of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

As of the 1990 census there are 163,000 rural Alaskans qualified to participate in subsistence hunting or fishing. Although some of the subsistence users may conduct their activities on State or private lands, it is likely that a large portion of the 163,000 rural Alaskans utilize Federal lands to some extent.

These regulations do not meet the threshold criteria of ''Federalism Effects'' as set forth in Executive Order 12612. 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 significant takings implication relating to any property rights as outlined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates 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.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Subsistence, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended 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.

2. Effective June 30, 1996, the effective date for 36 CFR 242.25 and 50 CFR 100.25 which were added at 60 FR 31553 is extended from July 1, 1996 through July 31, 1996.

Dated: April 3, 1996.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: April 15 1996.

John C. Capp,

Acting Regional Forester, USDA—Forest Service.

[FR Doc. 96–12833 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–11–M and 4310–55–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH44

Compensation for Disability Resulting From Hospitalization, Treatment, Examination, or Vocational Rehabilitation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule with minor, nonsubstantive changes an interim rule amending Department of Veterans Affairs (VA) adjudication regulations concerning compensation for disability or death resulting from VA hospitalization, medical or surgical treatment, or examination. Before the interim rule, to establish entitlement to compensation for adverse results of medical or surgical treatment, the regulations required that VA be at fault or that an accident occur. In order to conform the regulations to a recent United States Supreme Court decision, the interim rule deleted the fault-or-accident requirement and instead provided that compensation is not payable for the necessary consequences of proper treatment to which the veteran consented.

EFFECTIVE DATE: This final rule is effective July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1151 provides for the payment of disability or dependency and indemnity compensation for additional disability or death resulting from an injury or aggravation of an injury suffered as the result of VA hospitalization, medical or surgical treatment, examination, or pursuit of a course of vocational rehabilitation under 38 U.S.C. ch. 31. VA had long interpreted the statute to require a showing of fault on the part of VA or the occurrence of an accident to establish entitlement to § 1151 compensation for adverse consequences of VA medical treatment. This interpretation was codified at 38 CFR 3.358(c)(3).

In a recent decision, *Brown* v. *Gardner,* 115 S. Ct. 552 (1994), upholding a lower court decision, the U.S. Supreme Court held that the fault-or-accident requirement in former 38 CFR 3.358(c)(3) was inconsistent with the plain language of 38 U.S.C. 1151 and that no fault requirement was implicit in the statute. The Supreme Court determined that the statutory language simply requires a causal connection between an injury or aggravation of an injury and VA hospitalization, medical or surgical treatment, examination, or vocational rehabilitation, but that compensation is not payable for the necessary consequences of treatment to which a veteran consented.

In the Federal Register of March 16, 1995 (60 FR 14222), VA published an interim rule amending 38 CFR 3.358(c) in order to implement 38 U.S.C. 1151 as interpreted in that decision of the Supreme Court. Interested persons were invited to submit written comments on or before May 15, 1995. We received comments from the Paralyzed Veterans of America and from a concerned individual.

One commenter, observing that VA may provide disability examinations for beneficiaries of the British Imperial and Canadian governments and for pensioners of other nations allied with the U.S. during World War I and World War II, and that VA may conduct examinations for other Federal agencies (e.g., Office of Personnel Management, Railroad Retirement Board), asked whether VA intends to cover under 38 U.S.C. 1151 those examinees. Since the plain language of 38 U.S.C. 1151 provides for payment of benefits only for a veteran, VA has no authority to award § 1151 benefits for anyone who is not a veteran.

The same commenter suggested substituting the term ''veteran'' for the

terms ''beneficiary'' and ''claimant'' in 38 CFR 3.358 (b)(1) and (c)(5) respectively if VA's intention was to restrict payment of compensation under 38 U.S.C. 1151 for veterans only. Since the statute authorizes the payment of benefits only for veterans, we have made the suggested changes. These changes are not substantive; they merely conform the regulation's terms to the statute's terms.

One commenter stated that because VA changed the regulation as a result of the Supreme Court's decision in *Brown* v. *Gardner*, which he contends found that the relevant portions of VA's prior regulations were void *ab initio*, the effective date of the regulatory change should be the date the legislation now codified as 38 U.S.C. 1151 was originally enacted rather than November 25, 1991, the date of the Court of Veterans Appeals decision that invalidated former § 3.358(c)(3).

