Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting & recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart D as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1226, 1231; 46 U.S.C Chapter 701; 50 U.S.C 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend temporary § 165.T05–015 by revising paragraphs (d) and (e) to read as follows:

§ 165.T05–015 Security Zone: Jamestown Island, VA.

* * * * *

(d) *Enforcement period:* The security zone will be enforced from 7 a.m. on May 11, 2007, until 10 p.m. on May 13, 2007.

(e) *Effective period:* This regulation is effective from 7 a.m. on May 11, 2007, to 10 p.m. on May 13, 2007.

Dated: April 27, 2007.

John S. Kenyon,

Commander, U.S. Coast Guard, Acting Captain of the Port, Hampton Roads.

[FR Doc. 07–2246 Filed 11–3–07; 11:02 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AT99

Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations

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

ACTION: Final rule.

SUMMARY: This rule revises the list of nonrural areas identified by the Federal Subsistence Board (Board, we, us). Only residents of areas identified as rural are eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska. We are changing Adak's status to rural. We also are adding Prudhoe Bay to the list of nonrural areas. The following areas continue to be nonrural, but we are changing their boundaries: the Kenai Area; the Wasilla/Palmer Area, including Point McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area. We have also added Saxman to the Ketchikan nonrural area. We are making no other changes in status. This final rule differs from the proposed rule relative to the Kodiak area and Saxman: For reasons set forth below, we did not change the status of the Kodiak area from rural to nonrural, as we had proposed, and we included Saxman in the nonrural Ketchikan area, which we had not proposed. Residents of those areas changing from rural to nonrural have 5 years to come into compliance with this rule.

DATES: *Effective Date:* This rule is effective June 6, 2007. *Compliance Date:* Compliance with the nonrural determinations for Prudhoe Bay, Point MacKenzie, the expanded portion of Sterling, Fritz Creek East, North Fork Road area, Saxman, and the additions to the Ketchikan nonrural area is required by May 7, 2012.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; 3601 C Street, Suite 1030, Anchorage, AK 99503, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that ''the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *'' and that ''continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened. * * *'' As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a program to provide rural Alaska residents a priority for the taking of fish and wildlife on public lands in Alaska for subsistence uses, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, priority, 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 priority in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* caused the State to delete the rural priority from the subsistence statute, which 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 Departments published the Temporary Subsistence Management Regulations for Public Lands in Alaska in the **Federal Register** (55 FR 27114). Permanent regulations were jointly published on May 29, 1992 (57 FR 22940), and have been amended since then.

As a result of this joint process between Interior and Agriculture, these regulations can be found in the titles for Agriculture and Interior in the Code of Federal Regulations (CFR) both in title 36, ''Parks, Forests, and Public

Property,'' and title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain the following subparts: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), and December 27, 2005 (70 FR 76400), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program, as established by the Secretaries. 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 (BLM); 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 regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Rural Determination Process

With a **Federal Register** notice on October 5, 1990 (55 FR 40897), the newly established Federal Subsistence Board initiated the preparation of an Environmental Impact Statement as a vehicle for widespread public review and participation in the development of the final temporary regulations. The rural determination process was included, and subsequently on November 23, 1990 (55 FR 48877), the Board published another notice in the **Federal Register** explaining the proposed Federal process for making rural determinations, the criteria to be used, and the application of those criteria in preliminary determinations. Public meetings were held in approximately 56 Alaskan communities, specifically to solicit comments on the proposed Federal Subsistence Management Program. On December 17, 1990, the Board adopted final rural and nonrural determinations, which were published on January 3, 1991 (56 FR 236). Final programmatic regulations were published on May 29, 1992, with only slight variations in the rural determination process (57 FR 22940).

Federal subsistence regulations require that the rural/nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data. The Board evaluated several options for conducting the review and decided to adopt an approach similar to that taken in 1990, which used criteria established in Federal subsistence regulations.

Although the process uses data from the 2000 census for its review, some data were not compiled and available until 2005. Data from the Alaska Department of Labor were used to supplement the census data.

During February–July 2005, the staff of the Federal Subsistence Management Program conducted an initial review of the rural status of Alaska communities, looking at the 2000 census data for each community or area with an emphasis on what had changed since 1990. From this initial review, staff compiled a report that included a proposed list of communities and areas for which further analysis appeared warranted. In addition, the report described the method used to develop this list. In August–October 2005, the public and Federal Subsistence Regional Advisory Councils were invited to comment on the results of this initial review.

At a meeting in Anchorage on December 6–7, 2005, the Board took public testimony and determined that additional information was needed on 10 communities and areas before it decided upon any potential changes.

- For three communities, the further analysis that followed was focused on evaluation of rural/nonrural status, as follows:

Kodiak, Adak, and Prudhoe Bay: At that time, Kodiak and Prudhoe Bay were considered rural, and Adak was considered nonrural. These three communities were further analyzed as to their rural/nonrural status.

- For five nonrural groupings of communities and areas, further analysis evaluated the possibility of excluding or including boundary areas, as follows:

Fairbanks North Star Borough: Evaluated whether to continue using the entire borough as the nonrural area, or whether to separate some outlying areas and evaluated their rural/nonrural status independently.

Seward Area: Evaluated whether to exclude Moose Pass and similarly situated places from this nonrural grouping and evaluate their rural/nonrural status independently.

Wasilla/Palmer Area: Evaluated whether to include Willow, Point MacKenzie, and similarly situated places in this nonrural grouping.

Homer Area: Evaluated whether to include Fox River, Happy Valley, and similarly situated places in this nonrural grouping.

Kenai Area: Evaluated whether to exclude Clam Gulch and similarly situated places from this nonrural grouping and evaluated their rural/nonrural status independently, and evaluated whether to include an additional portion of the Sterling census designated place in the nonrural Kenai area.

- In addition, two areas were further analyzed as follows:

Ketchikan Area: Evaluated whether to include Saxman, and other areas outside the current nonrural boundary, and evaluated the rural/nonrural status of the whole area.

