

Bridge to navigation to replace and install the existing motor and coupling. The vertical lift span will be locked in the closed-to-navigation position for two 3-day closure periods: From 7 a.m. on October 14, 2005, through 5 p.m. on October 17, 2005, and from 7 a.m. on November 18, 2005, through 5 p.m. on November 21, 2005. During these periods, the work requires completely immobilizing the operation of the vertical lift span in the closed-to-navigation position.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repairing the drawbridge. The temporary deviation allows the James River Bridge, at mile 5.0, between Isle of Wight and Newport News, Virginia, to remain closed to navigation on two 3-day closure periods: From 7 a.m. on October 14, 2005, through 5 p.m. on October 17, 2005, and from 7 a.m. on November 18, 2005, through 5 p.m. on November 21, 2005.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operations as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 9, 2005.

**Waverly W. Gregory, Jr.,**

*Chief, Bridge Administration Branch, Fifth Coast Guard District.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

[R10-OAR-2005-TR-0001; FRL-7970-2]

### Announcement of the Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan for the Nez Perce Reservation to the Nez Perce Tribe

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

**ACTION:** Delegation of authority; technical amendment.

**SUMMARY:** This action announces that on June 27, 2005, EPA Region 10 and the Nez Perce Tribe entered into a Partial Delegation of Administrative Authority

to carry out certain day-to-day activities associated with administration of the Federal Implementation Plan for the Nez Perce Reservation (Nez Perce FIP). A note of this partial delegation is being added to the Nez Perce FIP.

**DATES:** This action is effective September 16, 2005. The date of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. R10-OAR-2005-TR-0001. The delegation agreement and other docket materials are available electronically in EDOCKET, EPA's electronic public docket and comment system, found at <http://www.epa.gov/edocket>, or in hard copy from Steve Body at EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101, or via e-mail at [body.steve@epa.gov](mailto:body.steve@epa.gov). Additional information may also be obtained from the Nez Perce Tribe by contacting Julie Simpson, Air Quality Project Coordinator, Environmental Restoration and Waste Management (ERWM), Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 82540.

**FOR FURTHER INFORMATION CONTACT:** Steve Body at telephone number: (206) 553-0782, e-mail address: [body.steve@epa.gov](mailto:body.steve@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** The purpose of this action is to announce that on June 27, 2005, EPA Region 10, delegated partial administrative authority for implementation of certain provisions of the Nez Perce FIP to the Nez Perce Tribe. See 40 CFR part 49, subpart M, section 10401 through 10430, as authorized by 40 CFR 49.122 of the Federal Air Rules for Reservations, (FARR), 40 CFR part 49, subpart C.

#### I. Authority To Delegate

Federal regulation 40 CFR 49.122 provides EPA authority to delegate to Indian tribes partial administrative authority to administer provisions of the Federal Air Rules for Reservations (FARR), 40 CFR part 49, subpart C. Tribes must submit a request to the Regional Administrator that meets the requirements of 40 CFR 49.122.

#### II. Partial Delegation of Administrative Authority

On June 27, 2005, EPA entered into an "Agreement for Partial Delegation of the Federal Implementation Plan for the Nez Perce Reservation by the United States Environmental Protection Agency, Region 10, to the Nez Perce

Tribe." The Delegation Agreement provides authority for the Nez Perce Tribe to administer the following rules that are part of the Federal Implementation Plan for the Nez Perce Tribe of Idaho, 40 CFR 49.10401 through 49.10430: 49.10410(b) Section 49.124 Rule for limiting visible emissions; 49.10410(i) Section 49.131 General rule for open burning; 49.10410(j) Section 49.132 Rule for general open burning permits; 49.10410(k) Section 49.133 Rule for agricultural burning permits; 49.10410(l) Section 49.134 Rule for forestry and silvicultural burning permits; and 49.10410(n) Section 49.137 Rule for air pollution episodes.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely informing the public of partial delegation of administrative authority to the Nez Perce Tribe and making a technical amendment to the Code of Federal Regulations (CFR) by adding a note announcing the partial delegation. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Moreover, since today's action does not create any new regulatory requirements, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

#### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely makes a technical amendment and gives notice of a partial delegation of administrative authority. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does

not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the regulation. EPA has concluded that this rule may have tribal implications. EPA's action fulfills a requirement to publish a notice announcing partial delegation of administrative authority to the Nez Perce Tribe and noting the partial delegation in the CFR. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This technical amendment merely notes that partial delegation of administrative authority to the Nez Perce Tribe is in effect. This rule also is not subject to Executive Order 13045, "Protection of Children From Environmental Health Risks and

Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 49

Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 7, 2005.

**Julie M. Hagensen,**

*Acting Regional Administrator, Region 10.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 49—[Amended]

■ 1. The authority citation for part 49 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart M—[Amended]

■ 2. Section 49.10410 is amended by adding a note to the end of the section to read as follows:

#### § 49.10410 Federally-promulgated regulations and Federal implementation plans.

\* \* \* \* \*

Note to § 49.10410: EPA entered into a Partial Delegation of Administrative Authority Agreement with the Nez Perce Tribe on June 27, 2005 for the rules listed in paragraphs (b), (i), (j), (k), (l) and (n) of this section.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-DE-0001; FRL-7970-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Withdrawal of Direct Final Rule

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to adverse comments, EPA is withdrawing the direct final rule to approve Delaware's State Implementation Plan (SIP) revision. The SIP revision pertains to the modifications to the ambient air quality standards for ozone and fine particulate matter. In the direct final rule published on July 18, 2005 (70 FR 41146), we stated that if we received adverse comments by August 17, 2005, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on July 18, 2005 (70 FR 41166). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule is withdrawn as of September 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.