

## History

On August 11, 2004, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area at Jonesville, VA, was published in the **Federal Register** (69 FR 48826–48827). The proposed action would provide controlled airspace to accommodate Standard Instrument Approach Procedures (SIAP), based on area navigation (RNAV), to Lee County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before September 10, 2004. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

## The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within an 8-mile radius of Lee County Airport, Jonesville, VA.

The FAA has determined that this regulation only involves an establish body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation administration amends 14 CFR part 71 as follows:

### PART 71—[AMENDED]

■ 1. Authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AEA VA E5 Jonesville, VA (New)

Lee County Airport, Jonesville, VA  
(Lat. 36°39'15" N., long. 83°13'04" W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Lee County Airport.

\* \* \* \* \*

Issued in Jamaica, New York, on October 5, 2004.

**John G. McCartney,**

*Staff Manager, Eastern Terminal Service Unit.*  
[FR Doc. 04–23070 Filed 10–13–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 170

**RIN 1076–AE17**

#### Indian Reservation Roads Program

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule; delay of implementation.

**SUMMARY:** On July 19, 2004, the Bureau of Indian Affairs published a Final Rule in the **Federal Register** (69 FR 43090) which established policies and procedures governing the Indian Reservation Roads (IRR) Program. The IRR Program is a part of the Federal Lands Highway Program established to address transportation needs of tribes. The program is jointly administered by the Bureau of Indian Affairs and the Federal Highway Administration's Federal Lands Highway Office. The

Final Rule has an announced effective date of October 1, 2004. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the **Federal Register** or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). Because of an inadvertent clerical error, the Final Rule was not received by Congress until September 13, 2004. Therefore, implementation of the Final Rule by the Bureau of Indian Affairs is delayed until November 13, 2004.

**DATES:** Implementation of the Final Rule published at 69 FR 43090 will be delayed until November 13, 2004.

#### FOR FURTHER INFORMATION CONTACT:

LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320 SIB, Washington, DC 20240, Telephone 202–513–7711 or Fax 202–208–4696.

Dated: October 7, 2004.

**Duncan L. Brown,**

*Regulatory Specialist, Office of the Executive Secretariat, Department of the Interior.*

[FR Doc. 04–22984 Filed 10–13–04; 8:45 am]

**BILLING CODE 4310–LH–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

**RIN 1018–AT58**

#### Subsistence Management Regulations for Public Lands in Alaska

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

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies the membership qualifications for Federal Subsistence Regional Advisory Councils established under Subsistence Management Regulations. The rulemaking is necessary because of an order entered by the U.S. District Court for Alaska. The final rule also removes the definition of “regulatory year” from Subpart A and places it in Subpart D of the regulations.

**DATES:** This final rule is effective November 15, 2004.

#### 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) 786-3592.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretaries implement a program to grant a preference for subsistence uses of fish and wildlife resources on public lands, 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. 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 preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, 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 Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). With the State unable to create a program in compliance with Title VIII by May 29, 1992, the Departments published a final rule in the **Federal Register** (57 FR 22940). On January 8, 1999 (64 FR 1276), the Departments published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska v. Babbitt*.

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 (Board) to administer the Federal Subsistence Management Program. The

Board's composition consists of 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 participate in the development of Federal Subsistence Management Regulations (Subparts A, B, C, and D).

The Board has reviewed this rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

##### Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

##### Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, Alaska is divided into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands.

The Board reviews applications for membership on the Councils and makes recommendations to the Secretaries on the appointments to the Councils. The appointments are actually made by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. The Regional Council members represent varied geographical areas, cultures, interests, and resource users within each region. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about

the region and subsistence uses of the public lands therein.

