



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

September 28, 2018.

VIA REGULAR MAIL

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

RECEIVED
SEP 28 2018
EPA ORC WS
Office of Regional Hearing Clerk

Re: In the Matter of: Bedoukian Research, Inc., Docket No. RCRA-01-2018-0063

Dear Ms. Santiago,

Please accept for filing the original and one copy of a Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) issued by the U.S. Environmental Protection Agency (“EPA”), Region 1, regarding federal and federally-authorized state hazardous waste regulatory violations allegedly committed by Bedoukian Research, Inc., at its manufacturing facility in Danbury, Connecticut.

Thank you for your attention to this matter.

Sincerely,

Steven J. Viggiani
Senior Enforcement Counsel
EPA Region 1

Attachments (original and one copy)

cc: Robert H. Bedoukian
Bedoukian Research, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

_____)	
In the Matter of:)	
)	
Bedoukian Research, Inc.)	Docket No. RCRA-01-2018-0063
21 Finance Drive)	
Danbury, Connecticut 06810)	
)	
Proceeding under Section 3008(a))	COMPLAINT, COMPLIANCE
of the Resource Conservation and)	ORDER, AND NOTICE OF
Recovery Act, 42 U.S.C. § 6928(a))	OPPORTUNITY FOR HEARING
_____)	

**COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) is filed by the United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. This Complaint alleges that Bedoukian Research, Inc. (“Bedoukian” or “Respondent”) has violated RCRA, 42 U.S.C. §§ 6921-6939e, and federal and state hazardous waste regulations promulgated or authorized pursuant to RCRA.

3. The Notice of Opportunity for Hearing section of this Complaint describes Respondent’s option to file an Answer to this Complaint and to request a formal hearing.

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4. Notice of commencement of this action has been given to the State of Connecticut pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

II. NATURE OF ACTION

5. This is a federal enforcement action pursuant to RCRA, 42 U.S.C. §§ 6901 - 6987, to obtain compliance with RCRA and the hazardous waste regulations promulgated or authorized pursuant to RCRA, and to seek civil penalties pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for violations of RCRA and of regulations promulgated or authorized pursuant to RCRA. Complainant also seeks compliance pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to ensure that Respondent complies with RCRA and its implementing regulations.

III. STATUTORY AND REGULATORY FRAMEWORK

6. In 1976, Congress enacted RCRA (which amended the Solid Waste Disposal Act) in order to regulate hazardous waste management. Since then, Congress has enacted various amendments to RCRA, including the Hazardous and Solid Waste (“HSWA”) Amendments of 1984.

7. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. *See* Sections 3001 – 3023 of RCRA, 42 U.S.C. §§ 6921 - 6939e. EPA has promulgated regulations pursuant to RCRA that set forth standards and requirements applicable to, among other entities, generators of hazardous waste and to owners and operators of facilities that treat, store or dispose of hazardous waste (“TSDFs”). These regulations are codified at 40 C.F.R. Parts 260 - 271.

8. The HSWA Amendments of 1984 enacted various new provisions in Section 3004 of RCRA, including Section 3004(n) of RCRA, 42 U.S.C. § 6921(n), that required EPA to promulgate air emission control regulations. EPA has promulgated these regulations at 40 C.F.R. Part 264, Subparts AA, BB and CC (for TSDFs) and at Part 40 C.F.R. Part 265, Subparts AA, BB and CC (for interim status sources).

9. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA deems the state program to be equivalent to the federal program.

10. In December 1990, EPA granted the State of Connecticut final authorization to administer its base hazardous waste program. *See* 55 Fed. Reg. 51707 (December 17, 1990). This authorization became effective on December 31, 1990. In September 2004, EPA granted Connecticut final authorization for additional RCRA requirements and regulations, including HSWA requirements set out in Subparts AA, BB and CC within 40 C.F.R. Parts 264 and 265, respectively. *See* 69 Fed. Reg. 57842 (September 28, 2004).

11. The Connecticut Department of Energy and Environmental Protection (“CT DEEP”), formerly the Connecticut Department of Environmental Protection, administers the Connecticut hazardous waste program through hazardous waste management regulations set out at RCSA Title 22a, §§ 22a-449(c)-1 through 22a-449(c)-119. Connecticut’s hazardous waste regulations contain EPA-authorized hazardous waste regulations, including HSWA-related regulations and hazardous waste facility permitting requirements, together with certain non-federally-authorized regulations and requirements. Many of Connecticut’s hazardous waste regulations incorporate federal hazardous waste regulations by reference,

including 40 C.F.R. Part 262 (containing regulations for hazardous waste generators) and 40 C.F.R. Part 265 (containing interim status regulations, including air emissions regulations in Subparts AA, BB and CC).

12. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that authorized state hazardous waste programs are carried out under RCRA. Thus, a violation of a requirement of an authorized state hazardous waste program is a violation of a requirement of RCRA. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce violations of any requirement of RCRA, including requirements of the federally-authorized Connecticut hazardous waste program set out in Connecticut's hazardous waste management regulations, by issuing administrative orders to assess a civil penalty and to require compliance.

13. Sections 3008(a)(1) and (a)(2) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (a)(2), authorizes EPA to commence administrative penalty and compliance actions to enforce the requirements of the federally-authorized Connecticut hazardous waste program. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Civil Penalties Inflation Adjustment Act of 1990, as amended through 2016 ("CPIAA"), and the CPIAA's implementing regulations set out at 40 C.F.R. Part 19, violations of these RCRA-related requirements that occur after November 2, 2015, are currently subject to penalties up to \$97,229. *See* 83 Fed. Reg. 1190, 1193 (Jan. 10, 2018). Violations of RCRA compliance orders issued pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), are currently subject to penalties up to \$58,562. *Id.*

IV. GENERAL ALLEGATIONS

14. Bedoukian is a Connecticut corporation doing business in Connecticut, and is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and the Regulations of Connecticut State Agencies (“RCSA”) at RCSA § 22a-449(c)-100(c)(22).

15. At all times relevant to this Complaint, Bedoukian has owned and operated a facility consisting of two buildings (known as Building Nos. 1 and 2) on contiguous property at 27 Augusta Drive and 21 Finance Drive in Danbury, Connecticut (“Danbury Facility” or “Facility”). Bedoukian is the “owner” and/or “operator” of the Facility as those terms are defined at 40 C.F.R. § 260.10 and RCSA § 22a-449(c)-100(b)(2)(B), which incorporates by reference 40 C.F.R. § 260.10.

16. At the Danbury Facility, Bedoukian manufactures flavor and aroma chemicals, insect pheromones, and custom products for the pharmaceutical, agricultural and specialty chemical industries.

17. Bedoukian’s manufacturing processes generate solid and liquid “hazardous waste” as that term is defined at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. § 261.3, and RCSA § 22a 449(c)101(a)(1), which incorporates by reference 40 C.F.R. § 261.3.

18. At the Danbury Facility, Bedoukian routinely uses solvents with organic concentrations that are greater than 10% by weight in its manufacturing processes. A typical reaction process involves solvents, raw materials and catalysts. The solvents are removed from the crude product after the reaction process and during the subsequent distillation process. The removed solvents are collected and disposed of as hazardous waste according

to various hazardous waste profiles created by Bedoukian that demonstrate that Bedoukian's solvent wastes and other liquid wastes have organic concentrations that are greater than 10% by weight. Other solid and liquid materials removed from production units, such as reactor residues, still bottoms, and cleaning solvents, are also hazardous wastes with organic concentrations that are greater than 10% by weight.

19. Accordingly, Bedoukian's reactor and distillation processes (and associated equipment), which are located in the Danbury Facility's Reactor Room and Distillation Room, respectively, generate hazardous wastes with organic concentrations of at least 10% by weight.

20. At all times relevant to this Complaint, Respondent has been a "generator" of hazardous wastes at the Danbury Facility as defined in 40 C.F.R. § 260.10 and RCSA §§ 22a-449(c)-100(b)(1) and (b)(2)(B), which incorporates by reference 40 C.F.R. § 260.10.

21. Accordingly, Respondent is subject to the federally-authorized Connecticut hazardous waste programs regulations for generators set forth in RCSA § 22a-449(c)-102, which, with certain revisions and exceptions, incorporates by reference 40 C.F.R. Part 262.

22. Further, pursuant to RCSA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a) (with certain revisions set out in RCSA §§ 22a-449(c)-102(a)(2)(D) - (G)), Respondent must comply with the air emissions regulations of Subpart BB in 40 C.F.R. Part 265 at the Danbury Facility.¹

¹ 40 C.F.R. § 262.34(a) is cited as it appeared when it was incorporated by reference by RCSA § 22a-449(c)-102(a). EPA has since moved the substantive requirements of 40 C.F.R. § 262.34(a) to 40 C.F.R. § 262.17(a). See 81 Fed. Reg. 85732, 85739 (Nov. 28, 2016).

23. On August 8-10, 2017, EPA Region 1 conducted a RCRA compliance inspection (“EPA’s RCRA Inspection”) at the Danbury Facility.

24. On November 6, 2017, EPA Region 1 issued a Notice of Potential Violation to Bedoukian regarding potential RCRA violations identified at the Danbury Facility during EPA’s RCRA Inspection.

V. RCRA VIOLATIONS

1. Failure to Label Equipment in Subpart BB Service

25. Subpart BB in 40 C.F.R. Part 265 (hereinafter, “Subpart BB”), as incorporated by reference by RCRA §§ 22a-449(c)-102(a)(1), requires at 40 C.F.R. § 265.1050(c) that each piece of equipment to which Subpart BB applies shall be marked in such a manner that it can be readily distinguished from other equipment.

26. Subpart BB applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10% by weight. *See* 40 C.F.R. § 265.1050(b).

27. Subpart BB defines “equipment” as including valves, pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and flanges or other connectors. *See* 40 C.F.R. § 265.1051 and 40 C.F.R. § 264.1031.

28. Subpart BB contains specific standards for pumps in light liquid service, compressors, pressure relief devices in gas/vapor service, sampling connection systems, open-ended valves or lines; valves in gas/vapor service or in light liquid service and pumps and valves in heavy liquid service, pressure relief devices in light or heavy liquid service, and flanges and other connectors. *See* 40 C.F.R. §§ 265.1052 - 265.1088.

29. At the time of EPA's RCRA Inspection, the Facility's Distillation Room contained numerous pieces of equipment that were associated with distillation process units, and that were subject to Subpart BB. For example, Distillation Unit Nos. 200-1, 200-2, 200-3, 200-4, 200-5, 200-6, 200-7, 200-8, 200-10, 300-1 and 300-2 had a total of approximately 35 valves, and 27 open-ended lines that were subject to Subpart BB. Also, there was a portable pump (with two open-ended lines), used to transfer hazardous waste from Distillation Room equipment into a 55-gallon hazardous waste storage drum (labeled "hazardous waste, 95% flammable organic wastes"), that was also subject to Subpart BB.

30. At the time of EPA's RCRA Inspection, the Facility's Reactor Room contained numerous pieces of equipment that were associated with Reactor RX-1002, and with the reactor's associated Wash Tank RE-500-1 and Centrifuge CE-1004, that were subject to Subpart BB. This equipment included, for example, two open-ended drain lines with valves (located downstream of a three-way valve associated with Reactor RX-1002's overhead condenser and reflux column) that were used to drain waste condensate into containers: a two-inch, open-ended service line and valve at the base of Reactor RX-1002; an open-ended drain line at the base of Centrifuge CE-1004 that was used to remove waste; and an open-ended drain line at the base of the post-condenser for Wash Tank RE-500-1.

31. At the time of EPA's RCRA inspection, the Facility's Reactor Room also contained equipment associated with other reactors that were subject to Subpart BB. For example, for Reactors RE-100-2, RE-100-3, RE-50-1 and RE-30-2, waste transfer lines (attached to drain lines and valves) were used to remove stripped-off solvents that were collected in the reactors' corresponding condensers. These waste solvents were drained into

hazardous waste storage drums, one of which was labeled “hazardous waste, waste flammable liquid, ethyl alcohol.” The above-described transfer lines, drain lines and valves were subject to Subpart BB.

32. Also, for Reactors RE-400-1, RE-300-1 and RE-300-2, waste transfer lines (attached to drain lines and valves) were used to remove reactor vessel residues directly from the reactors. These waste residues were drained from the reactors into 55-gallon hazardous waste storage drums. One such drum, associated with Reactors RE-300-2 and RE-400-1, was labeled “hazardous waste, waste flammable liquid.” The above-described transfer lines, drain lines and valves were subject to Subpart BB.

33. Also, at the time of EPA’s RCRA inspection, workers in the Facility’s Reactor Room were preparing to pump out wastes from Reactor RX-1002 and Wash Tank RE-500-1 into a 55-gallon drum using flexible hoses, portable diaphragm pumps and hand-held wands. This waste-handling equipment was also subject to Subpart BB.

34. None of the above-described equipment subject to Subpart BB in the Facility’s Distillation Room and Reactor Room was marked or labeled so that the equipment could be readily distinguished from other equipment.

35. At the time of EPA’s RCRA Inspection, Respondent failed to mark equipment that was subject to Subpart BB such that the equipment could be readily distinguished from other equipment. Accordingly, Respondent violated RCRA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which in turn requires compliance with 40 CFR Part 265, Subpart BB, including 40 C.F.R. § 265.1050(c).

2. Failure to Perform Leak Detection Monitoring on Pumps and Valves in Subpart BB Service

36. Subpart BB, as incorporated by reference by RCRA §§ 22a-449(c)-102(a)(1), requires leak detection monitoring of specific types of Subpart BB-subject equipment at specific time intervals.

37. Pursuant to Subpart BB at 40 C.F.R. § 265.1052(a)(1), each pump in light liquid service must be monitored monthly, with properly-calibrated leak detection equipment, in order to detect leaks as required by 40 C.F.R. § 265.1063(b). Further, pursuant to 40 C.F.R. § 265.1052(a)(2), each pump must also be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. Separately, pursuant to 40 C.F.R. § 265.1057(a), each valve in light liquid and gas/vapor service must be monitored monthly with properly-calibrated equipment to detect leaks as required by 40 C.F.R. § 265.1063(b).

38. At the time of EPA's RCRA Inspection, Respondent had no air emission leak detection equipment at the Danbury Facility, and was conducting no monthly leak detection inspections of pumps or valves in the Facility's Distillation Room and Reactor Room. Further, Respondent was conducting no weekly leak detection inspections of pumps in either the Distillation Room or Reactor Room.

39. At the time of EPA's RCRA Inspection, Respondent failed to conduct Subpart BB-required monthly or weekly leak detection monitoring on pumps in light liquid service, and was not conducting Subpart BB-required monthly leak detection monitoring on valves in light liquid or gas/vapor service. Accordingly, Respondent violated RCRA §

22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which in turn requires compliance with 40 CFR Part 265, Subpart BB, including 40 C.F.R. §§ 265.1052(a)(1) - (a)(2) and 40 C.F.R. § 265.1057(a).

3. Failure to Cap Open-Ended Lines in Subpart BB Service

40. Subpart BB, as incorporated by reference by RCRA § 22a-449(c)-102(a)(1), requires at 40 C.F.R. § 265.1056 (a)(1) that each open-ended valve or line subject to Subpart BB must be equipped with a cap, blind flange, plug, or a second valve. Further, 40 C.F.R. § 265.1056(a)(2) requires that the cap, blind flange, plug, or second valve must seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

41. At the time of EPA's RCRA inspection, there were approximately 29 open-ended lines, without caps or other closures devices sealing the open end, in the Danbury Facility's Distillation Room. There were also numerous uncapped open-ended lines associated with reactors and related systems in the Facility's Reactor Room.

