

Dated: February 15, 2002.

**B.M. Salerno,**

*Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 02-4842 Filed 2-25-02; 2:50 pm]

BILLING CODE 4910-15-U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 167

[USCG-2001-11201]

#### Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, North Carolina

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of Study; correction.

**SUMMARY:** On January 18, 2002 the Coast Guard announced in a **Federal Register** notice of study and request for comments that we were conducting a Port Access Routes Study (PARS) to evaluate the need for vessel routing or other vessel traffic management measures along the sea coast of North Carolina and in the approaches to the Cape Fear River and Beaufort Inlet. In the *Background and Purpose* section of the preamble to the notice, we listed an incorrect expected completion date for the PARS as January 31, 2002. The purpose of this correction is to make clear that the comment period will continue until March 19, 2002, and that the PARS will be completed after a review and analysis of all comments and data collected.

**DATES:** Comments and related material must reach the Docket Management Facility on or before March 19, 2002.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2001-11201), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery 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. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at 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. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of study, call Tom Flynn, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757-398-6229, e-mail [TWflynn@lantd5.uscg.mil](mailto:TWflynn@lantd5.uscg.mil); or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202-267-0574, e-mail [Gdetweiler@comdt.uscg.mil](mailto:Gdetweiler@comdt.uscg.mil). If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG-2001-11201), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this study, we will hold one

at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

On January 18, 2002, the Coast Guard published a notice in the **Federal Register** entitled "Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, North Carolina" (67 FR 2616). In the preamble to the notice we indicated that the study would begin immediately and that we expected to complete the study by January 31, 2002. This incorrect study completion date was based on an earlier projected publishing date of the notice announcing the start of the Port Access Routes Study.

#### Need for Correction

The study will not be completed before the end of the comment period, which is March 19, 2002. We listed an earlier estimated completion date in the January 18, 2002, notice. The removal of this date is needed to accurately reflect that the study has not yet been completed and that the comment period will remain open until March 19, 2002.

#### Correction of Publication

In rule FR Doc. 02-1371 published on January 18, 2002, make the following correction: On page 2618, in the first column, starting on line 25, remove the phrase "and we anticipate the study will be completed by January 31, 2002".

Dated: February 19, 2002.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 02-4632 Filed 2-26-02; 8:45 am]

BILLING CODE 4910-15-U

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

RIN 1018-AI31

#### Subsistence Management Regulations for Public Lands in Alaska, Subpart D—Subsistence Taking of Fish, Customary Trade

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise regulations related to the customary trade of fish taken under Subsistence Management Regulations. The rulemaking is necessary because Title VIII of the Alaska National Interest Lands Conservation Act recognizes customary trade as a use of subsistence-taken resources. However, the current Federal regulations do not provide clear guidance as to what is or is not allowed in this regard. When final, this rulemaking would replace a portion of the existing regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Wildlife Resources," which expire on February 28, 2003.

**DATES:** The Federal Subsistence Board must receive your written public

comments on this proposed rule no later than March 29, 2002. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive comments on this proposed rule from February 20, 2002—March 21, 2002. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

**ADDRESSES:** You may be able to submit electronic comments and other data to [BillKnauer@fws.gov](mailto:BillKnauer@fws.gov). See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. Public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY**

**INFORMATION** for additional information on locations of the public meetings.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786-3592.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Review Process—Regulation Comments, Proposals, and Public Meetings**

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council .....	Hoonah .....	March 12, 2002.
Region 2—Southcentral Regional Council .....	Anchorage .....	March 5, 2002.
Region 3—Kodiak/Aleutians Regional Council .....	Kodiak .....	March 18, 2002.
Region 4—Bristol Bay Regional Council .....	Dillingham .....	February 28, 2002.
Region 5—Yukon-Kuskokwim Delta Regional Council .....	Tuntutuliak .....	March 6, 2002.
Region 6—Western Interior Regional Council .....	McGrath .....	March 19, 2002.
Region 7—Seward Peninsula Regional Council .....	Nome .....	February 26, 2002.
Region 8—Northwest Arctic Regional Council .....	Kotzebue .....	March 21, 2002.
Region 9—Eastern Interior Regional Council .....	Circle Hot Springs .....	February 25, 2002.
Region 10—North Slope Regional Council .....	Barrow .....	February 20, 2002.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

