4180T27G04, P/N 4923T82G01, or P/N 4923T82G02 installed on GE CF34–8C1 turbofan engine models, or with P/N 4145T11G08, P/N 4145T11G10, P/N 4180T27G02, P/N 4180T27G04, or P/N 4923T82G02 installed on GE CF34–8C5, CF34–8C5/M, CF34–8C5A1, CF34–8C5A1/M, CF34–8C5A2, CF34–8C5A2/M, CF34–8C5A3, or CF34–8C5B1 turbofan engine models, revise CF34–8C Engine Manual GEK105091 by:

(A) Replacing Table 801, (For –8C1) and Table 802 (For –8C5) Static Structures—Life Limits (''Table 801'' and ''Table 802''), with the revised Tables 801 and 802 in Task 05–11–05–200–801 of GE CF34–8C Engine Manual TR 05–0141, dated February 21, 2019, and

(B) Adding Task 05–21–03–200–801 of GE CF34–8C TR 05–0142, dated February 13, 2019 (''GE CF34–8C TR 05–0142'').

(iii) For a combustion chamber assembly with P/N 4145T11G08, P/N 4145T11G10, P/N 4180T27G02, P/N 4180T27G04, or P/N 4923T82G02 installed on GE CF34–8C5B1/B CF34–8C5/B, CF34–8C5A1/B, or CF34–8C5A2/B turbofan engine models (Business Jet), revise CF34–8C Engine Manual GEK105091 by:

(A) Replacing Table 801 (For/B –8C5 Models) Static Structures—Life Limits with the revised Table 801 in Task 05–11–25–200–801 of GE CF34–8C TR 05–143, dated February 13, 2019, and

(B) Adding Task 05–21–03–200–801 of GE CF34–8C TR 05–0142.

(2) For any combustion chamber assembly that has exceeded the initial inspection threshold (in cycles) specified in GE CF34–8E TR 05–0086 or GE CF34–8C TR 05–0142:

(i) Perform the initial FPI of the combustion chamber assembly aft flange within 2,200 cycles after the effective date of this AD in accordance with GE CF34–8E TR 05–0086 or GE CF34–8C TR 05–0142. Thereafter, perform repetitive FPIs in accordance with the intervals in GE CF34–8E TR 05–0086 or GE CF34–8C TR 05–0142.

(ii) If, during the FPI required by paragraph (g)(2)(i) of this AD, a crack is found in the combustion chamber assembly aft flange, disposition the assembly in accordance with paragraph 2.A. of GE CF34–8E TR 05–0086, or paragraph 2.A. of GE CF34–8C TR 05–0142.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact David Bethka, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7129; fax: 781–238–7199; email: *david.bethka@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on November 25, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–25987 Filed 12–2–19; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1, 22, 23, 49, 52, 55, 71, 78, 124, and 222

[EPA–HQ–OGC–2019–0406; FRL–10002–10–OGC]

Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes a procedural rule intended to streamline and modernize part of the Agency's permitting process by creating a new, time-limited alternative dispute resolution process (ADR process) as a precondition to judicial review. Under this proposal, the parties in the ADR process may agree by unanimous consent to either extend the ADR process or proceed with an appeal before the Environmental Appeals Board (EAB). If the parties don't agree to proceed with either the ADR process or an EAB appeal, the permit would become final and could be challenged in federal court. EPA also proposes to amend the current appeal process to clarify the scope and standard of EAB review, remove a provision authorizing participation in appeals by *amicus curiae,* and eliminate the EAB's authority to review Regional permit decisions on its own initiative, even absent an appeal. To promote internal efficiencies, EPA also proposes to establish a 60-day deadline for the EAB to issue a final decision once an appeal has been fully briefed and argued and to limit the length of EAB opinions to only as long as necessary to address the issues raised in an appeal; EPA also proposes to limit the availability of extensions to file briefs. The proposed rule would apply to permits issued by or on behalf of EPA under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Resources Conservation and Recovery Act. In addition to these permit appeal reforms, EPA proposes several additional reforms designed to provide tools to better allow the Administrator to exercise his or her statutory authority together with appropriate checks and balances on how the Board exercises its delegated authority. In this vein, EPA proposes to set twelve-year terms for EAB Judges, which the Administrator may renew at the end of that twelve-year period or reassign the Judge to another position within EPA. EPA also proposes a new process to identify which EAB opinions will be considered precedential. Finally, EPA proposes a new mechanism by which the Administrator, by and through the General Counsel, can issue a dispositive legal interpretation in any matter pending before the EAB.

DATES: Comments must be received on or before January 2, 2020.

ADDRESSES: Submit your comments, identified in Docket ID No. EPA–HQ–OGC–2019–0406, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mark Talty, Office of General Counsel, Environmental Protection Agency, 1200

Pennsylvania Avenue NW, Washington, DC 20460; (202) 564–2751; email address: *staff_ogc@epa.gov.*

SUPPLEMENTARY INFORMATION:

Submitting CBI. Do not submit information that you consider to be CBI electronically through *https://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address using U.S. Postal Service: U.S. Environmental Protection Agency, EPA–HQ–OGC–2019–2751, Mail Code 2310A, 1200 Pennsylvania Avenue NW, Washington, DC 20460. For other methods of delivery, see *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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 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. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

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

I. General Information

A. Does this action apply to me?

This proposed procedural rule would not regulate any person or entity outside EPA. This proposal would modify the process relevant to certain administrative appeals handled by the EAB under 40 CFR 124.19 and other regulations listed below. It may be of interest to persons and entities that apply for or are interested in challenging EPA permitting decisions under the National Pollutant Discharge Elimination System (NPDES) program of the Clean Water Act, the Safe Drinking Water Act's Underground Injection Control (UIC) program, and the Resources Conservation and Recovery Act (RCRA), including Remedial Action Plans, 40 CFR 270.42(f) & 270.155. It may also be of interest to persons or entities interested in challenging EPA permitting decisions under the Clean Air Act, including Outer Continental Shelf permits, 40 CFR 55.6(a)(3); Title V permits, 40 CFR 71.11(*l*); Acid Rain permits, 40 CFR 78.3(b)(1); Tribal Major Non-Attainment NSR permits, 40 CFR 49.172(d)(5); and Tribal Minor NSR permits, 40 CFR 49.159(d).

In addition, any person or entity interested in EPA's administrative processes may be interested in this proposal. With exception of section III.A.7 (Administrator's Legal Interpretations), nothing in this proposal affects the EAB's adjudication of enforcement appeals.

B. What action is the Agency taking?

This is a rule of agency organization, procedure or practice. Although not subject to the notice and comment requirements of the Administrative Procedure Act, the Agency nonetheless voluntarily seeks comment because it believes that the information and opinions supplied by the public will inform the Agency's views. To this end, EPA solicits information and comment from the public on EPA's proposal to streamline part of EPA's permitting process.

Each proposal is identified immediately below and described in Section III.

First, EPA solicits comment on a proposal to create a new, time-limited ADR process, resulting in a fundamental change to the Agency's long-held administrative exhaustion requirements. Any interested party seeking judicial review of an EPA permit would have to participate in this new process before filing a petition in federal court. Under this new process, the parties would have the choice, by unanimous consent, to extend the ADR process or proceed to an appeal before the EAB.

Second, EPA solicits comment on a proposal to clarify the scope and standard of the EAB's review. Under the current regulations, the EAB reviews petitions for a finding of fact or conclusion of law that is clearly erroneous. 40 CFR 124.19(a)(4)(i)(A). However, the current regulations also include a provision that provides that the EAB may review of an exercise of discretion ''or an important policy consideration.'' 40 CFR 124.19(a)(4)(i)(B). This has led to some confusion as to whether a petitioner may ask the EAB—standing in the Administrator's shoes—to address issues that a federal court generally could not review, such as whether EPA properly exercised its discretion relative to an ''important policy consideration.'' In any event, to the extent 40 CFR 124.19(a)(4)(i)(B) suggests that the EAB may review EPA's compliance with discretionary policies, EPA is proposing to eliminate that provision and clarify that the EAB's scope and standard of review is limited to findings of fact and conclusions of law that are clearly erroneous.

Third, EPA solicits information and comment on a proposal to remove 40 CFR 124.19(e), which currently authorizes interested persons to participate in a permit appeal as *amicus curiae.* Under today's proposal, the EAB would no longer accept *amicus curiae* briefs.

Fourth, EPA also solicits comment on a proposal to eliminate the EAB's authority to review Regional permit decisions on its own initiative (*sua sponte*), even absent a private party appeal. In EPA's experience, the EAB rarely invokes this authority, and to exercise it now could impede timely permitting.

Fifth, EPA solicits comment on a proposal to establish a 60-day deadline for the EAB to issue a final decision once an appeal has been fully briefed and argued. EPA also solicits information and comment on a proposal to limit the availability of filing extensions to one request per party, with a maximum extension of 30 days. (Nothing in the proposed rule would modify the EAB's discretion to relax or suspend filing requirements for good cause.)