42. At the time of EPA's RCRA Inspection, Respondent failed to cap open-ended lines subject to Subpart BB in the Facility's Distillation Room and Reactor Room. Accordingly, Respondent violated RCRA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which in turn requires compliance with 40 CFR Part 265, Subpart BB, including 40 C.F.R. § 265.1056(a)(2).

4. Failure to Keep Subpart BB Records

43. Subpart BB, as incorporated by reference by RCRA § 22a-449(c)-102(a)(1), requires at 40 C.F.R. §§ 265.1064(a)(1) and 265.1064(b)(1) that facilities subject to Subpart

BB must record certain Subpart BB-related information. Specifically, for each piece of Subpart BB-subject equipment, the following information must be recorded: (i) an equipment identification number and hazardous waste management unit identification; (ii) the approximate location of the equipment within the facility; (iii) the type of equipment (e.g., pump or valve); (iv) the percent-by-weight total organics in the hazardous waste stream at the equipment; (v) the hazardous waste state at the equipment (e.g., gas/vapor or liquid); and (vi) the method of compliance with Subpart BB (e.g., monthly leak detection and repair). See 40 C.F.R. § 265.1064(b)(1).

44. At the time of EPA's RCRA Inspection, Respondent was keeping no Subpart BB-required records, including the above-listed information required by 40 C.F.R. § 265.1064(b)(1), for Subpart BB-subject equipment.

45. At the time of EPA's RCRA Inspection, Respondent had failed to record any required information for Subpart BB-subject equipment at the Danbury Facility. Accordingly, Respondent violated RCRA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which in turn requires compliance with 40 CFR Part 265, Subpart BB, including 40 C.F.R. §§ 265.1064(a)(1) and 265.1064(b)(1).

5. Failure to Keep Hazardous Waste Containers Closed

46. RCRA § 22a-449(c)-102(a)(1) incorporates by reference 40 C.F.R. § 262.34(a)(1), which requires, *inter alia*, that hazardous waste be placed in containers, and that generators comply with the applicable requirements of Subpart I in 40 C.F.R. Part 265. Subpart I at 40 C.F.R. § 265.173(a) requires that containers holding hazardous waste must always be closed during storage, except when necessary to add or remove waste.

47. At the time of EPA's RCRA Inspection, there was a 55-gallon drum with a large, hinged red lid located in a hazardous waste storage area in the Danbury Facility's Building No. 1. This drum was labeled as "hazardous waste, spent rags, debris." According to the Facility's uniform hazardous waste manifests, such wastes were shipped under Waste Profile No. 014581, which described these wastes as "spent rags and debris, solids containing flammable liquids, ethanol, D001," consisting of one-quarter solvents.

48. At the time of EPA's RCRA Inspection, the above-described 55-gallon drum was open when no waste was being added or removed from it. In addition, the drum's hinged lid did not have a gasket around the rim to provide a vapor seal. Accordingly, Respondent failed to keep the lid of this drum closed except when necessary to add or remove waste, and thus violated RCRA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which in turn requires compliance with 40 C.F.R. § 265.173(a).

49. In addition, RCRA §§ 22a-449(c)-102(a)(1) and (a)(2)(M) incorporate by reference, with certain revisions, 40 C.F.R. § 262.34(c)(1), which allows generators to accumulate specified quantities of hazardous waste at or near the wastes' point of generation. Such storage areas are referred to as "satellite accumulation areas." Pursuant to 40 C.F.R. §§ 262.34(c)(1) and (c)(1)(i), generators accumulating waste in satellite accumulation areas must comply with 40 C.F.R. § 265.173, including the above-cited requirement in 40 C.F.R. § 265.173(a) that containers holding hazardous waste must be closed during storage except when adding or removing waste.

50. At the time of EPA's RCRA Inspection, there was a black metal 55-gallon drum and a white plastic 55-gallon drum located in a satellite accumulation area in the Danbury Facility's Distillation Room. The black drum was labeled "hazardous waste, 95% flammable organic wastes," and the white drum was labeled "hazardous waste, aqueous organic wastes (5% organics)."

51. Both of these drums had steel funnels screwed into their bungs used to accept wastes from 5-gallon transfer pails. The lids of the steel funnels were not clamped down, and no wastes were being added to or removed from the drums. In addition, the funnels were not equipped with rim gaskets. Accordingly, Respondent failed to keep the lids of these drums closed except when necessary to add or remove waste, and thus violated RCRA §§ 22a-449(c)-102(a)(1) and (a)(2)(M), which incorporate by reference 40 C.F.R. §§ 262.34(c)(1) and (c)(1)(i), which in turn require compliance with 40 C.F.R. § 265.173(a).

52. In addition, at the time of EPA's RCRA Inspection, there was a white plastic 15-gallon container located in the Danbury Facility's Research and Development Laboratory. This container was labeled "hazardous waste, 8/8/17, UN 1993, waste flammable liquid, ethanol, tetrahydrofuran." A yellow funnel was screwed into the lid of the container. The lid of the funnel was not clamped down, and the funnel was not equipped with a rim gasket. Accordingly, Respondent failed to keep the lid of this container closed except when necessary to add or remove waste, and thus violated RCRA §§ 22a-449(c)-102(a)(1) and (a)(2)(M), which incorporate by reference 40 C.F.R. §§ 262.34(c)(1) and (c)(1)(i), which in turn require compliance with 40 C.F.R. § 265.173(a).

VI. PROPOSED PENALTIES

53. Through this Complaint, EPA Region 1 seeks to assess Respondent a civil administrative penalty of up to \$97,229 for each day for each violation alleged in Section V above. As described therein, Respondent has violated numerous requirements of RCRA and regulations promulgated or authorized pursuant to RCRA. The seriousness of these violations is briefly described as follows:

a. One violation for failing to label equipment in Subpart BB service.

Respondent's failure to label Subpart BB-subject equipment was a serious violation because it made it difficult or impossible for Respondent to ensure that this equipment was complying with applicable Subpart BB requirements, and for regulatory authorities to know what equipment was subject to Subpart BB.

b. One violation for failing to conduct leak detection monitoring on pumps and valves in Subpart BB service.

Respondent's failure to conduct leak detection monitoring was a serious violation because leaks from Subpart BB-subject equipment could go undetected and unrepaired, which would result in hazardous wastes or air emissions being released in the environment and adversely affecting human health and the environment.

c. One violation for failing to cap open-ended lines in Subpart BB service.

Respondent's failure to cap open-ended equipment in Subpart BB was a serious violation because hazardous air emissions or wastes could be

released from the uncapped equipment and adversely affect human health and the environment.

- d. One violation for failing to keep Subpart BB records. Respondent's failure to keep Subpart BB records was a serious violation because Respondent could not demonstrate that it was complying with Subpart BB. This lack of knowledge increased the risks of Subpart BB noncompliance and excess hazardous air emissions.
- e. One violation for failing to keep hazardous waste containers closed. Respondent's failure to keep hazardous waste containers closed was a serious violation because it increased the likelihood that hazardous waste would be spilled (or hazardous air emission would be released) from the open tanks and containers, which could pose risks to human health and the environment.

54. Prior to any hearing on this case, and as required by the Consolidated Rules, EPA will file a document specifying a proposed penalty for the violations and explaining how the proposed penalty was calculated.

55. In determining the amount of any RCRA penalty to be assessed pursuant to Section 3008(a) of RCRA, EPA must take into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. *See* Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3).