**Electronic filing of comments:** You may submit electronic comments and other data to [Bill\\_Knauer@fws.gov](mailto:Bill_Knauer@fws.gov). Please check whether this option is available before filing. Electronic access to Department of the Interior and Fish and Wildlife Service employees and offices has recently been suspended by the courts and may not be reestablished in time for filing of comments on this proposed rule. If electronic filing of comments is possible, please submit your comments as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, May 14, 2002. You may provide additional oral testimony before the Board at that time. The Board will then deliberate and may take final action on requested changes to this proposed rule at that public meeting.

#### **Background**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of

Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). On January 8, 1999, (64 FR 1276), the Departments published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska v. Babbitt*. Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development

of Federal Subsistence Management Regulations (Subparts A, B, C, and D).

The Board has reviewed and approved the publication of this proposed rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

#### **Applicability of Subparts A, B, and C**

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

#### **Federal Subsistence Regional Advisory Councils**

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical areas, cultures, interests, and resource users within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2002.

#### **Recognizing Customary Trade Practices**

Title VIII of ANILCA specifically identifies customary trade as a recognized part of subsistence uses. The term "customary trade" is defined in these regulations as "\* \* \* cash sale of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal or family needs, and does not include trade which constitutes a significant commercial enterprise." The distinction between the terms "customary trade" and "barter" (which

is also provided for in Title VIII) is that "customary trade" is the exchange of subsistence resources for cash, while "barter" is defined as the exchange of subsistence resources for something other than cash. While the exchange of subsistence resources as customary trade may involve fish, shellfish or wildlife resources, this proposed rule only covers the customary trade of fish resources.

Prior to the expansion of the Federal program to include management on other waters on October 1, 1999, Federal Subsistence Board regulations applied only to subsistence fisheries in non-navigable waters. Those regulations contained the same definition for customary trade cited above, but also included the following regulatory language (in § \_\_\_\_\_.26(c)(1)): "No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination from the Federal Subsistence Board that the sale constitutes customary trade". During the development of the regulations for the expanded fisheries program, it was recognized that the customary trade of fisheries resources was ongoing in many parts of Alaska, but was not provided for in the existing Federal regulation nor in existing State regulations (except for the sale of herring roe on kelp in southeast Alaska). Therefore the general prohibition in § \_\_\_\_\_.26(c)(1) was replaced effective October 1, 1999, with the following language which generally permits customary trade:

§ \_\_\_\_\_.26(c)(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

While detailed statistics are not available to show where customary trade transactions of fishery resources take place, we believe that the large majority of such transactions take place within rural villages or non-rural communities. Generally, the Federal subsistence regulations apply only within or adjacent to conservation

system units and other Federal lands as described in § \_\_\_\_\_.3 of the regulations. We believe, however, that Federal regulations governing customary trade of subsistence-taken resources (including the current regulations as well as the proposed regulations below) extend to any customary trade of legally-taken subsistence fish regardless of where the actual cash transaction takes place. However, State officials may disagree with that view.

Current Federal regulations regarding customary trade need to be refined. Much of the current discord and uncertainty associated with customary trade relates to the term "significant commercial enterprise" which is not defined in the regulations. Additionally, there is a concern that by allowing customary trade without further regulatory clarification, a loophole is created for valuable subsistence resources to become a commodity on the commercial market for monetary gain by those who wish to take wrongful advantage of the system. Without a more specific definition of "significant commercial enterprise" or other regulatory modification, law enforcement personnel regard the current regulation unenforceable. Another concern expressed by the Regional Councils is the need for a regional approach to customary trade regulations to take into account differences among the Regions.