Sixth, EPA solicits comment on a proposal to set twelve-year terms for

EAB Judges, which the Administrator may renew at the end of that twelve-year period or reassign the Judge to another position within EPA.

Seventh, EPA solicits comment on a proposal to establish a mechanism by which the Administrator, by and through the General Counsel, can issue a dispositive legal interpretation in any matter pending before the EAB or on any issue addressed by the EAB.

The new ADR process and the revised permit appeal procedures apply only to permitting decisions under:

- The National Pollutant Discharge Elimination System (NPDES) program of the Clean Water Act;
- The Safe Drinking Water Act's Underground Injection Control (UIC) program;
- The Resources Conservation and Recovery Act (RCRA), including Remedial Action Plans, 40 CFR 270.42(f) & 270.155; and
- The Clean Air Act, including Prevention of Significant Deterioration (PSD) permits, Outer Continental Shelf permits, 40 CFR 55.6(a)(3); Title V permits, 40 CFR 71.11(*l*); Acid Rain permits, 40 CFR 78.3(b)(1); Tribal Major Non-Attainment NSR permits, 40 CFR 49.172(d)(5); and Tribal Minor NSR permits, 40 CFR 49.159(d).

In particular, the new ADR process and procedural changes in this proposal would not apply to other types of appeals not listed above. Those topics are outside the scope of this rulemaking. Specifically, EPA does not solicit comment on the EAB's enforcement functions. In addition, with the exception of the proposed revisions above, nothing in this proposal would alter the mechanics of permit appeals or the process by which parties interact with the EAB, *e.g.,* service requirements. Those issues are also outside the scope of this rulemaking and EPA does not solicit comment on them.

C. What is the Agency's authority for taking this action?

EPA's authority to issue this proposed procedural rule is contained in Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.* EPA has additional authority under the Federal Housekeeping Statute, 5 U.S.C. 301, which authorizes an agency head to prescribe regulations governing his or her department and the performance of its business, among other purposes.

II. Background

A. The Evolving Role of the Environmental Appeals Board in Permit Appeals

The EAB was created in 1992 to hear, among other things, administrative appeals of enforcement proceedings and EPA-issued permits. The purpose of its creation was to formally transfer the Administrator's authority over such appeals to the new Board in an effort to address the Agency's expanding enforcement docket and an increase in EPA-issued permits.

Over the past 27 years, the EAB's role in permit appeals has changed as more states and tribes have assumed permitting authority under EPA's statutes. For example, 47 states and one territory have assumed authority to administer NPDES permits under the Clean Water Act. In the context of RCRA, 48 states, the District of Columbia, and Guam have been authorized to implement either all or parts of state hazardous waste programs in lieu of RCRA subtitle C. Under the Clean Air Act, 43 states fully administer the PSD program, and EPA has approved Title V permit programs in all 50 states. As discussed later in this document, the EAB does not hear challenges to most state-issued permits.

As more states and tribes have assumed authority, the Agency has dramatically reduced the number of EPA-issued permits and, in turn, the number of permits appealed to the EAB. Since January 1, 2016, a total of 50 permit appeals have been filed with the EAB affecting a total of 40 permits.

In 2010, the EAB launched a voluntary ADR program to assist parties in resolving disputes before the EAB, including permit appeals. The EAB established this ADR program to promote faster resolution of issues and more creative, satisfying and enduring solutions; to foster a culture of respect and trust among EPA, its stakeholders, and its employees and to improve working relationships; to promote compliance with environmental laws and regulations; to expand stakeholder support for Agency programs; and to promote better environmental outcomes. The EAB's ADR program currently offers parties the option of participating in ADR with the assistance of an EAB Judge acting as a neutral evaluator/mediator (generally referred to as the Settlement Judge). The ADR program has been highly successful, and, to date, over 90% of the cases that have gone through the program have been resolved without litigation. *See The EPA's Environmental Appeals Board at Twenty-five: An Overview of the Board's Procedures, Guiding Principles, and Record of Adjudicating Cases,* p. 5 available at *https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/8f612ee7fc725edd852570760071cb8e/381acd4d3ab4ca358525803c00499ab0/$FILE/The%20EAB%20at%20Twenty-Five.pdf.* Since its inception, the ADR Program has helped parties achieve faster resolution of issues, enduring solutions, and broader support for outcomes. *Id.*

B. What are the major permitting functions of the Environmental Appeals Board?

Under the current regulations, the EAB has jurisdiction over three categories of permit-related actions, and an appeal to the EAB is a prerequisite for judicial review of the permit. (Prior to 1992, appeal to the Administrator was a prerequisite for judicial review of permits issued by Regional Administrators.)