VII. COMPLIANCE ORDER

56. Based on the foregoing violations, Respondent is hereby ORDERED to achieve and maintain compliance with all applicable requirements of RCRA and the federally-authorized Connecticut hazardous waste regulations, including the regulations for generators set forth in RCSA § 22a-449(c)-102, which, with certain revisions and exceptions, incorporates by reference 40 C.F.R. Part 262.

57. Further, pursuant to RCSA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), and RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(M), which incorporate by reference 40 C.F.R. §§ 262.34(c)(1) and (c)(1)(i), Respondent shall comply with the air emissions regulations of Subpart BB and Subpart I in 40 C.F.R. Part 265 at the Danbury Facility.

58. By no later than 90 days after the filing of this Complaint, Respondent shall comply with the following specific regulatory requirements of Subpart BB and Subpart I:

- a. Respondent shall identify all equipment to which Subpart BB applies at the Danbury Facility, including but not limited to such equipment in the Facility's Distillation Room and Reactor Room, and shall label each such piece of equipment so that it can be readily distinguished from other equipment, as required by RCSA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which requires compliance with 40 C.F.R. § 265.1050(c);

- b. Respondent shall commence leak detection monitoring of specific types of Subpart BB-subject equipment at specific time intervals as specified in Subpart BB, including but not limited to weekly visual inspections of pumps in light liquid service, and monthly monitoring using properly-calibrated leak detection equipment of pumps in light liquid service and valves in light liquid and gas/vapor service, as required by RCRA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which requires compliance with 40 C.F.R. §§ 265.1052(a)(2), 265.1052(a)(1), 265.1057(a), and 265.1063(b). Respondent shall purchase or otherwise obtain all leak detection equipment necessary to perform the leak detection monitoring required by Subpart BB, and shall calibrate, operate and maintain such equipment in accordance with all applicable Subpart BB requirements;
- c. Respondent shall equip each open-ended valve and line subject to Subpart BB at the Danbury Facility with a cap, blind flange, plug or second valve, and shall ensure that this cap, flange, plug or valve seal the open end at all times, except during operations requiring hazardous waste stream flow through the open-ended valve and line, as required by RCRA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. §

262.34(a), which requires compliance with 40 C.F.R. §§ 265.1056(a)(1) and (a)(2);

- d. Respondent shall generate and keep records of Subpart BB-related information at the Facility, as required by 40 C.F.R. § 265.1064, including but not limited to the specific information for each piece of Subpart-BB subject equipment, as required by RCSA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), which requires compliance with 40 C.F.R. §§ 265.1064(a)(1) and 265.1064(b)(1).
- e. Respondent shall keep all hazardous waste containers at the Danbury Facility closed at all times except when necessary to add or remove waste, as required by RCSA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. § 262.34(a), and by RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(M), which incorporate by reference 40 C.F.R. §§ 262.34(c)(1) and (c)(1)(i), which both require compliance with 40 C.F.R. § 265.173(a).

59. By no later than 120 days after the filing of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in Paragraphs 57 and 58 above. Any notice of noncompliance required under this Paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance shall in no way excuse the noncompliance.

60. Respondent shall submit the above-required documentation and notices to:

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

61. If Respondent fails to comply with the requirements of this Compliance Order, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek civil penalties of up to \$58,562 for each day of continued noncompliance with the Order.

62. Upon receipt of a compliance order issued under RCRA Section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

63. As provided by Section 3008(b) of RCRA, Respondent has the right to request a hearing on the issues raised in this Complaint. To request a hearing, Respondent must file a Written Answer 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. Any such

hearing will be conducted in accordance with the Consolidated Rules set out at 40 C.F.R. Part 22 (copy attached).

64. 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 ORA18-1
Boston, MA 02109-3912

Respondent shall serve copies of 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

IX. OPPORTUNITY FOR ELECTRONIC FILING AND SERVICE

65. 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

Consolidated Rules. See Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer, 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.

X. DEFAULT ORDER

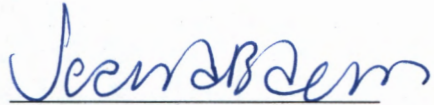
66. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing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

XI. SETTLEMENT CONFERENCE

67. Respondent may confer informally with EPA Region 1 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.

68. 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

September 28, 2018
Date

In the Matter of Bedoukian Research, Inc., Docket No. RCRA-01-2018-0063
Certificate of Service

CERTIFICATE OF SERVICE

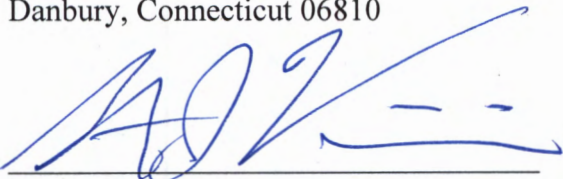
I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and one copy of the Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") in the above-captioned case, together with a cover letter, and arranged to send a copy of the Complaint and 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 RECEIPT REQUESTED:

Robert H. Bedoukian
President
Bedoukian Research, Inc.
21 Finance Drive
Danbury, Connecticut 06810



Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

9/28/18
Date

§21.13

40 CFR Ch. I (7-1-17 Edition)

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 pro-

vided 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.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service by the parties, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

Environmental Protection Agency

§ 22.1

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

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

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing or to set aside a default order.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

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

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.

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).

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.

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

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.

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.

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.
- 22.51 Presiding Officer.
- 22.52 Information exchange and discovery.

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. 1367(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).

Environmental Protection Agency

§ 22.3

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 pursu-

ant 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.

§ 22.4

40 CFR Ch. I (7-1-17 Edition)

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 adjudica-

tion 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:

Environmental Protection Agency

§ 22.5

(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 re-assignment.* (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 re-

turn 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.

§22.14

40 CFR Ch. I (7-1-17 Edition)

(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 testi-

mony, 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 re-

quests 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.

(e) *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.

§ 22.32

40 CFR Ch. I (7-1-17 Edition)

(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 sec-

tions 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

40 CFR Ch. I (7-1-17 Edition)

§ 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 pro-

posed 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.

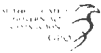
PART 23—JUDICIAL REVIEW UNDER EPA-ADMINISTERED STATUTES

Sec.

- 23.1 Definitions.
- 23.2 Timing of Administrator's action under Clean Water Act.
- 23.3 Timing of Administrator's action under Clean Air Act.
- 23.4 Timing of Administrator's action under Resource Conservation and Recovery Act.
- 23.5 Timing of Administrator's action under Toxic Substances Control Act.
- 23.6 Timing of Administrator's action under Federal Insecticide, Fungicide and Rodenticide Act.
- 23.7 Timing of Administrator's action under Safe Drinking Water Act.
- 23.8 Timing of Administrator's action under Uranium Mill Tailings Radiation Control Act of 1978.
- 23.9 Timing of Administrator's action under the Atomic Energy Act.
- 23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.
- 23.11 Holidays.
- 23.12 Filing notice of judicial review.

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.



Division, U.S. Department of Labor, and includes any official of the Wage and Hour Division who is authorized by the Administrator to perform any of the functions of the Administrator under this part.

* * * * *

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 74. The authority citation for part 580 is revised to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 75. In § 580.1, revise the definition of "Administrator" to read as follows:

§ 580.1 Definitions.

* * * * *

Administrator means the Administrator of the Wage and Hour Division, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized by the Administrator to perform any of the functions of the Administrator under this part and parts 578 and 579 of this chapter.

* * * * *

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

■ 76. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat. 584.

■ 77. In § 801.2:

- a. Remove paragraph (h);
- b. Redesignate paragraphs (i) and (j) as paragraphs (h) and (i), respectively; and
- c. Revise newly redesignated paragraph (h).

The revision reads as follows:

§ 801.2 Definitions.

* * * * *

(h) *Wage and Hour Division* means the organizational unit of the Department of Labor to which is assigned primary responsibility for enforcement and administration of the Act.

