

Finally, 31 CFR 224.6 currently states that a listing of the divisional offices of the court in each judicial district may be obtained from the Surety Bond Branch, Financial Management Service, U.S. Department of the Treasury. This information is available directly from the U.S. Courts. Therefore, the regulation is revised to provide the contact information for the U.S. Courts.

### Regulatory Analyses

*Administrative Procedure Act.* We did not publish a Notice of Proposed Rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), a rule is exempt from notice and comment rulemaking requirements if the agency finds that notice and public comment are unnecessary or contrary to the public interest. This rule reflects provisions that are already in effect as a matter of law. The changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Likewise, for the same reasons a delayed effective date is not required.

*Clarity of Regulations.* Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comment on how to make this rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

*Executive Order 12866.* FMS has determined that this regulation is not a significant action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

*Regulatory Flexibility Act.* Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

### List of Subjects in 31 CFR Part 224

Bonding, Insurance, Insurance companies, Sureties, Surety bonds, Process agents.

■ For the reasons set forth in the preamble, 31 CFR part 224 is revised as follows:

### PART 224—FEDERAL PROCESS AGENTS OF SURETY CORPORATIONS

Sec.

- 224.1 What does this part cover?  
 224.2 Definitions.  
 224.3 When may a surety corporation provide a bond without appointing a process agent?  
 224.4 When must a surety corporation appoint a process agent?

- 224.5 Who may a surety corporation appoint to be a process agent?  
 224.6 Where can I find a sample power of attorney form?  
 224.7 Where can I find a list of United States district court offices?  
 224.8 When must a surety corporation appoint a new process agent?

**Authority:** 31 U.S.C. 9306 and 9307.

#### § 224.1 What does this part cover?

This part provides guidance on when a surety corporation must appoint a service of process agent and how the surety corporation complies with this requirement.

#### § 224.2 Definitions.

For purposes of this regulation:  
 (a) *Principal* means the person or entity required to provide a surety bond.  
 (b) *Process agent* means a resident agent for service of process.  
 (c) *State* means a State, the District of Columbia, or a territory or possession of the United States.

#### § 224.3 When may a surety corporation provide a bond without appointing a process agent?

A surety corporation may provide a bond without appointing a process agent when the State where the bond is filed, the State where the principal resides, and the State where the surety corporation is incorporated are the same.

#### § 224.4 When must a surety corporation appoint a process agent?

A surety corporation must appoint a process agent when either the State where the bond is filed or the State where the principal resides is different from the State where the surety corporation is incorporated. In such a case, the surety corporation must appoint a process agent in each such State that is different from the State where the surety is incorporated.

#### § 224.5 Who may a surety corporation appoint to be a process agent?

A surety corporation may appoint either of the following as process agent—(a) An official of the State who is authorized or appointed under the law of that jurisdiction to receive service of process on the surety corporation; or  
 (b) An individual who resides in the jurisdiction of the district court for the district in which a surety bond is filed and who is appointed by the surety corporation by means of a power of attorney. A certified copy of the power of attorney must be filed with the clerk of the district court for the district in which a surety bond is to be provided. In addition, the surety corporation must provide the clerk of the United States

District Court at the main office in each judicial district with the required number of authenticated copies of the power of attorney for each divisional office of the court within that judicial district.

#### § 224.6 Where can I find a sample power of attorney form?

The Surety Bond Branch provides a sample form on its Web page located at: <http://www.fms.treas.gov/c570>. While use of the sample form is not required, any power of attorney provided should be substantially the same as the sample form.

#### § 224.7 Where can I find a list of United States district court offices?

A list of the divisional offices of the court in each judicial district may be obtained from the Federal Judiciary, U.S. Courts Web page at <http://www.uscourts.gov>, or by mail by writing to: Office of Public Affairs, Administrative Office of the U.S. Courts, Washington, DC 20544.

#### § 224.8 When must a surety corporation appoint a new process agent?

The surety corporation must immediately appoint a new process agent whenever the authority of a process agent is terminated by reason of revocation, disability, removal from the district, or any other cause.

Dated: October 11, 2006.

