UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

March 28, 2019

VIA HAND DELIVERY

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, Mail Code ORC 4-6
Boston, MA 02109-3912

Re: In the Matter of Nutra-Blend, L.L.C., dba Old Mill Troy,
Docket No. ~~RCRA-01-2019-0013~~ EPCRA 0016

Dear Ms. Santiago:

Please accept for filing the original and one copy of Complaint and Notice of Opportunity for Hearing issued by the U.S. Environmental Protection Agency ("EPA"), Region 1, regarding violations of the Emergency Planning and Community Right-to-Know Act ("EPCRA") and EPCRA's implementing regulations allegedly committed by Nutra-Blend, L.L.C., dba Old Mill Troy, at its animal feed supplement manufacturing facility in St. Albans, Vermont.

Thank you for your attention to this matter.

Sincerely,

Steven J. Viggiani
Senior Enforcement Counsel
EPA Region 1

Enclosures

cc : Peter Decker, Nutra-Blend, L.L.C. (via registered mail)

In the Matter of Nutra-Blend, L.L.C.,

CERTIFICATE OF SERVICE OF COMPLAINT

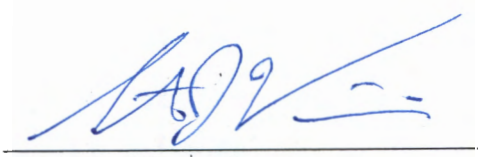
I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and one copy of the Complaint and Notice of Opportunity for Hearing ("Complaint") in the above-captioned case, together with a cover letter, and arranged to send a copy of the Complaint and cover letter via certified mail to Respondent at the address set forth below:

HAND-DELIVERY (original and one copy):

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

VIA CERTIFIED MAIL, RETURN RECIEPT REQUESTED:

Peter Decker
Plant Manager
Nutra-Blend, L.L.C., dba Old Mill Troy
79 Walnut Street
St. Albans, Vermont 05478



Steven J. Viggiani
Senior Enforcement Counsel
U.S. EPA, Region 1

3/28/19
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF Nutra-Blend, L.L.C., d/b/a Old Mill Troy 79 Walnut Street St. Albans, Vermont 05478, Respondent. Proceeding under Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c)	Docket No: EPCRA-01-2019-0016 **COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

I. INTRODUCTION

1. This Complaint and Notice of Opportunity for Hearing ("Complaint") is filed by the United States Environmental Protection Agency ("EPA"), Region 1 ("Complainant"), pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. This Complaint alleges that Nutra-Blend, L.L.C. ("Respondent"), doing business as "Old Mill Troy" at an animal feed supplement manufacturing facility in St. Albans, Vermont, has violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and EPCRA's implementing federal regulations at 40 C.F.R. Part 372, and seeks civil penalties for these violations.

3. The Notice of Opportunity Section of this Complaint describes Respondent's option to file an Answer to this Complaint and to request a formal hearing.

II. STATUTORY AND REGULATORY FRAMEWORK

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated Toxic Chemical Release Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 372.

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as "Form A"). Each Form R or Form A (hereinafter, referred to together as "TRI Forms") is required to be submitted to EPA and a designated state authority.

6. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. §§ 372.22 and 372.30 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification System ("NAICS") code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year, are required to submit TRI Forms to EPA and the state authority for each of these substances for that year.

7. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 ("FCPIAA"), and the FCPIAA's implementing regulations as promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 84 Fed. Reg. 2056, 2060 (Feb. 6, 2019)), together authorize the assessment of civil administrative penalties of up to $57,317 for each violation of Section 313 of EPCRA that occurred after November 2, 2015. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day that an EPCRA Section 313 violation continues constitutes a separate violation.

III. GENERAL ALLEGATIONS

8. Nutra-Blend is a privately-held corporation organized under the laws of the State of Missouri. Nutra-Blend is a subsidiary corporation of Land O'Lakes, Inc.

9. Respondent owns and operates an animal feed supplement manufacturing facility at 79 Walnut Street, St. Albans, Vermont 05478 (the "Facility").

10. At the Facility, Respondent mixes vitamins, nutrients and other ingredients to produce animal feed supplements.

11. On September 20, 2018, a duly authorized representative of EPA Region 1 conducted a compliance evaluation inspection of the Facility to determine its compliance with EPCRA reporting requirements.

12. As a corporation or partnership, Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. Respondent owns and operates a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

14. The Facility has more than 10 "full-time employees," as that term is defined by 40 C.F.R. § 372.3.

15. The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

16. During the calendar year 2016, Respondent's Facility processed one or more zinc compounds, manganese compounds, selenium compounds, copper compounds, and cobalt compounds, each of which is a toxic chemical category listed under 40 C.F.R. § 372.65(c), in quantities greater than 25,000 pounds.

17. The EPCRA TRI reporting threshold set out at 40 C.F.R. § 372.25 for a facility that processes any of the above-listed toxic chemical categories is 25,000 pounds per year.

18. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, apply to the Facility.

IV. VIOLATIONS

Count 1: Failure to Timely File TRI Form for Zinc Compounds for Calendar Year 2016

19. During the calendar year 2016, Respondent processed one or more zinc compounds, a toxic chemical category listed under 40 C.F.R. § 372.65(c), at the Facility in quantities more than ten times greater than the 25,000 pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25. Respondent was therefore required to submit a TRI Form for this chemical category to EPA on or before July 1, 2017.

20. Respondent failed to submit a TRI Form for the Facility's zinc compounds to EPA on or before July 1, 2017.

21. Respondent's failure to timely submit this TRI Form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to Timely File TRI Form for Manganese Compounds for Calendar Year 2016

22. During the calendar year 2016, Respondent processed one or more manganese compounds, a toxic chemical category listed under 40 C.F.R. § 372.65(c), at the Facility in quantities more than ten times greater than the 25,000 pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25. Respondent was therefore required to submit a TRI Form for this chemical category to EPA on or before July 1, 2017.

23. Respondent failed to submit a TRI Form for the Facility's manganese compounds to EPA on or before July 1, 2017.

24. Respondent's failure to timely submit this TRI Form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 3: Failure to Timely File TRI Form for Selenium Compounds for Calendar Year 2016

25. During the calendar year 2016, Respondent processed one or more selenium compounds, a toxic chemical category listed under 40 C.F.R. § 372.65(c), at the Facility in quantities greater than the 25,000 pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25. Respondent was therefore required to submit a TRI Form for this chemical category to EPA on or before July 1, 2017.

26. Respondent failed to submit a TRI Form for the Facility's selenium compounds to EPA on or before July 1, 2017.

27. Respondent's failure to timely submit this TRI Form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 4: Failure to Timely File TRI Form for Copper Compounds for Calendar Year 2016

28. During the calendar year 2016, Respondent processed one or more copper compounds, a toxic chemical category listed under 40 C.F.R. § 372.65(c), at the Facility in quantities greater than the 25,000 pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25. Respondent was therefore required to submit a TRI Form for this chemical category to EPA on or before July 1, 2017.

29. Respondent failed to submit a TRI Form for the Facility's copper compounds to EPA on or before July 1, 2017.

30. Respondent's failure to timely submit this TRI Form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 5: Failure to Timely File TRI Form for Cobalt Compounds for Calendar Year 2016

31. During the calendar year 2016, Respondent processed one or more cobalt compounds, a toxic chemical category listed under 40 C.F.R. § 372.65(c), at the Facility in quantities greater than the 25,000 pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25. Respondent was therefore required to submit a TRI Form for this chemical category to EPA on or before July 1, 2017.

32. Respondent failed to submit a TRI Form for the Facility's cobalt compounds to EPA on or before July 1, 2017.

33. Respondent's failure to timely submit this TRI Form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

V. PROPOSED CIVIL PENALTY

34. Through this Complaint, Complainant seeks to assess Respondent a civil administrative penalty of up to $57,317 for each violation alleged in Section IV above. As

described therein, Respondent has committed at least five violations of Section 313 of EPCRA and 40 C.F.R. Part 372 by failing to timely submit required TRI Forms for one or more zinc, manganese, selenium, copper, and cobalt compounds for the calendar year 2016. Respondent submitted these missing TRI Forms for calendar year 2016 on September 27, 2018.

35. Respondent's violations are serious because its failures to timely report the use of zinc, manganese, selenium, copper, and cobalt compounds, all of which are hazardous to aquatic life, could have deprived the surrounding community of its right to know about toxic chemicals used or stored at the Facility that could have affected public health and the environment.

36. Prior to any hearing in this case, and as required by the Consolidated Rules, Complainant will file a document specifying a proposed penalty for the violations and explaining how the proposed penalty was calculated. Complainant will calculate the penalty by taking into account the particular facts and circumstances of this case with specific reference to the "Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated April 12, 2001 and last updated on February 24, 2017, and the penalty calculation factors set out therein, including the nature, circumstances, extent and gravity of the violations, and Respondent's ability to pay, prior history of violations, degree of culpability, and economic benefit or savings resulting from the violations, and such other matters as justice may require. A copy of this enforcement response policy is attached to this Complaint. Should this policy be updated prior to a hearing on the case, Complainant reserves the right to use the new policy and shall provide the updated policy to Respondent.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

37. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing will be conducted in accordance with the Consolidated Rules set out at 40 C.F.R. Part 22 (copy attached). To request a hearing, Respondent must include such a request in a written Answer to this Complaint filed with the Regional Hearing Clerk in accordance with the requirements of 40 C.F.R. § 22.15 within thirty (30) days of Respondent's receipt of this Complaint.