* * * * *

■ 78. In § 801.7, revise paragraph (d) to read as follows:

§ 801.7 Authority of the Secretary.

* * * * *

(d) Any person may report a violation of the Act or these regulations to the Secretary by advising any local office of the Wage and Hour Division, U.S. Department of Labor, or any authorized representative of the Administrator. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division for the region or area in which the reported violation is alleged to have occurred.

* * * * *

■ 79. In § 801.30, revise the parenthetical at the end of section to read as follows:

§ 801.30 Records to be preserved for 3 years.

* * * * *

(Approved by the Office of Management and Budget under control number 1235–0005.)

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 80. The authority citation for part 525 continues to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 81. In § 825.104, revise paragraph (b) to read as follows:

§ 825.104 Covered employer.

* * * * *

(b) The terms commerce and industry affecting commerce are defined in accordance with section 501(1) and (3) of the Labor Management Relations Act of 1947 (LMRA) (29 U.S.C. 142(1) and (3)), as set forth in the definitions at § 825.102 of this part. For purposes of the FMLA, employers who meet the 50-employee coverage test are deemed to be engaged in commerce or in an industry or activity affecting commerce.

* * * * *

■ 82. In § 825.209, revise paragraph (a) to read as follows:

§ 825.209 Maintenance of employee benefits.

(a) During any FMLA leave, an employer must maintain the employee's coverage under any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employers covered by FMLA, including public agencies, are subject to the Act's requirements to maintain health coverage. The definition of group health plan is set forth in § 825.102. For purposes of FMLA, the term group health plan shall not include an

insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employer;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

* * * * *

■ 83. In § 825.401, revise paragraph (a) to read as follows:

§ 825.401 Filing a complaint with the Federal Government.

(a) A complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, U.S. Department of Labor. A complaint may be filed at any local office of the Wage and Hour Division; the address and telephone number of local offices may be found in telephone directories or on the Department's Web site.

* * * * *

[FR Doc. 2016–31293 Filed 1–6–17; 8:45 am]
BILLING CODE 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 124

[FRL–9956–53–OARM]

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits; Procedures for Decisionmaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the Environmental Protection Agency's ("EPA") Consolidated Rules of Practice governing the administrative assessment

of civil penalties and various other administrative adjudicatory hearings. These revisions simplify the administrative processing of cases by removing inconsistencies, codifying electronic filing and service procedures, and streamlining the procedures in cases initiated at EPA Headquarters. This rule also corrects some punctuation typographical errors found in the Consolidated Rules of Practice. This rule similarly revises EPA's procedures governing decisionmaking in permit appeals. These amendments are procedural in nature and none of these changes are intended to substantively alter the Agency's administrative enforcement actions or review of permit appeals.

DATES: This rule is effective on March 10, 2017.

FOR FURTHER INFORMATION CONTACT:

Michael B. Wright, Office of Administrative Law Judges, U.S. Environmental Protection Agency, Ronald Reagan Building, Room M1200, 1300 Pennsylvania Ave. NW., Washington, DC 20004, phone number (202) 564-3247 or by email at wright.michaelb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this rule in final form without first issuing a proposal?

Today's final rule is limited to procedural requirements for administrative adjudicatory hearings and appeals from such hearings and from permit decisions. Under the Administrative Procedure Act, an agency may issue "rules of agency organization, procedure, or practice" without first proposing such rules for public comment. 5 U.S.C. 553(b). Accordingly, public comment is not required.

II. Does this action apply to me?

This action affects parties involved in EPA administrative adjudicatory proceedings for the assessment of civil penalties, issuance of various compliance orders, and termination or suspension of certain permits, under part 22 of title 40 of the CFR. *See* 40 CFR 22.1. This action also affects parties involved in appeal of EPA permits under part 124 of title 40 of the CFR.

III. Summary of Rule

A. Background: The EPA's Consolidated Rules of Practice in Part 22 and the EPA's Rules for Procedures for Decisionmaking on Permits in Part 124

Part 22 of Title 40 of the CFR establishes procedures governing administrative adjudicatory proceedings

to assess administrative civil penalties, to issue various compliance orders, and to terminate or suspend certain permits. 40 CFR 22.1. These proceedings are conducted under a variety of environmental statutes, including the Clean Air Act, the Clean Water Act, the Solid Waste Disposal Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, among others. Such cases are generally heard by the Administrative Law Judges (ALJs) within the EPA's Office of Administrative Law Judges or Regional Judicial Officers. The part 22 regulations are titled the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits" ("Rules of Practice").

The EPA promulgated the Rules of Practice to establish uniform procedural rules for administrative proceedings required to be held on the record after opportunity for a hearing in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, *see* 40 CFR part 22, subparts A-G, and administrative enforcement proceedings not governed by section 554, *id.* part 22, subpart I. Consolidated Rules of Practice, 45 FR 24360 (Apr. 9, 1980). The Rules of Practice also establish supplementary rules that recognize the unique procedural requirements of certain environmental statutes within the EPA's jurisdiction. *See* 40 CFR part 22, subpart H. Finally, the Rules of Practice establish procedures for appeals from decisions of the ALJs and Regional Judicial Officers to the Environmental Appeals Board. *See id.* part 22, subpart F.

Part 124 of Title 40 of the CFR establishes rules governing the EPA's issuance, modification, and revocation of permits under the Resource Conservation and Recovery Act, the Underground Injection Control program of the Safe Drinking Water Act, the Prevention of Significant Deterioration program of the Clean Air Act, and the National Pollutant Discharge Elimination System program of the Clean Water Act. These permit rules include procedures for appealing permit decisions by the EPA's regional offices to the Environmental Appeals Board. *See* 40 CFR 124.19.

B. Amendments to Part 22 Procedures

This action makes several minor changes to part 22 procedures. Many of these changes pertain to the electronic filing and service of documents.

Filing and service. The EPA has amended the filing and service

requirements to clarify how these requirements apply to electronic transmission of documents and to otherwise clarify filing and service requirements and make them more consistent with similar requirements in part 124.

Section 22.5(a) currently allows a Presiding Officer or the Environmental Appeals Board to "authorize" filing of documents by "facsimile or electronic filing." 40 CFR 22.5(a). The EPA is amending this section to also allow a Presiding Officer or the Environmental Appeals Board to "require" filing by "facsimile or an electronic filing system." Both the Office of the Administrative Law Judges and the Environmental Appeals Board have an operational electronic filing system. This section is also being amended to standardize the Environmental Appeals Board filing methods under part 22 with those currently in the EPA's permit regulations in part 124.

Section 22.5(b)(2) is modified to allow parties to agree with other parties to service by facsimile or other electronic means, including but not necessarily limited to email. A party's consent to such methods of service must be in writing and the party must file acknowledgement of such consent with the Clerk for the Presiding Officer or the Environmental Appeals Board, whichever is appropriate. This section is also modified to allow the Presiding Officer or the Environmental Appeals Board to authorize or require that the parties serve each other by facsimile or other electronic means, including but not necessarily limited to email. To facilitate electronic service, § 22.5(b)(4) is modified to require that a party include an email address in the first document it files in a proceeding.

The EPA emphasizes that the rules on electronic delivery of documents differ depending on whether the document is being *filed* with an EPA adjudicatory tribunal or *served* on a party to the proceeding. In the case of filing a document in an EPA administrative proceeding, the Presiding Officer or the Environmental Appeals Board has the sole authority to authorize or require electronic filing, and only these entities may authorize or require electronic filing by facsimile or an electronic filing system. As to service of documents between parties, not only may the Presiding Officer or the Environmental Appeals Board authorize or require service by either facsimile or other electronic means, including but not necessarily limited to email, but the parties may agree to such forms of electronic service.

Additionally, the EPA is revising § 22.5(b) to clarify that in cases before the Environmental Appeals Board, documents a party files with the Board need not also be served on the Board.

