



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, NY 10007-1866

## **STANDING ORDER**

### **AUTHORIZATION OF EPA REGION 2 ELECTRONIC FILING SYSTEM FOR FILING AND SERVING DOCUMENTS ELECTRONICALLY IN PROCEEDINGS GOVERNED BY 40 C.F.R. PART 22**

**Background.** 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 or Part 22), state that “[t]he Presiding Officer . . . may by order authorize or require filing by . . . an electronic filing system, subject to any appropriate conditions and limitations.” 40 C.F.R. § 22.5(a)(1).

**Designation of Electronic Filing System (EFS).** Pursuant to this authority, I hereby authorize the U.S. Environmental Protection Agency’s (EPA) Microsoft Outlook email-based system as a Region 2 Electronic Filing System for utilization in Part 22 proceedings and adopt the following conditions and limitations to facilitate electronic filing. This Standing Order does not require that documents be filed using this EFS. Rather, it authorizes the use of the EFS as an option, in addition to those methods already authorized by the Part 22 for the filing of documents with the RHC.<sup>1</sup>

**Electronic Service.** In addition, Rule 22.5(b)(2) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(2), provides, in pertinent part, that “[a]ll documents filed by a party other than the complaint . . . shall be served by the filing party on all other parties. Service may be made . . . by facsimile or other electronic means, including but not necessarily limited to email, if service by such electronic means is consented to in writing. . . . In addition, the Presiding Officer . . . may by order authorize or require service by facsimile, email or other electronic means, subject to any appropriate conditions and limitations.” Pursuant to my authority as the Regional Judicial and Presiding Officer of EPA Region 2, in accordance with Part 22, and subject to the conditions and limitations set forth below, I authorize the use of facsimile, email or other electronic means for the service of documents, other than Complaints, in proceedings subject to Part 22.

### **Filing Documents by Email in Region 2**

The following conditions and limitations apply to the filing of documents by email in proceedings governed by the Consolidated Rules of Practice before the Regional Judicial Officer (RJO) serving as a

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<sup>1</sup> If a party is unable to electronically file during a protracted period of EPA Region 2 mandatory or unscheduled telework, the party shall contact the RHC to discuss other options for filing permitted by 40 C.F.R. § 22.5(a)(1).

Presiding Officer.<sup>2</sup>

1. **EFS email address and subject line.** All documents being filed electronically with the Regional Hearing Clerk (RHC) using the EFS shall be sent to [maples.karen@epa.gov](mailto:maples.karen@epa.gov). The subject line of the email shall contain the name and docket number of the proceeding and the document being filed. It is the responsibility of the party filing a document using the EFS to make certain that all other parties to the matter are copied on the EFS email.
2. **Format and contact information.** Electronically filed documents shall be submitted in portable document format (PDF), shall contain the contact name, phone number, mailing address, and email address of the filing party or its authorized representative, and shall otherwise conform to all applicable format requirements of 40 C.F.R. § 22.5(c). Where there are multiple attachments to a document, the attachments should be filed in a single electronic file to the extent technically practicable.
3. **Content.** A party electronically filing a document shall comply with the Consolidated Rules of Practice, including, but not limited to, all rules pertaining to content of the document being filed.
4. **Signature of Documents by EPA Personnel.** Documents filed using the EFS must be signed by EPA personnel in accordance with Rule 22.5(c)(3), 40 C.F.R. § 22.5(c)(3). More specifically, EPA personnel may sign documents with a PDF of a “wet signature” or with an acceptable electronic signature (e-signature). With regard to e-signatures by EPA personnel, these signatures must comply with the Agency’s [Electronic Signature Policy \(Directive No. CIO 2136.0\)](#) and an [Electronic Signature Procedure \(Directive No. CIO 2136-P-01.0\)](#) that apply to new uses of electronic signature technology for internal Agency processes. Standard digital signature functions in applications, such as Adobe Reader and Acrobat DC, generally will satisfy these requirements.
5. **Signature of Documents by Outside Parties/Non-Agency.** Non-agency parties must sign documents in accordance with 40 C.F.R. § 22.5(c)(3) when utilizing Region 2’s EFS. Non-agency parties may sign documents by submitting a PDF of a “wet signature” or by affixing an acceptable e-signature to the document being filed. For an RJO to accept an electronically signed document from a non-agency party (i.e., a respondent), the document needs to bear a “valid electronic signature.” A Certificate Based Digital Signature, such as one created using standard digital signature software (for example, the Digital Signature function in Adobe Acrobat), can constitute a “valid electronic signature” for Part 22 purposes. Acceptable e-signature products will embed metadata identifying a unique user and the time and date that the signature was applied to the document. Since this information is embedded in the document itself, the electronic version of a document that has been electronically signed is considered the “original,” and shall be preserved (with all relevant metadata) in accordance with any applicable records retention schedules. If a party files a document that has been electronically signed, the party must file the “original” version of the electronic document in order to preserve the

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**2 This Standing Order does not apply to the filing of Consent Agreements and Final Orders (CAFOs) and Expedited Settlement Agreements (ESAs) for consideration by the RJO. The process and requirements for the submission of CAFOs or ESAs in connection with settlements of Part 22 matters are governed by the *Region 2 Standard Operating Procedure for Filing and Service of Part 22 CAFOs and ESAs*, issued by the RJO on August 3, 2020. To the extent that there is a conflict between this Standing Order and the SOP, the Standing Order controls and will be applicable.**

metadata establishing that the digital signature is valid.