38. The original and one copy of Respondent's Answer shall be filed with the Regional Hearing Clerk at the following address:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, Mail Code ORC 4-6
Boston, MA 02109-3912

Respondent shall serve copies of the Answer and any subsequent pleadings that Respondent files in this action to EPA Region 1's enforcement counsel for this matter, who is authorized to receive service for Complainant at the following address:

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
5 Post Office Square
Suite 100, Mail Code OES04-3
Boston, MA 02109-3912
viggiani.steven@epa.gov

VII. OPPORTUNITY FOR ELECTRONIC FILING AND SERVICE

39. Pursuant to 40 C.F.R. §§ 22.5(a)(1) and (b)(2), and subject to certain conditions and limitations, the EPA Region 1 Regional Judicial Officer has authorized the use of electronic mail for filing or service in addition to those methods already authorized in the Consolidated

Rules. See "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," EPA Docket No. 01-2015-0001, dated October 9, 2014 (copy attached). According to the above-referenced Standing Order, the parties must confer and reach agreement regarding acceptable electronic addresses and other logistical issues prior to utilizing electronic service.

VIII. DEFAULT ORDER

40. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations.

IX. SETTLEMENT CONFERENCE

41. Respondent may confer informally with Complainant regarding a potential settlement of this action. Any such settlement would be made final by the issuance of a written Consent Agreement and Final Order by the EPA Region 1 Regional Judicial Officer. Please note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer. To request such a conference, Respondent's legal counsel may contact Steven J. Viggiani, Senior Enforcement Counsel, at (617) 918-1729.

Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

3/21/19
Date

ENFORCEMENT RESPONSE POLICY FOR SECTION 313 OF THE EMERGENCY PLANNING COMMUNITY RIGHT-TO-KNOW ACT (1986) AND SECTION 6607 OF THE POLLUTION PREVENTION ACT (1990) [AMENDED]

Amended 1996, 1997, and 2001

April 12, 2001

This policy has been updated in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule.

February 24, 2017

ENFORCEMENT RESPONSE POLICY

FOR SECTION 313 OF THE

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (1986)

And

SECTION 6607 OF THE

THE POLLUTION PREVENTION ACT (1990)

Issued by the

Office of Compliance Monitoring

of the

Office of Prevention, Pesticides and Toxic Substances

United States Environmental Protection Agency

August 10, 1992

TABLE OF CONTENTS

INTRODUCTION

On December 2, 1988, the U.S. Environmental Protection Agency (EPA) issued an Enforcement Response Policy for addressing violations of Section 313 of the Emergency Planning and Community Right-to-Know Act. Since that time, EPA has identified opportunities for refining and adding clarity to that policy. This revised enforcement response policy incorporates three years of enforcement experience with Section 313 of the Emergency Planning and Community Right-to-Know Act.

This policy is immediately applicable and will be used to calculate penalties for all administrative actions concerning EPCRA Section 313 issued after the date of this policy, regardless of the date of the violation.

The Emergency Planning and Community Right-to-Know Act, (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986, contains provisions for reporting both accidental and nonaccidental releases of certain toxic chemicals. Section 313 (§313) of EPCRA requires certain manufacturers, processors, and users of over 300 designated toxic chemicals to report annually on emissions of those chemicals to the air, water and land. The Pollution Prevention Act (PPA) of 1990 requires additional data and information to be included annually on Form R reports beginning in the 1991 reporting year, for reports which are due on July 1, 1992. These reports must be sent to the U.S. Environmental Protection Agency (EPA) and to designated state agencies. The first reporting year was 1987, and reports were due by July 1, 1988, and annually by July 1 thereafter. The U.S. EPA is responsible for carrying out and enforcing the requirements of §313 of EPCRA and the PPA and any rules promulgated pursuant to EPCRA and the PPA.

Section 325(c) of the law authorizes the Administrator of the EPA to assess civil administrative penalties for violations of §313. Any person (owner or operator of a facility, other than a government entity) who violates any requirement of §313 is liable for a civil administrative penalty in an amount not to exceed $25,000 for each violation. Each day a violation continues may constitute a separate violation. The Administrator may assess the civil penalty by administrative order or may bring an action to assess and collect the penalty in the U.S. District Court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

The purpose of this Enforcement Response Policy is to ensure that enforcement actions for violations of EPCRA §313 and the PPA are arrived at in a fair, uniform and consistent manner; that the enforcement response is appropriate for the violation committed; and that persons will be deterred from committing EPCRA §313 violations and the PPA.

For purposes of this document, "EPCRA," "§313" and EPCRA "EPCRA §313" should be understood to include the requirements of the Pollution Prevention Act.

LEVELS OF ACTION

Enforcement alternatives include: (a) no action; (b) notices of noncompliance; (c) civil administrative penalties (d) civil judicial referrals, and (e) criminal action under 18 U.S. Code 1001.

EPA reserves the right to issue a Civil Administrative Penalty for any violation not specifically identified under the Notice of Noncompliance or Administrative Civil Penalty section.

NO ACTION

Revisions to Form R reports

Generally, an enforcement action will not be taken regarding voluntary changes to correctly reported data in Form R reports. Changes to Form R reports are: revisions to original reports which reflect only improved or new information and/or improved or new procedures which were not available when the facility was completing its original submission. Facilities submitting revisions should maintain records to document that the information used to calculate the revised estimate is new and was not available at the time the first estimate was made. A facility which submits a revision to a Form R report which does not meet this description of a change or otherwise calls into question the basis for the initial data reported on the original Form R report will be subject to an enforcement action.

Discussion

Each Form R report must provide estimated releases: it is not acceptable to submit Form R reports with no estimate(s) of releases. Such reports will be considered incomplete reports and subject to an enforcement action as described below. An estimate of "zero" is acceptable if "zero" is a reasonable estimate of a facility's releases based on readily available information, i.e., monitoring data or emission estimates.

Every Form R report submitted after July 1 for a chemical not previously submitted is not a revision, but a failure to report in a timely manner.

Facilities considering whether to submit a revision should refer to the September 26, 1991 Federal Register policy notice which explains for what circumstances a facility should submit a revision and the correct format for submitting a revision. Additionally, the notice explains the purpose of EPA's policy of delaying data entry of all revisions received after November 30th of the year the original report was due until after the Toxic Release Inventory (TRI) database can be made available to the public. Revisions submitted after November 30th will be processed and made available to the public in updated versions of the TRI database. The EPA cannot accept and process revisions to the TRI database on a continuing basis without significantly delaying the public availability of the data. Following on the September 26, 1991 Federal Register policy notice, this ERP adopts the November 30th date to determine the gravity of voluntarily disclosed data quality violations.

NOTICES OF NONCOMPLIANCE (NON)

Summary of Circumstances Generally Warranting an NON

- Form R reports which are incorrectly assembled; for example, failure to include all pages for each Form R or reporting more than one chemical per Form R.
- Form R reports which contain missing or invalid facility or chemical identification information; for example, the CAS number reported does not match the chemical name reported.
- Submission of §313 and Pollution Prevention Act data on an invalid form.
- Incomplete Reporting, i.e., reports which contain blanks where an answer is required.
- Magnetic media submissions which cannot be processed.
- The submission of a Form R report with trade secrets without a sanitized version, or the submission of the sanitized version of the Form R report without the trade secret information.
- Form R reports which are sent to an incorrect address.

  NOTE: An incorrect address is any address other than that of the U.S. EPA Administrator's office, or other than the address listed in the §313 regulation or on the Form R. Form R reports not received by EPA due to an incorrect address and/or packaging are not the

responsibility of EPA and are subject to a civil administrative penalty for "failure to report in a timely manner" violation.

NOTE: The Agency reserves the right to assess a Civil Administrative Complaint for certain data quality errors; see page five for a definition of these types of errors. Generally, these are errors which cannot be detected during the data entry process.

Discussion

A Notice of Noncompliance (NON) is the appropriate response for certain errors on Form R reports detected by the Agency. Generally, these are errors which prevent the information on the Form R from being entered into EPA's database. The NON will state that corrections must be made within a specified time (30 days from receipt of the NON). Failure to correct any error for which a NON is issued may be the basis for issuance of a Civil Administrative Complaint.

The decision to issue NONs for the submission of a Form R report with a trade secret claim without a sanitized version, or of the sanitized version without the trade secret information, is being treated the same as a Form R report with errors. This is a violation of EPCRA §313 as well as the trade secret requirements of EPCRA.

CIVIL ADMINISTRATIVE COMPLAINTS

A Civil Administrative Complaint will be the appropriate response for: failure to report in a timely manner; data quality errors; failure to respond to a NON; repeated violations; failure to supply notification and incomplete or inaccurate supplier notification; and failure to maintain records and failure to maintain records according to the standard in the regulation.

Definitions:

Failure to Report in a Timely Manner This violation includes the failure to report in a timely manner to either EPA or to the state for each chemical on the list. There are two distinct categories for this violation. A circumstance level one penalty will be assessed against a category I violation. A "per day" formula is used to determine category II penalties; see this per day formula on page 13.