Delta Junction, Big Delta, Deltana and Fort Greely: Evaluated whether some or all of these communities should be grouped, and if so, their rural/nonrural status evaluated collectively.

This assignment for additional analysis differed from the proposed list released for public comment in July 2005, in that: (1) The scope of the review was broadened for the Ketchikan area, considered nonrural, to include an analysis of rural/nonrural characteristics of the entire area; (2) the rural/nonrural status of Prudhoe Bay was added; and (3) additional analysis of Sitka was not believed to be necessary.

Sitka, whose population had increased from 8,588 people in 1990 to 8,835 in 2000, had been initially identified as an area possibly warranting further analysis. However, during its December 6–7, 2005, meeting, the Board heard substantial public testimony regarding the rural characteristics of Sitka and determined that no additional analysis was necessary, leaving Sitka's rural status unchanged.

During January–May 2006, Federal subsistence staff conducted in-depth analyses of each community or area on the Board-approved list of communities and areas identified for further analysis.

On June 22, 2006, the Board met in executive session to develop the list of communities and areas they proposed to be nonrural. Those communities and areas were identified in a proposed rule published in the **Federal Register** on August 14, 2006 (71 FR 46416).

Population size is a fundamental distinguishing characteristic between rural and nonrural communities. Under the current programmatic guidance in Federal subsistence regulations:

- A community with a population of 2,500 or less is deemed rural, unless it possesses significant characteristics of a nonrural nature, or is considered to be socially, economically, and communally part of a nonrural area.
- A community with a population of more than 7,000 is presumed nonrural, unless it possesses significant characteristics of a rural nature.

• A community with a population above 2,500 but not more than 7,000 is evaluated to determine its rural/nonrural status. The community characteristics considered in this evaluation may include, but are not limited to, diversity and development of the local economy, use of fish and wildlife, community infrastructure, transportation, and educational institutions.

Communities that are economically, socially, and communally integrated are combined for evaluation purposes. The Board identified three guidelines or criteria for analysis to assist in its determination of whether or not to group communities in its review of rural determinations. The criteria that were used include: (1) Are the communities in proximity and road-accessible to one another? The first criterion, proximity and road accessibility, is considered a logical first step in evaluating the relationship between communities, and, applied in relation to the other two criteria, is considered a reasonable indicator of economic, social, and communal integration. (2) Do they share a common high school attendance area? The second criterion, regarding sharing a common high school attendance area, is taken to be an indicator of the social integration of communities. This is an improvement by way of modification from the former criterion of a shared school district. The public pointed out in past testimony that attendance in a common school district often reflects political or administrative boundaries rather than social integration. A shared social experience is better captured by the shared high school criterion. (3) Do 30 percent or more of the working people commute from one community to another? This criterion, regarding whether working people commute from one community to another, was identified as providing meaningful information relating to the grouping of communities. Also, the U.S. Census uses this criterion because commuting to work is an easily understood measure that reflects social and economic integration. These criteria were not considered separately, but assessed collectively, with the recommendation to group communities being dependent upon the collective assessment.

Community characteristics and specific indicators that the Board used to evaluate rural/nonrural status included: (1) Economy—wage employment, percent unemployment, per capita income, diversity of services, cost-of-food index, and number of stores of defined large national retailers; (2) Community infrastructure—including the cost of electricity; (3) Fish and wildlife use—variety of species used per household, percentage of households participating, level of average harvest per capita for all subsistence resources combined, and level of average harvest per capita for salmon and large land mammals only; (4) Transportation—variety of means, predominant means, and length of road system; and (5) Educational institutions present in the community.

The Board's analysis and preliminary efforts to distinguish between rural places and nonrural places were heavily reliant on population size, but when the Board used other characteristics, its approach was based on a totality of the circumstances. Unemployment is generally higher and per capita income is generally lower in rural places than in nonrural places. Cost of food and cost of electricity were generally higher in the rural communities than in the nonrural. Subsistence per capita harvest of all resources shows a pattern of increasing amount with decreasing population size among nonrural areas, and typically higher levels in rural communities. The per capita harvest of salmon and large land mammals also shows a general pattern of increasing amount with decreasing population size among nonrural areas, and typically higher levels in rural communities. The defined large national retailers were concentrated in the nonrural communities.

Public Review and Comment

The Board published a proposed rule (71 FR 46416) on August 14, 2006, soliciting comments through October 27, 2006, on the proposed revision to the list of areas designated as nonrural. The Board then held public hearings in Kodiak on September 20–21, 2006, in Saxman on September 25, 2006, in Ketchikan on September 26, 2006, and in Sitka on October 10, 2006. Approximately 230 individuals testified at those hearings. During the public comment period, we received an additional 300 comments from individuals and 31 comments from organizations, agencies and government representatives, as well as 11 resolutions from city, borough, and tribal governments and organizations. Virtually all of the written comments from individuals came from Sitka, Kodiak, Ketchikan, and Saxman. Most expressed a desire for their communities to have a rural designation.

Five of the 10 Regional Councils had comments and recommendations to the Board on the proposed rule on the decennial review of rural/nonrural determinations.

Southeastern Alaska Federal Subsistence Regional Advisory Council—The Council concurred with the Board's proposed rule to maintain the rural status of Sitka and Saxman. The Council did not agree with the Board's proposed rule for Ketchikan. The Council was also concerned that the presumptive nonrural population threshold of 7,000 is in error, and recommended a change, if a threshold must be used, to 11,316.

Southcentral Alaska Federal Subsistence Regional Advisory Council—The Council supported the proposed rule for all changes in the Southcentral region. The Council also commented that guidelines and criterion need to be reviewed further to clearly address communities surrounding military bases and hub communities on the road system.

Kodiak/Aleutians Federal Subsistence Regional Advisory Council—The Council recommended that Kodiak and its road system should remain classified as rural, and that classification of Adak should be changed from nonrural to rural.