The first category consists of appeals of federal permitting decisions by Regional Administrators under the Clean Air Act (PSD, Title V, Outer Continental Shelf, and some acid rain program permits), the Safe Drinking Water Act (UIC permits), the Clean Water Act (NPDES permits) and RCRA permits. Appeals under RCRA include decisions to deny a permit for the active life of a hazardous waste management facility or unit. This category also includes appeals by of Clean Air Act permits issued by states in certain circumstances.[1]

In the case of PSD permits, the entire process—from the determination that an application is complete to a final decision to grant or deny a permit application—must occur within one year by statutory mandate. 42 U.S.C. 7475(c); *see Avenal Power Center LLC* v. *EPA,* 787 F.Supp.2d 1 (D.D.C. 2011). Nothing in today's proposal would affect that statutory obligation.

The second category consists of appeals of Clean Air Act NSR permits

[1] In some permitting programs, EPA regulations provide authority for EPA to delegate the administration of the federal permitting program to a state or tribal administrative agency. *See, e.g.,* 40 CFR 52.21(u); 40 CFR 71.10. This delegation empowers the delegated agency to ''stand in the shoes'' of an EPA Regional Office and exercise federal law authority. But the action taken by the delegate remains a federal permitting decision subject to review in the Environmental Appeals Board. This relationship is distinct from an EPA-approved or authorized permitting program under which a state agency applies state laws and regulations that EPA has determined are sufficient to meeting the minimum programs requirements for such a permitting program. *See, e.g.,* 40 CFR 51.166; 40 CFR part 70. State permitting decisions under an EPA-approved program is an action under state law that is reviewable under any applicable state administrative procedures and in state courts.

issued by EPA in Indian Country. The third category consists of terminations of NPDES, RCRA and Marine Protection, Research, and Sanctuaries Act permits. Under 40 CFR 124(*l*), the EAB's decision and the Regional Administrator's subsequent issuance of the permit constitutes final agency action.

These permit-related functions are listed below, accompanied by the parts of the Code of Federal Regulations where they currently appear.

- Appeals from NPDES permit decisions made by Regional Administrators and Administrative Law Judges under the Clean Water Act (40 CFR part 124).
- Appeals from permit decisions and remedial action plan (RAP) approvals made by Regional Administrators under RCRA (40 CFR part 124; 40 CFR 270.42(f) & 270.155).
- Appeals from PSD permit decisions made by Regional Administrators and delegated states under the Clean Air Act (40 CFR part 124; 40 CFR 52.21(q)).
- Appeals from Title V operating permit decisions made by Regional Administrators and delegated states under the Clean Air Act (40 CFR 71.11(*l*)).
- Appeals of Outer Continental Shelf permit decisions made by Regional Administrators (40 CFR part 124; 40 CFR 55.6(a)(3)).
- Appeals from certain acid rain permitting decisions made by Regional Administrators (40 CFR 78.3(b)(1)).
- Appeals from UIC permit decisions made by Regional Administrators under the Safe Drinking Water Act (40 CFR part 124).
- Appeals from ocean dumping permit decisions made by Regional Administrators under the Marine Protection, Research, and Sanctuaries Act (40 CFR part 222).
- Appeals from Federal Major Non-Attainment New Source Review permit decisions by Regional Administrators in Indian County under the Clean Air Act (40 CFR 49.172(d)).
- Appeals from Federal Minor New Source Review permit decisions made by Regional Administrators in Indian Country under the Clean Air Act (40 CFR 49.159(d)).
- Appeals from the terminations of NPDES and RCRA permits and RAPs (40 CFR 22.44).