In 1998, Safari Club International and others filed suit in the U.S. District Court for the District of Alaska. This suit, as ultimately ruled upon, challenged the Board's customary and traditional use determination process, specific customary and traditional use determinations, and the balance of membership on the Regional Councils required by the Federal Advisory Committee Act (FACA) of 1972, Pub. L. 92-463, 86 Stat. 770 (*Safari Club v. Demientieff*, No. A98-0414-CV). In the meantime, the Secretary of the Interior, as part of a national review of advisory councils and in response to inquiries related to the Federal Subsistence Regional Advisory Councils in Alaska, requested the Board to examine its process for selecting nominees, and "see that" groups such as "residents of non-rural areas, commercial users of fish and wildlife resources and sportsmen are represented on the RACs." Based on Board recommendations following that in-depth examination, the Secretary of the Interior with concurrence of the Secretary of Agriculture in 2002 increased the size of nine of the Regional Councils; established the goal of making appointments to the Regional Council so as to achieve, where possible, a representation goal of 70% subsistence users and 30% sport/commercial users; revised the application/evaluation/selection process and forms; and approved a 3-year implementation period.

The Native Village of Venetie Tribal Government et al. were permitted to intervene in the Safari Club case and to challenge the 70/30 ratio representational goals established by the Secretaries. In January 2004, the U.S. District Court for Alaska entered an order dismissing the first two of Safari Club's claims and staying proceedings on the balance of Regional Council membership. The court did note in part with respect to the Regional Councils "that a council comprised of only subsistence users is not fairly balanced. Subsistence users are not the only persons directly affected by regional advisory council recommendations and subsistence users are not the only persons who might be interested in the management of fish and wildlife on federal lands \* \* \* Non-subsistence users of fish and wildlife are directly affected by management of fish and wildlife for subsistence uses and have a legitimate interest in the proper scientific management of same \* \* \*. While *all* points of view and *all* persons directly affected are not entitled to representation on a FACA committee, in

this instance, a cross-section of those affected by fish and wildlife management on federal public lands must be, in a reasonable and fair manner, afforded representation on regional advisory councils."

In ruling on a cross-claim of the Native Village of Venetie, the Court invalidated the Secretaries' policy of a goal of a 70/30 (subsistence users/sport and commercial users) membership ratio for failure to procedurally comply with the provisions of the Administrative Procedure Act found at 5 U.S.C. 553, and found that the policy should have been put before the public for comment in a rulemaking process. The District Court also ordered that the Secretaries promptly initiate and conclude a rulemaking to promulgate an appropriate Regional Council regulation consistent with FACA after compliance with 5 U.S.C. 553. The Secretaries initiated action with a proposed rule published on April 15, 2004, (69 FR 19964) and received testimony on the proposed rule at a May 2004 public hearing.

The underlying purpose of the change to § .11(b), while complying with the District Court's order, is to ensure continued compliance with both the fairly balanced representational requirements of FACA and the requirements and purposes of Title VIII of ANILCA in the appointments to the Regional Councils. In the change, the Secretaries recognize that some persons with interests other than subsistence uses are entitled under FACA to be represented on the Regional Councils, while recognizing that Congress intended in Title VIII for rural Alaska residents "who have personal knowledge of local conditions and requirements \* \* \* to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands in Alaska," and that Congress also intended that "large urban population centers" not be allowed to dominate the Regional Council system. The 70/30 representational goals of the change to § .11(b) assures the appropriate representation and meaningful majority role for rural Alaska residents, while providing an appropriate representation for the interests of nonrural residents and nonsubsistence users.

The change to § .11(b) establishes representational goals only in recognition that the actual appointments are dependent on the receipt of applications and nominations of highly qualified individuals. The change also requires the Board to identify to the Secretaries the interests that the applicant would represent. The

Secretaries retain their role in making the appointments to the Regional Councils. They also approve the Regional Council charters, wherein the size of each Regional Council is set. This is reflected in a change to identify the Secretaries as establishing the number of members for each Council. These changes to § .11(b) are consistent with FACA and ANILCA.

Additionally, we modified the definition of "regulatory year" for fish and shellfish fisheries to mean April 1 through March 31 and shifted the placement of this definition from § .4 to § .25. This change in dates allows more opportunity for development of public booklets informing subsistence users of regulatory changes, and the shift in placement of the definition within the regulations allows the Board more flexibility to make adjustments in the future.

#### Summary of Comments Received on the Proposed Rule

In addition to comments from the Regional Councils, we received written comments and/or oral testimony from 11 individuals or organizations. Their comments and the responses are summarized below.