Eastern Interior Alaska Federal Subsistence Regional Advisory Council—The Council recommended the removal of Fort Greely from the Board's grouping of the four census designated places of Delta Junction, Big Delta, Deltana, and Fort Greely with the intent that the communities retain their rural status.

North Slope Federal Subsistence Regional Advisory Council—The Council recommended changing the designation of Prudhoe Bay from rural to nonrural.

We will address the major comments from all sources below:

Comment: The Board has failed to provide sufficient information and assurances of consistency regarding the basis for the Board's evaluations of rural status or of the effects of a Board determination. This lack of information has caused unnecessary fear and confusion among Alaskans.

Response: The Board has conducted this review of rural/nonrural determinations with substantial opportunities for public involvement, and with substantial informational outreach. The generalized timeline for the process has been previously noted. In the course of this process, there have been public news releases, a question and answer sheet, fact sheet, briefings to Regional Advisory Councils, staff reports, a proposed rule, Board public meetings, and Board public hearings in four communities.

Comment: At a minimum, the Federal Subsistence Board is obligated to

construe Title VIII and the regulations implementing it broadly in favor of Alaska Natives.

Response: Title VIII and the Federal subsistence management system established to implement it are racially neutral. The Ninth Circuit Court in *Hoonah Indian Association* v. *Morrison*, 170 F.3d 1223, 1228 (9th Cir. 1999) has concluded that Title VIII is not Indian legislation for the purpose of statutory construction.

Comment: Communities should not be grouped or are being improperly grouped. The Coast Guard base in Kodiak should not be grouped in the Kodiak area; the Coast Guard base in Sitka should not be grouped in the Sitka area; the Community of Saxman should not be grouped in the Ketchikan area.

Response: Section ____.15(a)(6) requires that communities that are economically, socially, and communally integrated be considered in the aggregate. That means they must be grouped for consideration. It should be noted that places in a grouping need not be economically, socially, or communally homogenous in order to be included. Portions of a nonrural grouping may appear more rural than other portions of the grouping and may have their own community governments and services, but may still be combined or joined in one area.

Comment: Many people objected to the use of aggregating communities or to the use of population in making presumptive determinations.

Response: The procedure of considering aggregated areas has been in place in Federal Subsistence Management regulations (50 CFR 100.15(a)(6) and 36 CFR 242.15(a)(6)) since 1992 and recognizes the fact that some areas and/or communities are interrelated and should be considered as a whole. The use of population to set presumptive thresholds has also been in regulation (____.15(a)(1–3)) since 1992 and recognizes the intent of Congress and the Courts in using population as an initial determinant of the rural or nonrural nature of a community or area. The plain meaning of the term ''rural'' involves population. Since larger population size may be seen as an impediment to maintaining or acquiring rural status for a community or area, there is an incentive to minimize the importance of population size as a factor or to exclude portions of the total population in the assessment of a community's size. The use of a population threshold recognizes that population alone is not the sole indicator of a rural or nonrural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural.

Comment: The Federal staff analysis ignores the historical context for aggregation. The Board's decision making process should include an evaluation regarding small communities along road systems and their links to larger population centers with services that residents of these small communities regularly use. The 2006 Federal staff analysis should have evaluated the changes throughout the Kenai Peninsula and should provide sufficient analysis to allow the Board to consider reinstating an aggregation of communities on the road-connected Kenai Peninsula.

Response: The Board considered grouping issues for some areas, as assigned for further staff analysis in December 2005. The method to be used for the assigned staff analyses was described and subjected to public comment earlier in 2005. An analysis that would evaluate aggregation of the entire road-connected Kenai Peninsula was not proposed by the Board for assignment in July 2005, was not requested by ADF&G at the December 2005 Board public meeting at which the assignments were made, was not requested by the public, and was not assigned by the Board. The staff analysis is consistent with the assignment made by the Board in public session. Further, given the criteria used by the Board, there was no reason to address the issue further during the December 2006 public meeting.

Comment: Testimony and public comments have challenged the appropriateness of the derivation of the 7,000 threshold from the Ketchikan population level. The point made is that the 7,000 level was the approximate size of Ketchikan City at the time of ANILCA passage, but that the greater Ketchikan area had a population of about 11,000 at that time. The concern is that the area population of 11,000 should have been taken to represent Congressional intent, since the approach as implemented requires grouping of economically, socially, and communally integrated places.

Response: Whether the regulations should describe a threshold of 11,000 derived from the Ketchikan Area as a whole, or 7,000 derived only from the City of Ketchikan, has no effect on the outcome of this decennial review. Existing population levels identified in regulation provide for a presumption unless a community or area exhibits characteristics contrary to the initial presumption. This provides the Board latitude to deviate from the presumption thresholds as warranted by additional data. Communities and areas of all sizes were given adequate consideration, and multiple opportunities were provided for review and comment by Regional Advisory Councils, the State of Alaska, and the public. None of the communities or areas (as defined by grouping in the course of this review) that were proposed by the Board for change in status was in the population range of 7,000 to 11,000. For future clarification, the Board will interpret the 7,000 population figure as a figure to be used for an individual community and the 11,000 population figure as a figure to be used when considering aggregated areas.

Comment: The Board's decisions for proposing nonrural status for some communities and not others was made in executive session on June 22, 2006.

Response: The Board's decisions regarding communities and areas assigned for further analysis were made in a public meeting December 6–7, 2005. At the executive session on June 22, 2006, the Board developed the proposed rule, the release of which activated an extensive public comment period, including Board hearings in four communities.

Comment: The Board did not use a consistent process for each community in evaluating whether a community is rural or nonrural. This is most clearly demonstrated in the Board's decision to maintain Sitka's rural status without review or comparison to the standards.