Recognizing these concerns, the Board initiated an agreement with the Alaska Department of Fish and Game to assemble information on contemporary customary trade. In December 2000, the State submitted a report entitled "Sharing, Distribution, and Exchange of Wildlife Resources, An Annotated Bibliography of Recent Sources" documenting a wide range of continuing practices.

In late 2000, the Board established a Customary Trade Task Force composed of representatives of the 10 Regional Councils, fishery biologists, enforcement personnel, anthropologists, and others. This Task Force was charged with developing draft regulatory language defining the intent of customary trade as identified in ANILCA Title VIII. They met several times during 2001, requested, received, and considered public comments, and eventually developed preliminary draft regulatory language. The Task Force identified three different types of customary trade, with specific recommendations for each type. In the first, trade between rural residents, the Task Force recommended that unlimited cash exchange be permitted.

For the second type, trade between rural residents and others (the term "others" is defined as "commercial entities other than fishery businesses or individuals other than rural residents"), the Task Force recommended that customary trade also be permitted but that a monetary cap be applied to the customary trade of salmon. The Task Force chose a cap of \$1,000 per household member per year for salmon as a starting point for discussion and potential modification by each Council. For the third type, customary trade or barter to fisheries businesses, the Task Force recommended that this activity not be permitted. This draft was circulated for review by all ten Regional Councils, the 229 Federally recognized tribes, and for general public review. The Task Force met one more time to consider all comments received and eventually developed draft language that was presented to the Board on December 12, 2001, as Option 1 of six options for Board consideration. It should be noted that the preliminary draft language that was provided to the Regional Councils, Tribal governments, and general public was modified during the final meeting of the Task Force and then further modified by the Board at its December 2001 meeting.

The Board initiated tribal consultation with 229 Federally recognized tribes, using the preliminary draft language from the Task Force. In addition, Federal staff met with representatives of several villages, Tribal associations, and Regional Corporations. The consultation was conducted pursuant to the Department of the Interior, Alaska Policy on Government to Government Relations with the Alaska Native Tribes. Three tribal governments submitted comments. Two of the Tribal governments concurred with the proposed regulatory language; the comments from the third tribal government were not specific to customary trade.

During the review of the draft Task Force recommendation by the Regional Councils, seven of the ten Councils made specific regional recommendations. Included as part of the Task Force draft language was a \$1,000 cap per household member per year for the exchange of salmon for cash between rural residents and others. The Regional Council comments generally agreed with a monetary cap but also suggested regional needs and differences. Some Regional Councils thought the \$1,000 cap too high; others thought it too low. Several Council members expressed concern about allowing sales of subsistence-taken salmon in areas experiencing

subsistence shortages and limited fishing opportunities. In recent years, areas such as the Yukon and Kuskokwim Rivers have had poor salmon returns requiring managers to reduce subsistence fishing schedules and, in some instances, close subsistence fishing. Some Regional Councils also were concerned that the draft language restricted barter between rural residents and others. The specific recommendations of the Regional Councils are summarized below for each Fishery Management Area: (**Note:** In several cases, the boundaries of Fishery Management Areas do not coincide with Regional Council boundaries. For example, the Cook Inlet Fishery Management Area is divided approximately equally between the Southcentral and Bristol Bay Regional Advisory Council areas. For clarity, the recommendations listed below include only the recommendation of one Council for each Fishery Management Area.)

#### *Kotzebue Area*

The total cash value per household member of salmon taken in the Kotzebue Area exchanged in customary trade to others should not exceed \$1,000.00 annually.

#### *Norton Sound-Port Clarence Area*

The total cash value of salmon taken in the Norton Sound-Port Clarence Area exchanged in customary trade by each household member to others should not be limited.

#### *Yukon-Northern Area*

The total cash value per household member of salmon taken in the Yukon-Northern Area exchanged in customary trade to others should not exceed \$1,000.00 annually.