We make no change in the effective date of the interim rule based on this comment. In our opinion, choosing November 25, 1991, as the effective date is rational. Furthermore, it is consistent with VA policies concerning the finality of decided claims and the application of court decisions invalidating VA regulations or statutory interpretations.

VA's General Counsel, in a precedent opinion issued March 25, 1994 (VAOPGCPREC 9–94) (*see* 59 FR 27307, May 26, 1994), held that decisions of the Court of Veterans Appeals invalidating VA regulations or statutory interpretations do not have retroactive effect in relation to prior finally adjudicated claims, but should be given retroactive effect as they relate to claims still open on direct review. In reaching this conclusion, the General Counsel quoted the following passage from the U.S. Supreme Court's opinion in *Harper* v. *Virginia Dept. of Taxation*, 113 S. Ct. 2510 (1993):

> When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.

Id. at 2517. That General Counsel precedent opinion is binding on VA and requires that VA apply the courts' interpretation of 38 U.S.C. 1151 to claims still open on direct review on November 25, 1991, the date of the Court of Veterans Appeals decision, but not to prior finally adjudicated claims.

By being effective from the date of the Court of Veterans Appeals decision invalidating former § 3.358(c)(3), the new rule will be applied just as VAOPGCPREC 9–94 requires the court decision to be applied. With an effective date of November 25, 1991, the new rule will apply to all claims still open on direct review on that date, whether by an agency of original jurisdiction or the Board of Veterans' Appeals. Moreover, the effective date of any award based on the new rule's application to such a claim will be in accordance with 38 U.S.C. 5110. However, the new rule will not retroactively apply to claims already finally decided as of November 25, 1991. Although those claims can be reopened with new and material evidence or administratively reviewed under the liberalized provisions of the new rule, no award based on the new rule's application to such a claim will be effective before that date.

In the absence of new and material evidence to reopen a claim or another reason to reconsider a Board of Veterans' Appeals decision, a finally decided claim remains final unless it involved clear and unmistakable or obvious error. By being effective from November 25, 1991, the new rule will also be consistent with this policy of finality. Claims pending on that date will receive the benefit of the new, more liberal interpretation of 38 U.S.C. 1151. Claims finally decided by that date, although decided under the old, subsequently invalidated rule, in the absence of new and material evidence to reopen or another reason to reconsider, will remain final unless they involved clear and unmistakable or obvious error. Moreover, we do not consider the application of the old rule before November 25, 1991, to have been clear and unmistakable or obvious error. *See* 38 CFR 3.105; VAOPGCPREC 25–95 (December 6, 1995).

The same commenter also objected to using 38 U.S.C. 1151 as the authority citation for paragraph (c)(6). In addition to containing information relating to 38 U.S.C. 1151, this paragraph contains information relating to 38 U.S.C. 1720 (non-VA nursing home care). Therefore, we are changing the authority citation to include both 38 U.S.C. 1151 and 1720.

Before the interim rule, 38 CFR 3.358(c)(4) provided that compensation would be payable for disability resulting from transportation while in a hospitalized status only if injury or death proximately resulted from VA's fault. The interim rule removed former paragraph (c)(4). A commenter suggests adding language to 38 CFR 3.358(a) expressly providing for 38 U.S.C. 1151 coverage where additional disability results from transportation while in a hospitalized status.

As was true before the courts invalidated VA's former interpretation of 38 U.S.C. 1151, claims based on additional disability or death resulting from an injury suffered as a result of transportation while in a hospitalized status are held to the same standard as claims based on additional disability or death resulting from an injury otherwise suffered as a result of hospitalization. Former paragraph (c)(4) was added to the regulation because of a decision of the Administrator of Veterans' Affairs holding that injuries suffered while being transported in a hospitalized status could give rise to eligibility under the predecessor provisions of 38 U.S.C. 1151. Transportation while hospitalized can still give rise to eligibility even though the old fault-or-accident standard is no longer valid. However, since the rule's general term ''hospitalization'' encompasses the particular circumstances of transportation while in a hospitalized status, we see no need to specify a provision for transportation while in a hospitalized status.