- Category I: Form R reports that are submitted one year or more after the July 1 due date.

- Category II: Form R reports that are submitted after the July 1 due date but before July 1 of the following year.

EPCRA §313 Subpart (a) requires Form R reports to be submitted annually on or before July 1 and to contain data estimating releases during the preceding calendar year. Facilities which submit Form R reports after the July 1 deadline have failed to comply with this annual reporting requirement and have defeated the purpose of EPCRA §313, which is to make this toxic release data available to states and the public annually and in a timely manner.

Data Quality Errors: Data Quality Errors are errors which cause erroneous data to be submitted to EPA and states. Generally, these are errors which are not readily detected during EPA's data entry process.[1] Below are the range of actions which constitute data quality errors; generally, these are a result of a failure to comply with the explicit requirements of EPCRA §313:

- Failure to calculate or provide reasonable estimates of releases or off-site transfers.
- Failure to identify all appropriate categories of chemical use, resulting in error(s) in estimates of release or off-site transfers.
- Failure to identify for each wastestream the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods, for that wastestream.
- Failure to use all readily available information necessary to calculate as accurately as possible, releases or off-site transfers.
- Failure to provide the annual quantity of the toxic chemical which entered each environmental medium.
- Failure to provide the annual quantity of the toxic chemical transferred off-site.
- Failure to provide information required by §6607 of the Pollution Prevention Act of 1990 and by any regulations promulgated under §6607 of the Pollution Prevention Act of 1990.

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[1]EPA's program office may issue Notices of Technical Error (NOTEs) for certain data quality errors which are detected during the data entry process.

- Under the requirements of §6607 of the Pollution Prevention Act of 1990, claiming past or current year source reduction or recycling activities which are not in fact implemented by the facility. This does not apply to activities which the facility may estimate for future years.

- A facility's Form R reporting demonstrates a pattern of similar errors or omissions as manifested by the issuance by EPA of NONs for two or more reporting years for the same or similar errors or omissions.

NOTE: If an error is made in determining a facility's toxic chemical threshold which results in the facility erroneously concluding that a Form R report for that chemical is not required, this is not a data quality error, but a "failure to report in a timely manner" violation.

Failure to respond to an NON When a facility receives a Notice of Noncompliance (NON) and fails to comply with the Notice of Noncompliance, i.e, fails to correct the information EPA requests to be corrected in the NON by the time period specified in the NON, the violation is "failure to respond to an NON." Included here is the failure to also provide the state with corrected information requested in the NON within 30 days of receiving the NON.

Repeated violation This category of violation only applies to violations which would generally warrant an NON for the first time. A repeated violation is any subsequent violation which is identical or very similar to a prior violation for which an NON was issued. Separate penalty calculation procedures (discussed on page 16 under "history of prior violations") are to be followed for violations which warrant a civil administrative complaint for the first violation and are repeated.

Failure to Supply Notification Under 40 CFR §372.45, certain facilities which sell or otherwise distribute mixtures or trade name products containing §313 chemicals are required to supply notification to (i) facilities described in §372.22, or (ii) to persons who in turn may sell or otherwise distribute such mixtures or products to a facility described in §372.22(b) in accordance with paragraph §372.45(b). Failure to comply with 40 CFR §372.45, in whole or in part, constitutes a violation. A violation will be "failure to supply notification" or "incomplete or inaccurate supplier notification."

Failure to Maintain Records Under 40 CFR §372.10, each person subject to the reporting requirements of 40 CFR §372.30 must retain records documenting and supporting the information submitted on each Form R report. Additionally, under 40 CFR

§372.10, each person subject to the supplier notification requirements of 40 CFR §372.45 must retain certain records documenting and supporting the determination of each required notice under that same section. These records must be kept for three years from the date of the submission of a report under 40 CFR §372.30 or the date of notification under 40 CFR §372.45. The records must be maintained at the facility to which the report applies or at the facility supplying notification. Failure to comply with 40 CFR Part 372.10, in whole or in part, constitutes a violation. Violations will be a "failure to maintain records as prescribed at 40 CFR Part 372.10 (a) or (b)", or a "failure to maintain complete records as prescribed at 40 CFR Part 372.10 (a) or (b)" or "failure to maintain complete records at the facility as prescribed at 40 CFR Part 372.10(c)."

CIVIL JUDICIAL REFERRALS

In exceptional circumstances, EPA, under EPCRA §325(c), may refer civil cases to the United States Department of Justice for assessment and/or collection of the penalty in the appropriate U.S. District Court. U.S. EPA also may include EPCRA counts in civil complaints charging Respondents with violations of other environmental statutes.

CRIMINAL SANCTIONS

EPCRA does not provide for criminal sanctions for violations of §313. However, 18 U.S.C. §1001 makes it a criminal offense to falsify information submitted to the U.S. Government. This would specifically apply to, but not be limited to, EPCRA §313 records maintained by a facility that were intentionally generated with incorrect or misleading information. In addition, the knowing failure to file an EPCRA §313 report may be prosecuted as a concealment prohibited by 18 U.S.C. §1001.

ASSESSING A CIVIL ADMINISTRATIVE PENALTY

SUMMARY OF THE PENALTY POLICY MATRIX

This policy implements a system for determining penalties in civil administrative actions brought pursuant to §313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Penalties are determined in two stages: (1) determination of a "gravity-based penalty," and (2) adjustments to the gravity-based penalty.

To determine the gravity-based penalty, the following factors affecting a violation's gravity are considered:

- the "circumstances" of the violation
- the "extent" of the violation

The circumstance levels of the matrix take into account the seriousness of the violation as it relates to the accuracy and availability of the information to the community, to states, and to the federal government. Circumstance levels are described on pages 11-13.

The extent level of a violation is based on the quantity of each EPCRA §313 chemical manufactured, processed, or otherwise used by the facility; the size of the facility based on a combination of the number of employees at the violating facility; and the gross sales of the violating facility's total corporate entity. The Agency will use the number of employees and the gross sales at the time the civil administrative complaint is issued in determining the extent level of a violation.

To determine the gravity-based penalty, determine both the circumstance level and the extent level. These factors are incorporated into a matrix which establishes the appropriate gravity-based penalty amount. The penalty is determined by calculating the penalty for each violation on a per-chemical, per-facility, per-year basis (see special circumstances for per day penalties on page 13).

Once the gravity-based penalty has been determined, upward or downward adjustments to the proposed penalty amount may be made in consideration of the following factors:

- Voluntary Disclosure
- History of prior violation(s)
- Delisted chemicals
- Attitude
- Other Factors as Justice May Require
- Supplemental Environmental Projects
- Ability to Pay

The first three of these adjustments may be made prior to issuing the civil complaint.

EXTENT LEVELS

In the table below, the total corporate entity refers to all sites taken together owned or controlled by the domestic or foreign parent company. EPA Regions have discretion to use those figures for number of employees and total corporate sales which

are readily available. If no information is available, Regions may assume the higher level and adjust if the facility can produce documentation demonstrating they belong in a lower extent level.

Facilities which manufacture, process or otherwise use ten times or more the threshold of the §313 chemical involved in the violation and meet the total corporate entity sales and number of employees criteria below:

	LEVEL
$10 million or more in total corporate entity sales and 50 employees or more.	A
$10 million or more in total corporate entity sales and less than 50 employees.	B
Less than $10 million in total corporate entity sales and 50 employees or more.	B
Less than $10 million in total corporate entity sales and less than 50 employees.	B

Facilities which manufacture, process or otherwise use less than ten times the threshold of the §313 chemical involved in the violation and meet the total corporate entity sales and number of employee criteria below:

	LEVEL
$10 million or more in total corporate entity sales and 50 employees or more.	B
$10 million or more in total corporate entity sales and less than 50 employees.	C
Less than $10 million in total corporate entity sales and 50 employees or more.	C
Less than $10 million in total corporate entity sales and less than 50 employees.	C

Discussion

EPA believes that using the amount of §313 chemical involved in the violation as the primary factor in determining the extent level underscores the overall intent and goal of EPCRA §313 to make available to the public on an annual basis a reasonable estimate of the toxic chemical substances emitted into their communities from these regulated sources. A necessary component

of making useful data available to the public is the supplier notification requirement of §313, as a significant amount of toxic chemicals are distributed in mixtures and trade name products. An additional goal of §313 is to ensure that purchasers of §313 chemicals are informed of their potential §313 reporting requirements. The extent levels underscore this goal as well.

The size of business is used as a second factor in determining the appropriate extent level to reflect the fact that the deterrent effect of a smaller penalty upon a small company is likely to be equal to that of a larger penalty upon a large company. Ten times the threshold for distinguishing between extent levels was chosen because it represents a significant amount of chemical substance. Thus, the two factors, the amount of §313 chemical involved and the size of business, are combined and used to determine the extent level table.

Gravity-Based Penalty Matrix for Violations that Occurred After January 12, 2009 but before or on November 2, 2015

CIRCUMSTANCE LEVELS	EXTENT A Major	B Significant	C Minor
1	$37,500	$24,080	$7,090
2	$28,330	$18,420	$4,250
3	$21,250	$14,170	$2,130
4	$14,170	$8,500	$1,420
5	$7,090	$4,250	$710
6	$2,840	$1,850	$290

Gravity-Based Penalty Matrix for Violations that Occurred after November 2, 2015[1]

CIRCUMSTANCE LEVELS	EXTENT A Major	B Significant	C Minor
1	$40,779	$27,730	$8,156
2	$32,623	$21,205	$4,893
3	$24,467	$16,312	$2,447
4	$16,312	$9,787	$1,631
5	$8,156	$4,893	$816
6	$3,262	$2,121	$326

CIRCUMSTANCE LEVELS

A penalty is to be assessed for each §313 chemical for each facility. There are two "per day" penalty assessments; see pages 12 and 13 for further clarification.

The date used to determine the circumstance level for failure to report in a timely manner is the date the non-trade secret Form R or Form A is certified in TRI-MEweb. All violations are "one day" violations unless otherwise noted.

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[1]This page replaces the previous page 11, 11-A, 11-B, and insert behind 11-B. The 2016 Civil Monetary Penalty Inflation Adjustment Rule increased EPCRA § 313 statutory maximum penalties from $37,500 to $53,907 pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 inflation adjustment methodology. Where penalties are assessed on or after January 15, 2017, for violations that occurred after November 2, 2015 the new statutory maximum penalty is $54,789. EPA used the 2001 EPCRA § 313 ERP original 2001 penalty matrix (with its maximum penalty amount of $27,500) and a multiplier of 1.48287 to calculate an updated penalty matrix with an appropriate inflation adjustment for violations after November 2, 2015. Note that this modification supersedes application of the "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation." (Effective August 1, 2016.)

LEVEL 1

Failure to report in a timely manner, Category I.

LEVEL 2

Failure to maintain records as prescribed at 40 CFR §372.10(a) or (b).

Failure to supply notification; per chemical, per year.

LEVEL 3

Data Quality Errors.

Repeated NON violations.

LEVEL 4

Failure to report in a timely manner, Category II: Per Day formula applies.

Failure to maintain complete records as prescribed at 40 CFR §372.10(a) or (b).

LEVEL 5

Failure to Respond to an NON.

Data Quality Errors which are voluntarily disclosed after November 30th of the year the original report was due.

Incomplete or inaccurate supplier notification; per chemical, per year.

LEVEL 6

Data Quality Errors which are voluntarily disclosed on or before November 30th of the year the original report was due.

Revisions which are voluntarily submitted to EPA but are not reported to the State within 30 days of the date the revision is submitted to EPA.

Failure to maintain records at the facility (40 CFR §372.10(c)).

MULTIPLE VIOLATIONS

Separate penalties are to be calculated for each chemical for each facility. If a company has three facilities and fails to report before July 1 of the year following the year the report was due, a penalty is to be assessed for each facility and for each chemical. Assuming the annual sales of the corporate entity exceed $10 million dollars, the facility has more than 50 employees, and each facility exceeds the threshold limits by more than ten times, the penalty would be $25,000 X 3 or $75,000. If each facility manufactured two chemicals, again at more than ten times the threshold, the penalty would be $25,000 X 3 X 2 or $150,000.

If there is more than one violation for the same facility involving the same chemical, the penalties are cumulative. For example, if a firm reports more than one year after the report was due, and the form also contains errors which the firm refused to correct after receiving an NON, the penalty is $25,000 plus $15,000. However, since it is the same form involved, and since the statute imposes a maximum of $25,000 per violation for each day the violation continues, the penalty which will be assessed should be the one day $25,000 maximum.

PER DAY PENALTIES

Generally, penalties of up to $25,000 per day may be assessed if a facility within the corporate entity has received a Civil Administrative Complaint, which has been resolved, for failing to report under §313 for any two previous reporting periods. A Civil Administrative Complaint is resolved by a payment, a Consent Agreement and Final Order, or a Court Order.

Penalties of up to $25,000 per day may also be used for those facilities which refuse to submit reports or corrected information within thirty days after a Civil Administrative Complaint is resolved. Such refusal may be the basis for issuing a new Civil Administrative Complaint to address the days of continuing noncompliance after the initial Civil Administrative Complaint is resolved. For example, a respondent may respond to a Civil Administrative Complaint by paying the full penalty, yet not correct the violation; in such a situation, a new Civil Administrative Complaint should be issued.

PER DAY FORMULA FOR FAILURE TO REPORT IN A TIMELY MANNER

The following per day penalty calculation formula is to be used only for violations involving failure to report on or before July 1 of the year the report is due and before July 1 of the following year:

Level 4 Penalty +

$$\frac{(\text{\# of days late} - 1) \times (\text{Level 1} - \text{Level 4 Penalty})}{365}$$

For example, the penalty for a facility which submitted one Form R report on October 11 of the year the report was due, and met the criteria for extent level A, would be calculated as follows:

$$\$10,000 + \frac{(102-1)(\$15,000)}{365} = \$10,000 + \$4151 = \$14,151.$$

CAPS ON PENALTIES

While there is a $25,000 per day per violation maximum penalty under EPCRA §326, which outlines EPA's enforcement authority for EPCRA §313, there are no caps on the total penalty amount a facility may be liable for under EPCRA §313.

ADJUSTMENT FACTORS

The Agency intends to pursue a policy of strict liability in penalizing a violation, therefore, no reduction is allowed for culpability. Lack of knowledge does not reduce culpability since the Agency has no intention of encouraging ignorance of EPCRA and its requirements and because the statute only requires facilities to report information which is readily available. In fact, if a violation is knowing or willful, the Agency reserves the right to assess per day penalties, or take other enforcement action as appropriate. In some cases, the Agency may determine that the violation should be referred to the Office of Criminal Enforcement.

Voluntary Disclosure

To be eligible for any voluntary disclosure reductions, a facility must: submit a signed and written statement of voluntary disclosure to EPA and submit complete and signed report(s) to their state and EPA's TRI Reporting Center within 30 days, or submit complete and signed Form R report(s) immediately to their state and EPA's TRI Reporting Center as indicated on the Form R. In the case of supplier notification violations, the facility must submit a signed and written statement of voluntary disclosure to EPA.

The Agency will not consider a facility to be eligible for any voluntary disclosure reductions if the company has been notified of a scheduled inspection or the inspection has begun, or the facility has otherwise been contacted by U.S. EPA for the purpose of determining compliance with EPCRA §313.

This enforcement response policy establishes two reductions in penalties for voluntary disclosure of violations: the first reduction is a fixed 25%; the second reduction is capped at 25% and can be applied in full or in part according to the extent to which the facility meets the criteria for the second 25% reduction. All facilities which voluntarily disclose violations of §313 (except those identified below) are eligible for the first fixed 25%. The voluntary disclosure reductions apply to the following violations: failure to report in a timely manner, category I and II; and failure to supply notification.

In order to obtain the second reduction for voluntary disclosure a facility must meet the following criteria and explain and certify in writing how the facility meets these criteria:

- The violation was immediately disclosed within 30 days of discovery by the facility.
- The facility has undertaken concrete actions to ensure that the facility will be in compliance with EPCRA §313 in the future. Such steps may include but are not limited to: creating an environmental compliance position and hiring an individual for that position; changing the job description of an existing position to include managing EPCRA compliance requirements; and contracting with an environmental compliance consulting firm.
- For supplier notification violations, the facility provides complete and accurate supplier notification to each facility or person described in §372.45(a) within 60 days of notifying EPA of the violation.
- The facility does not have a "history of violation" (see below) for EPCRA §313 for the two reporting years preceding the calendar year in which the violation is disclosed to EPA.

This policy is designed to distinguish between those facilities which make an immediate attempt to comply with §313 as soon as noncompliance with §313 is discovered and those which do not.

This enforcement response policy does not allow for voluntary disclosure adjustments in penalties for the following violations because these violations will, in almost all circumstances, be discovered by EPA: failure to maintain records, failure to maintain records according to the standard in the regulation, failure to submit Form R reports containing error corrections or revisions to the state, and failure to supply

corrections or revisions to the state, and failure to supply notification according to the standard in the regulation. In the rare case that a facility identifies such violations and voluntarily discloses them, EPA Regional offices have discretion to adjust the penalty under the "as justice may require" reduction. Consideration of voluntary disclosure for data quality errors is already structured into the circumstance levels: voluntarily disclosed data quality errors are assessed two and three levels lower than data quality errors which are discovered by EPA. Therefore no further "voluntary" reduction is allowed.

NOTE: Reductions available for attitude and for voluntary disclosure are mutually exclusive, as both recognize the facility's concern with, and actions taken toward, timely compliance. Therefore, a facility cannot qualify for reductions in both of these categories.

History of Prior Violations

The penalty matrix is intended to apply to "first offenders." Where a violator has demonstrated a history of violating any section(s) of EPCRA, the penalty should be adjusted upward according to section (d) below prior to issuing the Administrative Civil Complaint. The need for such an upward adjustment derives from the violator not having been sufficiently motivated to comply by the penalty assessed for the previous violation, either because of certain factors consciously analyzed by the firm, or because of negligence. Another reason for penalizing repeat violators more severely than "first offenders" is the increased enforcement resources that are spent on the same violator.

