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Drafting Information

William 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; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, 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: October 4, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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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; Emergency Closures—Redoubt and Salmon Lakes Drainages

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

ACTION: Emergency closures.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Redoubt and Salmon Lakes drainages. These regulatory adjustments and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the

Federal Register on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: This closure was effective July 13, 2001, through August 31, 2001.

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 Ken Thompson, 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 2001 fishing seasons, harvest limits, and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule 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 emergency closures were necessary because of predictions of extremely weak returns of sockeye salmon in the Redoubt and Salmon Lakes drainages. These emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Redoubt Lake Drainage

Since the projected escapement was well below desirable levels for Redoubt Lake, the system was closed to provide for spawning escapement needs. The total return to July 11, 2001, was 1,089 sockeye. Usually 16% of the run returned to the lake by that time. The projected escapement is 7,571 fish for the 2001 season. This projection represents 21% of the average escapement of 36,000 sockeye during the period 1989-1999

Salmon Lake Drainage

Salmon Lake was closed since returns were low, and to avoid excessive harvest effort for this relatively small sockeye population. Closure of the nearby Redoubt Lake system could displace harvest effort in the Sitka Sound area to Salmon Lake. The total escapement to July 11, 2001, was 320 to Salmon Lake. Past subsistence harvest for Salmon Lake has ranged from zero

to 353 sockeye salmon since monitoring began in 1985.

On July 11, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a sockeye salmon closure in the Redoubt and Salmon Lakes drainages for the period from July 13, 2001, through August 31, 2001. This action was necessary due to low sockeye returns.

This regulatory action was necessary to assure the continued viability of the sockeye salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. This closure brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this emergency closure is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, 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 this action and pursuant to 5 U.S.C. 553(d) to make this effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

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) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, 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).

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, 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 emergency closure does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The emergency closure has 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 tackle, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the emergency closure will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

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 emergency closure has 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 emergency closure 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 emergency closure meets 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 emergency closure does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising 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 this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

William 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; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, 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: October 4, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA-4176; FRL-7089-5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Eighteen Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eighteen major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 15, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814-2104 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_x. This rulemaking pertains to eighteen of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_x RACT requirements for each source. These sources are all located in the Philadelphia area and include: Amerada Hess Corp.; Amoco Oil Company; Cartex Corporation; Exxon Company, USA; GATX Terminals Corporation; Hatfield Quality Meats, Incorporated; J. L. Clark, Incorporated; Johnson Matthey, Incorporated; Kurz Hastings, Incorporated; Lawrence McFadden Company; Philadelphia Baking Company; Philadelphia Gas Works; PPG Industries, Incorporated; SmithKline Beecham Pharmaceuticals; Teva Pharmaceuticals, USA; The Philadelphian Condominium Building; Warner Company; and Webcraft Technologies, Incorporated.

On August 20, 2001, EPA published a direct final rule (66 FR 43502) and a companion notice of proposed rulemaking (66 FR 43551) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 26, 2001, (66 FR 49107), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 20, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 43551). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 20, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 20, 2001 to approve case-by-case RACT SIP submissions

from the Commonwealth for NO_x and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_x and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan v. Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_x and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected