DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Furosemide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for oral use of furosemide syrup for the treatment of edema in dogs.

DATES: This rule is effective December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Linda M. Wilmot, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1069, e-mail: *linda.wilmot@fda.gov*.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–373 for Furosemide Syrup 1% for oral use in dogs for the treatment of edema. First Priority, Inc.'s, Furosemide Syrup 1% is approved as a generic copy of Intervet, Inc.'s, LASIX (furosemide) Syrup 1%, approved under NADA 102–380. ANADA 200–373 is approved as of November 18, 2005, and the regulations are amended in 21 CFR 520.1010 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1010 [Amended]

■ 2. Section 520.1010 is amended in paragraph (b)(3) by removing ''No. 059130'' and by adding in its place ''Nos. 058829 and 059130''.

Dated: December 12, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–24440 Filed 12–23–05; 8:45 am]

BILLING CODE 4160–01–S

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

Proposed Changes to Arbitration Policies, Functions, and Procedures

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is amending 29 CFR part 1404, Arbitration Services. The amendments are intended to set forth the criteria and procedures for listing on the arbitration roster, removal from the arbitration roster, and expedited arbitration processing. Other changes include how parties may request arbitration lists or panels and fees associated with the arbitrators. The purpose of these changes is to facilitate the management and administration of the arbitration roster.

DATES: Effective December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Maria A. Fried, General Counsel and Federal Register Liaison, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606–5444, FAX (202) 606–5345.

SUPPLEMENTARY INFORMATION: FMCS amends 29 CFR part 1404. The original regulation was issued in June 1997. The amendments set forth procedures for the listing and removal of arbitrators from the arbitration roster maintained by FMCS, procedures for requesting arbitration lists and panels, and the nomination of arbitrators.

Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS offers panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements and to deal with the fact finding and interest arbitration issues as well.

Title II of the Labor Management Relations Act of 1947 (Pub. L. 90–101) as amended in 1959 (Pub. L. 86–257) and 1974 (Pub. L. 93–360), states that it is the labor policy of the United States that ''the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes.'' Under its regulations at 29 CFR part 1404, FMCS has established policies and procedures for its arbitration function dealing with all arbitrators listed on the FMCS Roster of Arbitrators, all applicants for listing on the Roster, and all persons or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes which are to be submitted to arbitration or fact-finding. FMCS strives to maintain the highest quality of dispute resolution experts on its roster. FMCS now amends 29 CFR part 1404 to update its procedures and facilitate the maintenance and administration of its arbitration roster.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The fees assessed by FMCS for requests for panels are nominal and should not cause any significant economic effect on small entities which may request arbitration panels.

Executive Order 12866

This regulation does not constitute ''significant regulatory action'' that is likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or trial governments or communities, or create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with Foreign based companies in domestic and export markets.

Comments received: The agency received two comments from the public. One comment noted an inadvertent omission of a protected class under Title VII. We concurred with the comment and made the change. The second comment questioned the inclusion of federal employees on the FMCS arbitration roster, the definition of advocacy as defined by the proposed rule, recommended that an ad hoc advisory group be reinstated, and timely notification by FMCS relating to arbitrator reports and fee forms. The comments were considered and no changes were made to the final rule.

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Labor management relations.

■ For the reasons stated in the preamble, the Federal Mediation and Conciliation Service amends 29 CFR part 1404 as follows:

PART 1404—ARBITRATION SERVICES

Subpart A—Arbitration Policy: Administration of Roster

■ 1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

■ 2. In § 1404.3, paragraph (c)(1)(iv) is revised and (v) is added to read as follows:

§ 1404.3 Administrative responsibilities.

* * * * *

(c) Arbitrator Review Board. The Arbitrator Review Board (Board) shall consist of a chairperson and members appointed by the Director who shall serve at the Director's pleasure.

(1) Duties of the Board. The Board shall:

* * * * *

(iv) At the request of the Director of FMCS, or upon its own volition, review arbitration policies and procedures, including all regulations and written guidance regarding the use of the FMCS arbitrators, and make recommendations regarding such policies and procedures to the Director; and

(v) Review the qualifications of all persons who request a review in anticipation of attending the FMCS-sponsored labor arbitrator training course, interpreting and applying the criteria set forth in Sec. 1404.5.

* * * * *

Subpart B—Roster of Arbitrators: Admission and Retention

■ 3. In § 1404.4, paragraphs (b) and (e) are revised to read as follows:

§ 1404.4 Roster and status of members.

* * * * *

(b) Adherence of Standards and Requirements. Persons listed on the Roster shall comply with FMCS rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by the OAS pursuant to Subpart C of this Part. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes, as approved by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association (Code).