The Agency's policy is to interpret "prior such violations" as referring to prior violations of any provision of the Emergency Planning and Community Right-to-Know Act (1986). The following rules apply in evaluating history of prior such violations:

(a) In order to constitute a prior violation, the prior violation must have resulted in a final order, either as a result of an uncontested complaint, or as a result of a contested complaint which is finally resolved against the violator, except as discussed below at section (d). A consent agreement and final order/consent order (CAFO/CACO), or receipt of payment in response to a administrative civil complaint, are both considered to be the final resolution of the complaint against the violator. Therefore, either a CAFO/CACO, or receipt of payment made to the U.S. Treasury, can be used as evidence constituting a prior violation, regardless of whether or not a respondent admits to the violation.

(b) To be considered a "prior such violation," the violation must have occurred within five years of the present violation. Generally, the date used for the present violation will be one day after July 1 of the year the Form R report was due for failure to report, data quality errors, recordkeeping violations, and supplier notification violations. For other violations, the date of the present violation will be the date the facility was required to come into compliance; for example, for a "failure to respond" violation, the date of the present violation will be the last day of the 30 day period the facility had to respond to a Notice of Noncompliance. This five-year period begins when the prior violation becomes a final order. Beyond five years, the prior violative conduct becomes too distant to require compounding of the penalty for the present violation.

(c) Generally, companies with multiple establishments are considered as one when determining history. Thus, if a facility is part of a company for which another facility within the company has a "prior such violation," then each facility within the company is considered to have a "prior violation." However, two companies held by the same parent corporation do not necessarily affect each other's history if they are in substantially different lines of business, and they are substantially independent of one another in their management, and in the functioning of their Boards of Directors. In the case of wholly- or partly-owned subsidiaries, the violation history of a parent corporation shall apply to its subsidiaries and that of the subsidiaries to the parent corporation.

(d) For one prior violation, the penalty should be adjusted upward by 25%. If two prior violations have occurred, the penalty should be adjusted upward by 50%. If three or more prior violations have occurred, the penalty should be adjusted upward by 100%.

(e) A "prior violation" refers collectively to all the violations which may have been described in one prior Administrative Civil Complaint or CAFO. Thus, "prior violation" refers to an episode of prior violation, not every violation that may have been contained in the first Civil Administrative Complaint or CAFO/CACO.

Delisted Chemicals

For delisted chemicals, an immediate and fixed reduction of 25% can be justified in all cases according the following policy:

If the Agency has delisted a chemical by a final Federal Register Notice, the Agency may settle cases involving the delisted chemical under terms which provide for a 25% reduction

of the initial penalty calculated for any Section 313 violation involving that chemical. The reduction would only apply to chemicals delisted before or during the pendancy of the enforcement action. This reduction may be made before issuing the Administrative Civil Complaint. Facilities will not be allowed to delay settling Administrative Civil Complaints in order to determine whether the violative chemical will be delisted.

Attitude

This adjustment has two components: (1) cooperation and (2) compliance. An adjustment of up to 15% can be made for each component:

(1) Under the first component, the Agency may reduce the gravity-based penalty based on the cooperation extended to EPA throughout the compliance evaluation/enforcement process or the lack thereof. Factors such as degree of cooperation and preparedness during the inspection, allowing access to records, responsiveness and expeditious provision of supporting documentation requested by EPA during or after the inspection, and cooperation and preparedness during the settlement process.

(2) Under the second component, the Agency may reduce the gravity-based penalty in consideration of the facility's good faith efforts to comply with EPCRA, and the speed and completeness with which it comes into compliance.

NOTE: See note on page 16 regarding the mutual exclusion of reductions for attitude reduction and voluntary disclosure.

Other Factors as Justice May Require

In addition to the factors outlined above, the Agency will consider other issues that might arise, on a case-by-case basis, and at Regional discretion, which should be considered in assessing penalties. Those factors which are relevant to EPCRA §313 violations include but are not limited to: new ownership for history of prior violations, "significant-minor" borderline violations, and lack of control over the violation. For example, occasionally a violation, while of significant extent, will be so close to the borderline separating minor and significant violations or so close to the borderline separating noncompliance from compliance, that the penalty may seem disproportionately high. In these situations, an additional reduction of up to 25% off the gravity-based penalty may be allowed. Use of this reduction is expected to be rare and the circumstances justifying its use must be thoroughly documented in the case file.

Settlement With Conditions (SWC)

Supplemental Environmental Projects (SEPs):

Circumstances may arise where a violator will offer to make expenditures for environmentally beneficial purposes above and beyond those required by law in lieu of paying the full penalty. The Agency, in penalty actions in the U.S. District Courts under the Clean Air Act and Clean Water Acts, and in administrative penalty actions under the Toxic Substances Control Act, has determined that crediting such expenditures is consistent with the purpose of civil penalty assessment. Although civil penalties under EPCRA §313 are administratively assessed, the same rationale applies. This adjustment, which constitutes a credit against the actual penalty amount, will normally be discussed only in the course of settlement negotiations.

Other Settlements With Conditions may be considered by EPA Regional Offices as appropriate.

Before the proposed credit amounts can be incorporated into a settlement, the complainant must assure himself/herself that the company has met the conditions as set forth in current or other program specific policy guidance. The settlement agreement incorporating a penalty adjustment for an SEP or any other SWC should make clear what the actual penalty assessment is, after which the terms of the reduction should be clearly spelled out in detail in the CAFO/CACO. A cash penalty must always be collected from the violator regardless of the SEPs or SWCs undertaken by the company. Finally, in accordance with Agency-wide settlement policy guidelines, the final penalty assessment contained in the CACO/CAFO must not be less than the economic benefit gained by the violator from noncompliance.

Ability to Pay

Normally, EPA will not seek a civil penalty that exceeds the violator's ability to pay. The Agency will assume that the respondent has the ability to pay at the time the complaint is issued if information concerning the alleged violator's ability to pay is not readily available. Any alleged violator can raise the issue of its ability to pay in its answer to the civil complaint, or during the course of settlement negotiations.

If an alleged violator raises the inability to pay as a defense in its answer, or in the course of settlement negotiations, it shall present sufficient documentation to permit the Agency to establish such inability. Appropriate documents will include the following, as the Agency may request, and will be presented in the form used by the respondent in its ordinary course of business:

1. Tax returns
2. Balance sheets
3. Income statements
4. Statements of changes in financial position
5. Statements of operations
6. Retained earnings statements
7. Loan applications, financing and security agreements
8. Annual and quarterly reports to shareholders and the SEC, including 10 K reports
9. Business services reports, such as Compusat, Dun and Bradstreet, or Value Line.
10. Executive salaries, bonuses, and benefits packages.

Such records are to be provided to the Agency at the respondent's expense and must conform to generally recognized accounting procedures. The Agency reserves the right to request, obtain, and review all underlying and supporting financial documents that form the basis of these records to verify their accuracy. If the alleged violator fails to provide the necessary information, and the information is not readily available from other sources, then the violator will be presumed to be able to pay.

SETTLEMENT

Any reductions in penalties are to be made in accordance with this penalty policy. In preparing Consent Agreements, Regions must require a statement signed by the company which certifies that it has complied with all EPCRA requirements, and specifically §313 requirements, at all facilities under their control.

Any violations reported by the company or facility in the context of settlement are to be treated as self-confessed violations or treated as a failure to report in a timely manner if the company has not submitted the report. If a Region wishes to enter into a Settlement Agreement for the facility/company to audit its facility/company, then the Consent Agreement and Final Order may contain this agreement. A Region may choose to agree to assess prior stipulated penalties for the violations found during the compliance audit, or may choose to assess any such violations in accordance with this enforcement policy. Reductions for compliance audits cannot exceed the after-tax value of the compliance audit. Finally, as stated above, a cash penalty must always be collected from the violator regardless of the SEPs or SWCs undertaken by the company.

AMENDMENT for 1991 Reporting Year Only

Due to the unusual circumstances in finalizing and distributing the revised Form R for use beginning with calendar year 1991 reports (reports due on July 1, 1992), the following amendment to the Enforcement Response Policy is issued:

Penalty Assessment for Failure to Report in a Timely Manner

One element of the Per Day Penalty Formula on page 14 is the number of days late a facility submits its Form R reports. For the 1991 reporting year only, the number of days late will be calculated beginning on September 2, 1992. Thus, if a facility submits its Form R report on September 15, 1992, the number of days late should be calculated as 14.

AMENDMENT FOR REPORTS DUE JULY 1, 1996

Penalty Assessment for Failure to Report in a Timely Manner

On page 12, one element of the Per Day Penalty Formula is the number of days late a facility submits its Form R reports. For the 1995 reporting year only, the number of days late will be calculated beginning on August 2, 1996. Thus, if a facility submits its Form R report on August 15, 1996, the number of days late should be calculated as 14. The one exception to this amendment will be Aerosol Forms of Hydrochloric Acid, which should be calculated beginning on August 16, 1996.