C. What is the current process for permit appeals to the Environmental Appeals Board?

Any person who participated in the permit public participation process, either by filing comments on the draft permit or by speaking at a public hearing, may petition the EAB for review. 40 CFR 124.19(a)(2). In addition, anyone may petition the EAB for review of a permit condition that reflects changes from the draft. *Id.* A petition for review must be filed within thirty days after service of notice of the issuance of a permit decision and must identify the contested permit condition or other challenge to the permit decision and clearly set forth the petitioner's contentions, with appropriate support, as to why the Board should review the decision. *Id.* at § 124.19(a)(4). A petitioner must demonstrate that each issue raised in the petition was previously raised during the public comment period, or at a public hearing. *Id.* In order to prevail, a petitioner must show that each challenged permit condition is based on ''[a] finding of fact or conclusion of law that is clearly erroneous'' or ''[a]n exercise of discretion or an important policy consideration that the Environmental Appeals Board should, in its discretion, review.'' *Id.* § 124.19(a)(4)(i). Generally, the EPA Region—or other authority acting on EPA's behalf—that issued the permitting decision must file a response to a petition for review together with a certified index of the administrative record and relevant portions of the record within 30 days after service of the petition. *Id.* at § 124.19(b)(2). In the case of PSD or other new source permit appeals, the Agency has 21 days to file its response. *Id.* at § 124.19(b)(1). A permit applicant who did not appeal a permit decision may also file a notice of appearance and respond to a petition, as may a state or tribal authority where a permitted facility is (or is proposed to be) located. *Id.* § 124.19(b)(3) through (4). Any other interested person may also participate in the appeal by filing an amicus brief. *Id.* § 124.19(e).

Once the EAB has received a petition for review of a permit, the Clerk of the Board assigns the matter to a panel of judges using a neutral case assignment system. The EAB typically hears matters before it in three-member panels, with the fourth member of the EAB available to serve as a settlement judge in the event the parties opt to participate in the EAB's ADR program. *See id.* § 1.25(e)(1). The panel decides each matter before it ''in accordance with applicable statutes and regulations'' and considers the standard of review, prior EAB precedents, Agency policy it deems relevant, and the evidence in the record. *Id.* at §§ 1.25, 22.30(d), 124.19(h). When appropriate, the EAB hears oral argument on any or all issues in a proceeding. *Id.* at 124.19(h). The regulations specify that the EAB shall decide matters by majority vote. *Id.* at § 1.25. The EAB issues its opinions in writing, and the Regional Administrator's subsequent issuance of the permit consistent with the opinion constitutes final agency action.

Currently, under the EAB's ADR Program, parties to an appeal are invited to participate in ADR with the assistance of an EAB Judge acting as a neutral evaluator/mediation (referred to as the ''Settlement Judge''). An EAB staff attorney (referred to as ''EAB Settlement Counsel'') is often assigned to assist the Settlement Judge. Each party to the appeal must agree to participate in ADR for the case to proceed under the Program, which is often referred to as an ''opt-in'' ADR process. If all parties agree to proceed with ADR, an EAB Judge is assigned as the Settlement Judge, and the appeal proceedings are stayed for 60 days. The Settlement Judge contacts the parties for a status conference, followed by submission of issue summaries within 10 days of the status conference and an initial ADR meeting at which the parties begin the case evaluation/mediation process.

The ADR process may be terminated and the case returned to the EAB's active docket if: (1) The Settlement Judge, at any point following his or her designation, determines, in his or her discretion, that ADR is no longer appropriate; (2) the Settlement Judge, in his or her discretion, determines that the ADR process has not made substantial progress within the stay period; or (3) any party determines that it no longer wishes to participate in ADR. If a matter is returned to the EAB's active docket, the Settlement Judge and the EAB Settlement Counsel are prohibited from participating in any way in the EAB's resolution.

If the parties reach an acceptable resolution to all or part of their dispute, the parties must create a written agreement signed by each party. Upon execution of any agreement resolving all issues, the parties then file a joint motion to dismiss the pending matter. The EAB then issues an order dismissing the appeal. If some, but not all issues are resolved, and the issues are severable, the parties must file a motion for dismissal of the resolved issues. The EAB then issues an order returning the remaining issues to the EAB's active docket for resolution.

III. Summary of Today's Proposal

A. What are the key elements of this proposal?

1. New Time-Limited ADR Process

EPA proposes to create a new, time-limited ADR process and participation in that process would be a precondition to judicial review in federal court. Under the current regulations, an interested party must file a petition for review with the EAB as a precondition to judicial review. *See* 40 CFR 124.19(*l*). Once the appeal process has begun, parties to an appeal may ''opt-in'' to the EAB's ADR program to resolve the dispute without litigating the issues before a panel of EAB Judges. EPA is seeking to leverage the success of the EAB's current ADR program and empower the parties to decide for themselves the best, most efficient process to resolve their disputes.

Under this proposal, the EAB's ADR program would be switched from an opt-in process to an opt-out process conducted in compliance with the confidentiality provisions of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 574. Under the proposed process, an interested person would have thirty days after service of notice of the issuance of a permit decision to file a notice of dispute with the EAB in which the interested person identifies the contested permit condition or other specific challenge to the permit decision. The notice of dispute would also need to certify that the party filed comments on the draft permit or participated in a public hearing on the draft permit or that the disputed conditions in the final permit reflect changes from the proposed draft permit. The party filing the notice would have to serve the notice on the Regional Administrator that issued the permitting decision, the permit applicant, as well as the state or tribal authority where the permitted facility is (or is proposed to be) located. The Regional Administrator would be required to file its response to a notice within 21 days after service of the notice of dispute. A permit applicant who did not dispute a permit decision may file a notice of appearance and a response, as may the relevant state or tribal authority, within the same 21-day period.