**Kenneth R. Papaj,**  
*Commissioner.*

[FR Doc. E6–17225 Filed 10–16–06; 8:45 am]

BILLING CODE 4810–35–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Part 256

RIN 1510–AA52

### Obtaining Payments From the Judgment Fund and Under Private Relief Bills

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Financial Management Service (FMS) is revising 31 CFR part 256, governing how Federal government agencies (agencies) obtain payments from the Judgment Fund, 31 U.S.C. 1304, and how individuals obtain payments under private relief acts. The revision reflects current rules and procedures; it does not include any substantive changes.

**DATES:** This rule is effective on October 17, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kevin McIntyre, Manager, Judgment Fund Branch, at (202) 874-6664 or [Kevin.McIntyre@fms.treas.gov](mailto:Kevin.McIntyre@fms.treas.gov); or William J. Erle, Senior Counsel, at (202) 874-6680 or [William.Erle@fms.treas.gov](mailto:William.Erle@fms.treas.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

FMS is the Treasury Department bureau that administers and certifies payments from the Judgment Fund, 31 U.S.C. 1304. Pursuant to Public Law 104-53 (November 19, 1995), the Judgment Fund function was transferred from the General Accounting Office (GAO), now known as the Government Accountability Office, to the Office of Management and Budget (OMB). OMB delegated this responsibility to the Treasury Department.

We are revising 31 CFR part 256, in part, to clarify that Judgment Fund payment requests are no longer submitted to GAO, to remove the reference to obsolete processing requirements for awards that are above \$100,000 (this statutory ceiling was removed in 1977 by Public Law 95-26), to provide guidance on the kinds of awards that are properly payable from the Judgment Fund, and to provide information on the current procedures for obtaining such payments. This rule seeks to provide guidance to agencies government-wide that submit requests for payments from the Judgment Fund for paying litigative and administrative awards. Additionally, it provides direction to private attorneys regarding filing requirements necessary to preserve the right to interest.

**Regulatory Analyses**

*Administrative Procedure Act.* This rule reflects provisions that are already in effect as a matter of law and provides information on the current procedures for obtaining payments from the Judgment Fund. Under 5 U.S.C. 553(b)(B), this rule is exempt from notice and comment rulemaking requirements on the grounds that the amendments are non-substantive and further delay in making these amendments is unnecessary and contrary to the public interest. Likewise, for the same reasons a delayed effective date is not required.

*Clarity of Regulations.* Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comment on how to make this rule clearer. For example, you may wish to discuss: (1) Whether

we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

*Executive Order 12866.* FMS has determined that this rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

*Regulatory Flexibility Act.* Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**List of Subjects in 31 CFR Part 256**

Awards, Claims, Costs, Interest, Judgment Fund, Judgments, Tort claims.

■ For the reasons stated in the preamble, part 256 of title 31 of the Code of Federal Regulations is revised as follows:

**PART 256—OBTAINING PAYMENTS FROM THE JUDGMENT FUND AND UNDER PRIVATE RELIEF BILLS**

**Subpart A—General Information**

Sec.

256.0 What does this part cover?

256.1 What is Treasury's role in paying awards and settlements from the Judgment Fund?

256.2 Where can I find more information about, and forms for, Judgment Fund payments?

**Subpart B—Requesting Payments**

256.10 Who may request payment from the Judgment Fund?

256.11 How do agencies request payments?

256.12 What supporting documentation must agencies submit to FMS when requesting a payment from the Judgment Fund?

256.13 Are agencies required to supply a taxpayer identification number (TIN) when submitting a request for payment?

256.14 What happens if I submit an incomplete request for payment?

**Subpart C—Debt Collection**

256.20 How does an agency indicate that a debt is to be offset from a Judgment Fund payment?

256.21 Are Judgment Fund payments offset to collect administrative debts?

256.22 How does FMS set off an award under 31 U.S.C. 3728?

**Subpart D—Interest and Litigation Costs**

256.30 When does the Judgment Fund pay interest?

256.31 How does FMS compute interest on payments?

256.32 What documentation must be submitted to the Judgment Fund Branch to preserve the right to seek interest under 31 U.S.C. 1304(b) in a case where the government has taken an appeal?

