

**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

**ORDER GOVERNING PROCEDURES FOR REGISTRATION-RELATED APPEALS  
UNDER THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT**

*Before the Environmental Appeals Board*

*Per Curiam:*

The Environmental Appeals Board (“Board”) exercises jurisdiction over appeals from decisions of Administrative Law Judges arising from refusals to register, cancellations of registration, changes of classification, or suspensions of registration of pesticides under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). 7 U.S.C. § 136d; 40 C.F.R. §§ 164.100-.111, *see also* 7 U.S.C. §§ 136a(c)(2)(B)(iv) (providing that a hearing “shall be conducted under section 136(d) of this title”), 136a-1(e)(3)(B)(iii)(III) (same).<sup>1</sup> Following an initial or accelerated decision by an Administrative Law Judge (“ALJ”) under FIFRA section 6, or certification of an interlocutory order for appeal, a party may file exceptions to the ALJ’s decision and an appeal with the Board. 40 C.F.R. §§ 164.100-.102. If, by contrast, an expedited hearing is held, the Presiding Officer must submit recommended findings and conclusions to the Board, and the parties are required to file any objections to the recommended findings and conclusions with the Board. *Id.* § 164.121(j)(3), (4). The EPA Administrator has delegated authority to the Board to issue final decisions in these cases. *Id.* §§ 164.2(g), .103, .122(a); *see id.* § 1.25(e).<sup>2</sup>

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<sup>1</sup> FIFRA civil penalty appeals are governed by 40 C.F.R. Part 22 and related standing orders. 40 C.F.R. § 22.1(a)(1).

<sup>2</sup> The Board may, in its discretion, refer an appeal under FIFRA section 6 to the Administrator. 40 C.F.R. § 164.2(g).

The regulations governing appeals under FIFRA section 6 require filing of documents with the hearing clerk and service on all other parties without specifying the manner of filing or service. *Id.* § 164.5. While the Board has authorized electronic filing in all matters before the Board and service by email in permit and enforcement appeals, the Board’s standing order regarding electronic service of documents does not address FIFRA section 6 appeals. *See* Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals (EAB Sept. 21, 2020), *available at* <http://www.epa.gov/eab>. Furthermore, the regulations governing appeals under FIFRA section 6 do not provide any limitations on the length of appeal briefs. *See* 40 C.F.R. §§ 164.101, .102. Accordingly, the Board is issuing this order clarifying the procedures for appeals under FIFRA section 6 to facilitate the expeditious resolution of appeals while simultaneously giving fair consideration to any issues raised.<sup>3</sup>

For a matter on appeal to the Board, any document required to be filed with the hearing clerk pursuant to 40 C.F.R. §§ 164.100-.111 shall be filed with the Clerk of the Board. The Board encourages use of the Board’s electronic filing system<sup>4</sup> in accordance with the procedures described in the Revised Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (EAB Aug. 13, 2013),

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<sup>3</sup> *See Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) (holding that it is “always within the discretion of \* \* \* an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it”); *see also Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 543-44 (1978) (“Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.” (internal quotation marks omitted)).

<sup>4</sup> For instructions on using the Board’s electronic filing system, visit the Board’s website at: [http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/General+Information/Electronic+Submission?OpenDocument](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/General+Information/Electronic+Submission?OpenDocument).

*available at* <http://www.epa.gov/eab>.<sup>5</sup> Parties and any amicus curiae must serve all documents filed with the Board on all other parties at the same time that the party or amicus curiae files documents with the Board. The Board authorizes parties and any amicus curiae to use email to fulfill their service obligations under 40 C.F.R. Part 164. Parties and amicus curiae must promptly file notices informing the Board and the other parties and amici curiae of any changes in their email addresses.

The exceptions and appeal brief may not exceed 14,000 words in total and may be combined into a single document. Filers may rely on the word-processing application used to determine the word count. In lieu of a word limitation, filers may comply with a thirty-page limit (using double spacing, twelve-point font, and one-inch margins). The table of contents, table of authorities, statement of compliance with the word limitation, and any exhibits do not count toward the word limitation or page limit.

Any responses to the appeal from other parties may not exceed 14,000 words. Filers may rely on the word-processing application used to determine the word count. In lieu of a word limitation, filers may comply with a thirty-page limit (using double spacing, twelve-point font, and one-inch margins). The table of contents, table of authorities, statement of compliance with the word limitation, and any exhibits do not count toward the word limitation or page limit. Any other briefs including briefs from amicus curiae shall not exceed 7,000 words or fifteen pages (using double spacing, twelve-point font, and one-inch margins).

Motions filed under 40 C.F.R. § 164.110 and responses thereto may not exceed 7,000 words or fifteen pages (using double spacing, twelve-point font, and one-inch margins). Any

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<sup>5</sup> If filing by U.S. mail, hand delivery, or courier, parties shall follow the procedures set forth in 40 C.F.R. § 124.19(i)(2)(ii), (iii).

other motions and responses may not exceed five pages (using double spacing, twelve-point font, and one-inch margins). In advance of filing a motion, the filing 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. All motions must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion.

The Board in its discretion may issue an order modifying these procedures as appropriate on a case-by-case basis, and the Board may revoke or amend this order at any time. This order creates no vested rights in any party.

So ordered.