#### *Kuskokwim Area*

The total cash value per household member of salmon taken in the Kuskokwim Area exchanged in customary trade to others should not exceed \$1,000.00 annually.

#### *Bristol Bay Area*

The total cash value per household member of salmon taken in the Bristol Bay Area exchanged in customary trade to rural residents should not exceed \$1,000.00 annually.

The total cash value per household member of salmon taken in the Bristol Bay Area exchanged in customary trade to others should not exceed \$400.00 annually.

#### *Aleutian Islands Area*

The total cash value per household member of salmon taken in the Aleutian Islands Area exchanged in customary trade to others should not exceed \$1,000.00 annually.

[The Regional Council also recommended: These regulations should expire in two years from the effective date of the regulations unless extended, superseded, modified, or revoked.]

#### *Alaska Peninsula Area*

The total cash value per household member of salmon taken in the Alaska Peninsula Area exchanged in customary trade to others should not exceed \$1,000.00 annually.

[The Regional Council also recommended: These regulations should expire in two years from the effective date of the regulations unless extended, superseded, modified, or revoked.]

#### *Chignik Area*

The total cash value per household member of salmon taken in the Chignik Area exchanged in customary trade to rural residents should not exceed \$1,000.00 annually.

The total cash value per household member of salmon taken in the Chignik Area exchanged in customary trade to others should not exceed \$400.00 annually.

#### *Kodiak Area*

The total cash value per household member of salmon taken in the Kodiak Area exchanged in customary trade to others should not exceed \$1,000.00 annually.

[The Regional Council also recommended: These regulations should expire in two years from the effective date of the regulations unless extended, superseded, modified, or revoked.]

#### *Cook Inlet Area*

The total cash value per household member of salmon taken in the Cook Inlet Area exchanged in customary trade to others should not exceed \$1,000.00 annually. At least 50% of all fish taken by a household under subsistence regulations should be kept for the household's consumption.

#### *Prince William Sound Area*

The total cash value per household member of salmon taken in the Prince William Sound Area exchanged in customary trade to others should not exceed \$1,000.00 annually. At least 50% of all fish taken by a household under subsistence regulations should be kept for the household's consumption.

### *Yakutat Area*

The total cash value of salmon taken in the Yakutat Area exchanged in customary trade by each household member to others should not be limited.

### *Southeastern Alaska Area*

The total cash value of salmon taken in the Southeastern Alaska Area exchanged in customary trade by each household member to others should not be limited.

The Customary Trade Task Force received 17 written comments from the public, government agencies, private organizations, and individuals expressing concerns regarding the issue of customary trade generally and regarding the draft regulatory language in particular. There was general recognition that customary trade is integral to the subsistence way of life; however, some commentors said that subsistence should not include any cash transactions. Some commentors said that there is a need to authorize existing practices without creating new uses or expanding existing ones, while others stated that there is little or no need to regulate this practice. Some commentors expressed concern that an inappropriate cash limit would create a hardship for subsistence users. Some expressed concern that the practice of customary trade will have an impact on resources, and some felt that customary trade should not have the same priority as the use of fish for food. Other commentors object that the regulations do not address potential impacts on commercial fisheries. Some commentors expressed concern that setting a dollar amount would encourage unscrupulous behavior patterns or invite abuse resulting in significant cash sales to the detriment of the resource. Others believe that setting a cash limit would protect the resource. Concern was expressed that improperly processed fish present a health risk to the consumers. A related concern is that these proposed regulations may put many subsistence fishers in violation of State and Federal food laws. Many commentors felt that the Board's projected timeline for finalizing this proposed regulation is too brief, because it does not provide adequate time to determine necessary harvest amounts or to coordinate with State regulations, nor does it allow time to address all the issues the proposed regulation raises. Some later commentors stated during Board discussion that there should also be a prohibition on the sale of subsistence-taken fish to State-licensed fishery businesses (not just a prohibition on the purchase by such businesses.)

