the quarterly error rate for those claims medically reviewed in that quarter. In order for this determination to be made, the provider or supplier must submit a copy of the medical records that indicate that the items or services billed are covered, correctly coded, and are reasonable and necessary for the condition of the patient. When a provider or supplier is terminated from non-random prepayment complex medical review after 1 year of review and the contractor determines that the provider or supplier continues to have a high error rate despite educational interventions the contractor must consider referring the provider or supplier to the Benefit Integrity PSC. Contractors must also consider continuing educational interventions without performing medical review or must consider performing postpayment medical review.

(b) *Extension of non-random prepayment complex medical review.* (1) A contractors must extend non-random prepayment complex medical review beyond the 1 year timeframe if a provider or supplier stops billing the code under review or shifts billing to another inappropriate code to avoid proper calculation of the error rate. If the reduction in the error rate is attributed to a 25 percent or greater reduction in the number of claims submitted for the specific billing code under review, non-random prepayment complex medical review for that provider or supplier must be extended. However, if the number of claims submitted for a specific code were reduced because the provider or supplier began billing claims using a new appropriate code, or there is another legitimate explanation for the reduced number of claims billed, at contractor discretion, the provider or supplier may not be required to undergo extended non–random prepayment complex medical review.

(2) If extended medical review is necessary, contractors must notify providers and suppliers in writing the reasons for the need to perform additional prepayment complex review.

(c) *Quarterly termination evaluation*—(1) Contractors, at a minimum, must evaluate the length of time a provider or supplier has been on non-random prepayment complex medical review on a quarterly basis. A determination as to whether the provider's or supplier's initial probe review error rate for a specific billing code has been reduced by 70 percent must also be evaluated quarterly.

(2) Quarterly error rate evaluations must be for the discrete quarter; a rolling error rate average over more than one quarter is not permitted. After the contractor determines that the provider or supplier should be terminated from non-random prepayment complex medical review, the claims processing system must be updated within 2 business days to ensure that a provider's or supplier's claims for a specific billing error is no longer suspended for non-random prepayment complex medical review.

(d) *Periodic re-evaluation.* Once a provider or supplier is terminated from non-random prepayment complex medical review, contractors must periodically re-evaluate the provider or supplier's data and if necessary must place a provider or supplier that appears to have resumed a high level of payment error on complex medical review. This review would only be initiated if a probe review confirms that there continues to be a high level of payment error.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 26, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 10, 2005.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on September 30, 2005.

[FR Doc. 05–19925 Filed 9–30–05; 2:47 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

[WO–350–1410–00–24 1A]

RIN 1004–AD60

Alaska Native Veterans Allotments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend regulations published in the **Federal Register** on Friday, June 30, 2000 (65 FR 40953). The existing regulations allowed certain Alaska Native veterans another opportunity to apply for a Native allotment under the repealed Native Allotment Act of 1906. This proposed rulemaking would delete the requirement that veteran applicants must post the land by marking all corners of the ground with their name and address prior to filing an application with the BLM. Enforcement of the posting rule for allotments adjudicated under the 1906 Act was previously waived by an Assistant Secretary. Therefore, the posting requirement is deemed unnecessary for Native veteran allotment cases.

DATES: *Comments:* Send your comments to reach the BLM on or before December 6, 2005. The BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES: You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

Hand Delivery: 1620 L. Street, NW., Suite 401, Washington, DC 20036.

E-mail: *comments_washington@blm.gov*.

Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Haskins, Division of Conveyance Management, Bureau of Land Management, 222 West 7th Avenue #13, Anchorage, Alaska 99513; telephone (907) 271–3351; or Kelly Odom, Bureau of Land Management, Regulatory Affairs Group, Mail Stop 401, 1620 L Street, NW., Washington, DC 20036; telephone (202) 452–5028. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. The BLM may not necessarily consider or include in the Administrative Record for the final rule comments which the BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments including names, street addresses, and other contact information of respondents, will be available for public review at 1620 L Street, NW., Room 401, Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The Alaska Native Veterans Allotment Act of 1998 (Act), (Section 432 of Pub. L. 105–276), as amended, authorized allotments for certain Alaska Native veterans who served in the U.S. military during the Vietnam era. The Act provided an opportunity to file allotment applications for veterans who may have missed their chance to file (under the 1906 Native Allotment Act) as a direct result of their military service. The Act provided an 18 month application period which began on July 31, 2000 and ended on January 31, 2002. Regulations promulgated to implement the Act included a requirement for applicants to post the corners of their claims before filing their applications with the BLM. The BLM issued the regulations requiring posting before filing because we believed that physical markings on the land would facilitate the processing of the veteran applications and help finalize state and Native conveyance entitlements.

III. Discussion of Proposed Rule

The BLM, Bureau of Indian Affairs (BIA), Alaska Legal Services and BIA service providers notified Alaska Native veterans that it was critical that they submit their applications before the filing deadline. The BLM estimates almost 90% of the applicants failed to post their claim as the regulations require by January 31, 2002, the end of the application filing period. An applicant's failure to post its claim is a legal defect requiring the BLM to reject the claim. The BLM does not wish to reject a large percentage of applications because the corners of claims were not posted. Rejecting these claims for this reason alone is contrary to the purpose of the 1998 Act which was to provide another opportunity for certain veterans to file allotment applications. The BLM has determined that it would be inequitable to enforce a non-statutory requirement for the Vietnam veterans who timely filed their applications but did not post their claims. The BLM wants to give veteran applicants an opportunity to apply for a Native Allotment on the same basis as other applicants. Therefore, the BLM is proposing to amend 43 CFR 2568.74(d) by removing the requirement to post parcels and to delete 43 CFR 2568.77, which requires applicants to post corners of their claims.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

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

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does this rule raise novel legal or policy issues. Eliminating the posting requirement would only impact a limited number of individual Alaska Native Veteran applicants, Interior agencies, and tribal offices that are assisting applicants.

b. This rule will not create inconsistencies with other agencies' actions. The effect of this rule 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 was limited by law to 18 months and has passed; the existing staff of responsible agencies will process applications following most of the same rules that are currently in effect for allotment applications under the 1906 Native Allotment Act.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Eliminating the posting requirement would impact a limited number of individual Alaska Native Vietnam Veteran applicants, Interior agencies, and tribal offices that are assisting applicants. It will have no affect on budgetary entitlements, grants, user fees, or loan programs.

d. This rule will not raise novel legal or policy issues. This rule will place Alaska Native Vietnam Veteran applicants in the same position as those applicants who filed under the initial 1906 Native Allotment Act.

Clarity of the Regulations

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

1. Are the requirements in the proposed regulations clearly stated?

2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?

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

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?

5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. An environmental assessment is not required. Section 910 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1638, made conveyances, regulations, and other actions which lead to the issuance of conveyances to Natives under Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 *et seq.*) exempt from NEPA compliance requirements. Since the Alaska Native Veterans Allotment Act is part of ANCSA, NEPA does not apply.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule will only apply to

certain Alaska Native veterans and specific classes of heirs of Alaskan Native veterans who are eligible to apply for allotments. 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

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

a. Does not have an annual effect on the economy of $100 million or more. This rule would result in some costs saving to allotment applicants because under this rule they would no longer be required to post the corners of the lands in their applications. The Department of the Interior will have to implement the allotment program over the next several years, but these costs will be far below $100 million per year. Enforcing the posting requirement would cost the Department more than eliminating the posting requirements that we have determined to be unnecessary.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will result in some costs saving to allotment applicants.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Eliminating the posting requirement would have a positive impact on a limited number of individual Alaska Native Vietnam Veterans, Interior agencies, and tribal offices who are helping the applicants. The BLM will not have any additional applicants because of this revised rule. The original regulations provided for the filing of applications.