6. **Signature representation.** By filing a document electronically through EPA’s Microsoft Outlook email-based system, a party, or its attorney or other representative, represents that the signatory has read the document, that to the best of his or her knowledge, information, and belief, the statements made therein are true, and that the document is not interposed for delay. 40 C.F.R. § 22.5(c)(3).
7. **Certificate of Service.** In accordance with 40 C.F.R. § 22.5(a)(3), each document electronically filed by a party shall be accompanied by a certificate of service.
8. **Documents sent to other email addresses.** Documents to be filed electronically shall be submitted to [maples.karen@epa.gov](mailto:maples.karen@epa.gov) or will not be accepted for electronic filing and will not be deemed to be filed as part of the administrative record for the matter, except for settlement documents in proceedings initiated under 40 C.F.R. §§ 22.13(b) and 22.18(b), which shall be filed in accordance with the *Region 2 Standard Operating Procedure for Filing and Service of Part 22 CAFOs and ESAs, issued on August 3, 2020.*
9. **Date/time of filing.** Pursuant to Rule 22.5(a)(1), a document is considered “filed” when received by the RHC. 40 C.F.R. § 22.5(a)(1). The RHC will electronically stamp documents received through the EFS with the date and time that the document is received by the RHC email account. Therefore, to be considered timely, documents electronically submitted to the EFS email account must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed. Documents emailed after 11:59 p.m. Monday through Friday, or anytime during the weekend, are considered filed at 7:00 a.m. the next business day, and will be stamped accordingly.<sup>3</sup>
10. **Original and copy.** The Consolidated Rules of Practice require that “[t]he original and one copy of each document intended to be part of the record shall be filed with the . . . Regional Hearing Clerk . . . when the proceeding is before the Presiding Officer . . .” 40 C.F.R. § 22.5(a)(1). A party who files electronically is deemed to satisfy this requirement.
11. **Amendments.** Once a document is received by the EFS, it becomes part of the administrative record of the matter. The document shall not be retrieved, deleted or altered in any manner by any submitting party. Amendments to filed documents can only be performed in accordance with the Consolidated Rules of Practice.
12. **Copy of Standing Order to Respondents.** This Order applies only in proceedings in which notice to the Respondent of the availability of electronic filing is clearly provided. **A copy of this Order, as well as the Consolidated Rules of Practice, is to accompany all Complaints that are filed and served after the effective date of this Standing Order. For any pending matter for which a Complaint was filed prior to the effective date of this Standing Order, Complainant is required to serve in a timely manner a copy of this Standing Order upon each Respondent(s).** To facilitate the efficient and effective use of the EFS, the parties are

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<sup>3</sup> For documents filed through non-electronic means, the inked date stamp physically applied by the RHC to the paper copy of the documents will continue to serve as the official record of the date and time of filing. The RHC may receive such paper filings between the hours of 6:30 a.m. and 4:00 p.m. Eastern Time, Monday through Friday.

encouraged to confer and reach agreement regarding acceptable electronic addresses and other logistical issues.

13. **Confidential business information (CBI) and personally identifiable information (PII).** It shall be the responsibility of the party electronically filing a document to ensure the document does not contain confidential business information (CBI) or personally identifiable information (PII). Any claim of confidentiality for business information will be deemed waived if such information is submitted to the EFS. Additionally, filers may not electronically submit other private information the disclosure of which would constitute the unwarranted invasion of any person's privacy, e.g., social security numbers, birthdates, medical information, financial information, or other private information. For information on how to file CBI or other private materials, please contact the RHC.