Response: To address these concerns, we will need to recall the approach for the initial steps in the review process, which was presented to the Councils for their consideration during the February–March 2005 Council meeting window, coincident with a public comment period. There were 300 communities or areas (as grouped by the Federal Subsistence Management Program) in Alaska in 2000, using data from the 2000 U.S. Census. The initial review work by staff in support of the Board, conducted with an emphasis on what has changed since the initial determinations were made in 1990, was reported to the Board in July 2005. The Board then proposed a list of communities and areas for further analysis, which was subjected to public comment and Council review and recommendation during the September–October 2005 Council meeting window. Sitka was one of the places initially proposed by the Board as a candidate for further analysis because it is rural in status but grew further over the 7,000 threshold between 1990 and 2000, which was one of the triggers for consideration. That growth amounted to 247 people (or 3 percent), from 8,588 in

1990 to 8,835 in 2000 (using Sitka City and Borough as the area of interest). Notably, Sitka's population remains below the 11,000 figure discussed above for aggregated areas. The initial steps in the review process winnowed the number of communities and areas proposed for further analysis from the potential scope of 300 to 10. The public comment period in the fall of 2005, and the Board public meeting in December 2005, provided further information and feedback on the first phase of the review, with the Board seeking to learn more and being open to adding communities and areas to, or removing them from, the list for further analysis. Based on public comments and Regional Council recommendations, and testimony at the December 2005 Board public meeting, the Board added to, and removed from, the list proposed for further analysis in making its assignment to staff for further analysis. In the case of Sitka, the prevailing view of the Board was that sufficient information had been obtained to preclude the need for further staff analysis. The subsequent staff report to the Board on the assigned further analyses included historical and current information on population and community characteristics for Sitka along with other places from around the State, in carrying forward the range of coverage that had been provided in 1990.

Comment: The final analysis used by the Board is selective in its use of the regulatory criteria and does not address other communities whose status has significantly changed between the 1990 and 2000 census.

Response: The June 23, 2006, Office of Subsistence Management (OSM) report was not selective in its use of the criteria. Tabular appendix tables and in-text graphics presented historical and current population data and indicators for all five community characteristics identified in regulation. In addition, data was presented on population density, which is a characteristic not identified in regulation. Not all data types were available for all communities and areas, but relevant data were provided to the extent available. The June 23, 2006, OSM report was not intended to address all communities or areas within which changes may have occurred, but rather those for which additional staff analysis was assigned by the Board. The Federal review process, from the beginning, involved opportunities for Council, State, and public input. The Board review was intended to progressively winnow the scope of candidate communities for potential change in status, or grouping and status, from the approximately 300 places in Alaska.

Comment: Federal regulations specify that the criteria ''shall be considered in evaluating a community's rural or nonrural status.'' However, the analysis prepared by Federal staff and the Board's preliminary determinations reflected in the proposed rule make selective use of the criteria. Old Believer communities on the Kenai Peninsula and Delta Junction are two examples where consideration of the use of fish and wildlife resources, as well as other factors, are minimized or omitted.

Response: The regulatory phrase, quoted above, is taken out of context. The Federal regulations specify that ''community or area characteristics shall be considered in evaluating a community's rural or nonrural status. The characteristics may include, but are not limited to: [a list of five characteristics follows].'' This regulatory construction provides substantial latitude to the Board in the type of community characteristics used to evaluate rural or nonrural status. All five of the characteristics listed in regulation were addressed with data for one or more indicators in the historical (1990) and current (2006) tables presented in appendices to the June 23, 2006, OSM report to the Board, and selected indicators were also presented in graphs for ease of visual interpretation. Characteristics were evaluated for communities using the data as available. The issue raised regarding the Old Believer communities confuses the community characteristics used to address rural/nonrural status with the grouping of economically, socially, and communally integrated places, for which the Board identified three criteria as indicators. For Delta Junction, data on community characteristics were used to the extent available. Sufficient information on community use of fish and wildlife was not available in a way that would have been reliable for contributing to an assessment of rural/nonrural status.

Comment: The June 23, 2006, Federal staff analysis fails to incorporate results of previous statewide analyses. Available comparisons of patterns and their changes between 1990 and the 2000 census, as well as subsequent changes, are not presented consistently for all communities.

Response: The June 23, 2006, OSM report is not selective in its use of population data or community characteristics, and both historical and current data are presented. Tabular appendix tables and in-text graphics present historical and current population data and indicators for all five community characteristics identified in regulation. In addition, data is presented on population density, which is a characteristic not identified in regulation. Not all data types were available for all communities and areas. Current data were presented in a standardized way for those data types for which it was available. Additionally, the analysis never intended to examine all communities statewide, nor the changes for all communities statewide.

Comment: There is no need for a nonrural designation because the resources are adequate to support all users.

Response: ANILCA requires the Federal Subsistence Board to distinguish between rural and nonrural areas. Availability of resources is not relevant to rural/nonrural determinations.

Comment: The analysis for Adak needs to be expanded to evaluate subsistence use of fish and wildlife by the current population, in light of the proposed designation of rural status, rather than just relying on population size, remote location, and salmon harvest data.

Response: Adak is a remote community in the Aleutian Islands which has undergone a substantial decrease in population (from more than 4,600 people in 1990 to less than 200 in 2005). The June 23, 2006, OSM report does not present per capita subsistence use information in the appendix database because such data are not available for Adak in a way that would be consistent with other places for which there are household survey data. The report section on Adak does provide some limited information on salmon harvests. However, the main point of relevance for Adak is in the category of population size.

Comment: The analysis does not address what, if any, impacts on fish and wildlife uses may result if the Board changes the rural/nonrural status of Prudhoe Bay. The analysis does not describe the result of a nonrural determination for any area that contains limited to no Federal lands. The analysis also does not consider the effects of the nonrural designation on other North Slope resident's customary and traditional uses of the Prudhoe Bay/Deadhorse area. One commentor also claims that it was inaccurate for the June 23, 2006, OSM report to state that ''harvest of subsistence resources has never been reported by Prudhoe Bay residents,'' citing a 2001 ADF&G database.