*Comment:* Participating in the rulemaking process is costly and time consuming.

*Response:* We appreciate the time and effort that many individuals and organizations have dedicated to reviewing and commenting on the proposed rule.

*Comment:* The Regional Councils do not have the opportunity to comment on this rule. The comment period should be extended to allow the Councils to comment during their fall meetings.

*Response:* We were aware that the comment period would not coincide with the regular Regional Council meeting cycle. However, the Court ordered us to proceed promptly with a rulemaking action. Therefore, we made special effort to brief each Regional Council on the content of the proposed rule during its winter meeting. We then provided each Council with an opportunity to ask questions and to offer comments. Further, members of the Councils also had opportunity to comment on this rule during the public comment period.

*Comment:* The recommendations on this rule from the Regional Councils must be given deference in accordance with Section 805(c) of ANILCA.

*Response:* Section 805(c) requires the Secretaries to consider and give deference to Regional Councils' recommendations relative to the taking of fish and wildlife on the public lands.

The proposed membership balance rule is not a policy or regulation addressing the taking of fish and wildlife on public lands, and therefore, is not subject to the requirements of Section 805(c). We have, however, fully considered the comments from the Regional Councils in making our decision in this final rule.

*Comment:* The proposed change may potentially affect the interests of Tribal members. The proposed changes are subject to consultation with recognized tribes.

*Response:* We have provided all Alaskan Tribes and Native organizations the opportunity to provide comments on the proposed rule. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and Executive Order 13175 (November 6, 2000) "Consultation and Coordination with Indian Tribal Governments," government-to-government consultation is appropriate in cases where there is the potential for substantial direct effects on Tribes. In this case, redesignating a small number of seats to increase the diversity of viewpoints on the Regional Councils does not rise to the level of a substantial direct effect.

*Comment:* Without a significant majority of subsistence users on the Councils, it is difficult to get subsistence proposal passed.

*Response:* The 70/30 membership goal in the rule provides for a significant majority of members representing the subsistence interest on the Councils. The purpose of providing a goal for a minority of seats (30%) for sport and commercial interests is to ensure that those interests that are directly affected are represented on the Councils in compliance with FACA. We expect that all Regional Council members would continue to examine each proposal, policy, or plan and develop Regional Council recommendations based on recognized principles of fish and wildlife conservation, satisfaction of subsistence needs, and substantial evidence, consistent with Title VIII of ANILCA.

*Comment:* Rural communities should be allocated one seat on the Council. Regional Council composition needs to be representative of the population base of the rural communities. The proposal rule leaves out rural Alaska Natives and other rural residents because urban areas outnumber rural residents.

*Response:* This comment misconstrues both the statutory priority and the proposed rule. First, the statute creates a priority for all rural Alaska residents, not just rural Alaska Native residents. Further, by statute, all

members of a Regional Council must be residents of the region. Since most regions contain no nonrural areas, all members of those Councils will be rural Alaska residents. Even where the region includes nonrural areas, 70% of the members representing subsistence interests on the Council will likely be rural residents. Additionally, Alaska Natives are seated on every Regional Council. To have one representative from each rural community in Alaska sitting on the Councils would create excessively large and unworkable bodies. The current size of the Regional Councils and the diversity of their members provide good representation for the users in each region.

*Comment:* Sport users should be banned from sitting on these Councils. FACA's balanced representational requirement doesn't require the appointment of sport and commercial interests to the Councils. Representation from other interest groups (*i.e.*, commercial and sport interests) dilutes the purpose of the Councils.

*Response:* The U.S. District Court for Alaska found that FACA requires that a cross-section of those affected must be afforded reasonable representation on the Regional Councils. The court also stated that a Council comprised only of subsistence users is not fairly balanced and that sport and commercial users have legitimate points of view that must be considered. Consequently, inclusion of representatives of sport and commercial users is required and assures a diversity of views on the Regional Councils.

*Comment:* The wording should be modified as follows: " \* \* \* the Board will strive to ensure that *no more than* 70 percent of the members represent subsistence interests within a region and *no less than* 30 percent of the members represent commercial and sports interests within a region. The not less than 30 percent of the membership who represent the commercial and sport interests shall include at least one representative from the sport hunting community and one representative from the commercial fishing community in regions where these interests exist."