* * * * *

(e) Nominations and Panels. On request of the parties to an agreement to arbitrate or engage in fact-finding, or where arbitration or fact-finding may be provided for by statute, OAS will provide names or panels of names for a fee. Procedures for obtaining these services are outlined in subpart C of this part. Neither the submission of a nomination or panel nor the appointment of an arbitrator constitutes a determination by FMCS that an agreement to arbitrate or enter fact-finding proceedings exists; nor does such action constitute a ruling that the matter in controversy is arbitrable under any agreement.

* * * * *

■ 4. In § 1404.5, the section heading, the introductory text, paragraphs (a), (b), (c), (d) introductory text, (d)(5), (d)(6), (d)(7), (e) and (f) are revised to read as follows:

§ 1404.5 Listing on the roster, criteria for listing and removal, procedure for removal.

Persons seeking to be listed on the Roster must complete and submit an application form that may be obtained from OAS. Upon receipt of an executed application, OAS will review the application, assure that it is complete, make such inquiries as are necessary, and submit the application to the Board. The Board will review the completed application under the criteria in paragraphs (a), (b) and (c) of this section, and will forward to the FMCS Director its recommendation as to whether or not the applicant meets the criteria for listing on the Roster. The Director shall make all final decisions as to whether an applicant may be listed on the Roster. Each applicant shall be notified in writing of the Director's decision and the reasons therefore.

(a) General Criteria. (1) Applicants will be listed on the Roster upon a determination that he or she:

(i) Is experienced, competent and acceptable in decision-making roles in the resolution of labor relations disputes; or

(ii) Has extensive and recent experience in relevant positions in collective bargaining; and

(iii) Is capable of conducting an orderly hearing, can analyze testimony and exhibits and can prepare clear and concise findings and awards within reasonable time limits.

(iv) For applicants who are governmental employees, the following criteria shall also apply:

(A) Federal Employees: These applicants must provide the OAS with written permission from their employer to work as an arbitrator. Federal employees will not be assigned to panels involving the Federal Government.

(B) Governmental Employees other than Federal: These applicants must provide the OAS with written permission from their employer to work as an arbitrator as well as a statement of the jurisdiction(s) in which the applicant is permitted to do this work.

(2) FMCS may identify certain positions relating to collective bargaining that will substitute for the General Criteria. FMCS may also identify periodic educational requirements for remaining on the Roster.

(b) Proof of Qualification. The qualifications listed in paragraph (a) of this section are preferably demonstrated by the submission of five recent arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor relations disputes arising under collective bargaining agreements, or the successful completion of the FMCS labor arbitrator training course plus two awards as described above, and the submission of information demonstrating extensive and recent experience in collective bargaining, including at least the position or title held, duties or responsibilities, the name and location of the company or organization, and the dates of employment.

(c) Advocacy. Any person who at the time of application is an advocate as defined in paragraph (c)(1) of this section, must agree to cease such activity before being recommended for listing on the Roster by the Board. Except in the case of persons listed on the Roster as advocates before November 17, 1976, any person who did not divulge his or her advocacy at the time of listing or who becomes an advocate while listed on the Roster and who did not request to be placed on inactive status pursuant to Sec. 1404.6 prior to becoming an advocate, shall be recommended for removal by the Board after the fact of advocacy is revealed.

(1) Definition of Advocacy. An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant, in matters of labor relations or employment relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters.

(2) This definition of advocate also includes a person who is directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Individuals engaged only in joint education or training or other non-adversarial activities will not be deemed as advocates.

(d) Listing on Roster, Removal. Listing on the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Board or upon the Director's own initiative. The Board may recommend for removal, and the Director may remove, any person listed on the Roster, for violation of this Part and/or the Code. The reasons for removal include whenever a member of the Roster:

* * * * *

(5) Has been the subject of a complaint by parties who use FMCS services and the Board, after appropriate inquiry, concludes that cause for removal has been shown;

(6) Is determined to be unacceptable to the parties who use FMCS arbitration services. Such a determination of unacceptability may be based on FMCS records which show the number of times the arbitrator's name has been proposed to the parties and the number of times he or she has been selected. Such cases will be reviewed for extenuating circumstances, such as length of time on the Roster or prior history;

(7) Has been in an inactive status pursuant to § 1404.6 for longer than two years and has not paid the annual listing fee.

(e) Procedure for Removal. Prior to any recommendation by the Board to remove an arbitrator from the Roster, the Board shall conduct an inquiry into the facts of any such recommended removal. When the Board recommends removal of an arbitrator, it shall send the arbitrator a written notice. This notice shall inform the arbitrator of the Board's recommendation and the basis for it, and that he or she has 60 days from the date of such notice to submit a written response or information showing why the arbitrator should not be removed. When the Director removes an arbitrator from the Roster, he or she shall inform the arbitrator of this in writing, stating the effective date of the removal and the length of time of the removal if it is not indefinite. An arbitrator so removed may seek reinstatement to the Roster by making written application to the Director no earlier than two years after the effective date of his or her removal.