ALTERNATE THRESHOLD EXEMPTION ERP AMENDMENT
December 6, 1996

VIOLATION
Failure to File annual certification in a timely manner - Circumstance Level 1

VIOLATION
Filing an annual certification in lieu of the Form R when facility did not qualify for the exemption - Circumstance Level 3

VIOLATION
Recordkeeping

a) Failure to maintain records as prescribed at 40 CFR §372.10(d).
Circumstance Level 2

b) Failure to maintain complete records as prescribed at 40 CFR §372.10(d)
Circumstance Level 4

Interim Data Quality Amendment to the EPCRA Section 313 Enforcement Response Policy (ERP)

Significant Data Quality Errors are errors which significantly compromise the utility of the data submitted to EPA and states on the Form R or the Form A. Significant Data Quality Errors are subject to an administrative complaint and should be assessed as a circumstance level 2 violation in the EPCRA Section 313 ERP currently in effect. Generally, errors which are not readily detected during EPA's data entry will trigger a Civil Administrative Complaint. EPA will generally assess one data quality violation per reporting form according to the following circumstances:

- Significant Release Estimation Errors–Non PBT Chemicals[1]: This circumstance includes failing to make a reasonable estimate of the quantity of each toxic chemical entering each environmental medium, including transfers off-site. A significant data quality violation may result either by miscalculation, failure to use all readily available information (such as monitoring data or emission factors), or failure to make a reasonable estimate. The magnitude of error generally sufficient to issue a Civil Administrative Complaint for chemicals with reporting thresholds of 25,000 pounds for manufacturing and processing, and 10,000 pounds for otherwise use, is expressed as follows:

  - ✓ The difference between reported releases or transfers and corrected releases and transfers is 2500 pounds or less, and the *difference between the* corrected amount *and the actual amount reported* reflects greater than a 50% increase of the reported amount.[2]

    Example: Facility X reports 2500 pounds of chemical Y releases to air in its Form R. EPA discovers that Facility X should have reported 4900 pounds of chemical Y releases to air. Facility X under reported chemical Y by 2400 pounds. This instance of under reporting, *2400 pounds, is less than 2500 pounds and* represents

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[1] If an error is made in determining a facility's toxic chemical threshold which results in the facility erroneously concluding that a Form R report for that chemical is not required, this is not a Significant Data Quality Error, but a Failure to Report in a Timely Manner. This includes facilities which erroneously file a Form A in lieu of a Form R.

[2] In order to calculate the percentage increase from the reported amount and the corrected amount, use the following equation: (*total of corrected releases less total reported releases*) ÷ reported releases *equals percentage of error.*

96% of the *actual amount reported, 2500 pounds*. Therefore, Facility X may be subject to a Civil Administrative Complaint for "Failing to Submit an Accurate and Complete Report," due to "Significant Data Quality Errors."

✓ The difference between reported releases and transfers and corrected releases and transfers is greater than 2500 pounds but less than 20,000 pounds, and the *difference between the* corrected amount *and the actual amount reported* reflects greater than a 25% increase of the reported amount.

Example: Facility X reports 12,000 pounds of chemical Y releases to air in its Form R. EPA discovers that Facility X should have reported 17,000 pounds of chemical Y releases to air. Facility X under reported chemical Y by 5,000 pounds. This instance of under reporting, *5000 pounds, is greater than 2500 pounds, but less than 20,000 pounds and* represents 42% of the *actual amount reported*. Therefore, Facility X may be subject to a Civil Administrative Complaint for "Failing to Submit an Accurate and Complete Report," due to "Significant Data Quality Errors."

✓ The difference between reported releases and transfers, and corrected releases and transfers is greater than or equal to 20,000 pounds, and the *difference between the* corrected amount *and the actual amount reported* reflects greater than or equal to *a* 15% increase of the reported amount.

Example: Facility X reports 125,000 pounds of chemical Y releases to land in its Form R. EPA discovers that Facility X should have reported 155,000 pounds of chemical Y releases to land. Facility X under reported chemical Y by 30,000 pounds. This instance of under reporting, *30,000 pounds is greater than 20,000 pounds and* represents 24% of the *actual amount reported, 125,000 pounds*. Therefore, Facility X may be subject to a Civil Administrative Complaint for "Failing to Submit an Accurate and Complete Report," due to "Significant Data Quality Errors."

- Significant Errors Identifying Chemical Use: Failure to identify all appropriate categories of chemical use, resulting in error(s) in estimates of release or off-site transfers.

- Significant Errors Reporting Treatment or Disposal Data: Failure to identify for each waste stream the waste treatment or disposal methods

employed, and an estimate of the treatment efficiency typically achieved by such methods for that waste stream.

- Pattern of Minor Errors: A facility's annual reporting consistently demonstrates a pattern of errors or omissions, and the facility has received a NON for two or more reporting years for the same or similar errors or omissions.

This Policy sets forth factors for consideration that will guide the Agency in its proposed penalty calculations for civil administrative violations. It states the Agency's views as to the proper allocation of its enforcement resources. The Policy is not final agency action and is intended as guidance. This Policy is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA may decide to follow guidance provided in this document or to act at variance with it based on its analysis of the specific facts presented. This Policy may be revised without public notice to reflect changes in EPA's approach to calculating proposed civil administrative penalties, or to clarify and update text.

for Ann Pontius, Acting Director
Toxics and Pesticides Enforcement Division

April 12, 2001
Date

conforms to the requirements of this section. Any such approval shall be after sufficient notice has been provided to the Regional Director of SBA.

(c) If the Regional Administrator disapproves the application, he shall notify the State, in writing, of any deficiency in its application. A State may resubmit an amended application at any later time.

(d) Upon approval of a State submission, EPA will suspend all review of applications and issuance of statements for small businesses in that State, pending transferral. *Provided, however,* That in the event of a State conflict of interest as identified in §21.12(a)(4) of this section, EPA shall review the application and issue the statement.

(e) Any applications shall, if received by an EPA Regional Office, be forwarded promptly to the appropriate State for action pursuant to section 7(g)(2) of the Small Business Act and these regulations.

(f)(1) EPA will generally not review or approve individual statements issued by a State. However, SBA, upon receipt and review of a State approved statement may request the Regional Administrator of EPA to review the statement. The Regional Administrator, upon such request can further approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

AUTHORITY: 7 U.S.C. 1361; 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide,

and Rodenticide Act as amended (7 U.S.C. 136*l*(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d)), and a determination of nonconforming engines, vehicles or equipment under sections 207(c) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7541(c) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g–3(g)(3)(B), 300h–2(c), and 300j–6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c);

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(11) The assessment of any administrative civil penalty under section 1908(b) of the Act To Prevent Pollution From Ships ("APPS"), as amended (33 U.S.C. 1908(b)).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000; 79 FR 65900, Nov. 6, 2014; 81 FR 73970, Oct. 25, 2016]

§ 22.2 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

§ 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

Act means the particular statute authorizing the proceeding at issue.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.201(h).

Clerk of the Board means an individual duly authorized to serve as Clerk of the Environmental Appeals Board.

Commenter means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

Complainant means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

Consolidated Rules of Practice means the regulations in this part.

Environmental Appeals Board means the Board within the Agency described in 40 CFR 1.25.

Final order means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

Hearing means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

Hearing Clerk means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Initial decision means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

Party means any person that participates in a proceeding as complainant, respondent, or intervenor.

Permit action means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Proceeding means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

Regional Administrator means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under §22.4(b).

Respondent means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000; 79 FR 65901, Nov. 6, 2014]

§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice, and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate §22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

(b) *Regional Judicial Officer.* Each Regional Administrator shall delegate to one or more Regional Judicial Officers authority to act as Presiding Officer in proceedings under subpart I of this part, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I of this part does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to §22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any case in which he serves as a Regional Judicial Officer. A Regional Judicial Officer shall not knowingly preside over a case involving any party concerning whom the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the commencement of the case. A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.5 Filing, service by the parties, and form of all filed documents; business confidentiality claims.

(a) *Filing of documents.* (1) The original and one copy of each document intended to be part of the record shall be

filed with the Headquarters or Regional Hearing Clerk, as appropriate, when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. When a document is required to be filed with the Environmental Appeals Board, the document shall be sent to the Clerk of the Board by U.S. Mail, delivered by hand or courier (including delivery by U.S. Express Mail or by a commercial delivery service), or transmitted by the Environmental Appeal Board's electronic filing system, according to the procedures specified in 40 CFR 124.19 (i)(2)(i), (ii), and (iii). The Presiding Officer or the Environmental Appeals Board may by order authorize or require filing by facsimile or an electronic filing system, subject to any appropriate conditions and limitations.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of documents.* Unless the proceeding is before the Environmental Appeals Board, a copy of each document filed in the proceeding shall be served on the Presiding Officer and on each party. In a proceeding before the Environmental Appeals Board, a copy of each document filed in the proceeding shall be served on each party.

(1) *Service of complaint.* (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(ii)(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an agency of the United States complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) *Service of filed documents other than the complaint, rulings, orders, and decisions.* All documents filed by a party other than the complaint, rulings, orders, and decisions shall be served by the filing party on all other parties. Service may be made personally, by U.S. mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), by any reliable commercial delivery service, or by facsimile or other electronic means, including but not necessarily limited to email, if service by such electronic means is consented to in writing. A party who consents to service by facsimile or email must file an acknowledgement of its consent (identifying the type of electronic means agreed to and the electronic address to be used) with the appropriate Clerk. In addition, the Presiding Officer or the Environmental Appeals Board may by order

authorize or require service by facsimile, email, or other electronic means, subject to any appropriate conditions and limitations.