256.33 For what period of time is interest computed under 31 U.S.C. 1304(b)?

256.34 Does the Judgment Fund pay all litigation costs?

**Subpart E—Reimbursements to the Judgment Fund**

256.40 When must an agency reimburse the Judgment Fund?

256.41 When is reimbursement due for CDA and No FEAR payments?

**Subpart F—Additional Provisions**

256.50 How does FMS process back pay awards?

256.51 Does FMS report Judgment Fund payments to the IRS as income to the payee on IRS Form 1099?

256.52 How does FMS issue a payment?

256.53 How does the submitting agency know when payment is made?

256.54 What happens if FMS denies a request for payment?

**Subpart G—Private Relief Bills**

256.60 How do I get paid for a Private Relief Bill?

**Authority:** 31 U.S.C. 1304, 3728; 41 U.S.C. 612; 5 U.S.C. 2301 note.

**Subpart A—General Information**

**§ 256.0 What does this part cover?**

This part applies to payments made by the U.S. Department of the Treasury (Treasury) pursuant to the Judgment Fund statute, 31 U.S.C. 1304.

**§ 256.1 What is Treasury's role in paying awards and settlements from the Judgment Fund?**

(a) The Judgment Fund is a permanent, indefinite appropriation which is available to pay many judicially and administratively ordered monetary awards against the United States. In addition, amounts owed under compromise agreements negotiated by the U.S. Department of Justice in settlement of claims arising under actual or imminent litigation are normally paid from the Judgment Fund, if a judgment on the merits would be payable from the Judgment Fund. Treasury's Financial Management Service (FMS) certifies payments from the Judgment Fund when the following four tests have been met: (1) Awards or settlements are final; (2) Awards or settlements are monetary; (3) One of the authorities specified in 31 U.S.C. 1304(a)(3) provides for payment of the award or settlement; and (4) Payment may not legally be made from any other source of funds.

(b) Additionally, FMS requires that requests for payment identify the statute that forms the basis of the underlying claim. The award or settlement must comply with the statutory and regulatory requirements that authorize the award or settlement. For example, interest is payable on Judgment Fund awards only if there is an express statutory provision, contractual

agreement or constitutional waiver of sovereign immunity authorizing the assessment of interest against the United States. Also, a tort under the Federal Tort Claims Act (FTCA) is payable from the Judgment Fund only when the award amount exceeds \$2,500 (for administrative awards) and is in compliance with the regulatory requirements at 28 CFR part 14.

**§ 256.2 Where can I find more information about, and forms for, Judgment Fund payments?**

Detailed information related to Judgment Fund payments, including copies of all forms, can be found in the Treasury Financial Manual (TFM), Volume I, Part 6, Chapter 3100. The TFM is available on the Judgment Fund Web site at <http://www.fms.treas.gov/judgefund>. Contact information for the Judgment Fund Branch is also available on the Web site.

**Subpart B—Requesting Payments**

**§ 256.10 Who may request payment from the Judgment Fund?**

(a) *Court judgments and settlements of litigation.* The Department of Justice must normally submit the request for payment from the Judgment Fund. Agencies that have independent litigating authority may submit a request for payment themselves if the Department of Justice is not responsible for the case.

(b) *Administrative awards.* The program agency that is authorized to approve the award must submit the request for payment.

**§ 256.11 How do agencies request payments?**

Agencies must submit requests for payments from the Judgment Fund on FMS's Judgment Fund payment request forms or by using other approved methods as provided for on the Judgment Fund Web site at <http://www.fms.treas.gov/judgefund>. FMS provides forms and detailed information about Judgment Fund payments in the TFM, Volume I, Part 6, Chapter 3100. The TFM is also available on the Judgment Fund Web site. The submitting agency must complete and sign all required Judgment Fund forms and must attach all required supporting documents.

**§ 256.12 What supporting documentation must agencies submit to FMS when requesting a payment from the Judgment Fund?**

(a) *All payments.* The submitting agency must submit a copy of the judgment or settlement agreement, as applicable, in addition to the request for

payment from the Judgment Fund. The request for payment must be on the appropriate Judgment Fund payment request forms.

