

Issued in Fort Worth, Texas, on June 10, 2002.

Larry M. Kelly,

*Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 1006 and 1007

[Docket No. FR-4668-C-02]

RIN 2577-AC27

#### **Housing Assistance for Native Hawaiians: Native Hawaiian Housing Block Grant Program and Loan Guarantees for Native Hawaiian Housing; Correction**

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Interim rule, correction.

**SUMMARY:** On June 13, 2002, HUD published an interim rule to implement HUD's Office of Public and Indian Housing (PIH) procedures and requirements for two new programs to address the housing needs of Native Hawaiians. The preamble did not include the Federalism finding that was made for the rule. This notice provides that information.

**FOR FURTHER INFORMATION CONTACT:** Sherone Ivey, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 401-7914. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** HUD published an interim rule on June 13, 2000 (67 FR 40774) that established two new programs to provide affordable housing for Native Hawaiians. The Native Hawaiian Housing Block Grant Program will provide housing block grants to fund affordable housing activities. The Section 184A Loan Guarantees for Native Hawaiian Housing Program will provide Native Hawaiian families with greater access to private mortgage resources by guaranteeing loans for one- to four-family housing located on Hawaiian Home Lands. The preamble of the interim rule inadvertently omitted publication of the finding under Executive Order 13132, Federalism, that was made for the rule. This notice

published today provides that information as follows:

#### **Executive Order 13132, Federalism**

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Dated June 17, 2002.

Camille E. Acevedo,

*Associate General Counsel for Legislation and Regulations.*

[FR Doc. 02-15649 Filed 6-20-02; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

#### **Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River and Yukon and Kuskokwim River Drainages**

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

**ACTION:** Seasonal adjustments.

**SUMMARY:** This provides notice of the Federal Subsistence Board's in-season management actions to protect salmon escapement in the Yukon and Kuskokwim River drainages and in the Copper River, while still providing for a subsistence harvest opportunity. The regulatory adjustments, fishing schedules, and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 7, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2002 regulatory year.

**DATES:** The Kuskokwim and Yukon River drainages action is effective May 20, 2002, through February 28, 2003. The Copper River action is effective May 15, 2002, through July 13, 2002.

#### **FOR FURTHER INFORMATION CONTACT:**

Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786-3592.

#### **SUPPLEMENTARY INFORMATION:**

##### **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 in Alaska, 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. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

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. The Departments administer Title VIII through regulations at Title 50, part 100 and Title 36, part 242 of the Code of Federal Regulations (CFR). 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 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, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, 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, which establish the program structure and determine

which Alaska residents are eligible to take specific species for subsistence uses, and the annual subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2002 fishing seasons, harvest limits, and methods and means were published on February 7, 2002, (67 FR 5890). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents of as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish and wildlife on Federal lands and waters.

These adjustments (including restricted subsistence fishing schedules) are necessary because of predictions of potentially weak returns of chinook, summer-run chum, and fall-run chum salmon in the Yukon River drainage, poor runs of chinook and chum salmon in the Kuskokwim River drainage, and the need to manage the sockeye salmon run in the Chitina Subdistrict of the Cooper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d)-(e) and 36 CFR 242.19(d)-(e).

#### *Yukon and Kuskokwim River Drainages*

Returns of salmon to the Yukon and Kuskokwim Rivers have been very low in recent years. With the poor runs, a considerable number of in-season fishery management actions have been necessary. In the Yukon River during the 2001 season, 27 Special Actions were initiated by the Federal manager, 26 of these were identical to the State's Emergency Order (EO) actions. There were an additional eight Special Actions for the Kuskokwim River during the 2001 season. Seven of these were identical to the State's EO actions. In both river systems, most of these EO's involved setting fishing schedules or revising methods of harvest that protected spawning escapement while still allowing a subsistence harvest opportunity.

The past two years of active Federal fisheries management have provided an opportunity for the Federal Program to evaluate its approach to enacting Special Actions in concert with the State's EO process. Past procedures required that each change in the fishing schedule take place by Special Action. This resulted in some confusion by various user groups and placed significant administrative and financial burden on the Federal Program, including excessive and frequently outdated publication of notices in the **Federal Register**.

A streamlined approach was suggested by the regional Federal fisheries managers and reviewed by the three affected Regional Councils during their Winter 2002 meetings. The three Regional Councils were very supportive of such an approach. The Board, in public forum and after hearing testimony, considered and adopted, at its May 2002 meeting, a temporary action whereby State EO's would apply to Federal waters in instances where the State and Federal managers are in agreement. The action provides that for the Yukon and Kuskokwim River drainages, Federal subsistence fishing schedules, openings, closings, and fishing methods will be the same as those issued for the subsistence taking of fish under Alaska Emergency Orders (5 AAC 16.05.060), unless superseded by a Federal Special Action. Upon completion of the 2002 fishing season, this administrative streamlining approach will be evaluated and consideration given to including this as a statewide provision in the annual Federal subsistence fishing regulations.

#### *Copper River—Chitina Subdistrict*

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State also conducts a subsistence fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an

abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions for the 2002 season. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. State and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2002. No deviation from this date is anticipated.

By Special Action, the State preseason schedule is adopted for the Federal subsistence fishery. This Special Action delays the opening for the taking of salmon in the Chitina Subdistrict of the Copper River and replaces that date with a fishing schedule starting June 7, 2002. Separate openings would each week until July 11, 2002, when continuous fishing would be allowed until the regularly scheduled end of the season (September 30, 2002.)

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

#### **Conformance With Statutory and Regulatory Authorities**

##### *National Environmental Policy Act Compliance*

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. 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) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276).

#### *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, under Alternative IV with an annual process for setting hunting and fishing regulations may be some local impacts on subsistence users, but the program is not likely to significantly restrict subsistence uses.

#### *Paperwork Reduction Act*

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the paperwork Reduction Act of 1995.

#### *Other Requirements*

The adjustment have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 501 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. 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 economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Department certifies that the adjustments

will not have a significant economic effect on a substantial number of small entities within the measuring of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

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

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no 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 to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not

significant energy actions and no Statement of Energy Effects is required.

#### *Drafting Information*

William Knauer drafted this document 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.

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

Dated: May 28, 2002.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

**Kenneth E. Thompson,**

*Subsistence Program Leader, USDA—Forest Service.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 261**

**[FRL–7235–1]**

### **Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan), to exclude (or “delist”) a certain hazardous waste from the lists of hazardous wastes. Nissan will generate the petitioned waste by treating wastewater from Nissan's automobile assembly plant in Smyrna, Tennessee when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Nissan petitioned EPA to grant a “generator-specific” delisting because Nissan believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Nissan, performed calculations, and determined