Upon receipt of the notice of dispute, the Clerk of the EAB would assign an EAB Judge to act as the Settlement Judge. The Settlement Judge would have thirty days from the deadline for filing a response to convene a meeting of all the parties. Each party would be required to file issue summaries with the Settlement Judge no later than ten days prior to the convening meeting. At the convening meeting, each party would be required to meet with the Settlement Judge in a private session in which the Settlement Judge would provide the party with a confidential, oral assessment of the strengths and weaknesses of their case. Information discussed in the private sessions would be confidential unless a party authorizes the Settlement Judge to disclose it. At the conclusion of the convening meeting, or no later than thirty days after the deadline to file a response, the parties may decide by unanimous consent to either extend the ADR process (beyond the initial thirty-day window) or proceed with an appeal before the EAB. The Regional Administrator would not be considered a party for purposes of this unanimous agreement, meaning the Regional Administrator would not have a say in how the parties decide to proceed. EPA is proposing to make any agreement of the parties issue-specific, meaning only those issues or conditions that all parties agree to resolve via further ADR or EAB review continue through the process. However, EPA solicits comment on whether the parties' agreement should apply to all issues raised in the notice of dispute. All parties would be required to attend and participate in the convening meeting as a prerequisite to seeking judicial review in federal court. If the parties do not agree to proceed with either the ADR process or an EAB appeal, the notice of dispute would be dismissed, the permit would become final and it could be challenged in federal court. Lastly, any issues that are raised in notice of dispute process but do not continue beyond the initial thirty-day period would be preserved for appeal but may not be challenged in federal court until the remaining administrative process concludes. Again, EPA solicits comment on whether all issues raised in the notice of dispute should be required to continue through the ADR process or EAB appeal rather than only those issues or conditions that all parties agree should proceed. If promulgated, the new ADR process would apply only to any permit decision issued on or after the effective date of the procedural rule. The proposal would not apply to any current permit appeals.

2. Clarifying the EAB's Scope and Standard of Review in Permit Appeals

The current regulations establish a ''clearly erroneous'' standard of review and direct petitioners to demonstrate that ''each challenge to the permit is based on . . . a finding of fact or conclusion of law that is clearly erroneous.'' 40 CFR 124.19(a)(4)(i)(A). However, the current regulations also include a paragraph that provides that the EAB may review of an exercise of discretion ''or an important policy consideration.'' 40 CFR 124.19(a)(4)(i)(B). This has led to some confusion as to whether a petitioner may ask the EAB—standing in the Administrator's shoes—to address issues that a federal court generally could not review, such as whether EPA properly exercised its discretion relative to an ''important policy consideration.'' To the extent that 40 CFR 124.19(a)(4)(i)(B) authorizes the EAB to review EPA's compliance with discretionary policies, EPA proposes to eliminate that provision. In doing so, EPA intends to make clear that while the EAB's *scope* of review would no longer include exercises of discretion or important policy considerations, nothing in this proposal would alter the *standard* of review employed by the EAB in adjudicating permit.

3. Eliminating *Amicus Curiae* Participation

EPA proposes to eliminate the provision at 40 CFR 124.19(e) that authorizes interested persons to participate in a permit appeal as *amicus curiae.* Under today's proposal, the EAB would no longer accept amicus curiae briefs in permit appeals.

Under the current regulations, any interested person can appeal an EPA permit to the EAB; therefore, the *amicus curiae* process allowed the EAB to consider additional views in support of or opposition to the Region's permit. As discussed above, EPA proposes to create a new ADR process that would be a prerequisite to seeking judicial review in federal court. EPA believes that this new process would be the proper forum for parties to resolve disputes over Agency permits and that allowing for additional input in a permit appeal, should the parties choose to proceed in such a manner, is unnecessary. Moreover, eliminating amicus curiae briefs is consistent with the proposed streamlining of the EAB permit appeal process. By eliminating amicus briefs, EPA proposes to hasten the resolution of permit appeals by 15 days, see 40 CFR 124.19(e), and to simplify the process. All members of the public are encouraged to submit comments on draft EPA permits, and the Regions consider those comments when making permit decisions. This is meaningful public engagement that has the potential to shape the permit before it is appealed to the EAB. Moreover, the public comments coupled with the Region's

responses become part of the permit's administrative record. EPA believes that the availability of these comments, coupled with the vigorous briefing by the permit applicant, the Region, and other parties will ensure that the EAB becomes aware of any issues or positions that might otherwise be raised by *amici.* Under these circumstances, the benefits of expeditious resolution of appeals outweigh any benefits associated with *amici* participation.