Response: The analysis notes that the permanent population of Prudhoe Bay was 5 in 2000, 2 in 2005, and is now

reportedly 0. With virtually, or literally, no permanent population, there are no impacts to fish and wildlife uses operative with a change in status. A rural/nonrural determination is unrelated to whether Federal lands are present in the vicinity. Use of Federal public lands open to subsistence take by rural residents is not affected by designation of nonrural status for residents of parts of that geographic area. State database updates since 2001 may include harvest data for reported residents of Prudhoe Bay. Because of customary and traditional use determinations, the only large mammals that could have been taken under Federal subsistence regulations by persons claiming Prudhoe Bay residency were black bear, caribou, and sheep. However, given the de minimus residency in Prudhoe Bay, and the other characteristics and restrictions described, subsistence use of fish and wildlife is not a factor.

Comment: The analysis for Clam Gulch describes two options—neither of which includes any information on fish and wildlife harvest levels and harvest areas. For the Wasilla, Homer, and Delta Junction areas, fish and wildlife data are not discussed.

Response: The analyses for Clam Gulch in relation to the Kenai area and the analyses for the Wasilla and Homer areas were limited in scope to the question of whether they should be grouped with larger nonrural areas. Those analyses were done consistent with the guidelines identified by the Board for evaluating the grouping of communities and areas, the method for which was submitted to public comment in an earlier stage of the process. Adequate information on customary and traditional hunting fishing, and trapping practices for the Delta Junction area was not available to allow for evaluation consistent with other areas of the state for which the staff analysis provides data, nor is use of fish and wildlife resources one of the criteria used for grouping.

Comment: The OSM analysis of the Kodiak area does not make a convincing case to disaggregate any portion of the road system from the rest of the road-connected area. The analysis does not discuss Kodiak's role as a regional center and does not mention the ADF&G report on regional centers.

Response: The OSM staff analysis laid out options for including, or not including, Chiniak in the Kodiak Area grouping, and related considerations for the Pasagshak portion of the remainder area. The Board exercised its judgment in reviewing the grouping of the remainder area with the City of Kodiak, and other identified places, including Chiniak and the more distant portions of the road-connected remainder area. The OSM staff analysis provided an historical background of Kodiak Island. The central role of Kodiak City to the region is noted, as is the relationship to outlying areas and the movement of people to, from, and through Kodiak City.

Comment: Kodiak has become more rural since 1990. Kodiak's dependence on fisheries is a rural characteristic. The local economic downturn has led to an increase in dependence on fish and wildlife harvest. The cost of living in Kodiak, particularly for food, housing, and electricity, is among the highest in the State. Kodiak is isolated; weather and distance make travel difficult and expensive. There is a high level of sharing.

Response: The Board did not make a determination to change Kodiak from a rural area. Further information on the Board's action is provided later in this Preamble.

Comment: Testimony and comment letters supported retaining Saxman, and the Waterfall subdivision north of Ketchikan, as rural areas. Saxman is an independent community with its own Tribal government, mayor, and fraternal organizations. Fish and wildlife usage is higher than in Ketchikan City. For Saxman, Tribal culture plays a large role in daily life. Saxman is not integrated with Ketchikan.

Response: The Board made a determination to group all of the road-connected areas, including Waterfall subdivision and Saxman, as well as Pennock Island and parts of Gravina Island, in the Ketchikan Area. Further information on the Board's action is provided later in this Preamble.

Comment: There was testimony that the entire Ketchikan area should be treated the same and that Ketchikan and Saxman and the outlying areas along the road system should all be rural. People stated that gathering subsistence foods is important not only for nutrition, but also to culture, which is passed on to young children and family members. The island community is very isolated, and the cost of living is high, making it difficult to survive without supplementing incomes with subsistence foods.

Response: The Board considered these points, but did not make a determination to change Ketchikan from a nonrural area. Further information on the Board's action is provided later in this Preamble.

Comment: If a community is designated nonrural, the residents will not be able to harvest their traditional subsistence resources.

Response: For communities that change from rural to nonrural, the implementation will not occur until 5 years after this date. Additionally, residents of nonrural areas may harvest their traditional subsistence resources from Federal lands under existing State regulations. Many of the resources (*e.g.* seaweed, seals, migratory birds, cod, halibut, shrimp, crabs, and salmon taken in marine waters) that local people mentioned as being very important to them are currently being taken in areas of State jurisdiction or are not under the jurisdiction of the Federal Subsistence Management Program. Any changes in rural/nonrural determinations would have no impact on the harvesting of these resources.

Summarized below are the Board's final action for each area analyzed and the justification for that action. This final rule differs from the proposed rule relative to the Kodiak area and Saxman. The Board had proposed to add the Kodiak area to the list of nonrural areas but did not, for the reasons set forth below. The Board had also proposed that the nonrural Ketchikan area not include Saxman, but Saxman has been included, for the reasons set forth below.

Adak: Change Adak's status from nonrural to rural. Following the closure of the military base, the community of Adak decreased in population by 94 percent between the years 1990 and 2000. It currently has 167 residents (2005), which is well below the presumptive rural threshold of 2,500 persons. Adak is also extremely remote and is accessible only by boat or plane, with the nearest community (Atka) 169 miles away. With the changes that have occurred since the 1990s, Adak now has rural characteristics typical of a small isolated community.

Prudhoe Bay (including Deadhorse): Change Prudhoe Bay's status from rural to nonrural. In 2000 Prudhoe Bay had one permanent household comprised of five people. There were reportedly no permanent residents in February 2006. Prudhoe Bay has none of the characteristics typical of a rural community. Prudhoe Bay is an industrial area built for the sole purpose of extracting oil. The oil companies provide everything employees need: Lodging, food, health care, and recreation. The thousands of people in Prudhoe Bay do not live there permanently, but work multiweek-long shifts. They eat in cafeterias and live in group quarters. There are no schools, grocery stores, or churches. Subsistence is not a part of the way of life. Hunting

in the area and possession of firearms and ammunition are prohibited. Based on its industrial characteristics, Prudhoe Bay is now determined to be nonrural.

