



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[EPA-HQ-OECA-2014-0551; FRL-9914-32-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: Direct final rule.

SUMMARY: This direct final 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 rule also revises the address for the Environmental Appeals Board to reflect its relocation to the William Jefferson Clinton East Building.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives adverse comment by

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

If the EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

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. 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 using a direct final rule?

The EPA is publishing this rule in advance of receipt of public comment on the companion proposed rule because the EPA anticipates that this rule is noncontroversial and does not anticipate adverse comment. In the “Proposed Rules” section of this Federal Register, the EPA is publishing an otherwise identical companion proposed rule to invite public comment on the provisions of this direct final rule. Any parties interested in commenting on the provisions of the proposed rule must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document. If the EPA receives adverse comment, the EPA will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. The EPA would address adverse comments received either in that notice or in a subsequent final rule based on the proposed rule.

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. Summary of Rule

A. EPA's Consolidated Rules of Practice Governing Adjudication of Administrative Penalty Assessments

The EPA is authorized to institute administrative enforcement proceedings against alleged violators under a variety of environmental statutes, including the Clean Air Act, the Clean Water Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, among others. Such cases are generally heard by the Administrative Law Judges (ALJs) within EPA's Office of Administrative Law Judges and by presiding officers in administrative proceedings not governed by section 554 of the Administrative Procedure Act. The federal regulations that govern the proceedings before the ALJs and presiding officers are codified at 40 CFR Part 22, entitled "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 enforcement 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.* The Rules of Practice also establish uniform procedural rules for proceedings not governed by section 554 of the Administrative Procedure Act. Additionally, the Rules of Practice establish procedures for appeals from decisions of the ALJs and presiding officers to the Environmental Appeals Board. The purpose of this action is to apply the Rules of Practice to include adjudicatory proceedings for the assessment of civil penalties by the EPA under its Act to Prevent Pollution from Ships authority. This rule also revises the mailing and hand delivery address for the Environmental Appeals Board (EAB or Board) to reflect the Board's relocation.

B. The Act to Prevent Pollution from Ships (APPS)

The International Convention for the Prevention of Pollution from Ships (MARPOL) is the primary international treaty applicable to prevention of pollution of the marine environment by ships from operational or accidental causes. Annex VI to MARPOL addresses the prevention of air pollution from ships through the use of both engine-based and fuel-based standards. MARPOL is implemented in

the United States through the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901-1915. The provisions of APPS implementing certain provisions of MARPOL Annex VI are jointly administered and enforced by the U.S. Coast Guard and the EPA. Under the authority of APPS, the EPA, in consultation with the U.S. Coast Guard, promulgated regulations codifying the requirements specified in Regulations 13, 14 and 18 of Annex VI and addressing issues, for example, relating to nonparty vessel compliance. See 40 CFR Part 1043. Section 1907(f) of APPS authorizes the EPA to enforce regulations 17 and 18 of Annex VI for cases involving shoreside violations, and for any other matters that have been referred to the EPA by the U.S. Coast Guard. In addition, section 1908(b) of APPS authorizes the U.S. Coast Guard or the EPA to assess civil penalties against persons who have been found, after notice and an opportunity for a hearing, to have violated MARPOL, APPS, or the implementing regulations. In order to provide consistency and uniformity in all of EPA's administrative penalty proceedings, this action would expand the scope of the EPA's Rules of Practice to also apply to any administrative proceedings brought by the EPA under its APPS authority for the assessment of civil penalties.

V. 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 final 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 60 days after publication.

VI. Statutory Authority

Statutory authority for this action comes from 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 procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

Dated: October 20, 2014.

Gina McCarthy,

Administrator

For the reasons set out in the preamble, 40 CFR part 22 is 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 continues to read as follows:

Authority: 7 U.S.C. 136(l); 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. Section 22.1 is amended by adding paragraph (a)(11) to read as follows:

§ 22.1 Scope of this part.

(a) * * *

(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)).

* * * * *

3. Section 22.3, paragraph (a), is amended by revising the definition for “Clerk of the Board” to read as follows:

§ 22.3 Definitions.

(a) * * *

Clerk of the Board means an individual duly authorized to serve as Clerk of the Environmental Appeals Board.

* * * * *

4. Section 22.5, paragraph (a)(1), is amended by revising the third sentence to read as follows:

§ 22.5 Filing, service, and form of all filed documents; business confidentiality claims.

(a) *Filing of documents.* (1)* * * Documents filed in proceedings before the Environmental Appeals Board shall be sent to the Clerk of the Board either by U.S. Mail (except by U.S. Express Mail) to U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue, NW., Mail Code 1103M, Washington, DC 20460-0001; or delivered by hand or courier (including deliveries by U.S. Express Mail or by a commercial delivery service) to U.S. Environmental Protection Agency, Environmental Appeals Board, 1201 Constitution Avenue, NW., WJC East, Room 3332, Washington, DC 20004.* * *

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Subpart F – Appeals and Administrative Review

5. Section 22.30, paragraph (a)(1), is amended by revising the first sentence to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board as set forth in § 22.5(a).* * *

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