4. Eliminating *Sua Sponte* Review

The current regulations authorize the EAB to decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision for which review is otherwise available. Today's proposal would eliminate this provision. Allowing *sua sponte* review by the EAB would be inconsistent with the Agency's goal of empowering the parties of a permit dispute to dictate the process they believe will most effectively and efficiently resolve their dispute.

5. Expediting the Appeal Process

EPA proposes several additional changes to the appeal process that are intended to expedite resolution of appeals, should the parties choose to proceed with an EAB appeal. First, EPA proposes to establish a deadline of 60 days for the EAB to issue a final decision, measured from the date of oral argument or the filing of the last brief, whichever is later. This deadline demonstrates EPA's commitment to making permits final and effective expeditiously. It also should be achievable, in light of the EAB's reduced workload contemplated by this proposed rule.

Second, in light of the proposed 60-day deadline, EPA proposes to limit the length of EAB opinions by advising the Board to make them only as long as needed to address the specific issues raised in the appeal. EPA solicits comment on whether to set a numerical limit, either in words or pages.

In the third time-saving change, EPA proposes to revise the provisions in the current regulations relating to extensions of time to file briefs. The regulations at 40 CFR 124.19(g) authorize parties to seek such extensions. A review of motion practice before the EAB reveals that much of the delay in resolving appeals stems from frequent and lengthy extensions requested by the parties. Today's proposal would authorize each party to request a one-time 30-day extension that the EAB, in the exercise of its discretion, may choose to grant. Nothing in the proposed rule would eliminate the EAB's discretion to relax or suspend filing requirements for good cause. *See* 40 CFR 124.19(n).

6. 12-Year Terms for EAB Judges

The EAB is a permanent body with continuing functions established by regulation. It exercises authority expressly delegated to it from the Administrator by Title 40 of the Code of Federal Regulations. 40 CFR 1.25(e)(2). The EAB is composed of no more than four judges designated by the Administrator, 40 CFR 1.25(e)(1), but all positions need not be filled depending on the work load before the Board. By custom, EAB Judges are career employees of EPA and members of the Senior Executive Service (SES).

Over the years, the Agency has benefited from the arrival of new judges to fill vacancies created as former judges retire or move to other senior executive positions. Since 2012, eight different judges have served on the EAB, bringing with them experience from the Offices of the Regional Counsel, the Office of General Counsel, the Office of Enforcement and Compliance Assistance and other Federal agencies, including the U.S. Department of Justice. For judges joining the EAB since January 1, 2012, the average term of service is four years.

At the same time, the Agency has benefited from judges who have served on the Environmental Appeals Board for much longer terms. These judges bring deep experience in EAB jurisprudence and provide needed stability in light of frequent vacancies. Of the twelve judges who have served on the EAB since its creation in 1992, four of the first five EAB judges held their positions for nine to 21 years. One judge has served for 24 years.

In today's document, EPA proposes to set fixed twelve-year terms for EAB Judges, which the Administrator may renew at the end of that twelve-year period or reassign the Judge to another position within EPA. EPA solicits comment on whether eight-year terms are more appropriate. EPA also solicits comment on whether any other term length is more appropriate. The Administrator would apply the new twelve-year terms to the current EAB judges on a rolling basis over the next twelve years. Each seat on the EAB would be designated a number based on the seniority of the Board's current members. The seat of the longest serving judge would be designated as seat one, the second longest serving judge as seat two, the third longest serving judge as seat three, and the most recent judge as seat four. The term for the newly designated seat one would end three years after the effective date of the final rule. The process would then continue at three-year intervals, with seat two ending six years after the effective date, seat three ending nine years after the effective date, and seat four ending twelve years after the effective date. Thereafter, all terms will last for twelve years. If a judge vacates his or her position before the end of the judge's term, the Administrator would appoint a new judge to serve for the remainder of the vacated term. That new member could then be renewed at the end of the vacated term. For example, assume the term of the judge holding seat two ends in 2026, subject to renewal. Further assume that this judge retires in 2020. The new judge occupying seat two would serve for six years (until 2026) and then be eligible for a twelve-year term renewal. But assume this judge leaves after five years in 2025. The newest judge occupying seat two would serve for one year (until 2026) and then be eligible for twelve-year term renewal. There would be no limit to the number of twelve-years terms that one judge could serve. EPA also solicits comment on whether a different process for retention of EAB Judges is more appropriate.