Section 22.6 is amended to allow the Regional Hearing Clerk, the Headquarters Hearing Clerk, or the Clerk of the Environmental Appeals Board to serve rulings, orders, decisions, or other documents by electronic means (including but not necessarily limited to facsimile and email).

Section 22.7(c) addresses when service is considered complete and includes a provision allowing an additional period of time for response to documents served using certain procedures. *Id.* § 22.7(c). The EPA has amended this section to specify that when documents are served by facsimile or other electronic means, the service will be complete upon transmission. This approach is similar to that in Rule 5(b) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 5(b).

The EPA has also modified the so-called "mailbox rule" in § 22.7(c) providing for additional days to respond to documents served using certain procedures. As modified, the revised mailbox rule in § 22.7(c) allows an additional three days to the time allowed for response to documents served by U.S. mail, the EPA's internal mail,¹ or commercial delivery service. Three additional days are not allowed for a response when a document to be responded to is served by personal delivery or electronic means (e.g., facsimile or email). This change allows additional days where needed, but recognizes that extra days for delivery are not needed where same-day delivery is utilized. Further, this change makes part 22 consistent with the Federal Rules of Civil Procedure, including changes made to the Rules effective December 1, 2016. Rule 6(d) of the Federal Rules of Civil Procedure currently grants an additional three days when service is effectuated by U.S. mail, an agreed-to delivery service, or an electronic means. However, an amendment to Rule 6(d) that was effective December 1, 2016, removes electronic service from the types of service to which the additional three-day rule applies. Order (S. Ct. Apr. 28, 2016). This change was based on the conclusion that electronic service has become sufficiently reliable method of

providing instantaneous delivery. Fed. R. Civ. P. 6(d) advisory committee's note to 2016 amendment.

Presiding officer prior to respondent filing answer. Generally, the Presiding Officer in part 22 proceedings is an Administrative Law Judge except for proceedings under subpart I, which are not governed by section 554 of the Administrative Procedure Act. *See* 40 CFR 22.3 (definition of "Presiding Officer") & subpart I. Regional Judicial Officers are the Presiding Officer under subpart I proceedings. *Id.* § 22.51. The Environmental Appeals Board hears appeals from interlocutory orders and initial decisions of a Presiding Officer. *Id.* § 22.29–22.30.

However, sections 22.4(a) and 22.16(c) currently specify, among other things, that the Environmental Appeals Board will act as Presiding Officer in proceedings under part 22 commenced at EPA Headquarters until the respondent files an answer. *Id.* §§ 22.4(a), 22.16(c). In such proceedings, an Administrative Law Judge replaces the Environmental Appeals Board as the Presiding Officer once an answer is filed. *Id.* § 22.16(c).

This rule amendment modifies § 22.4(a) and § 22.16(c) to authorize an Administrative Law Judge to serve as the Presiding Officer in part 22 proceedings commenced at EPA Headquarters from the time a complaint is filed. The Environmental Appeals Board will no longer be assigned as a Presiding Officer for the period between the filing of a complaint and the filing of an answer. Rather, an Administrative Law Judge will serve as the Presiding Officer both prior to and after the filing of the answer. Removing the Environmental Appeals Board from the initial stage of enforcement proceedings will enhance the efficiency of proceedings commenced at EPA Headquarters because a single entity will exercise the role of Presiding Officer. This also eliminates the possibility that the Environmental Appeals Board could be asked to review on appeal its own decision on a preliminary motion (filed before an answer is filed).

Other changes. Section 22.28 addresses motions to reopen a hearing. This rule modifies § 22.28 to clarify the effect of filing such a motion and to expand the section to apply to motions to set aside a default order. The revised language clarifies that the filing of a motion to reopen a hearing tolls not only the time by when an initial decision becomes final or by when an appeal of an initial decision to the Environmental Appeals Board must be filed but also the time by which the

Board must decide whether it is going to exercise its authority to hear the case on its own initiative. The revised language also applies similar requirements to a motion to set aside a default order.

Additionally, the EPA is making a series of changes to § 22.30 to clarify various issues relating to appeals to the Environmental Appeals Board. *See id.* § 22.30. Section 22.30 is modified to (1) explain how attachments to a notice of appeal, appellate brief, or response brief should be identified (§ 22.30(a)(1)(iii) and (2)); (2) impose word/page limitations for briefs and motions (§ 22.30(a)(3)); (3) provide more consistency between § 22.30(a)(1)(iii) and § 124.19(a)(4)(ii) pertaining to the need for parties' briefs to contain specific citations or other appropriate references (e.g., by including the document name and page number) (§ 22.30(a)(1)(iii) and (2)); (4) clarify that when the Board initiates review of an initial decision, it will identify any issues to be briefed and a schedule for briefing in its initial order of its intent to review or in a subsequent order (§ 22.30(b)); (5) clarify that the Board may request oral argument on its own initiative, how a party must request oral argument, and that the Board may establish additional oral argument procedures by order (§ 22.30(d)); (6) make explicit that the Board may act on a motion without awaiting a response (§ 22.30(e)(2)); and (7) explain the procedure for parties to request an extension of time (§ 22.30(e)(3)).

C. Amendments to Part 124 Procedures

Most of the revisions to part 124 also concern filing and service issues. Section 124.19(i) addresses filing and service requirements in permit appeal proceedings before the Environmental Appeals Board. This section has been modified to add language clarifying when service is complete. Specifically, service is complete upon mailing for U.S. mail and EPA internal mail, when placed in the custody of a reliable commercial deliver service, or upon transmission for facsimile or email. This new language is similar to that in Rule 5(b)(2) of the Federal Rules of Civil Procedure and Environmental Appeals Board decisions. Fed. R. Civ. P. 5(b)(2); *see In re Beckman Prod. Servs.*, 5 E.A.D. 10, 15 (EAB 1994) ("When the Region serves a final permit decision by mail, service occurs upon mailing."). The EPA has revised the language in § 124.19(i)(3) to clarify that parties may agree to electronic service by facsimile, email, or other electronic means. The EPA has also revised § 124.19(i)(3) to require that parties that consent to

¹ EPA has specifically included "EPA internal mail" in this revision to the mailbox rule because the Environmental Appeals Board previously ruled that a prior version of this provision referencing "certified mail" did not cover a document served by EPA internal mail. *In re Outboard Marine Corp.*, 6 E.A.D. 194, 197 (EAB 1995).

service by electronic means file acknowledgement of that consent with the Environmental Appeals Board.

The EPA has also made several changes to part 124 on service and filing that duplicate the changes made to part 22: (1) Requiring that a party's first filing contain an email address (§ 124.19(i)(3)(i)); (2) authorizing the Environmental Appeals Board to require that parties file documents by facsimile or through use of the Board's electronic filing system (§ 124.19(i)(2)); (3) allowing the Environmental Appeals Board to authorize or require that the parties serve each other by facsimile or other electronic means, including email (§ 124.19(i)(3)(ii)); and (4) authorizing the Board to serve rulings, orders, and decisions on the parties by electronic means (including but not necessarily limited to facsimile and email). (§ 124.19(i)(3)(iii)).

Section 124.19(b)(1) and (2) are modified so that the deadlines for filing a response to a petition for review are based on the date the petition is served, rather than filed. This provides for appropriate notice of the petition for review in advance of the deadline for a response.

Similar to the changes made in the mailbox rule in § 22.7(c), discussed above, the EPA has modified § 124.20(d) to specify that three days are added to a prescribed period of time to act when service is made by U.S. mail, the EPA's internal mail, or a reliable, commercial delivery service. Three days are not added to the prescribed time to act when service is made by personal delivery or electronic transmission (e.g., facsimile or email).