Fairbanks North Star Borough: No changes to this nonrural grouping are being made. In applying the grouping criteria as indicators of economic, social, and communal integration, the Board continues to define the current nonrural boundary of the Fairbanks Area as the boundary of the Fairbanks North Star Borough. No census designated places (CDPs) should be excluded from the nonrural grouping for the following reasons: (1) All CDPs are road accessible to one another. Although the Harding-Birch Lakes and Salcha areas are more sparsely populated than central areas of the borough, both communities include many occasional-use homes owned by Fairbanks residents. Further, both places are home to only a few year-round residents. (2) The majority of the Borough's high school students are bused to one of the schools located in Fairbanks, North Pole, or Eielson. (3) The Remainder area of the North Star Borough should be included in the grouping because the majority of the population is road connected and over half (57 percent) of the workers residing in this area commute to Fairbanks for employment. Additionally, 75 percent of the workers living in Harding-Birch Lakes drive to the City of Fairbanks to work, and 71 percent of the working population in Pleasant Valley commute to the City of Fairbanks.

Delta Junction Vicinity: No changes are being made to the rural status of Delta Junction, or the communities in the immediate vicinity. In applying the grouping criteria as indicators of economic, social, and communal integration, the four Delta Junction vicinity CDPs assigned for analysis (Delta Junction, Big Delta, Deltana, and Fort Greely) should be grouped as an area for purposes of rural/nonrural analysis because they fulfill the three guidelines for grouping: (1) All four CDPs are road connected and proximal; (2) the majority of the high school-aged students from Big Delta, Deltana, and Fort Greely attend high school in Delta Junction; and (3) in the two outlying CDPs, over 30 percent of the workers commute within the vicinity (41 percent of the workers living in Big Delta commute to either Delta Junction, Deltana, Fort Greely, or to a Remainder area within the Southeast Fairbanks Census Area, and 45 percent of the workers in Deltana commute to Delta Junction or Fort Greely).

The four places grouped into the Delta Junction Area will remain rural in status. The population size of the grouping (3,921) places it in the nonpresumptive midrange, and information on the characteristics of the grouping, although somewhat limited, is indicative of a rural character. The recent economic upswing to the area due to construction of the Missile Defense system at Fort Greely and development of the Pogo Mine is thought to be temporary.

Seward Area: No changes to this nonrural grouping are being made. In applying the grouping criteria as indicators of economic, social, and communal integration, the Moose Pass, Crown Point, and Primrose CDPs should remain within the Seward Area grouping. Moose Pass, Crown Point, and Primrose CDPs meet all the criteria for grouping: proximity and road-accessibility to the Seward Area; their students attend the high school in Seward; and greater than 30 percent of workers commute to Seward for employment.

Wasilla/Palmer Area: Include the Point MacKenzie CDP in the nonrural Wasilla/Palmer Area grouping but do not include the Willow CDP. The Point Mackenzie CDP meets all the criteria for grouping with the Wasilla/Palmer Area. The Point MacKenzie CDP is in proximity to the Wasilla/Palmer Area and road-accessible; their students attend Wasilla High School; and 50 percent of workers commute to the Wasilla/Palmer Area for employment. This change makes Point McKenzie part of a nonrural area, a change from its current rural status. Willow CDP will not be included in the Wasilla/Palmer Area grouping. Students in the Willow CDP are located in two attendance areas for high schools, within and outside of the Wasilla/Palmer Area. The level of commuting for workers to the Wasilla/Palmer Area is at 23.9 percent, which is below the criteria identified for grouping.

Kenai Area: Change the boundaries of the nonrural Kenai Area to include all of the current Sterling CDP, and make no change to the current grouping and status of Clam Gulch CDP as part of the nonrural Kenai Area. Clam Gulch CDP will continue to be included in the Kenai Area grouping because, although students of Clam Gulch CDP attend high school outside of the Kenai Area, the commuting of workers to the Kenai Area is on the order of 30 percent, and Clam Gulch is connected by paved highway to the Kenai Area, with which it has been grouped since initial determinations were made in 1990. Cohoe CDP will remain within the Kenai Area grouping. Cohoe students attend a high school in the Kenai Area and the level of work commuting, at 69.5 percent, is significantly above the minimum criteria for grouping. The Sterling CDP has been part of the nonrural Kenai Area since 1990. During the course of the analysis, it was noted that for the 2000 census, the Sterling CDP had expanded in size, such that a significant portion of the CDP extended beyond the boundary of the nonrural Kenai Area. The Board decided that the boundaries of the Kenai Area should be adjusted to include all of the current Sterling CDP. Students within the Sterling CDP go to high school within the Kenai Area and the level of commuting is at 61 percent of workers, well above the minimum criteria for grouping.

Homer Area: Change the boundaries of the nonrural Homer Area to include all of the Fritz Creek CDP (not including Voznesenka) and the North Fork Road portion of the Anchor Point CDP. This change makes Fritz Creek East, except for Voznesenka , and the North Fork Road portion of the Anchor Point CDP nonrural, a change from their current rural status. The Board concluded for Fritz Creek East that, except for Voznesenka, the residents are economically, socially, and communally integrated with the Homer Area. Fritz Creek East is in proximity and road-connected to the Homer Area. The Homer High School attendance area includes their students, and 44 percent of their workers commute to the Homer Area. Voznesenka will not be included in the Homer Area because, while it is in proximity and road-connected to the Homer Area, the number of jobs shown as being located within the Homer Area is only about 20 percent, and Voznesenka students attend high school in Voznesenka.

The Board found that residents of the North Fork Road area fully meet two of the three criteria, proximity and commuting of workers. For the third criteria, although students have the option of attendance in Nikolaevsk School or Ninilchik High School, the vast majority go to Homer High School. This is sufficient basis for considering the North Fork Road area of the Anchor Point CDP to be economically, socially, and communally integrated with the nonrural Homer Area.

The Board found that residents of the Happy Valley CDP fulfill only the proximity criterion for grouping with the Homer Area. Happy Valley students are within the Ninilchik High School attendance area, and less than 30 percent of Happy Valley workers commute to the Homer Area (14.4 percent). The residents of the Happy Valley CDP will not be included with the Homer Area.