(f) Suspension. The director of OAS may suspend for a period not to exceed 180 days any person listed on the Roster who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall be promptly notified of a suspension. The arbitrator may appeal a suspension to the Board, which shall make a recommendation to the Director of FMCS. The decision of the Director of FMCS shall constitute the final action of the agency.

■ 5. Section 1404.6 is revised to read as follows:

§ 1404.6 Inactive status.

A member of the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule, or other reasons. If the inactive status lasts longer than two (2) years and the arbitrator has not paid the annual listing fee, the arbitrator will then be removed from the Roster.

Subpart C—Procedures for Arbitration Services

■ 6. In § 1404.9, paragraphs (a), (b), (e) and (f) are revised and paragraph (h) is added to read as follows:

§ 1404.9 Procedures for requesting arbitration lists and panels.

(a) The Office of Arbitration Services (OAS) has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Federal Mediation and Conciliation Service, Office of Arbitration Services, 2100 K Street, NW., Washington, DC 20427.

(b) The OAS will refer a panel of arbitrators to the parties upon request. The parties are encouraged to make joint requests. In the event, however, that the request is made by only one party, the OAS will submit a panel of arbitrators. However, the issuance of a panel—pursuant to either joint or unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by the FMCS regarding the arbitrability of any dispute or the terms of the parties' contract.

* * * * *

(e) The parties are required to use the Request for Arbitration Panel (Form R–43), which has been prepared by the OAS and is available upon request to the Federal Mediation and Conciliation Service, Office of Arbitration Services, Washington, DC 20427, or by calling (202) 606–5111. Form R–43 is also available on the FMCS Internet Web site, *http://www.fmcs.gov*. Requests that do not contain all required information requested on Form R–43 in typewritten form or legible handwriting may be rejected.

(f) Parties may submit requests for any standard geographical arbitration panels electronically by accessing the agency's Internet Web site, *http://www.fmcs.gov,* and receive panels via e-mail, fax or mail. Panel requests that contain certain special requirements may not be processed via the agency's internet system. Parties must provide all required information and must pay the cost of such panels using methods of payment that are accepted by the agency.

* * * * *

(h) The OAS will charge a fee for all requests for lists, panels, and other major services. Payments for these services must be received with the request for services before the service is delivered and may be paid by either labor or management or both. A schedule of fees is listed in the appendix to this part.

■ 7. In § 1404.11, paragraphs (c) introductory text, (c)(2) and (d) are revised to read as follows:

§ 1404.11 Nominations of arbitrators.

* * * * *

(c) The OAS will provide a randomly selected panel of arbitrators located in geographical areas in proximity of the hearing site. The parties may request special qualification of arbitrators experienced in certain issues or industries or that possess certain backgrounds. TheOAS has no obligation to put an individual on any given panel or on a minimum number of panels in any fixed period. In general:

* * * * *

(2) If at any time both parties request that a name or names be included, or omitted, from a panel, such name or names will be included, or omitted, unless the number of names is excessive. These inclusions/exclusions may not discriminate against anyone because of age, race, color, gender, national origin, disability, or religion.

(d) If the parties do not agree on an arbitrator from the first panel, the OAS will furnish second and third panels to the parties upon joint request, or upon a unilateral request if authorized by the applicable collective bargaining agreement, and payment of additional fees. Requests for second or third panels should be accompanied by a brief explanation as to why the previous panel(s) was inadequate. In addition, if parties are unable to agree on a selection after having received three panels, the OAS will make a direct appointment upon joint request.

■ 8. In § 1404.12, paragraphs (a) and (c) introductory text are revised to read as follows:

§ 1404.12 Selection by parties and appointments of arbitrators.

(a) After receiving a panel of names, the parties must notify the OAS of their selection of an arbitrator or of the decision not to proceed with arbitration. Upon notification of the selection of an arbitrator, the OAS will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. Should an arbitrator be notified directly by the parties that he or she has been selected, the arbitrator must promptly notify the OAS of the selection and his or her willingness to serve. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the OAS.

Consistent failure to follow these procedures may lead to a denial of future OAS service.

* * * * *

(c) Where the parties' collective bargaining agreement is silent on the manner of selecting arbitrators, the parties may wish to consider any jointly determined or one of the following methods for selection of an arbitrator from a panel:

* * * * *

■ 9. In § 1404.14, paragraph (c) is revised to read as follows:

§ 1404.14 Decision and award.