(b) *Awards to minors.* For awards to claimants that are minors, the submitting agency must include in its submission to FMS documentation establishing that the payee, if different from the claimant, is legally authorized to act on behalf of the claimant. Documentation of court approvals (Federal, State, or foreign) that are legally required for payment must be submitted along with the request for payment from the Judgment Fund. State law typically specifies when money awards to minors require the appointment of a guardian. Agencies must list the appropriate controlling state law citation on the payment request forms.

(c) *Awards of costs.* For awards of costs, the submitting agency must include a copy of the "bill of costs" or the Court's order awarding costs. Only those items expressly enumerated under the cost statute, 28 U.S.C. 1920, or other governing statute specific to the award, are payable from the Judgment Fund.

(d) *Payments to multiple claimants/payees in a single award.* For awards where multiple payees are to receive separate payments, the submitting agency must complete separate Judgment Fund Vouchers for Payment for each payee. When there are multiple claimants in an administrative tort matter, each claimant's award must independently exceed the mandatory \$2,500 threshold in order for payment to be made from the Judgment Fund. A claimant's threshold can be satisfied by combining amounts awarded for personal and property damage under the FTCA.

(e) *Awards of back pay.* For awards of back pay where the judgment does not specifically state the principal amounts to be paid and withholdings to be made, the submitting agency must include a spreadsheet indicating precisely which amounts are allocable to net pay, deductions, and interest.

**§ 256.13 Are agencies required to supply a taxpayer identification number (TIN) when submitting a request for payment?**

Yes, agencies must include a valid TIN on all requests for payments, unless the situation meets one of the exceptions listed in the FMS TIN Policy, which may be found on the FMS Web site at: <http://www.fms.treas.gov/tinpolicy/regulations.html>. For an individual, the TIN is the Social Security Number. For a business, the TIN is the Employer Identification Number issued by IRS. The TIN

provided must be for the party entitled to the payment, whether or not that party is the payee. Failure to include a required TIN results in an incomplete request for payment.

**§ 256.14 What happens if I submit an incomplete request for payment?**

FMS may return, without action, any request for payment that is incomplete. If a request for payment is returned for lack of necessary information, the submitting agency may resubmit the request for payment once all the required information is available.

**Subpart C—Debt Collection**

**§ 256.20 How does an agency indicate that a debt is to be offset from a Judgment Fund payment?**

The submitting agency must identify on the appropriate Judgment Fund form any known debt owed to the United States that FMS is expected to collect by setoff against the award. Such a debt will be offset pursuant to the provisions of 31 U.S.C. 3728.

**§ 256.21 Are Judgment Fund payments offset to collect administrative debts?**

Yes, separate and apart from its role as administrator of the Judgment Fund, FMS, in its capacity as disbursing official for the executive branch, offsets Judgment Fund payments to collect delinquent, nontax Federal debts through the Treasury Offset Program (TOP). This rule applies only to the setoff of Judgment Fund payments prior to payment certification, pursuant to 31 U.S.C. 3728, and not to disbursing official offsets pursuant to other authorities. (See 31 CFR 285.5 for requirements for disbursing official offset of past-due delinquent, nontax debts pursuant to the authority set forth in 31 U.S.C. 3716.)

**§ 256.22 How does FMS set off an award under 31 U.S.C. 3728?**

The setoff statute establishes a two-step process to collect debts that are owed to the United States. If an agency notifies FMS of a debt for which a court has issued a judgment against a debtor in favor of the United States, or for which the IRS has issued a tax levy pursuant to 26 U.S.C. 6331, then FMS will automatically set off the debt from the payment. If the debt owed to the United States has not been judicially determined, then FMS must notify the claimant of the debt and request the debtor's consent to a setoff. If the debtor consents, then FMS will set off the debt. If the debtor does not consent, then FMS will withhold from payment an amount equal to the debt. FMS also may withhold an amount sufficient to pay

the cost of litigating the debt to judgment. FMS then will consult with the underlying agency and the Department of Justice regarding the necessity for a civil action to reduce the debt to judgment. If litigation proceeds and is successful, FMS will set off the debt. If the suit is unsuccessful, FMS will pay the withheld amount with interest accruing from the date when payment would have been made.