Nikolaevsk CDP, north of the Anchor Point CDP and connected to the Homer Area by the North Fork Road, does not warrant inclusion in the Homer Area. There is a K–12 school in Nikolaevsk, and data show that only 22 percent of jobs held by Nikolaevsk residents were located in the Homer Area.

The residents of Fox River CDP, primarily in the communities of Razdolna and Kachemak Selo, do not meet any of the three criteria, which would indicate that Fox River residents are not economically, socially, or communally integrated with the Homer Area.

Kodiak Area: The Board defined the Kodiak Area consisting of the road system, the City of Kodiak, the Mill Bay area, Womens Bay, Bell's Flats, the Coast Guard Station, Chiniak, Pasagshak, and Anton Larsen and made no change to its rural status. Although the population of the Kodiak Area was estimated at approximately 12,000 in 2005, the area exhibits strong characteristics of a rural area. The population has increased only slightly since 1990. Kodiak's per capita income is less than many nonrural areas and also many rural areas. The unemployment rate has increased with the decline of the fishing industry. The community is very isolated with no road access. Inclement weather can strand residents for days. The per capita harvest of subsistence resources is higher in the Kodiak Area than in some other rural areas. Based on the marginal population growth since 1988 (1.3 percent), the high cost of food, remoteness, and the high use of subsistence resources, no change will be made to Kodiak's rural determination.

Ketchikan Area: The Board defined the Ketchikan Area to include Pennock Island, parts of Gravina Island, and the road system connected to the City of Ketchikan, including the community of Saxman. The Ketchikan Area, as defined, would retain its nonrural status. Saxman is directly adjacent to Ketchikan, connected by road, and surrounded by the outlying Ketchikan development. Visually, the only distinguishing feature to indicate the boundary between Ketchikan and Saxman is a sign on the South Tongass Highway. Saxman has clearly been overtaken and is surrounded by the geographic expansion of Ketchikan; Saxman students attend high school in Ketchikan; and 64 percent of the workers in Saxman commute to Ketchikan for their employment, with another 8 percent commuting to outlying parts of the area. Although a significant percentage of Saxman's population is Native, Ketchikan's Native population is approximately 10 times the size of Saxman's Native population. Many of the people testifying at the hearing in Saxman live in Ketchikan, but reported having very close family and cultural ties to Saxman. Given comments about the need for consistency of application of the criteria for grouping of communities, and the information on Saxman relative to those criteria, the Board grouped Saxman with the nonrural Ketchikan area.

The Remainder area fulfills all three criteria for grouping with the Ketchikan Area: (1) The Remainder, other than nearby Gravina and Pennock Islands which are connected by a very short skiff ride, is road-connected to the City of Ketchikan; (2) Students in the Remainder attend high school in Ketchikan; and (3) Over 30 percent of the workers from the Remainder commute to work in the City of Ketchikan. Presently, most of the Remainder is included in the nonrural Ketchikan Area, established in 1990. The Board action adds additional areas where development has occurred that is connected to the road system and additional parts of Gravina Island that are being developed. The Board action also treats any future developed areas connected to the road system the same as the existing road system.

The population of the Ketchikan Area was estimated at 13,125 in 2005 (including Saxman), having decreased slightly from 1990. Ketchikan possesses many nonrural characteristics, including having a 2-year college, a large national retailer, car dealerships, fast food restaurants, and roads linking the outlying surrounding area to the city. Ferry service is more dependable with greater frequency of service than in most other locations in Alaska. Although the pulp mill closed, there is still diversity in the economy, with tourism, fishing, fish processing, timber, dry docking services, retail services, and government providing the majority of employment. There is a hospital and a high diversity of services offered. The Ketchikan Area had the sixth highest population in the state in 2005, considering community groupings as defined by the Board. All other areas with higher populations are currently considered nonrural in Federal subsistence regulations. Three areas with smaller populations are currently classified as nonrural and are not being changed in status: the Homer Area, Seward Area, and Valdez. Harvest of subsistence resources in the Ketchikan Area is lower than is characteristic of rural communities.

This Board action changes the status of portions of the road-connected area of Ketchikan, including Saxman, and additional portions of Gravina Island from their current rural status to a nonrural status.

The revised list of nonrural communities and areas, including other nonrural communities or areas whose status would remain unchanged, is published herein as the final rule. All other communities and areas of Alaska not listed herein will retain their rural determination. We are amending § ____ .23, which identifies those communities and areas of Alaska that are determined to be rural and nonrural. We have made maps available for the nonrural areas. The purpose of these maps is to provide to the public a graphic representation of the extent of the nonrural areas. To view maps, go to the Office of Subsistence Management Web site at *http://alaska.fws.gov/asm/home.html*. If you do not have access to the internet, you may contact the Office of Subsistence Management at the address or phone number shown at **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT**, respectively, and we will send the maps to you.

The effective date of any community or area changing from a rural to nonrural status is 5 years after the date of publication of this final rule in the **Federal Register**. For communities or areas that change from nonrural to rural, the effective date is 30 days after the date of publication of this final rule in the **Federal Register**.

Because the Federal Subsistence Management Program relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, we are incorporating identical text into 36 CFR part 242 and 50 CFR part 100.

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 comments 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, published May 29, 1992, implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. The following **Federal Register** documents pertain to this rulemaking:

FEDERAL REGISTER DOCUMENTS PERTAINING TO SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A AND B

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	"Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register** establishing a Federal Subsistence Management Program.
64 FR 1276	January 8, 1999	Final Rule (amended).	Amended 57 FR 22940 to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation. Specified and clarified Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	In response to comments on an interim rule, amended the operating regulations. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Received no adverse comments on 68 FR 7703. Adopted direct final rule.
68 FR 60957	October 14, 2004	Final Rule	Established Regional Council membership goals.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised jurisdiction in marine waters in the Makhnati Island area near Sitka.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and therefore signed a Finding of No Significant Impact.

