

sign a binding contract pursuant to which T will be merged with and into P on June 2 of Year 1. At that time, A is T's sole shareholder. Pursuant to the contract, 60 percent of the T stock will be exchanged for \$80 of cash and 40 percent of the T stock will be exchanged for 20 shares of P stock. As of January 2, 20 shares of P stock have a value of \$20, representing only 20 percent of the value of the total consideration to be received by the T shareholders. Because the percentage of proprietary interests in the target corporation to be exchanged for stock of the issuing corporation and the proprietary interests in the target corporation to be exchanged for money do not each represent an economically reasonable exchange as of the last business day before the first date there is a binding contract to effect the potential reorganization, under paragraph (e)(2)(iii)(A)(3) of this section, the contract is not treated as a binding contract that provides for fixed consideration.

**Example 8. Absence of anti-dilution clause.** On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, the T shareholders will receive 40 P shares and \$60 of cash in exchange for all of the outstanding stock of T. The contract does not contain a customary anti-dilution provision. The P stock is listed on an established market. On January 2 of Year 1, the value of the P stock is \$1 per share. On April 10 of Year 1, P issues its stock to effect a stock split; each shareholder of P receives an additional share of P for each P share that it holds. On April 11 of Year 1, the value of the P stock is \$.50 per share. Because P altered its capital structure between January 3 and June 1 of Year 1 in a manner that materially alters the economic arrangement of the parties, under paragraph (e)(2)(iii)(E) of this section, the contract is not treated as a binding contract that provides for fixed consideration.

**Example 9. Shareholder election with a proration mechanism.** On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, at the shareholders' election, each share of T will be exchanged for cash of \$1 or, alternatively, P stock that has a value of \$1, if the value of each share of P stock is at least \$.80 and no more than \$1.20 on the effective date of the potential reorganization; 1.25 shares of P stock, if the value of each share of P stock is less than \$.80 on the effective date of the potential reorganization; or .83 shares of P stock, if the value of each share of P stock is more than \$1.20 on the effective date of the potential reorganization. In addition, the contract provides for a proration mechanism to ensure that 50 percent of the T shares will be exchanged for cash and 50 percent of the T shares will be exchanged for P stock. On January 2 of Year 1, T has 100 shares outstanding. The P stock is listed on an established market. On January 2 of Year 1, the value of the P stock is \$1 per share. Because the contract provides for the percentage of the number of shares of each class of proprietary interests in T, and the percentage (by value) of the proprietary interests in T, to be exchanged for stock of

P and the other requirements of paragraph (e)(2)(iii)(A)(3) of this section are satisfied, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for \$50 of P stock and \$50 of cash, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

\* \* \* \* \*

(8) *Effective date.* Paragraphs (e)(1) and (e)(3) through (e)(7) of this section apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter. Paragraph (e)(1)(ii) of this section, however, applies to transactions occurring after August 30, 2000, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter. Taxpayers who entered into a binding agreement on or after January 28, 1998, and before August 30, 2000, may request a private letter ruling permitting them to apply the final regulation to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for Federal tax purposes, with respect to the applicability of the final regulations to the transaction. Paragraph (e)(2) of this section applies to transactions occurring pursuant to binding contracts entered into after September 16, 2005.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: September 6, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-05-112]

RIN 1625-AA-09

#### Drawbridge Operation Regulations; James River, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the James River Bridge, mile 5.0, across the James River between Isle of Wight and Newport News, Virginia. This deviation allows the drawbridge to remain closed-to-navigation on two 3-day closure periods from 7 a.m. on October 14 through 5 p.m. October 17, 2005, and from 7 a.m. on November 18 through 5 p.m. November 21, 2005, to facilitate mechanical repairs.

**DATES:** This deviation is effective from 7 a.m. on October 14, 2005, until 5 p.m. on November 21, 2005.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6422.

**SUPPLEMENTARY INFORMATION:** The James River Bridge, a vertical-lift drawbridge, has a vertical clearance in the closed position to vessels of 60 feet and 145 feet in the full open position, at mean high water.

Electrical Motor Services Industrial, Inc. (EMS), is the contractor engaged to perform these repairs for the Virginia Department of Transportation (VDOT), the bridge owner. EMS, on behalf of VDOT, requested a temporary deviation from the operating regulations for the James River Bridge, set out in 33 CFR 117.5, that requires the bridge to open promptly and fully for the passage of vessels when a request to open is given.

EMS requested the temporary deviation to close the James River

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