(c) *Form of documents.* (1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, mailing address, telephone number, and email address of an individual authorized to receive service relating to the proceeding on behalf of the person. Parties shall promptly file any changes in this information with the Headquarters or Regional Hearing Clerk or the Clerk of the Board, as appropriate, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (b)(2) of this section and §22.6.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any document which does not comply with this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of business information.* (1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any document to be filed in a proceeding under these Consolidated Rules of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to the public for inspection and copying.

(2) Two versions of any document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Asserted". The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

[64 FR 40176, July 23, 1999, as amended at 69 FR 77639, Dec. 28, 2004; 79 FR 65901, Nov. 6, 2014; 82 FR 2234, Jan. 9, 2017]

§ 22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Headquarters or Regional Hearing Clerk, as appropriate, in any manner allowed for the service of such documents. All rulings, orders, decisions, and other documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. The Clerk of the Board, the Headquarters Hearing Clerk, or the Regional Hearing Clerk, as appropriate, must serve copies of such rulings, orders, decisions and other documents on all parties. Service may be made by U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), EPA's internal mail, any reliable commercial delivery service, or electronic means (including but not necessarily limited to facsimile and email).

[82 FR 2234, Jan. 9, 2017]

§ 22.7 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Completion of service.* Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing, when placed in the custody of a reliable commercial delivery service, or for facsimile or other electronic means, including but not necessarily limited to email, upon transmission. Where a document is served by U.S. mail, EPA internal mail, or commercial delivery service, including overnight or same-day delivery, 3 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document. The time allowed for the serving of a responsive document is not expanded by 3 days when the served document is served by personal delivery, facsimile, or other electronic means, including but not necessarily limited to email.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.8 *Ex parte* discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

§22.9 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

Subpart B—Parties and Appearances

§22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§22.11 Intervention and non-party briefs.

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to §22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) *Non-party briefs.* Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

§22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Proceedings subject to subpart I of this part may be consolidated only upon the approval of all parties. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) *Severance.* The Presiding Officer or the Environmental Appeals Board may, for good cause, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§22.13 Commencement of a proceeding.

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to §22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to §22.18(b)(2) and (3).

§ 22.14 Complaint.

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for each violation alleged;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for a Permit Action and a statement of its proposed terms and conditions; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or Permit Action;

(6) Notice if subpart I of this part applies to the proceeding;

(7) The address of the Regional Hearing Clerk; and

(8) Instructions for paying penalties, if applicable.

(b) *Rules of practice.* A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

§ 22.15 Answer to the complaint.

(a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or Permit Action, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing,

the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§22.16 Motions.

(a) *General.* Motions shall be served as provided by §22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

(1) Be in writing;

(2) State the grounds therefor, with particularity;

(3) Set forth the relief sought; and

(4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, an Administrative Law Judge) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§22.29(c) and 22.51, an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision becomes final or has been appealed. The Environmental Appeals Board shall rule as provided in §22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to §22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§22.17 Default.

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of §22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause

shown, the Presiding Officer may set aside a default order.

(d) *Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.* Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) *Quick resolution.* (1) A respondent may resolve the proceeding at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action. In a proceeding subject to the public comment provisions of § 22.45, this quick resolution is not available until 10 days after the close of the comment period.

(2) Any respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within 30 days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within 60 days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement and a proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Conclusion of proceeding.* No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement.

(c) *Scope of resolution or settlement.* Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative means of dispute resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

§ 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) *Prehearing information exchange.* (1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) Each party's prehearing information exchange shall contain:

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and (ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference to consider:

(1) Settlement of the case;

(2) Simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) The time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer shall ensure that the record of the proceeding includes any stipulations, agreements, rulings or orders made during the conference.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot reasonably be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act. The Presiding Officer may issue a subpoena for discovery purposes only in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.5(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in this paragraph (e) shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under any applicable law to conduct inspections, issue information request

letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) *Failure to exchange information.* Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under §22.17(c).

§ 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedures

§ 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) *Assignment of Presiding Officer.* When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact. The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing not later than 30 days prior to the date set for the hearing. The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under §22.19(d).

§ 22.22 Evidence.

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not

irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in paragraphs (c) and (d) of this section or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the party who has called the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the information excluded. The offer of

proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the information from evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.

§ 22.26 Proposed findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision, Motion To Reopen a Hearing, and Motion To Set Aside a Default Order

§ 22.27 Initial Decision.

(a) *Filing and contents.* After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty

criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become a final order 45 days after its service upon the parties and without further proceedings unless:

(1) A party moves to reopen the hearing;

(2) A party appeals the initial decision to the Environmental Appeals Board;

(3) A party moves to set aside a default order that constitutes an initial decision; or

(4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

(d) *Exhaustion of administrative remedies.* Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to paragraph (c) of this section, respondent waives its rights to judicial review. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

§ 22.28 Motion to reopen a hearing or to set aside a default order.

(a) *Motion to reopen a hearing*—(1) *Filing and content.* A motion to reopen a hearing to take further evidence must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: State briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Headquarters or Regional Hearing Clerk, as appropriate. A copy of the motion shall be filed with the Clerk of the Board in the manner prescribed by § 22.5(a)(1).

(2) *Disposition of motion to reopen a hearing.* Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Headquarters or Regional Hearing Clerk, as appropriate, and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The timely filing of a motion to reopen a hearing shall automatically toll the running of the time periods for an initial decision becoming final under § 22.27(c), for appeal under § 22.30, and for the Environmental Appeals Board to elect to review the initial decision on its own initiative pursuant to § 22.30(b). These time periods begin again in full when the Presiding Officer serves an order denying the motion to reopen the hearing or an amended decision. The Presiding Officer may summarily deny subsequent motions to reopen a hearing filed by the same party if the Presiding Officer determines that the motion was filed to delay the finality of the decision.

(b) *Motion to set aside default order*—(1) *Filing and content.* A motion to set aside a default order must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. The motion shall be made to the Presiding Officer and filed with the Headquarters or Regional Hearing Clerk, as appropriate. A copy of the motion shall be filed with the Clerk of the Board in the manner prescribed by § 22.5(a)(1).

(2) *Effect of motion to set aside default.* The timely filing of a motion to set aside a default order automatically tolls the running of the time periods for an initial decision becoming final under § 22.27(c), for appeal under § 22.30(a), and for the Environmental Appeals Board to elect to review the initial decision on its own initiative pursuant to § 22.30(b). These time periods begin again in full when the Presiding Officer serves an order denying

the motion to set aside or an amended decision. The Presiding Officer may summarily deny subsequent motions to set aside a default order filed by the same party if the Presiding Officer determines that the motion was filed to delay the finality of the decision.

[82 FR 2235, Jan. 9, 2017]

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:

(1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and

(2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.

(c) *Interlocutory review.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal and appeal brief—*(1) *Filing an appeal—*(i) *Filing deadline and who may appeal.* Within 30 days after the initial decision is served, any party may file an appeal from any adverse order or ruling of the Presiding Officer.

(ii) *Filing requirements.* Appellant must file a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board as set forth in § 22.5(a). One copy of any document filed with the Clerk of the Board shall also be served on the Headquarters or Regional Hearing Clerk, as appropriate. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants.

(iii) *Content.* The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with appropriate page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with specific citation or other appropriate reference to the record (*e.g.*, by including the document name and page number)), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If any appellant includes attachments to its notice of appeal or appellate brief, the notice of appeal or appellate brief shall contain a table that provides the title of each appended document and assigns a label identifying where it may be found in the record.

(iv) *Multiple appeals.* If a timely notice of appeal is filed by a party, any other party may file a notice of appeal and accompanying appellate brief on any issue within 20 days after the date on which the first notice of appeal was

served or within the time to appeal in paragraph (a)(1)(i) of this section, whichever period ends later.

(2) *Response brief.* Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or non-party participant may file with the Environmental Appeals Board an original and one copy of a response brief responding to arguments raised by the appellant, together with specific citation or other appropriate reference to the record, initial decision, and opposing brief (*e.g.*, by including the document name and page number). Appellee shall simultaneously serve one copy of the response brief upon each party, non-party participant, and the Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. If any responding party or non-party participant includes attachments to its response brief, the response brief shall contain a table that provides the title of each appended document and assigns a label identifying where it may be found in the record. Further briefs may be filed only with leave of the Environmental Appeals Board.

(3) *Length*—(i) *Briefs.* Unless otherwise ordered by the Environmental Appeals Board, appellate and response briefs may not exceed 14,000 words, and all other briefs may not exceed 7000 words. Filers may rely on the word-processing system used to determine the word count. As an alternative to this word limitation, filers may comply with a 30-page limit for appellate and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, and any attachments do not count toward the word or page-length limitation. The Environmental Appeals Board may exclude any appeal, response, or other brief that does not meet word or page-length limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board to file a longer brief. Such requests are discouraged and will be granted only in unusual circumstances.

(ii) *Motions.* Unless otherwise ordered by the Environmental Appeals Board, motions and any responses or replies may not exceed 7000 words. Filers may rely on the word-processing system used to determine the word count. As an alternative to this word limitation, filers may comply with a 15-page limit. Headings, footnotes, and quotations count toward the word or page-length limitation. The Environmental Appeals Board may exclude any motion that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board. Such requests are discouraged and will be granted only in unusual circumstances.