The Office of Management and Budget has reviewed this regulatory action under Executive Order 12866.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 7, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim rule amending 38 CFR Part 3, which was published at 60 FR 14222 on March 16, 1995, is adopted as a final rule with the following changes:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.358, paragraph (b)(1) introductory text is amended by removing ''beneficiary's'' and adding, in its place, ''veteran's''; paragraph (c)(4) is amended by removing ''claimant's'' and ''claimants'' and adding, in their respective places, ''veteran's'' and ''veterans''; and an authority citation is added immediately following paragraph (c)(6) to read as follows:

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

* * * * *

(Authority: 38 U.S.C. 1151, 1720.)

[FR Doc. 96–12924 Filed 5–22–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–80–1–9619a & 81–1–9620a; FRL–5505–4]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 29, 1995, the Forsyth County Board of Commissioners, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions include the adoption of new air quality rules and amendments to existing air quality rules that were the subject of public hearings held on May 16, 1995. A second submittal concerning these revisions was forwarded to EPA on December 28, 1995. This second submittal was the subject of a public hearing on September 26, 1995.

These revisions adopt three source-specific volatile organic compound rules; Thread Bonding Manufacturing, Glass Christmas Ornament Manufacturing, Commercial Bakeries, delete textile coating, Christmas ornament manufacturing, and bakeries from the list of sources that must follow interim standards, define di-acetone alcohol as a non-photochemically reactive solvent, and place statutory requirements for adoption by reference for referenced ASTM methods into a single rule rather than each individual rule that references ASTM methods.

DATES: This action is effective July 22, 1996 unless notice is received by June 24, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to:

Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365

Copies of the material submitted by the NCDEHNR may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ex 4212.

SUPPLEMENTARY INFORMATION: On November 29, and December 28, 1995, the Forsyth County Board of Commissioners, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions were approved into the North Carolina State Implementation Plan (SIP) in a previous document (61 FR 3588) and have been adopted by the Forsyth County Board of Commissioners. These revisions affect several sections in the ozone regulations. EPA is approving the revisions to sections Subchapter 3D .0104 Incorporation by Reference, .0501 Compliance With Emission Control Standards, .0516 Sulfur Dioxide Emissions From Combustion Sources, .0518 Miscellaneous Volatile Organic Compound Emissions, .0530 Prevention of Significant Deterioration, .0531 Sources in Nonattainment Areas, .0902 Applicability, .0907 Compliance Schedules for Sources in Nonattainment Areas, .0909 Compliance Schedules for Sources in New Nonattainment Areas, .0910 Alternative Compliance Schedules, .0911 Exception from Compliance Schedules, .0950 Interim Standards for Certain Source Categories, .0952 Petition for Alternative Controls, .0954 Stage II Vapor Recovery, .0955 Thread Bonding Manufacturing, .0956 Glass Christmas Ornament Manufacturing, and .0957 Commercial Bakeries because these revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

EPA is approving the following new rules and revisions of existing rules in the Forsyth County LIP. These new rules and revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

.0104, Incorporation by Reference

These amendments involve the placement of statutory requirements for adoption by reference for referenced American Society for Testing and Materials methods (ASTM) into a single rule rather than each individual rule that references ASTM methods.

.0501 Compliance With Emission Control Standards

This rule was amended to clarify the appropriate compliance methodology.

.0516 Sulfur Dioxide Emissions From Combustion Sources

This rule was amended to include an additional reference rule number.

.0518 Miscellaneous Volatile Organic Compounds Emissions

This rule was amended to clarify that diacetone alcohol and perchloroethylene are not considered to be photochemically reactive and to delete a repeated phrase.

.0530 Prevention of Significant Deterioration

This rule was amended to update the latest date of amendment of the CFR references.

.0531 Sources in Nonattainment Areas

This rule has been amended to add paragraph (k), which requires using the UAM model, by new or major modifications, at sources to predict effect on the ozone level and attainment status.

.0902 Applicability

Forsyth County did not adopt paragraph (e), which pertains to other counties in North Carolina, of the State rule because those areas are not in Forsyth County's jurisdiction.

.0909 Compliance Schedules for Sources in New Attainment Areas

This rule has been amended to correctly identify the appropriate paragraph references.

.0950 Interim Standards for Certain Source Categories

This section, is being revised to delete textile coating, bakeries and Christmas ornament manufacturing from the list of