

## § 242.15

the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

### § 242.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2,500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2,500 but not more than 7,000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7,000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

- (i) Use of fish and wildlife;
- (ii) Development and diversity of the economy;
- (iii) Community infrastructure;
- (iv) Transportation; and

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(v) Educational institutions.

(6) Communities or areas which are economically, socially, and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a 10-year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of 5 years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § 242.23.

### § 242.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by

past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § 242.24.

**§ 242.17 Determining priorities for subsistence uses among rural Alaska residents.**

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes nec-

essary, the Board shall solicit recommendations from the Regional Council in the area affected.

**§ 242.18 Regulation adoption process.**

(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in § 242.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the FEDERAL REGISTER, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § 242.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.