*Response:* We have modified the wording from the proposed rule to reflect that we shall include at least one representative from the sport community and one representative from the commercial community where possible. We have not made the other suggested change, believing it to be an unnecessarily restrictive stipulation.

*Comment:* Regional Councils should have an 80/20 representational balance.

*Response:* We have engaged in a thorough review and do not believe an

80/20 split would generally provide the best cross-section of interests and balanced membership. The 70/30 ratio provides a clear majority for subsistence users and a meaningful representation for other users. We have retained the 70/30 balance as a reasonable approach to providing the cross-section of interests suggested by the court ruling.

*Comment:* The Councils are already balanced because many members already participate in and represent various interests. The representational balance should be derived from the percentage of each individual member's activities. FACA does not require that each member make an arbitrary declaration of intent to support a single interest. An individual who primarily considers himself a subsistence user cannot represent the commercial fishing community simply because he holds a commercial fishing license. Similarly, a recreational hunter cannot represent the subsistence community simply because he eats the meat from the animal that he has hunted.

*Response:* We recognize that there are and have been individuals serving on the Councils who may participate in many types of uses (subsistence, sport and commercial) and are knowledgeable about the different interests. However, we are required by FACA to demonstrate that the Regional Advisory Councils continue to be fairly balanced in terms of points of view represented and the functions to be performed by the Council. Consequently, we have requested that people applying for Council seats declare their primary interest because it is the individual applicant who is the most knowledgeable about his/her viewpoints. This declaration should be supported by the information provided by the applicant and by an evaluation of the applicant's qualifications. This declaration assists the Federal Subsistence Board and the Secretaries in determining whether or not appointments to the Councils comply with the FACA requirements for balance.

*Comment:* Each Regional Council should have at least one member who will represent the public interest in the management of those Park Service units open to subsistence activities.

*Response:* In addition to the Regional Councils, ANILCA also designated a separate system of Subsistence Resource Commissions (16 U.S.C. 3118) to provide advice and recommendations for National Parks and Monuments where subsistence occurs. It has been our experience that the Regional Councils carefully consider recommendations of the Subsistence

Resource Commissions. The Regional Councils whose regions include national park or monument lands represented by an SRC also appoint three members to the nine-member SRC.

*Comment:* A "cross section of those affected" requires inclusion of other interests, such as conservation, Native heritage, and recreation interests. The Councils should include representation for the majority of people who do not want to see wildlife killed.

*Response:* ANILCA Title VIII is a statute that provides for the taking of fish and wildlife on Federal lands and waters. Therefore, on a committee providing advice on the taking of fish and wildlife resources, only representatives of groups involved in various aspects of consumptive use of the resources are appropriate members. Groups and individuals representing other interests have opportunity to express their opinions by providing public testimony at Regional Council and Board meetings.

*Comment:* Guidelines for Council composition should also maintain ethnic, gender, and geographical balance.

*Response:* Other than the guidelines for membership balance, there are no additional regulatory guidelines used by the Federal Subsistence Board in making appointment recommendations to the Secretaries. However, the Board does consider and attempt to maximize various diversity factors when making its recommendations. The Secretaries consider the Board's recommendations and must follow FACA and ANILCA requirements when making their appointments.

*Comment:* Current subsistence representatives should not be displaced by appointments representing sport or commercial interests.

*Response:* The 70/30 policy is to be implemented under a 3-year phase-in period to avoid displacement of sitting members. All members may conclude their current terms. We will maintain the FACA balance through appointment to open seats over a 3-year period.

*Comment:* The Seward Peninsula Regional Council should be increased in size from 10 to 13.

*Response:* The Board will examine this issue during the charter renewal process that will start at the fall 2004 meeting and conclude with charter approval by the Secretaries in 2005.

*Comment:* Evaluation panel guidelines should also include consideration of an applicant's command of traditional ecological knowledge.

*Response:* Evaluation panel guidelines are not a part of this

rulemaking process. However, the evaluation guidelines used by the Board do include an applicant's knowledge of subsistence customs and traditions.

*Comment:* The Board should evaluate all applicants by the same criteria.

*Response:* The Board evaluates all applicants on these same five criteria: knowledge of fish and wildlife resources in the region, knowledge of subsistence customs and traditions, knowledge of recreational and/or commercial uses, leadership, and communication.

*Comment:* The appointment of members creates divisiveness in rural communities. In every group or community there are always different factions.

*Response:* We expect that the persons appointed for membership are individuals who can overlook factionalism and engage in a meaningful dialog that considers the views of various users in their area.

*Comment:* The ethics disclosure requirement in the Regional Council charters is being applied too restrictively.

*Response:* The application of the ethics disclosure requirement is coordinated with the Department of the Interior's Office of the Solicitor and is not a part of this current rulemaking process.

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

#### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis, and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the

Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992, and amended January 8, 1999, 64 FR 1276; June 12, 2001, 66 FR 31533; May 7, 2002, 67 FR 30559; and February 18, 2003, 68 FR 7703) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

#### *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 may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

There is nothing in this rulemaking that affects the prior NEPA or Section 810 analysis and so no additional analysis is required for this rulemaking.

#### *Paperwork Reduction Act*

These changes do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, an information collection request unless it displays a currently valid OMB control number.

#### *Other Requirements*

**Economic Effects**—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule is administrative in nature only and does not restrict any existing sport or

commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The number of businesses and the amount of trade that will result from this Federal land related activity is unknown but expected to be insignificant.

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 economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments certify that this rulemaking 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 priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform 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. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations 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 rule does 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 unless their program meets certain requirements.

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 this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

#### Drafting Information

William Knauer drafted these regulations 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; Greg Bos, Carl Jack, and Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Bob Gerhard, Alaska Regional Office, National Park Service; Warren Eastland and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

#### List of Subjects

##### 36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

##### 50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons presented in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

#### PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA [AMENDED]

■ 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.

#### § \_\_.4 [Amended]

■ 2. In Subpart A of 36 CFR part 242 and 50 CFR part 100, § \_\_.4, the definition of "Regulatory year" is removed.

■ 3. In Subpart B of 36 CFR part 242 and 50 CFR part 100, § \_\_.11(b)(1) is revised to read as follows:

#### § \_\_.11 Regional advisory councils.

(a) \* \* \*

(b) *Establishment of Regional Councils; membership.* (1) The Secretaries, based on Board recommendation, will establish the number of members for each Regional Council. To ensure that each Council represents a diversity of interests, the Board will strive to ensure that 70 percent of the members represent subsistence interests within a region and 30 percent of the members represent commercial and sport interests within a region. The portion of membership that represents the commercial and sport interests shall include, where possible, at least one representative from the sport community and one representative from the commercial community. A Regional Council member must be a resident of the region in which he or she is appointed and must be knowledgeable about the region and subsistence uses of the public lands therein. The Board will accept nominations and make recommendations to the Secretaries for membership on the Regional Councils. In making their recommendations, the Board will identify the interest(s) the applicants propose to represent on the respective Regional Councils. The Secretary of the Interior with the concurrence of the Secretary of Agriculture will make the appointments to the Regional Councils.

\* \* \* \* \*

■ 4. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § \_\_.25(a) is amended by adding the definition "Regulatory year" immediately before the definition "Ring net" to read as follows:

#### § \_\_.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) \* \* \*

*Regulatory year* means July 1 through June 30, except for fish and shellfish for which it means April 1 through March 31.

\* \* \* \* \*

Dated: September 20, 2004.

**Gale A Norton,**

*Secretary of the Interior, Department of the Interior.*

Dated: September 30, 2004.

**Dennis E. Bschor,**

*Regional Forester, USDA-Forest Service.*

[FR Doc. 04–22820 Filed 10–13–04; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[CA 307–0464a; FRL–7818–6]

#### Revisions to the California State Implementation Plan, San Joaquin Valley 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) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from glass coating operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on December 13, 2004, without further notice, unless EPA receives adverse comments by November 15, 2004. 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 revision, EPA's technical support document (TSD), and other materials relevant to this action at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revision 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.