## **Serving Documents by Email in Region 2**

Service requirements under the Consolidated Rules of Practice are distinct from filing requirements. Parties in proceedings under the Consolidated Rules of Practice shall ensure they review the requirements relating to both filing and service of documents. The following conditions and limitations apply to service of documents by email in proceedings governed by the Consolidated Rules of Practice before the RJO serving as a Presiding Officer.<sup>4</sup>

1. **Service on each party.** Each document electronically filed shall be served on each party and the RJO as Presiding Officer and said service shall comply with the Consolidated Rules of Practice. *See* 40 C.F.R. § 22.5(b).
2. **Administrative Complaints.** The Consolidated Rules of Practice do not provide for the electronic service of complaints. Service of a complaint in a proceeding is governed by 40 C.F.R. § 22.5(b)(1), which provides 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. Therefore, this Order does not authorize electronic service of complaints.
3. **Reasonable Efforts for Service.** A party using electronic service for documents, other than complaints, shall undertake reasonable efforts to obtain valid contact information from the party being served (e.g., email address, facsimile number).
4. **Documents other than the complaint, orders, rulings, and decisions.** All documents filed subject to this Order, other than the complaint, orders, rulings, and decisions, shall be served electronically by the party filing the documents.
5. **Orders, rulings and decisions.** The RHC is responsible for serving copies of orders, rulings, and decisions by the RJO or Regional Administrator under the Consolidated Rules of Practice on all parties and is specifically authorized to do so by email pursuant to 40 C.F.R. § 22.6.

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<sup>4</sup> This Order does not mandate electronic service of documents by the parties to a proceeding governed by the Consolidated Rules of Practice before the RJO serving as a Presiding Officer. Rather, it authorizes the use of service by email by parties in addition to those service methods already authorized and enumerated in the Consolidated Rules of Practice, except for the service of complaints. *See* 40 C.F.R. § 22.5(b).

6. **Subject line on email service other than orders, rulings, and decisions.** The subject line of the email serving documents by the parties shall contain the name and docket number of the proceeding. Documents served by email, other than orders, rulings, and decisions, shall be in portable document format (PDF) and shall contain the contact name, phone number, mailing address, and email address of the serving party or the authorized representative.
7. **Certificate of service by the parties.** In accordance with 40 C.F.R. § 22.5(a)(3), **each document electronically served by email shall be accompanied by a certificate of service stating that service is by email and containing the name and email address of each party being served.**
8. **Service complete.** Pursuant to 40 C.F.R. § 22.7(c), electronic service by email of documents by a party is complete upon transmission to the valid electronic address(es) of the other party(ies). Service by the RHC of orders, rulings, and decisions by email is complete upon transmission to the parties' valid email addresses as provided by the parties.
9. **Service on the Regional Judicial Officer.** To serve the RJO as Presiding Officer in either a proceeding initiated under 40 C.F.R. Part 22, Subpart I, or until an answer is filed in a Part 22 proceeding not subject to Subpart I of Part 22, the documents being served must be submitted electronically to [Ferrara.helen@epa.gov](mailto:Ferrara.helen@epa.gov), in addition to being filed with the RHC at [maples.karen@epa.gov](mailto:maples.karen@epa.gov).

**Applicability of Standing Order.** This Order does not apply to the electronic filing with or service of documents that have been filed with the EPA Office of Administrative Law Judges or the EPA Environmental Appeals Board. Consult the EPA Office of Administrative Law Judges website at: <https://www.epa.gov/alj>, the EPA Environmental Appeals Board website at: <https://www.epa.gov/eab>, and/or contact the Headquarters Hearing Clerk or Board Hearing Clerk, as appropriate, for the applicable tribunal's filing procedures and requirements.

**Termination of Standing Order.** Unless a proceeding is subject to the provisions of Subpart I of the Part 22 Rules, the applicability of this Standing Order shall terminate as to a particular proceeding upon the filing of an answer with the RHC pursuant to 40 C.F.R. § 22.15, the issuance of an initial decision and default order pursuant to 40 C.F.R. § 22.17 or the conclusion of the matter pursuant to the entrance of a final order pursuant to 40 C.F.R. § 22.18. Regarding proceedings subject to Subpart I of the Part 22 Rules, this Standing Order shall be in effect during the duration of the proceeding unless revoked or modified by the RJO.<sup>5</sup>

**Supersedes Earlier Order.** This Standing Order supersedes the *Instructions for Electronic Filing of Documents Under 40 CFR Part 22 During Extended Period of Telework*, issued by the RJO on March 18, 2020.

**Conditions and Limitations.** The conditions and limitations set forth in this Order as they apply to both the electronic filing and service of documents may be amended or revoked generally or regarding a specific case or group of cases by further order at any time. In addition, the RJO may issue an order modifying these conditions and limitations if deemed appropriate. To the extent that this Standing Order conflicts with Part 22, Part 22 controls.

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<sup>5</sup> The RJO shall serve as the Presiding Officer in proceedings initiated under 40 C.F.R. Part 22, Subpart I and conduct hearings and rule on all motions until an initial decision has become final or has been appealed. 40 C.F.R. § 22.51.

This Standing Order will remain in effect until terminated in writing by the Regional Judicial Officer of EPA Region 2.

**IT IS SO ORDERED this 3<sup>rd</sup> day of August 2020.**

Helen Ferrara  
Regional Judicial Officer  
U.S. EPA, Region 2

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