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 that the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements described in the CFR regulations were approved by OMB under 44 U.S.C. 3501 and were assigned control number 1018–0075, which expires October 31, 2009. We may 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

Regulatory Planning and Review (E.O. 12866). In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. OMB makes the final determination of significance under Executive Order 12866.

a. Analysis indicates 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 full cost-benefit and economic analysis is not required. This rule revises the list of nonrural areas identified by the Federal Subsistence Board. Only residents of areas identified as rural are eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska.

b. This rule will not create serious inconsistencies or otherwise interfere with the actions of other agencies.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule raises novel legal or policy issues. This rule raises a novel policy issue in that Federal subsistence regulations require that the rural/nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data, this thereby being the first such decennial review. Although the process uses data from the 2000 census for its review, some data was not compiled and available until 2005. Data from the Alaska Department of Labor were used to supplement the census data.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of regulatory flexibility analyses for rules that will have a significant economic effect 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 effect 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; 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, sporting goods dealers, and gasoline dealers. The number of small entities affected is unknown; however, 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 the effects will not be significant.

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. Likewise, 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.

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 unless the State program is compliant with the requirements of that Title.

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 substantial direct effects. 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 action and no Statement of Energy Effects is required.

William Knauer drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Warren Eastland, and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, 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 Secretaries propose 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 C—Board Determinations

■ 2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, revise §____.23 to read as follows:

§____.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with §____.15, except those set forth in this paragraph. You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service, Office of Subsistence Management. The nonrural areas include:

(1) Anchorage, Municipality of;

(2) Fairbanks North Star Borough;

(3) Homer area—including Homer, Anchor Point, North Fork Road area, Kachemak City, and the Fritz Creek East area (not including Voznesenka);

(4) Juneau area—including Juneau, West Juneau, and Douglas;

(5) Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifonsky, Kasilof, and Clam Gulch;

(6) Ketchikan area—including all parts of the road system connected to the City of Ketchikan including Saxman, Pennock Island and parts of Gravina Island;

(7) Prudhoe Bay;

(8) Seward area—including Seward and Moose Pass;

(9) Valdez; and

(10) Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, Point MacKenzie, and Bodenburg Butte.

(b) [Reserved]

Dated: April 26, 2007.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: April 26, 2007.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 07–2205 Filed 5–4–07; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2006–0184; FRL–8308–6]

RIN 2009–AA01

Source-Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Four Corners Power Plant (FCPP), a coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico.

EFFECTIVE DATE: This rule is effective on June 6, 2007.

FOR FURTHER INFORMATION CONTACT: Rebecca Rosen, EPA Region IX, (415) 947–4152, *rosen.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a docket for this action under Docket ID No. R09-OAR–2006–0184. All documents in the docket are listed in the Federal eRulemaking portal index at *http://www.regulations.gov* and are available either electronically at www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Background of the Final Rule

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity in excess of 2000 megawatts (MW).

In 1999, EPA initially proposed to promulgate a FIP to regulate emissions from FCPP. At that time, FCPP had historically achieved certain emissions limits which had been approved by EPA into the New Mexico SIP. See 40 CFR 52.1640. However, because the New Mexico SIP is not approved to apply on the Navajo Indian Reservation, and because the Navajo Nation did not have a federally applicable tribal implementation plan (TIP), EPA proposed to promulgate a FIP to remedy the existing regulatory gap. 64 FR 48731 (September 8, 1999) (1999 proposed FIP). The proposed FIP would have, in essence, federalized the requirements contained in the New Mexico SIP which FCPP had historically followed. In explaining the basis for its proposed action, EPA stated that given the magnitude of emissions from the plant, the Agency believed the proposed FIP provisions were necessary and appropriate to ensure the protection of air quality on the Reservation. 64 FR at 48733.

Before EPA took final action on the 1999 proposed FIP, a stakeholders group of environmental organizations (Environmental Defense, Western Resource Advocates, and New Mexico Citizens for Clean Air and Water), the National Park Service (NPS), and Arizona Public Service (APS), the operating agent for FCPP, convened to discuss the facility. The stakeholders group negotiated substantial additional sulfur dioxide (SO_2) emissions reductions which FCPP believed it could achieve by enhancing the efficiency of its existing SO_2 scrubbers. After testing the program, the Navajo Nation and the stakeholders group requested that EPA include these negotiated, additional SO_2 emissions reductions in the FIP. FCPP agreed to increase the amount of SO_2 emissions it was eliminating from its exhaust stream from 72% to 88%, thereby reducing its annual emissions of SO_2 to the atmosphere by about 25,000 tons per year.

EPA did not finalize the proposed 1999 FIP after the stakeholders group began negotiations. Instead, after the stakeholders group had finished its work, EPA proposed a new FIP in September, 2006. 71 FR 53631 (September 12, 2006) (2006 proposed FIP).

In the 2006 proposed FIP, EPA again explained that to remedy the regulatory gap that exists with regard to FCPP, the Agency was proposing to issue a source-specific FIP. EPA proposed to establish federally enforceable emission limits for SO_2, NO_X, PM, and opacity, and control measures for dust. For SO_2, the 2006 proposed FIP included a requirement for FCPP to comply with a significantly lower emission limit than the one set forth in the 1999 proposed FIP. For NO_X and PM emissions, EPA again proposed to federalize the emissions limits which FCPP has historically followed. In other words, the primary difference between EPA's 1999 proposed FIP and our 2006 proposed FIP is our inclusion of requirements for FCPP to comply with the more stringent SO_2 emissions limitation.

EPA's objective at this time in promulgating a FIP for FCPP is to remedy the existing regulatory gap described above. Today's action will make federally enforceable the emission limitations which FCPP has historically followed as well as ensuring that FCPP continues to significantly reduce its emissions of SO_2. This action will help to advance the goals of ensuring continued maintenance of the national ambient air quality standards and protecting visibility. Given the importance of these goals and the magnitude of emissions from the plant, EPA believes that making these limits federally enforceable is appropriate to protect air quality on the Reservation and is accordingly exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40