The EPA has also added word/page limitations to § 124.19(f) for motions mirroring the word/page limitations added to § 22.30. Finally, the EPA has amended § 124.19(a)(4)(ii) and (b) to further clarify that parties are to provide in their briefs appropriate reference to the administrative record (e.g., by including the document name and page number) as to each issue raised.

IV. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review and 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it is limited to agency organization, management, or personnel matters.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the

PRA. This action will modify the EPA's procedural regulations governing administrative adjudicatory proceedings and appeals of adjudicatory proceedings and permit decisions to allow flexibility in the methods of serving and issuing documents and to promote efficiency in allocation of judicial resources. Specifically, the modifications to the Rules of Practice will codify the electronic service of documents between parties and by EPA adjudicative bodies. In addition, the modifications will facilitate the efficient issuance of rulings on motions by substituting an Administrative Law Judge for the Environmental Appeals Board to serve as the presiding officer in civil penalty cases initiated at EPA Headquarters before an answer is filed.

C. Regulatory Flexibility Act

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule pertains to agency management or personnel, which the APA expressly exempts from notice and comment rulemaking requirements under 5 U.S.C. 553(a)(2).

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action will modify the EPA's procedural regulations governing administrative adjudicatory proceedings and appeals of adjudicatory proceedings and permit decisions to allow flexibility in the methods of serving and issuing documents and to promote efficiency in allocation of judicial resources. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action will modify the EPA's procedural regulations governing administrative adjudicatory proceedings and appeals of adjudicatory proceedings and permit decisions to allow flexibility in the methods of serving and issuing documents and to promote efficiency in allocation of judicial resources.

K. Congressional Review Act

This rule is exempt from the CRA because it is a rule relating to agency management or personnel.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedures.

Dated: December 20, 2016.

Gina McCarthy,
Administrator.

For the reasons set out in the preamble, 40 CFR parts 22 and 124 are amended as follows:

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

■ 1. The authority citation for part 22 is revised to read as follows:

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.

Subpart A—General

■ 2. In § 22.4, revise the first sentence of paragraph (a)(1) to read as follows:

§ 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. * * *

■ 3. In § 22.5, revise the section heading and paragraphs (a)(1), (b) introductory text, (b)(2), and (c)(4) to read as follows:

§ 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.

* * * * *
(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.

* * * * *
(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) * * *
(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.

* * * * *
■ 4. Revise § 22.6 to read as follows:

§ 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).

■ 5. In § 22.7, revise paragraph (c) to read as follows:

§ 22.7 Computation and extension of time.

* * * * *
(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.

Subpart C—Prehearing Procedures

■ 6. In § 22.16, revise paragraph (c) to read as follows:

§ 22.16 Motions.

* * * * *
(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.

■ 7. Revise the subpart E heading to read as follows:

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

■ 8. Revise § 22.28 to read as follows:

§ 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.

Subpart F—Appeals and Administrative Review

■ 9. In § 22.30, revise paragraphs (a), (b), (c), (d), and (e) to read as follows:

§ 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.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

■ 10. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

Subpart A—General Program Requirements

- 11. In § 124.19:
 - a. Revise the first sentence of paragraph (a)(4)(ii), and paragraph (b).
 - b. Redesignate paragraph (f)(5) as paragraph (f)(6).
 - c. Add a new paragraph (f)(5).
 - d. Revise paragraphs (i) introductory text, (i)(2) introductory text, and (3).

The addition and revisions read as follows:

§ 124.19 Appeal of RCRA, UIC, NPDES and PSD Permits.

- (a) * * *
- (4) * * *
- (ii) Petitioners must demonstrate, by providing specific citation or other appropriate reference to the administrative record (*e.g.*, by including the document name and page number), that each issue being raised in the petition was raised during the public

comment period (including any public hearing) to the extent required by § 124.13. * * *

(b) *Response(s) to a petition for review.* (1) In a PSD or other new source permit appeal, the Regional Administrator must file a response to the petition for review, a certified index of the administrative record, and the relevant portions of the administrative record within 21 days after the service of the petition. The response brief must respond to arguments raised by the appellant, together with specific citation or other appropriate reference to the record (*e.g.*, by including the document name and page number).

(2) In all other permit appeals under this section, the Regional Administrator must file a response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the service of a petition.

* * * * *

(f) * * *

(5) *Length.* 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. In lieu of a 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.

* * * * *

(i) *Filing and service requirements.* Documents filed under this section, including the petition for review, must be filed with the Clerk of the Environmental Appeals Board. A document is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section. Service of a document between parties to an appeal or by the Environmental Appeals Board on a party is complete upon mailing for U.S. mail or EPA internal mail, when placed in the custody of a reliable commercial delivery service, or upon transmission for facsimile or email.

* * * * *

(2) *Method of filing.* Unless otherwise permitted under these rules, documents

must be filed either by using the Environmental Appeals Board's electronic filing system, by U.S. mail, or by hand delivery. In addition, a motion or a response to a motion may be submitted by facsimile if the submission contains no attachments. Upon filing a motion or response to a motion by facsimile, the sender must, within one business day, submit the original copy to the Clerk of the Environmental Appeals Board either electronically, by mail, or by hand-delivery. The Environmental Appeals Board may by order require filing by facsimile or the Board's electronic filing system, subject to any appropriate conditions and limitations.

* * * * *

(3) *Service*—(i) *Service information*. 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. Parties shall promptly file any changes in this information with the Clerk of the Environmental Appeals Board, and serve copies on 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 (i)(3) of this section.

(ii) *Service requirements for parties*. Petitioner must serve the petition for review on the Regional Administrator and the permit applicant (if the applicant is not the petitioner). Once an appeal is docketed, every document filed with the Environmental Appeals Board must be served on all other parties. Service must be by first class U.S. mail, by any reliable commercial delivery service, or, if agreed to by the parties, by facsimile or other electronic means, including but not necessarily limited to or email. A party who consents to service by facsimile or other electronic means must file an acknowledgement of its consent (identifying the type of electronic means agreed to and the electronic address to be used) with the Clerk of the Environmental Appeals Board. 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.

(iii) *Service of rulings, orders, and decisions*. The Clerk of the Environmental Appeals Board must serve copies of rulings, orders, and decisions 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).

* * * * *

■ 12. In § 124.20, revise paragraph (d) to read as follows:

§ 124.20 Computation of time.

* * * * *

(d) When a party or interested person may or must act within a prescribed period after being served and service is made by U.S. mail, EPA's internal mail, or reliable commercial delivery service, 3 days shall be added to the prescribed time. The prescribed period for acting after being served is not expanded by 3 days when service is made by personal delivery, facsimile, or email.

[FR Doc. 2016-31638 Filed 1-6-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0402; FRL-9957-27-Region 1]

Approval and Promulgation of Implementation Plans; Rhode Island; Clean Air Act Infrastructure State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing several obsolete Federal Implementation Plans (FIPs) for the State of Rhode Island. These FIPs address Clean Air Act (CAA) infrastructure State Implementation Plan (SIP) requirements that have since been addressed by Rhode Island in its SIP. Therefore, EPA is removing from the Code of Federal Regulations (CFR) the corresponding FIPs. This action is being taken in accordance with the CAA.

DATES: This rule is effective on February 8, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2015-0402. All documents in the docket are listed on the <http://www.regulations.gov> Web site, although some information, such as confidential business information or other information whose disclosure is restricted by statute is not publically available. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays. **FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1664; burkhart.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Public Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

This rulemaking addresses infrastructure SIP submissions from the State of Rhode Island for the 1997 fine particle matter (PM_{2.5}), 2006 PM_{2.5}, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). The state submitted these infrastructure SIPs on the following dates: 1997 PM_{2.5}—September 10, 2008; 2006 PM_{2.5}—November 6, 2009; 2008 Pb—October 26, 2011; 2008 ozone—January 2, 2013; 2010 NO₂—January 2, 2013; and 2010 SO₂—June 27, 2014. Details of Rhode Island's submittals and EPA evaluation of those submittals can be found in our Notice of Proposed Rulemaking (NPR) (81 FR 10168; February 29, 2016).