(b) *Review initiated by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall issue an order notifying the parties and the Presiding Officer of its intent to review that decision. The Clerk of the Board shall serve the order upon the Regional Hearing Clerk, the Presiding Officer, and the parties within 45 days after the initial decision was served upon the parties. In that order or in a later order, the Environmental Appeals Board shall identify any issues to be briefed by the parties and establish a time schedule for filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties written notice of such determination to allow preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion in response to a request or on its own initiative, order oral argument on any or

all issues in a proceeding. To request oral argument, a party must include in its substantive brief a statement explaining why oral argument is necessary. The Environmental Appeals Board may, by order, establish additional procedures governing any oral argument before the Environmental Appeals Board.

(c) *Motions on appeal*—(1) *General.* All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided. In advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.

(2) *Disposition of a motion for a procedural order.* The Environmental Appeals Board may act on a motion for a procedural order at any time without awaiting a response.

(3) *Timing on motions for extension of time.* Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Environmental Appeals Board with a reasonable opportunity to issue an order.

(f) *Decision.* The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may remand the case to the Presiding Officer for further action.

[64 FR 40176, July 23, 1999, as amended at 68 FR 2204, Jan. 16, 2003; 69 FR 77639, Dec. 28, 2004; 79 FR 65901, Nov. 6, 2014; 80 FR 13252, Mar. 13, 2015; 82 FR 2235, Jan. 9, 2017]

Subpart G—Final Order

§ 22.31 Final order.

(a) *Effect of final order.* A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date.* A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) *Other relief.* Any final order requiring compliance or corrective action, or a Permit Action, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) *Final orders to Federal agencies on appeal.* (1) A final order of the Environmental Appeals Board issued pursuant to § 22.30 to a department, agency, or instrumentality of the United States shall become effective 30 days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within 30 days of service of the final order. If a timely request is made, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the 30-day period described in paragraph (e)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order issued pursuant to § 22.30 shall be filed within 10 days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.4(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

Subpart H—Supplemental Rules

§ 22.33 [Reserved]

§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)), and a determination of nonconforming engines, vehicles or equipment under sections 207(c) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7541(c) and 7547(d)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Issuance of notice.* Prior to the issuance of a final order assessing a civil penalty or a final determination of nonconforming engines, vehicles or equipment, the person to whom the order or determination is to be issued shall be given written notice of the proposed issuance of the order or determination. Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies these notice requirements.

[81 FR 73971, Oct. 25, 2016]

§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

§ 22.36 [Reserved]

§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) ("SWDA"). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Corrective action and compliance orders.* A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15.

§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act ("CWA")(33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Consultation with States.* For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

§ 22.40 [Reserved]

§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives this right unless it requests in its answer a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the documents in the record as necessary, and notify the parties of the changes.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

(1) The docket number of the order;

(2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;

(3) The location of the facility where violations were found;

(4) A description of the violations;

(5) The penalty that was assessed; and

(6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

(a) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of

the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

[65 FR 30904, May 15, 2000]

§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice*—(1) *General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the proposed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick resolution and settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under § 22.18, or commenced under § 22.13(b), until 10 days after the close of the comment period provided in paragraph (c)(1) of this section.

(4) *Petition to set aside a consent agreement and proposed final order.* (i) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of any consent agreement between the parties and the proposed final order.

(ii) Within 30 days of receipt of the consent agreement and proposed final order a commenter may petition the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), to set aside the consent agreement and proposed final order on the basis that material evidence was not considered. Copies of the petition shall be served on the parties, but shall not be sent to the Regional Hearing Clerk or the Presiding Officer.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the consent agreement and proposed final order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or Environmental Appeals Board shall assign a Petition Officer to consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the proposed final order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the proceeding by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. The Petition Officer shall:

(A) File the order with the Regional Hearing Clerk;

(B) Serve copies of the order on the parties and the commenter; and

(C) Provide public notice of the order.

(viii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Regional Administrator may issue the proposed final order, which shall become final 30 days after both the order denying the petition and a properly signed consent agreement are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District

Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the final order is denied, the final order shall become effective 30 days after such denial has been filed with the Regional Hearing Clerk.

§§ 22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

§ 22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to all adjudicatory proceedings for:

(1) The assessment of a penalty under sections 309(g)(2)(A) and 311(b)(6)(B)(i) of the Clean Water Act (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§ 22.11, 22.16(c), 22.21(a), and 22.29. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

§ 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

§ 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to § 22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

PART 23—JUDICIAL REVIEW UNDER EPA-ADMINISTERED STATUTES

Sec.

AUTHORITY: Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j–7(a)(2), 300j–9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 28 U.S.C. 2112(a), 2343, 2344.

SOURCE: 50 FR 7270, Feb. 21, 1985, unless otherwise noted.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:	
Electronic Submission of Documents	EPA Docket No. 01-2015-0001

STANDING ORDER AUTHORIZING FILING AND SERVICE BY E-MAIL IN PROCEEDINGS BEFORE THE REGION 1 REGIONAL JUDICIAL OFFICER

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, set forth at 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), state that "[t]he Presiding Officer... may by order authorize... electronic filing, subject to any appropriate conditions and limitations." 40 C.F.R. §22.5(a)(l), (b)(2). Note, however, that rulings, orders and decisions must be filed and served in accordance with 40 C.F.R. § 22.6, and complaints must be served in accordance with 40 C.F.R. § 22.5(b)(1). Accordingly, pursuant to this authority, the filing and service of documents, ***other than the complaint***, rulings, ***orders***, and decisions, in all cases currently before or subsequently filed with the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by e-mail.[1] *See* 40 C.F.R. §§ 22.5(a), (b)(1), (b)(2) & 22.6.

Note that this Standing Order does not require the use of e-mail for filing or service in lieu of other methods for filing and/or service. Rather, it authorizes the use of e-mail *in addition to* those methods already authorized in the Consolidated Rules of Practice. 40 C.F.R. § 22.5(b)(2).

In addition, the following conditions and limitations to facilitate filing and service by email are hereby adopted.

- A document is considered filed when the Regional Hearing Clerk receives it. 40 C.F.R. § 22.5(a)(l). All filed documents must be signed, accompanied by a certificate of service, and submitted to the Regional Hearing Clerk for filing in person, or by mail, courier, commercial delivery service, or email.

- Documents filed with the Regional Hearing Clerk by email after 11:59 p.m. Eastern Time will be treated as having been filed the next business day.

- For documents filed through non-electronic means, the inked date stamp physically applied by the Regional Hearing Clerk to the paper copy of the documents will continue

[1] This Order ***shall not*** apply to proceedings under other provisions in Title 40 that do not expressly incorporate the Part 22 procedures.

to serve as the official record of the date and time of filing. The Regional Hearing Clerk is open to receive such paper filings between 8:00 a.m. and 5:00 p.m. Eastern Time, Monday through Friday.

- Any party choosing to submit a document to the Regional Hearing Clerk by e-mail for filing must address the e-mail to R1_Hearing_Clerk_Filings@epa.gov (note: there are "_" underscore characters between each word). The subject line of the electronic transmission shall include the name and docket number of the proceeding. Documents submitted electronically must be in Portable Document Format ("PDF"), and contain a contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. *All* documents submitted for filing, regardless of submission method, must be signed and accompanied by a certificate of service in accordance with 40 C.F.R. § 22.5(a)(3).

- Documents submitted by email for filing shall be deemed to constitute both the original and one copy of the document in satisfaction of the duplicate-filing requirement at 40 C.F.R. § 22.5(a)(1).

- This authorization terminates as to any particular proceeding when an answer is filed pursuant to 40 C.F.R. § 22.15. In addition, this authorization does *not* apply in proceedings under 40 C.F.R. § 22.13(b), or to consent agreements and final orders filed with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.18(b) and Memorandum from Susan L. Biro, Chief Administrative Law Judge, OALJ, Amendment of Hearing Clerk Pilot Procedures as to CAFOS (March 14, 2013) (available at http://www.epa.gov/oalj/orders/HrgClerk_PilotProject_Memo_Amendment.pdf).

- Documents filed after an answer is filed must comply with the Chief Administrative Law Judge's Standing Order Authorizing Filing and Service By E-Mail in Proceedings Before the Office of Administrative Law Judges (November 21, 2013) (available at http://www.epa.gov/oalj/orders/2013/Standing_Order_2013-11-21_E-Mail_Filing_&_Service_Signed.pdf) and the Chief Administrative Law Judge's Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges (August 11, 2014) (available at http://www.epa.gov/oalj/orders/2014/2014-08-11%20-%20E-Filing_Standing_Order_Final.pdf).

- This authorization applies only in proceedings in which the complaint clearly provides notice of the availability of electronic filing and service, and in which the complaint is accompanied by a copy of this notice and order. Prior to utilizing electronic service, the parties shall confer and reach agreement regarding acceptable electronic addresses and other logistical issues.

- The conditions and limitations set forth herein may be amended or revoked generally or in regard to a specific case or group of cases by further order of the Regional Judicial Officer in her sole discretion at any time. In addition, the Regional Judicial Officer may issue an order modifying these conditions and limitations if deemed appropriate in her discretion.

SO ORDERED.

Dated: October 9, 2014

LeAnn Jensen
Acting Regional Judicial Officer