



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[EPA-HQ-OECA-2014-0551; FRL-9914-33-OECA]

RIN 2020-AA50

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the scope of the Environmental Protection Agency's (EPA) Consolidated Rules of Practice governing the administrative assessment of civil penalties to encompass the assessment of civil penalties under the air pollution control provisions of the Act to Prevent Pollution from Ships. The EPA has not previously established adjudicatory procedures for the assessment of civil penalties under that statute. Establishment of such procedures will provide for the efficient and effective adjudication, including administrative appeals, of such proceedings consistent with statutory requirements. This proposed rule also revises the address for the Environmental Appeals Board to reflect its relocation to the William Jefferson Clinton East Building.

In the "Rules and Regulations" section of this **Federal Register**, we are making this same amendment as a direct final rule. If we receive no adverse comment, the direct final rule will go into effect and we will not take further action on this proposed rule.

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2014-0551, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. *Email:* [docket.oeca@epa.gov.]
3. *Fax:* (202) 566-9744.
4. *Mail:* Environmental Protection Agency, OECA Docket, Mail-Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
5. *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, 20004. Attention Docket No. EPA-HQ-OECA-2014-0551. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2014-0551. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov your email address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OECA Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Meetu Kaul, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, William Jefferson Clinton Building South, Room 1117B, 1200 Pennsylvania Ave., NW., Mail Code 2242A, Washington DC 20460, phone number (202) 564-5472 or by email at kaul.meetu@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this proposed rule?

The EPA is proposing to revise the scope of the EPA's Consolidated Rules of Practice governing the administrative assessment of civil penalties to encompass the assessment of civil penalties under the air pollution control provisions of the Act to Prevent Pollution from Ships. Establishment of such procedures will provide for the efficient and effective adjudication, including administrative appeals, of such proceedings consistent with statutory requirements.

We are publishing a direct final rule in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We explain our reasons for this action in the preamble to the direct final rule. The regulatory text for the proposal is identical to that for the direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will publish timely notice in the **Federal Register** to withdraw the direct final rule. We will address all public comments in any subsequent final rule based on this proposed rule. We do not intend to provide a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule see the **ADDRESSES** section of this document.

II. Does this action apply to me?

This action may affect parties involved in EPA administrative adjudicatory proceedings for the assessment of civil penalties under section 1908(b) of the Act to Prevent Pollution from Ships (33 U.S.C. 1908(b)). You may direct questions regarding the applicability of this action as noted in FOR FURTHER INFORMATION CONTACT.

III. What should I consider as I prepare my comments for EPA?

A. Submitting CBI Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action will apply the Rules of Practice to adjudicatory proceedings for the assessment of civil penalties by the EPA under its Act to Prevent Pollution from Ships authority, and will revise the mailing and hand delivery address for the EAB to reflect the Board's relocation.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small

governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not impose any additional requirements on small entities. This rule will apply the Rules of Practice to adjudicatory proceedings for the assessment of civil penalties by the EPA under its Act to Prevent Pollution from Ships authority, and will revise the mailing and hand delivery address for the EAB to reflect the Board's relocation.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The purpose of this action is to apply the Rules of Practice to adjudicatory proceedings for the assessment of civil penalties by the EPA under its Act to Prevent Pollution

from Ships authority, and to revise the mailing and hand delivery address for the EAB to reflect the Board's relocation.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects 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, as specified in Executive Order 13132. This action will apply the Rules of Practice to adjudicatory proceedings for the assessment of civil penalties by the EPA under its Act to Prevent Pollution from Ships authority, and will revise the mailing and hand delivery address for the EAB to reflect the Board's relocation. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action will apply the Rules of Practice to adjudicatory proceedings for the assessment of civil penalties by the EPA under its Act to Prevent Pollution from Ships authority, and will revise the mailing and hand delivery address for the EAB to reflect the Board's relocation. 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 EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action will apply the Rules of Practice to adjudicatory proceedings for the assessment of civil penalties by the EPA under its Act to Prevent Pollution from Ships authority, and will revise the mailing and hand delivery address for the EAB to reflect the Board's relocation.

V. Statutory Authority

Statutory authority for this proposed action comes from sections 1903 and 1908 of the Act to Prevent Pollution from Ships (APPS) (33 U.S.C. 1901 *et seq.*).

List of Subjects in 40 CFR Part 22

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

Dated: October 23, 2014.

Gina McCarthy,

Administrator

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