

Approved: March 25, 2005.

**Gregg A. Cervi,**

*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).*

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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 Adjustment—Copper River

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

**ACTION:** Seasonal adjustment.

**SUMMARY:** This provides notice of the Federal Subsistence Board's in-season management action to protect sockeye salmon escapement in the Copper River, while still providing for a subsistence harvest. The revised fishing schedule for the Chitina Subdistrict of the Copper River will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on March 21, 2005. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2005 regulatory year.

**DATES:** The fishing schedule for the Chitina Subdistrict of the Upper Copper River District is effective July 18, 2005, through September 17, 2005.

**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 Steve Kessler, 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 2005 fishing seasons, harvest limits, and methods and means were published on March 21, 2005 (70 FR 13377). Because this action 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 as provided by Title VIII

of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These actions are authorized and in accordance with 50 CFR 100.19(d-e) and 36 CFR 242.19(d-e).

#### 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 conducts a personal use 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. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. The preseason schedule was intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. During July 4–July 10, there were 55,740 salmon counted past the Miles Lake sonar. The preseason projection for this period was 48,848 salmon; therefore, an excess of 6,892 salmon passed the sonar during this period which will allow for increased fishing time during the eighth open period. Copper River sockeye salmon migratory timing and the previous 5-year average harvest and participation rates indicate sufficient numbers of salmon available to allow 168 hours of fishing time during the week of July 18–July 24. Depending on actual numbers of salmon passing the Miles Lake sonar, future openings may be increased or decreased accordingly.

Data from the sonar indicate that there are now sufficient salmon in the Copper River to allow additional fishing time in the Chitina Subdistrict, provide for the needs of upper Copper River users, and achieve spawning escapement objectives. Shown below are the fishing schedule openings for the Chitina Subdistrict of the Copper River:

Monday, July 11, 12:01 a.m.—Sunday,

July 17, 11:59 p.m.

Monday, July 18, 12:01 a.m.—Sunday,

July 24, 11:59 p.m.

Monday, July 25, 12:01 a.m.—Friday,

September 30, 11:59 p.m.

State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2005. No deviation from this date is anticipated.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments 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, could 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*

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, 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.)

#### *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 have some local impacts on subsistence uses, 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 adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *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; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness 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 subsistence 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 agencies 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*

Bill 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; Nancy Swanton, Alaska

Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, 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: July 22, 2005.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: July 22, 2005.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA–316–0484a; FRL–7949–1]

**Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and Monterey Bay Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation

Plan (SIP). These revisions concern visible emissions of a variety of pollutants and sources. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on October 11, 2005 without further notice, unless EPA receives adverse comments by September 12, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA’s technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 “I” Street, Sacramento, CA 95814;

San Joaquin Valley Unified Air Pollution Control District, 1990 East

Gettysburg Street, Fresno, CA 93726; and,

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, at either (415) 947–4111, or [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD .....	4101	Visible Emissions .....	02/17/05	04/26/05
MBUAPCD .....	400	Visible Emissions .....	10/15/03	01/15/04

On June 3, 2005 and March 1, 2004 respectively, EPA found that the submittals for SJVUAPCD Rule 4101 and MBUAPCD Rule 400 met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review may begin.

*B. Are There Other Versions of These Rules?*

EPA has received three prior versions of Rule 4101. SJVUAPCD adopted the first version on December 17, 1992 and CARB submitted the rule to EPA on September 28, 1994. SJVUAPCD adopted the second version on June 21, 2001 and CARB submitted the rule to

EPA on October 30, 2001. However, EPA has not acted on these two versions of Rule 4101. CARB submitted a third version of Rule 4101 to EPA on December 6, 2001, adopted on November 15, 2001. We proposed to approve this version of Rule 4101 on June 10, 2002 (see 67 FR 39659). However, after receiving adverse comments on our proposed approval, we proposed a disapproval on September 29, 2003 (see 68 FR 55917). On January 8, 2004, EPA disapproved Rule 4101 (see 69 FR 1271). Consequently, none of the prior adoptions of Rule 4101 were incorporated within the SIP. Because

prior versions of Rule 4101 have been incorporated within the latest submittal of the rule, they are reviewed as part of this action in our Technical Support Document (TSD).

*C. What is the Purpose of the Submitted Rules?*

SJVUAPCD Rule 4101 and MBUAPCD Rule 400 limit the emissions of visible air contaminants of any type; usually, but not always, particulate matter from combustion sources and industrial sites. Specifically, the rules prohibit emissions beyond a defined opacity standard. Administratively, SJVUAPCD Rule 4101 replaces the individual 1970s