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

§ 801.7 Authority of the Secretary.

(a) 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.

(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.

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

§ 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.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

§ 801.30 Records to be preserved for 3 years.

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

§ 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.

§ 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.

§ 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 by 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.

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 decision-making 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 establish 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. The EPA has amended the filing and service requirements to clarify how these requirements apply to electronic transmission of documents and to 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 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, 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. § 22.31. 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) and 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 modification 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 becomes final or by when an appeal is filed, but also the time by which the Environmental Appeals Board must be heard. 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 24 Procedures

Most of the revisions to part 24 also concern filing and service issues. Section 24.19(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

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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
through use of the Board’s electronic filing
system (§ 124.19(f)(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(f)(3)(iii)); and (4) authorizing
the Board to serve rulings, orders, and
decisions on the parties by electronic
means (including but not necessarily

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

§ 22.1 General.

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


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.

Subpart B—Procedures

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

(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(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 or non-party participant
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 notice 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 attachment
words do not count toward the word or
page-length limitation. The Environmental
appeals by the 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.

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PART 124—PROCEDURES FOR DECISIONMAKING

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


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) * * * * *

(b) * * * * *

(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.

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(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.

(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.

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Method of filing. Unless otherwise ordered by the Environmental Appeals Board, all 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.

(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.
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 acknowledgment 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).

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[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.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


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 publicly 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\textsubscript{2.5}), 2000 PM\textsubscript{2.5}, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO\textsubscript{2}), and 2010 sulfur dioxide (SO\textsubscript{2}) National Ambient Air Quality Standards (NAAQS). The state submitted these infrastructure SIPs on the following dates: 1997 PM\textsubscript{2.5}—September 10, 2006; 2006 PM\textsubscript{2.5}—November 6, 2009; 2008 Pb—October 26, 2011; 2008 ozone—January 2, 2013; 2010 NO\textsubscript{2}—January 2, 2013; and 2010 SO\textsubscript{2}—June 7, 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 52.2075(j). As discussed in detail in the NPR, these sections related to the public...