After the Council, tribal government, and public review, the Task Force met one more time to consider comments received during that review. In general there was concurrence with the Task Force recommendations for unlimited customary trade between rural residents and a prohibition against customary trade between rural residents and fisheries businesses. (Two exceptions to this concurrence were the Bristol Bay Regional Council recommendations for a \$1,000 limit on customary trade between rural residents in the Bristol Bay and Chignik Areas.) Based on concerns expressed at this Task Force meeting about the enforceability of a monetary cap on the exchange between rural residents and others, the Task Force added a permitting requirement to this section.

At its December 2001 meeting, the Board considered six options for a proposed rule regarding customary trade. They were:

*Option 1*—Publish the proposed rule for public comment with the draft regulatory language, including a permitting requirement, as recommended by the Customary Trade Task Force. This includes: unlimited customary trade transactions between rural residents; a \$1,000 limit for customary trade and barter of salmon, their parts, or their eggs between rural residents and others; a Federal customary trade and barter permit to implement this provision; and a prohibition of exchanges with fisheries businesses. The Task Force recommended establishment of a Federal permit as a necessary provision to monitor customary trade use patterns, as well as to accommodate agency enforcement needs.

*Option 2*—Publish the proposed rule for public comment with the draft regulatory language, as recommended by the Customary Trade Task Force, except replace the permitting requirement with a recordkeeping requirement. Option 2 would be identical in regulatory language to Option 1, with the exception of language addressing the transactions between a rural resident and others. Instead of establishing a Federal customary trade and barter permit, Option 2 would track the exchanges and transactions between rural residents and others for salmon, their parts, or their eggs by implementing a recordkeeping requirement. Those exchanging fish for cash to others would be required to keep a record of these transactions and provide such records to law enforcement officers upon request.

*Option 3*—Allow unlimited barter for transactions between rural residents and

others. Option 3 would be a variation of either Option 1 or Option 2, and arises from concerns that barter between a rural resident and others should not be limited. The Permitting Requirement under Option 1 and the Recordkeeping Requirement under Option 2 would impose limitations on barter involving salmon, their eggs, or their parts between a rural resident and others. Option 3 would remove the restriction on barter by deleting any reference to barter.

*Option 4*—Provide for regional limitations for exchanges between rural residents and others. This option would include draft regulatory language as proposed by the Federal Subsistence Regional Advisory Councils during their fall 2001 meetings. In some instances, Regional Councils recommended modifying the restrictions on transactions between a rural resident and others for salmon, their parts, or their eggs on a regional basis, while in other instances Regional Councils recommended going forward with the \$1,000 limit as recommended by the Task Force. Additionally, for the Bristol Bay and Chignik Areas, the Regional Council proposed to restrict the customary trade between rural residents. The regional language proposed by the Councils could be included with the regulatory language in Option 1, Option 2, Option 3 or Option 5 (with modification).

*Option 5*—Publish the proposed rule for public comment with the draft regulatory language, as recommended by the Customary Trade Task Force, except maintain the status quo for transactions between rural residents and others. Through the development and review of draft regulatory language for customary trade by the Task Force and the Regional Advisory Councils, there was general support and consensus for unlimited transactions between rural residents and the prohibition of transactions with fisheries businesses. Many of the concerns raised have been directed at the transactions between a rural resident and others. Option 5 would maintain the status quo for transactions between a rural resident and others, prohibit transactions with State-licensed fisheries businesses, and allow further discussions and analyses to occur before proposing further restrictions on the transactions between a rural resident and others in a proposed rule.

*Option 6*—Defer publication of a proposed rule to provide more opportunity for informal comment. Option 6 would defer publication of draft regulatory language for customary trade of fish in a proposed rule.

Concerns were raised that significant changes and options (*i.e.* permitting requirement or recordkeeping requirement) were developed after the fall meetings of the Regional Advisory Councils and without their full input.

After hearing the report of the Task Force, the six options, and comments from Regional Council Chairs, ADF&G, Alaska Department of Environmental Conservation, and other members of the public, the Board decided to implement Option 5 and to initiate a formal rulemaking process with this proposed rule.