Unfunded Mandates Reform Act

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

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Eliminating the posting requirement will potentially result in minimal savings to tribal governments assisting veteran applicants.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the unfunded Mandates Reform Act.

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

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. This rule does not represent a government action capable of interfering with constitutionally protected property rights. Eliminating the posting requirement will have no effect on the use or value of protected property rights. Therefore, the Department of the Interior determines that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule would not have 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. Eliminating the posting requirement would have a neutral effect on the State of Alaska. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b) (2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2 we have identified potential effects on Indian trust resources and they are not addressed in this rule. The rule would result in more allotments being conveyed.

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

a. We have consulted with the affected tribes.

b. We have consulted with tribes on a government-to-government basis and the consultations have been open and candid so that the affected tribes could fully evaluate the potential impact of the rule on trust resources.

c. We will consider tribal views in the final rule.

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

The elimination of the posting requirement would more closely comply with verbal and written comments received as a result of the above consultation.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use, including a shortfall in supply or price increase. This rule is not a significant energy action. It will not have an adverse effect on energy supplies. This rule will apply only to Alaska Native veterans and to a specific class of Alaskan Native veteran's heirs who are eligible to apply for allotments.

Paperwork Reduction Act

The BLM has determined this rulemaking does not contain any new information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Effects on Endangered Species or Critical Habitat

In accordance with the Endangered Species Act, this regulation does not have an effect on an endangered species or critical habitat. This rule will expedite the conveyance of otherwise

valid allotment claims for a small number of Alaska Native Veterans who have already applied.

Author: The principal author of this rule is Mike Haskins, Division of Conveyance Management, Bureau of Land Management, Anchorage, Alaska; assisted by Kelly Odom of the BLM's Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects in 43 CFR Part 2560

Alaska, Homesteads, Indian lands, Public lands, Public lands—sale, and Reporting and recordkeeping requirements, Alaska Native allotments for certain veterans.

Dated: September 27, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble and under the authority of the Alaska Native Veterans Allotment Act of 1998 (Section 432, Pub. L. 105–276) the BLM proposes to amend part 2560 of Title 43 of the Code of Federal Regulations as set forth below:

PART 2560—ALASKA OCCUPANCY AND USE

1. Revise the authority citation for part 2560 to read as follows:

Authority: 43 U.S.C. 1629g(e).

2. Revise paragraph (d) of § 2568.74 to read as follows:

§ 2568.74 What else must I file with my application?

* * * * *

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

§ 2568.77 [Removed and Reserved]

3. Remove and reserve § 2568.77.

[FR Doc. 05–20164 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

Docket No. FMCSA–2005–21323]

RIN–2126–AA91

Parts and Accessories Necessary for Safe Operation: Surge Brake Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: In response to a petition for rulemaking from the Surge Brake Coalition, the Federal Motor Carrier Safety Administration proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to allow the use of automatic hydraulic inertia brake systems (surge brakes) on trailers operated in interstate commerce. A surge brake is a self-contained permanently closed hydraulic brake system activated in response to the braking action of the tow vehicle. The amount of trailer braking effort developed is proportional to the total trailer weight and deceleration rate of the tow vehicle. Currently, surge brakes are not considered by FMCSA to comply with the FMCSRs specifying that all brakes with which a motor vehicle is equipped must at all times be capable of operating, and that a single application valve must, when applied, operate all the service brakes on the motor vehicle or combination of motor vehicles. The intent of this rulemaking is to adopt performance-based brake system requirements to allow the use of surge brakes on certain combinations of commercial motor vehicles based upon engineering test data submitted by the Surge Brake Coalition.

DATES: Comments must be received by December 6, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2005–21323 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN–2126–AA91). Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–0676, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 9 a.m. to 5 p.m. e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

I. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984 (49 U.S.C. 31131, *et seq.*).

The Motor Carrier Act of 1935, as amended, provides that ''[t]he Secretary