



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R10-OAR-2015-0847; FRL-9943-54-Region 10]

Announcement of the Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan for the Confederated Tribes of the Colville Reservation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority; technical amendment.

SUMMARY: This action announces that on October 26, 2015, EPA Region 10 and the Confederated Tribes of the Colville Reservation, entered into a Partial Delegation of Administrative Authority agreement to carry out certain day-to-day activities associated with implementation of the Federal Implementation Plan for the Colville Reservation (Colville FIP). A note of this partial delegation is being added to the Colville FIP in the Code of Federal Regulations.

DATES: This rule is effective [Insert date of publication in the Federal Register].

The partial delegation of administrative authority was effective October 26, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2015-0847. The delegation agreement and other docket materials are available electronically at the EPA's electronic public docket and comment system, found at <http://www.regulations.gov> or in hard copy from Andra Bosneag, Office of Air, Waste and Toxics, AWT-150, EPA Region 10, Suite 900, 1200 Sixth Avenue, Seattle, WA

98101, or via e-mail at bosneag.andra@epa.gov. Additional information may also be obtained from the Colville Tribe by contacting Kris Ray, Confederated Tribes of the Colville Reservation, P.O. Box 150, Nespelem, WA 99155 or via email at Kris.Ray@colvilletribes.com.

All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Andra Bosneag at (206) 553-1226, bosneag.andra@epa.gov, or the EPA Region 10 address.

SUPPLEMENTARY INFORMATION: The purpose of this action is to announce that on October 26, 2015, EPA Region 10, delegated partial administrative authority for implementation of certain provisions of the Colville FIP to the Confederated Tribes of the Colville Reservation. See 40 CFR part 49, subpart M, sections 9951 through 9960, 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 regulations at 40 CFR 49.122 provide the EPA authority to delegate to Indian Tribes partial administrative authority to implement provisions of the 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. Request for Delegation

On May 21, 2014, Chaitna Sinha of the Office of the Reservation Attorney of the Confederated Tribes of the Colville Reservation submitted to the Regional Administrator a request for delegation of certain provision of the Colville FIP. That request included all the information and demonstrations required by the FARR for delegation. A copy of all documentation is on file at the EPA Region 10, Seattle, Washington office (see addresses above).

The Confederated Tribes of the Colville Reservation requested delegation for the following provisions: 40 CFR 49.9960(b) Rule for limiting visible emissions, 40 CFR 49.9960(i) General rule for open burning, and 40 CFR 49.9960(k) Rule for air pollution episodes.

III. EPA Response to the Request for Delegation

The EPA and the Confederated Tribes of the Colville Reservation signed a delegation agreement that specifies the provisions and authorities delegated. The Confederated Tribes of the Colville Reservation are delegated the following provisions;

40 CFR 49.9960(b) Rule for limiting visible emissions, 40 CFR 49.9960(i) General rule for open burning, and 40 CFR 49.9960(k) Rule for air pollution episodes. In addition, the agreement delegates to the Tribe authority to investigate complaints and assist the EPA in inspections. The agreement also includes terms and conditions applicable to the delegation. A copy of the agreement is kept at EPA Region 10 at the address above.

Prior to entering into the Delegation Agreement, the EPA solicited by letter, advice and insight on the proposed delegation from Okanogan County, Ferry County, City of Okanogan, Town of Nespelem, Town of Coulee Dam, Electric City, City of Omak, Lake Roosevelt National Recreation Area, Bureau of Land Management, and the United States Forest Service. One comment supporting delegation was received.

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. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the EPA is merely informing the public of partial delegation of administrative authority to the Confederated Tribes of the Colville Reservation 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. The 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, the EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

IV. Statutory and Executive Order Reviews:

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), 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 (Public Law 104-4).

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the 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, the 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 the EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, the 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. The EPA has concluded that this rule may have tribal implications. The EPA's action fulfills a requirement to publish a notice announcing partial delegation of administrative authority to the Confederated Tribes of the Colville Reservation 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 Confederated Tribes of the Colville Reservation 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. The 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 **[insert date 60 days after date of publication in the Federal Register]**. 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

Environmental protection, Administrative practice and procedure, Air pollution control,

Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 29, 2016.

Dennis J. McLerran,
Regional Administrator,
Region 10.

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

**PART 49 – INDIAN COUNTRY; AIR QUALITY PLANNING AND
MANAGEMENT**

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

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

Subpart M – Implementation Plans for Tribes – Region X

2. Section 49.9960 is amended by adding a note to the end of the section to read as follows:

§ 49.9960 Federally-promulgated regulations and Federal implementation plans.

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Note to § 49.9960: The EPA entered into a Partial Delegation of Administrative Authority with the Confederated Tribes of the Colville Reservation on October 26, 2015 for the rules listed in paragraphs (b), (i), and (k) of this section.

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