Because most customary trade among rural subsistence users occurs between local users and involves only small amounts of fish, the Board does not believe that this rule will create an incentive for additional harvest of the resources nor result in additional fish being sold in the commercial markets. Likewise, nothing in this proposed rule would displace, supersede, or preempt State or Federal food and health safety laws and regulations governing the processing, handling, or sale of fish.

There is now the opportunity for further public comment and Regional Council input prior to implementation of a final rule. Additionally, since this rule would occur in subpart D of the Federal Subsistence Management Regulations, it would be subject to annual review and revision as needed or deemed appropriate. This rulemaking will provide a clear mechanism and focus for public comments, either directly to the Board in writing, or orally at their May 2002 meeting or to the Regional Councils during their February/March 2002 meetings. The Board invites comments on this proposed rule, the six options considered by the Board at their December 2001 meeting, and the regional recommendations provided by the Regional Councils. The Board will expand public awareness of this proposed rule and the opportunity to comment through targeted mailouts to interested parties, news releases, additional Tribal consultation, and by posting on the Office of Subsistence Management Web site at <http://www.r7.fws.gov/asm/home.html>. The Board's estimated schedule for this rulemaking is as follows:

- Regional Council meetings including comment on this rule. Feb./Mar. 2002.
- Additional Tribal Consultation on this rule. Feb./Mar. 2002.
- Public comment period ends on this rule. Mar. 29, 2002.
- Federal Subsistence Board deliberation and action on this rule. May 2002.

- Publication of a final rule June 2002.
- Final Rule effective ..... July 1, 2002.

### Conformance with Statutory and Regulatory Authorities

#### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992, amended January 8, 1999, 64 FR 1276, and June 12, 2001 66 FR 31533) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

#### *Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife

populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

#### *Paperwork Reduction Act*

These proposed amendments do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

#### *Other Requirements*

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; however, the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources traded under this rule will be consumed by local rural residents and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of \$3.00 per pound for salmon [Note: this is actually much higher than the current commercial ex-vessel value for salmon.] and \$ 0.58 per pound for other fish, would equate to

about \$34 million in food value Statewide. We anticipate that only a very small portion of this harvest might be used in customary trade and most of that would remain in the local village or region.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. For this reason, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

These actions are not significant regulatory actions under Executive Order 12866, nor will they raise novel legal or policy issues.

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant adverse effects. During the development of this proposed rule, the Board initiated Tribal consultation with 229 Federally-recognized Tribes. All of the comments that were received were consistent with the Task Force's recommended language. The Board will continue with Tribal consultation during the comment period through directed mailings and special meetings with Tribal entities. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

#### *Drafting Information*

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

#### **List of Subjects**

##### *36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

##### *50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

#### **PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA**

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

##### **Subpart D—Subsistence Taking of Fish and Wildlife**

2. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § \_\_\_\_\_.27(c)(11) through (13) are revised to read as follows:

##### **§ \_\_\_\_\_.27 Subsistence taking of fish.**

\* \* \* \* \*

(c) \* \* \*  
(11) Transactions Between Rural Residents—The exchange between rural residents in customary trade of subsistence-harvested fish, their parts,

or their eggs, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted.

(12) Transactions Between a Rural Resident and Others—Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise.

(13) No Purchase By Fisheries Businesses—If you are required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter for, subsistence-taken fish, their parts, or their eggs.

\* \* \* \* \*

Dated: January 15, 2002.

**Timothy R. Jennings,**

*Acting Chair, Federal Subsistence Board.*

**Calvin H. Casipit,**

*Acting Regional Forester, USDA-Forest Service.*

[FR Doc. 02–4540 Filed 2–26–02; 8:45 am]

**BILLING CODE 3410–11–P 4310–55–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

[CA 250–0317b; FRL–7145–9]

##### **Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open burning, prescribed burning, and hazard reduction burning. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by March 29, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection