

results in the collection of significantly more data than with the current MRE instrument? Would it be appropriate for operators to only provide miners with a portion of the data captured by the CPDM or to post the data for a period less than 31 days? Please be specific with your response, including your rationale.

D. Education and Training

It is vital that persons designated by the mine operator to perform dust sampling functions and miners be properly educated and trained to assure the integrity and credibility of the sampling process. To be effective, these persons must be fully cognizant of the nature of the health hazards in the working environment and possess a level of competence in the proper use, operation and maintenance of sampling equipment, and an awareness of the limitations of available protective measures. The required level of competence would be dictated by the complexity inherent in the operation of the particular CPDM and the degree to which oversight of sampling integrity is to be assumed by mine operators using the CPDMs. MSHA requests comments on suggested elements for a training program on using and maintaining a CPDM. Please be specific in your response, addressing the quality, quantity, and types of training, and the qualifications and certifications that should be required.

1. What training should miners receive if required to wear a CPDM? What type of training would be necessary to assure that the miner understands how the device works, what information it provides, and how that information should be used to reduce miners' exposure to respirable dust? How often should miners be required to receive this training?

2. What qualifications should be required before an individual is permitted to operate and maintain a CPDM? How should an individual be required to demonstrate proficiency before being permitted to operate and maintain a CPDM?

3. Which mine personnel should oversee CPDM usage, download exposure information, and interpret data? What type of qualifications/certifications should these personnel be required to have?

E. Benefits and Costs

Because of the changing mining environment, more timely feedback on current respirable dust conditions in the workplace should significantly enhance miner health protection. Benefits would include the ability to immediately

identify hazardous dust conditions that cause debilitating and potentially fatal coal workers' pneumoconiosis or "black lung" disease, and to reduce or eliminate the risk of overexposure and the potential for illness and premature death, thereby avoiding the attendant costs to employers, miners and their families, and society.

MSHA requests comment on the following questions concerning the benefits and costs of the CPDM:

1. What would be the benefits of using CPDMs in a comprehensive and effective compliance strategy? Note that benefits might differ depending upon which compliance strategy is selected.

2. What costs would be associated with using CPDMs? Please be specific as to every component, such as, initial outlay, maintenance, and training.

3. What would be the advantages, disadvantages, and relative costs of different methods of using CPDMs?

4. Would the use of CPDMs affect small mines differently than large mines, and if so, how?

5. What incentives, if any, should MSHA consider to promote effective use of CPDMs in coal mines?

6. What actions, if any, should MSHA take to encourage coal mining industry acceptance of the CPDM technology, stimulate economic market forces for more competitive pricing of CPDM devices, and promote innovation in respirable dust monitoring technology?

Dated: October 7, 2009.

Gregory R. Wagner,

Deputy Assistant Secretary for Policy, Mine Safety and Health Administration.

[FR Doc. E9-24665 Filed 10-13-09; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS-R7-SM-2009-0052]
[70101-1261-0000L6]

RIN 1018-AW77

Subsistence Management Regulations for Public Lands in Alaska, Subpart B; Special Actions

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

ACTION: Proposed rule.

SUMMARY: We, the U.S. Forest Service and U.S. Fish and Wildlife Service, are proposing to amend the regulations that manage take of wildlife and fish in Alaska for subsistence purposes to clarify them. In particular, we want to clarify the Federal Subsistence Board's process of accepting and addressing special action requests, along with the role of the Regional Advisory Councils in the special action process. We would also update public notice requirements to bring them into line with the practices of the digital age and accommodate a new biennial regulatory cycle.

DATES: *Public meeting:* The Federal Subsistence Board will hold a public meeting on January 12, 2010, to receive comments on this proposed rule. See **SUPPLEMENTARY INFORMATION** for specific information on the public meeting.

Public comments: We must receive written comments on this proposed rule by January 12, 2010.

ADDRESSES: *Public meeting:* The Federal Subsistence Board public meeting will be held at the Coast International Inn in Anchorage, Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on the public meeting.

Public comments: You may submit comments by one of the following methods:

- Electronically: Go to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. In the Search Documents box, enter FWS-R7-SM-2009-0052, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Send a Comment or Submission."

- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199; or hand-delivery to the Designated Federal Official attending the Federal Subsistence Board public meeting in Anchorage.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: For questions specific to National Forest System lands, contact Calvin H. Casipit, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 586-7918. For questions regarding Department of the Interior lands, contact

Peter J. Probasco, Office of Subsistence Management, U.S. Fish and Wildlife Service; (907) 786-3888.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska to rural residents. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940), but the regulations have been amended numerous times since then. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1-28 and 50 CFR 100.1-28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up 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, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the basic program, and the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a regional 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 Federal public lands in Alaska. The regional council members represent varied geographical, cultural, and user diversity within each region.

Proposed Regulatory Changes

Members of the regional councils, agency representatives, and the public have expressed concern to the Federal Subsistence Board that 36 CFR 242.19 and 50 CFR 100.19, respectively, need to be revised in a manner that provides more clarity to, and thereby increases understanding of, the Board's process of accepting and addressing special action requests. Special actions are actions that the Board takes to modify the hunting or fishing regulations on public lands to ensure the continued viability of a fish or wildlife population or for other reasons. These actions may include closing, opening, or adjusting the seasons; modifying the harvest limits; or modifying the methods and means of harvest for subsistence uses of fish and wildlife.

The problem with the lack of clarity in the regulations became particularly apparent during oral argument in the case of *Ninilchik Traditional Council v. Fleagle*, when the presiding judge struggled to interpret the procedural mechanisms described in the regulation and criticized it for being unclear. More recently, we have recognized the need to modify § __.19 to account for the programmatic shift to a biennial regulatory cycle.

The primary purposes of these proposed modifications are to:

- (1) Improve clarity with respect to the Board's process of accepting and addressing special action requests;
- (2) update public notice requirements to bring them into line with the practices of the digital age;
- (3) bring clarity to the role of the regional councils with respect to special action requests; and
- (4) accommodate the biennial regulatory cycle, which was implemented in 2008 (73 FR 35726; June 24, 2008). Additionally, we propose to revise § __.10(d) and § __.18(a) to correspond with the proposed changes in § __.19.

While these proposed regulatory revisions will result in no direct change to subsistence uses, the changes should help all Alaska residents to better understand the process by which special action requests are accepted or rejected by the Board.

Public Review Process—Public Meeting and Comments

The Secretaries, through the Federal Subsistence Board, will receive comments on this proposed rule during a public meeting to be held at the Coast International Inn in Anchorage on January 12, 2010, starting at 8:30 a.m. You may provide oral testimony before the Board at that time. The council chairs, or their designated representatives, will present their respective councils' comments at the Board meeting. The Board will then review all comments received and forward its recommendations to the Secretaries for final action.

We will publish notice of the date, time, and meeting location in local and statewide newspapers prior to this meeting. The location and date may change based on weather or local circumstances. The amount of work on the Board's agenda will determine the length of the meeting.

Public Comment Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the bases for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the Web site. Please note that comments submitted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee

that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on <http://www.regulations.gov>. In the Keyword box, enter FWS-R7-SM-2009-0052, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, select the type of documents you want to view under the Document Type heading.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Office of Subsistence Management, 1011 East Tudor Road, MS 121, Anchorage, AK 99503-6199.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Tribal Consultation and Comment

As expressed in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian tribes (tribes) as listed in 73 FR 18533 (April 4, 2008). ANILCA does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries have elected to provide tribes an opportunity to consult on this proposed rule. The Board will consider other opportunities for tribal consultation, as appropriate. The Board will consider tribes' information, input, and recommendations, and address their concerns as much as practicable.

Compliance with Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. 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. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018-0075, which expires October 31, 2009. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant.

OMB bases its determination of significance upon the following four criteria:

- a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.
- b. Whether the rule will create inconsistencies with other agencies' actions.
- c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.
- d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

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. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value statewide. Based upon the amounts and values cited above, 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.

Small Business Regulatory Enforcement Fairness 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.

Executive Order 12630

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.

Unfunded Mandates Reform Act

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.

Executive Order 12988

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.

Executive Order 13132

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 it meets certain requirements.

Executive Order 13175

ANILCA does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. And while, for this rule, E.O. 13175 does not require the agencies to consult with tribes, the Secretaries have elected to provide tribes an opportunity to consult on this rule. The Board will provide a variety of opportunities for consultation through: Commenting on proposed changes to the existing rule; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 1321

On May 18, 2001, the President issued E.O. 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. This rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Calvin H. Casipit, Alaska Regional Office, U.S. Forest Service.

List of Subjects in 36 CFR Part 242

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

List of Subjects in 50 CFR Part 100

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

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend subpart B of part 242 of title 36 and part 100 of title 50 of the Code of Federal Regulations, 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. Amend § ___.10 by revising paragraph (d)(4)(vi), redesignating paragraphs (d)(4)(vii) through (xix) as paragraphs (d)(4)(viii) through (xx), and adding a new paragraph (d)(4)(vii) to read as follows:

§ ___.10 Federal Subsistence Board.

* * * * *

(d) * * *
(4) * * *

(vi) Restrict the taking of fish and wildlife on public lands for nonsubsistence uses, close or open public lands for the take of fish and wildlife for nonsubsistence uses, or otherwise modify the requirements regarding the taking of fish and wildlife on public lands for nonsubsistence uses when necessary for the conservation of healthy populations of fish or wildlife, to continue subsistence uses of fish or wildlife, or for reasons of public safety or administration;

(vii) Restrict the taking of a particular fish or wildlife population on public lands for subsistence uses, close public lands to take for subsistence uses, or otherwise modify the requirements for take from a particular fish or wildlife population on public lands for subsistence uses when necessary to ensure the continued viability of a fish or wildlife population, or for reasons of public safety or administration (As soon as conditions warrant, the Board may also reopen public lands to the taking of a fish and wildlife population for subsistence users to continue those uses.);

* * * * *

3. Revise the introductory text of paragraph (a) of § ___.18 to read as follows:

§ ___.18 Regulation adoption process.

(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in § ___.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the **Federal Register**, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.

* * * * *

4. Revise § ___.19 to read as follows:

§ ___.19 Special actions.

(a) *Emergency special actions.* In an emergency situation, the Board may immediately open or close public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for take for subsistence uses, or close public lands to take for nonsubsistence uses of fish and wildlife,

or restrict the requirements for take for nonsubsistence uses, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted.

(1) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action. Such a Council recommendation, if any, will be subject to the requirements of § .18.

(2) The emergency action will be effective when directed by the Board, may not exceed 60 days, and may not be extended unless the procedures for adoption of a temporary special action, as set forth in paragraph (b) of this section, have been followed.

(b) *Temporary special actions.* After adequate notice and public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses or modify the requirements for subsistence take, or temporarily close public lands for the taking of fish and wildlife for nonsubsistence uses or restrict take for nonsubsistence uses. The Board may make such temporary changes only after it determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users.

(1) Prior to implementing a temporary special action, the Board will consult with the State of Alaska and the Chairs of the Regional Councils of the affected regions.

(2) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of § .18.

(3) The length of any temporary action will be confined to the minimum time period or harvest limit determined by the Board to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.

(c) The Board may reject a request for either an emergency or a temporary

special action if the Board concludes that there are no time-sensitive circumstances necessitating a regulatory change before the next regular proposal cycle. However, a special action request that has been rejected for this reason may be deferred, if appropriate and after consultation with the proponent, for consideration during the next regular proposal cycle. The Board will consider changes to customary and traditional use determinations in subpart C of this part only during the regular proposal cycle.

(d) The Board will provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management website (<http://alaska.fws.gov/asm/osm.cfm>). When appropriate, notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. The Board will publish notice and reasons justifying the special action in the **Federal Register** as soon as practicable.

(e) The decision of the Board on any proposed special action will constitute its final administrative action.

(f) Regulations authorizing any individual agency to implement closures or restrictions on public lands managed by the agency remain unaffected by the regulations in this part.

(g) You may not take fish and wildlife in violation of any restriction, closure, or change authorized by the Board.

Dated: October 6, 2009

Ken Salazar,

Secretary of the Interior, Department of the Interior.

Dated: July 22, 2009

Dennis E. Bschor,

Regional Forester, USDA—Forest Service.

[FR Doc. E9-24653 Filed 10-13-09; 8:45 am

BILLING CODE 4310-55-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2007-0908; FRL-8957-9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio Administrative Code Rule 3742-21-17 Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Ohio Environmental Protection Agency submitted a revision

to its State Implementation Plan (SIP) under the Clean Air Act in order to reduce air pollution in Ohio. The SIP revision consists of a new regulation entitled Ohio's Administrative Code Rule 3745-21-17 "Control of VOC Emissions from Portable Fuel Containers." This rule impacts sale, use, and manufacture of Portable Fuel Containers in the State of Ohio. EPA is proposing to approve this rule.

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0908, by one of the following methods:

1. *www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail:* mooney.john@epa.gov.

3. *Fax:* (312) 692-2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all