On April 20, 2016, EPA took final action on the vast majority of the elements included in these submittals (see 81 FR 23175). In today's action, EPA is taking final action on its proposal to remove the following sections from the Code of Federal Regulations (CFR): 40 CFR 52.2073(b); 52.2075(b); and 52.2078(b). As discussed in detail in the NPR, these sections related to the public

TABLE 2—ECONOMIC DATA WITH 1-YEAR EFFECTIVE DATE DELAY: COSTS AND BENEFITS STATEMENT—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Transfers							
Federal Annualized Monetized \$millions/year					7		
					3		
From/To	From:			To:			
Other Annualized Monetized \$millions/year					7		
					3		
From/To	From:			To:			
Effects State, Local or Tribal Government: No Effect Small Business: No effect Wages: No estimated effect Growth: No estimated effect							

The full analysis of economic impacts is available in the docket for this final rule (FDA-2015-N-2002) and at <http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm>.

V. References

The following references are on display in the Division of Dockets Management (see ADDRESSES) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. *United States v. LA Rush*, 2:13-cr-00249, First Superseding Information (C.D. Cal. April 3, 2014).
2. *United States v. Carlson*, 12-cr-00305-DSD-LIB, Amended Superseding Indictment (D. Minn. Sept. 11, 2013).
3. *United States v. Carlson*, 12-cr-00305-DSD-LIB, Court's Instructions to the Jury, (D. Minn. Oct. 8, 2013).
4. *United States v. Bowen*, 14-cr-00169-PAB, Indictment (D. Colo. May 5, 2014).
5. *United States v. Bowen*, 14-cr-00169-PAB, Rule 11(c)(1)(A) and (B) Plea Agreement and Statement of Facts Relevant to Sentencing (D. Colo. Jan. 29, 2015).
6. *United States v. Zeyid*, 1:14-cr-0197, First Superseding Indictment (N.D. Ga. June 24, 2014).
7. U.S. Department of Justice, "Atlanta Man Convicted of Illegally Importing and Distributing Male Enhancement Products from China", Feb. 16, 2017, available at <https://www.justice.gov/usao-ndga/pr/atlanta-man-convicted-illegally-importing-and-distributing-male-enhancement-products>.

Dated: March 16, 2017.
Leslie Kux,
 Associate Commissioner for Policy.
 [FR Doc. 2017-05526 Filed 3-17-17; 8:45 am]
BILLING CODE 4164-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22, 51, 124, 171, 300, and 770

[FRL-9960-28-OP]

Further Delay of Effective Dates for Five Final Regulations Published by the Environmental Protection Agency Between December 12, 2016 and January 17, 2017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; further delay of effective dates.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review," and the **Federal Register** document published by EPA on January 26, 2017, EPA is further delaying the effective dates for the five regulations listed in the table below.

DATES: This regulation is effective March 21, 2017. The effective date of each regulation listed in the table below is delayed to a new effective date of May 22, 2017.

FOR FURTHER INFORMATION CONTACT: Sarah Rees, Director, Office of Regulatory Policy and Management,

Office of Policy, Mail code 1804, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20460; (202) 564-1986; rees.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: On January 26, 2017, EPA published a document in the **Federal Register** entitled "Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017" (82 FR 8499) (January 26 Document). In that document, EPA delayed the effective dates of the five regulations listed in the table below to March 21, 2017, as requested in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review" (January 20 Memo). That memo directed the heads of Executive Departments and Agencies to temporarily postpone for 60 days from the date of the January 20 Memo the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect.

The January 20 Memo also directs that where appropriate and as permitted by applicable law, agencies should consider a rule to delay the effective date for regulations beyond that 60-day period. In this document, EPA is taking action to further delay the effective dates for five regulations listed in the table below until May 22, 2017. EPA is taking this action to give recently arrived Agency officials the opportunity to learn more about these regulations and to decide whether they would like to conduct a substantive review of any of those regulations. If Agency officials decide to conduct a substantive review

of any of those regulations, EPA will take appropriate actions to conduct such a review, including, but not limited to, issuing a document in the **Federal Register** addressing any further delay of the effective date of such regulation. If Agency officials decide not to conduct a substantive review of a regulation listed in the table below, it will become effective on May 22, 2017.

The Agency's implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B). (The good cause exception is also referenced in section 307(d) of the Clean Air Act (CAA).) The Agency has determined that seeking public comment is impracticable, unnecessary and contrary to the public interest. The further temporary delay in effective date until May 22, 2017, is necessary to give Agency officials the opportunity to decide whether they would like to

conduct a substantive review of the five regulations, consistent with the January 20 Memo. The intent of the January 20 Memo was to delay the effective dates of rules that had recently been promulgated to give the new Administration time to review them. When that delay was implemented through the January 26 Document, the EPA believed 60 days would be sufficient time for incoming Agency officials to review rules recently promulgated by the EPA. However, given the length of the confirmation process for the EPA Administrator and the fact that the Agency lacks Senate-confirmed officials elsewhere, the new Administration has not had the time contemplated by the January 20 Memo for this review. Thus, the EPA is deferring the effective date for the five regulations listed in the table below for another 62 days to allow Agency officials to conduct this review. Given

the imminence of the effective date, seeking prior public comment on this further temporary delay would be impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. Specifically, the Agency has been faced with circumstances beyond its control; as was the case on January 26, it is difficult to predict when the appropriate officials might assume their responsibilities. Indeed, as noted above, even today the EPA has only one Senate-confirmed official in place. Furthermore, allowing these regulations to go into effect without first deciding whether to undertake a substantive review may create public confusion. In addition, to the extent this extension is a procedural rule, it is exempt from notice and comment under 5 U.S.C. 553(b)(A), which is also referenced in CAA section 307(d).

Federal Register citation	Title	Publication date	Original effective date	New effective date
82 FR 2760	Addition of a Subsurface Intrusion Component to the Hazard Ranking System.	1/9/17	2/8/2017	5/22/2017
81 FR 89674	Formaldehyde Emission Standards for Composite Wood Products.	12/12/16	2/10/2017	5/22/2017
82 FR 5182	Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter.	1/17/17	2/16/2017	5/22/2017
82 FR 952	Pesticides; Certification of Pesticide Applicators	1/4/17	3/6/2017	5/22/2017
82 FR 2230	Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits; Procedures for Decisionmaking.	1/9/17	3/10/2017	5/22/2017

For the foregoing reasons, the EPA relies on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3) to make today's action effective on March 21, 2017.

Dated: March 14, 2017.

E. Scott Pruitt,

Administrator.

[FR Doc. 2017-05462 Filed 3-17-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA-HQ-OAR-2016-0408; FRL-9958-29-OAR]

RIN 2060-AS89

Technical Correction to the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to make a technical correction to equation 2 in appendix N to part 50, section 4.4(b) of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter. Equation 2 in appendix N describes an intermediate step in the calculation of the design value for the annual PM_{2.5} (particles

with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) NAAQS. This action corrects Equation 2 to properly account for cases where a site has quarters without daily values and passes the minimum quarterly value data substitution test. This change accurately reflects the intended calculation of the annual PM_{2.5} design value and is consistent with the text of section 4.1 in appendix N to part 50.

DATES: This final rule is effective on May 19, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0408. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

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)(1), (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)(1). 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

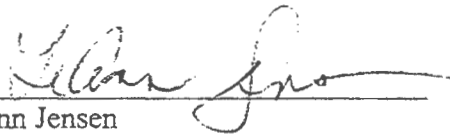
¹ This Order *shall not* apply to proceedings under other provisions in Title 40 that do not expressly incorporate the Part 22 procedures.

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