#### **Subpart D—Interest and Litigation Costs**

##### **§ 256.30 When does the Judgment Fund pay interest?**

Interest is paid when it is ordered in the judgment pursuant to a statutory, contractual or constitutional waiver of sovereign immunity. Such waivers may include interest as set forth under 41 U.S.C. 611 (Contract Disputes Act), 5 U.S.C. 5596 (Back Pay Act), or Title VII, 42 U.S.C. 2000e–16 (Civil Rights Act of 1991). In addition, post-judgment interest is paid on awards eligible for interest under 31 U.S.C. 1304(b) (unsuccessful appeal by the Government).

##### **§ 256.31 How does FMS compute interest on payments?**

FMS computes interest according to the terms of the statute that waives sovereign immunity for interest to be awarded against the Federal government. The statute that allows interest must be cited on the appropriate Judgment Fund form.

##### **§ 256.32 What documentation must be submitted to the Judgment Fund Branch to preserve the right to seek interest under 31 U.S.C. 1304(b) in a case where the government has taken an appeal?**

31 U.S.C. 1304(b) specifies that a “transcript of the judgment” must be filed with the Secretary of the Treasury. This means that a copy of the judgment must be filed with the Judgment Fund Branch for interest to accrue on a judgment of a federal district court, the Court of Appeals for the Federal Circuit, or the United States Court of Federal Claims. By practice, the successful plaintiff files a copy of the judgment. Whoever submits the judgment should include a cover letter explaining that it is being submitted to preserve interest rights under 31 U.S.C. 1304. A copy of the judgment and cover letter must be sent to the Financial Management Service, Judgment Fund Branch, at the address indicated on the Judgment Fund Web site at <http://www.fms.treas.gov/judgefund>.

##### **§ 256.33 For what period of time is interest computed under 31 U.S.C. 1304(b)?**

Interest is computed from the date that FMS receives the copy of the judgment until the date preceding the appellate court’s affirmative ruling. If the United States files a Notice of Appeal which it later withdraws, interest is paid on the award through the date before the withdrawal of the Notice of Appeal.

##### **§ 256.34 Does the Judgment Fund pay all litigation costs?**

FMS certifies for payment only those costs that are enumerated in the cost statute, 28 U.S.C. 1920, or as set forth under a statute that specifically governs payment of the award.

#### **Subpart E—Reimbursements to the Judgment Fund**

##### **§ 256.40 When must an agency reimburse the Judgment Fund?**

Agencies are required to reimburse the Judgment Fund for payments made pursuant to the Contract Disputes Act (CDA), 41 U.S.C. 612, and payments made pursuant to the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR), 5 U.S.C. 2301 note. The TFM, available on the Judgment Fund Web site at <http://www.fms.treas.gov/judgefund>, contains more information about how FMS bills agencies and collects such reimbursements.

##### **§ 256.41 When is reimbursement due for CDA and No FEAR payments?**

Reimbursement for a CDA or No FEAR payment should be made promptly upon notification from FMS of the amount due. If the agency is unable to timely reimburse FMS, the agency must contact FMS to establish a reimbursement plan. Under Office of Personnel Management (OPM) regulations, No FEAR reimbursements or payment reimbursement plans must be made within 45 days of the request for reimbursement. See 5 CFR part 724. Agencies that do not meet this requirement will be listed on FMS’s public Web site.

#### **Subpart F—Additional Provisions**

##### **§ 256.50 How does FMS process back pay awards?**

(a) The submitting agency may request one of two methods to process back pay awards. One method has three parts. The first part is a payment of net back pay (and interest if authorized), which is sent to the plaintiff or to the plaintiff’s attorney, as directed by the submitting agency. The second part is a payment to the agency of deductions

from the net back pay. The third part is a payment of attorney fees, which is sent directly to the attorney.

(b) Under the second method, FMS pays the entire back pay award to the agency out of whose actions the claim arose. The agency then issues amounts representing back pay (and interest if authorized) to the plaintiff and retains amounts representing deductions. FMS pays the attorney fees directly to the attorney.