* * * * *

(c) Within 15 days after an award has been submitted to the parties, the arbitrator shall submit an Arbitrator's Report and FeeStatement (Form R–19) to OAS showing a breakdown of the fee and expense charges for use in the event the OAS decides to review conformance with the basis for the arbitrator's fees and expenses as stated in the biographical sketch.

* * * * *

■ 10. Section 1404.15 is revised to read as follows:

§ 1404.15 Fees and charges of arbitrators.

(a) Fees to Parties. Prior to appointment, the parties should be aware of all significant aspects of the bases for an arbitrator's fees and expenses. Each arbitrator's biographical sketch shall include a statement of the bases for the arbitrator's fees and expenses, which shall conform to this part and the Code. The parties and the arbitrator shall be bound by the arbitrator's statement of the bases for fees and expenses in the biographical sketch unless they mutually agree otherwise in writing. Arbitrators listed on the Roster may change the bases for their fees and expenses if they provide them in writing to OAS at least 30 days in advance.

(b) Dual Addresses. Arbitrators with dual business addresses must bill the parties for expenses from the lesser expensive business address to the hearing site.

(c) Additional Administrative Fee. In cases involving unusual amounts of time and expense relative to the pre-hearing and post-hearing administration of a particular case, the arbitrator may charge an administrative fee. This fee shall be disclosed to the parties as soon as it is foreseeable by the arbitrator.

(d) Fee Disputes. The OAS requests that it be notified of an arbitrator's deviation from this Part. While the OAS does not resolve individual fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Board for consideration. Similarly, complaints by arbitrators concerning non-payment of fees by the parties may lead to the denial of services or other actions by the OAS.

■ 11. In § 1404.16, paragraph (b) is revised to read as follows:

§ 1404.16 Reports and biographical sketches.

* * * * *

(b) The OAS will provide parties with biographical sketches for each arbitrator on the Roster from information supplied by the arbitrator in conformance with this section and Sec. 1404.15. The OAS reserves the right to decide and approve the format and content of biographical sketches.

Subpart D—Expedited Arbitration

■ 12. Section 1404.17 is revised to read as follows:

§ 1404.17 Policy.

In an effort to reduce the time and expense of some grievance arbitrations, FMCS offers expedited procedures that may be appropriate in certain non-precedential cases or those that do not

involve complex or unique issues. Expedited arbitration is intended to be a mutually agreed-upon process whereby arbitrator appointments, hearings and awards are acted upon quickly by the parties, FMCS, and the arbitrators. Mandating short deadlines and eliminating requirements for transcripts, briefs and lengthy opinions streamline the process.

■ 13. In § 1404.18, paragraph (b) is revised to read as follows:

§ 1404.18 Procedures for requesting expedited panels.

* * * * *

(b) Upon receipt of a joint Request for Arbitration Panel (Form R–43) indicating that both parties desire expedited services, the OAS will refer a panel of arbitrators.

* * * * *

§ 1404.20 [Removed]

■ 14. Section 1404.20 is removed.

§ 1404.21 [Redesignated as § 1404.20]

■ 15. Section 1404.21 is redesignated as § 1404.20.

Dated: December 19, 2005.

Maria A. Fried,

General Counsel and Federal Register Contact.

[FR Doc. 05–24458 Filed 12–23–05; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AT81

Subsistence Management Regulations for Public Lands in Alaska, Subpart A

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

ACTION: Final rule.

SUMMARY: This rule revises and clarifies the jurisdiction of the Federal Subsistence Management Program for certain coastal areas in Alaska in order to further define, in part, certain waters that may never have been intended to fall under the Subsistence Management Program jurisdiction.

DATES: This rule is effective January 26, 2006.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact 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 for rural Alaska residents a priority for the taking 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, 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 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 subparts as follows: 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), the Departments established a Federal Subsistence 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; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Jurisdictional Perspective

Federal Subsistence Management Regulations (50 CFR 100.3 and 36 CFR 242.3) currently specify that they apply on ''all navigable and non-navigable waters within the exterior boundaries * * *'' of the parks, refuges, forests, conservation areas, recreation areas, and Wild and Scenic Rivers. This includes hundreds of thousands of acres of saltwater bays within National Wildlife Refuge boundaries that were not withdrawn prior to Statehood and which the Secretaries have now determined should not have been included in the regulations published on January 8, 1999 (64 FR 1276). We have concluded that our regulations (50 CFR 100.3 and 36 CFR 242.3) should exclude some bays associated with certain Refuges in Western Alaska. Therefore, we are amending the Federal Subsistence Management Regulations for Public Lands in Alaska to reflect the jurisdiction in those areas.

During the early interagency discussions relative to inclusion in fisheries management in the Federal Subsistence Management Program, there does not appear to have been any