##### **§ 256.51 Does FMS report Judgment Fund payments to the IRS as income to the payee on IRS Form 1099?**

No, FMS does not report Judgment Fund payments as potential taxable income to the IRS. FMS does not have sufficient information about the payment to determine if a Form 1099 must be issued or to prepare such a form when required. To the extent any Form 1099 needs to be issued, it is the responsibility of the agency submitting the payment request to do so.

##### **§ 256.52 How does FMS issue a payment?**

Pursuant to 31 CFR part 208, Judgment Fund payments are to be made by electronic funds transfer (EFT). FMS will issue an electronic payment to the payee’s account as specified on the appropriate Judgment Fund form. If a submitting agency determines that a waiver (in accordance with 31 CFR part 208) to the requirement for payment by EFT is appropriate, FMS will issue a payment by check. The Voucher for Payment must direct payment to the payee designated in the judgment or settlement agreement.

##### **§ 256.53 How does the submitting agency know when payment is made?**

FMS will e-mail the agency contact when payment is disbursed, if the agency contact has provided an email address on the appropriate Judgment Fund form. Also, FMS maintains an on-line payment status system that the submitting agency can access to determine the status of a payment. The payment reporting system can be accessed from the Judgment Fund Web site at <http://www.fms.treas.gov/judgefund>.

##### **§ 256.54 What happens if FMS denies a request for payment?**

FMS must deny any request for payment that fails to satisfy the requirements of 31 U.S.C. 1304. The submitting agency may request reconsideration of a payment denial. The submitting agency must provide an explanation of how the request for payment meets the four tests contained in section 256.1 of this part. If applicable, requests for reconsideration

must contain a reference to the agency's program authority and include specific funding provisions that pertain to the program activity that resulted in the claim. If, upon reconsideration, FMS determines that payment from the Judgment Fund is appropriate, and the agency has already made payment to the plaintiff or claimant, FMS will reimburse the agency from the Judgment Fund.

### Subpart G—Private Relief Bills

#### § 256.60 How do I get paid for a Private Relief Bill?

You may apply for payment by sending a request letter along with supporting documentation, to include a copy of the private relief act and proof of your identity, to the address specified on the FMS Web site at <http://www.fms.treas.gov/privaterelief>.

Dated: October 11, 2006.

**Kenneth R. Papaj,**  
Commissioner.

[FR Doc. E6-17229 Filed 10-16-06; 8:45 am]

BILLING CODE 4810-35-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

[R10-OAR-2005-TR-0001; FRL-8230-8]

#### Announcement of the Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan for the Umatilla Indian Reservation to the Confederated Tribes of the Umatilla Indian Reservation

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

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

**SUMMARY:** This action announces that on August 21, 2006, EPA Region 10 and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) 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 Umatilla Indian Reservation (Umatilla FIP). A note of this partial delegation is being added to the Umatilla FIP.

**DATES:** The partial delegation of administrative authority was effective on August 21, 2006. 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 [www.regulations.gov](http://www.regulations.gov) 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 CTUIR by contacting Dr. John Cox, Air Quality Project Coordinator, Environmental Science and Technology Program, P.O. Box 638, Pendleton, Oregon 97801.

#### 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 August 21, 2006, EPA Region 10, delegated partial administrative authority for implementation of certain provisions of the Umatilla FIP to the CTUIR. See 40 CFR part 49, subpart M, section 11011 through 11040, 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 August 21, 2006, EPA entered into an "Agreement for Partial Delegation of the Federal Implementation Plan for the Umatilla Indian Reservation by the United States Environmental Protection Agency, Region 10, to the Confederated Tribes of the Umatilla Indian." The Delegation Agreement provides authority for the CTUIR to administer the following rules that are part of the Federal Implementation Plan for the Nez Perce Tribe of Idaho, 40 CFR 49.11011 through 49.11040: 49.11020(a) Section 49.123 General provisions; 49.11020(g) Section 49.131 General rule for open burning; 49.11020(h) Section 49.132 Rule for general open burning permits; 49.11020(i) Section 49.133 Rule for agricultural burning permits; 49.11020(j) Section 49.134 Rule for forestry and silvicultural burning

permits; and 49.11020(l) 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 CTUIR 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