If the Administrator chooses not to renew the appointment, the Administrator would assign that judge to another SES position within EPA for which he or she qualifies, in compliance with all applicable procedures. (As members of the SES, EAB judges are subject to reassignment to any other SES position in the Agency for which he or she qualifies, after approval from OPM and the Office of Presidential Personnel. *See Guide to the Senior Executive Service,* published by the Office of Personnel Management (March 2017), pages 8, 10. *https://www.opm.gov/policy-data-oversight/senior-executive-service/referencematerials/guidesesservices.pdf. See also* 5 U.S.C. 3131(5) (SES program shall be administered so as to enable the head of an agency to reassign senior executives to best accomplish the agency's mission).

In EPA's experience, EAB judges have left their appointments either to retire from federal service or to take another position within EPA or elsewhere. Nothing in this process would prevent a judge from leaving the EAB before the expiration of his or her twelve-year term. Similarly, nothing in this process prevents the Administrator from reassigning an EAB judge to another position prior to the expiration of his or her renewable twelve-year term.

7. Identifying Precedential EAB Decisions

EPA is soliciting comment on whether it should create a process to explicitly identify certain decisions of the EAB as precedential. Under such a process, only published decisions could be considered precedential. The determination of which decisions should be published would be determined by the Administrator acting through the General Counsel.

Other federal agencies that utilize adjudicatory hearings have similar processes for identifying precedential decisions. For instance, the Department of Homeland Security and the Department of Justice designate certain decisions as ''precedent decisions'' in various immigration proceedings. Under their process, ''precedent decisions'' are administrative decisions of the Administrative Appeals Office, the Board of Immigration Appeals (BIA), and the Attorney General, which are selected and designated as precedent by the Secretary of the Department of Homeland Security, the BIA, and the Attorney General, respectively. Identifying certain decision as precedential is important because federal courts give greater deference to such decisions. For that reason, EPA is soliciting comment on whether the Agency should affirmatively designate certain EAB decisions as precedential.

8. Administrator's Legal Interpretations

EPA proposes a new mechanism by which the Administrator, by and through the General Counsel, can issue a dispositive legal interpretation in any matter before the EAB or on any issue addressed by the EAB. This legal interpretation would be binding on the EAB. Under this proposal, the General Counsel may file written notice to the EAB providing the Administrator's legal interpretation of an applicable Agency regulation or governing statute in any matter before the EAB; this proposal is not limited just to permit appeals. This new mechanism is distinguished from legal briefs filed by EPA's Regions, which simply set forth the Agency's position on any relevant legal interpretations. The intent of this proposal is to allow the Administrator, in specific cases, to retain authority as it pertains to legal interpretations. Nothing in this proposal would limit the Administrator's existing authority (derived from his or her statutory authority to issue the permits in the first instance) to review or change any EAB decision.

9. Conforming Revisions

EPA also proposes conforming changes to regulatory text to implement the objectives described above.

B. How would today's proposal affect pending appeals?

If promulgated as proposed, today's revisions would not apply to appeals that had been filed with the EAB before the effective date of any final rule codifying such revisions.

C. Why is EPA undertaking this reform?

EPA has an almost 20-year history of promoting the expanded use of ADR to address disputes and resolve conflict. *See* EPA's Policy on Alternative Dispute Resolution, 65 FR 81,858 (Dec. 27, 2000). The Agency has long recognized that ADR techniques can have many benefits, including faster resolution of issues; more creative, satisfying and enduring solutions; fostering a culture of respect and trust among EPA, its stakeholders, and its employees; improving working relationships; promoting compliance with environmental laws and regulations; expanding stakeholder support for Agency programs; and promoting better environmental outcomes. *Id.* at 81,858–59. The EAB instituted its ADR program in 2010 in recognition of these many benefits and the success experienced by other federal agencies and by federal courts (including appellate courts) in settling contested matters through ADR. As noted above, the EAB's ADR program has been highly successful with over ninety percent of the cases that have gone through the program resolved without litigation.

EPA is seeking to build off the success of the EAB's ADR program by creating a new process that will ensure speedy resolution of disputes while providing the interested parties with options to achieve those ends. Under this proposal, the EAB's ADR program would switch to an opt-out process by requiring all parties to convene with an EAB Judge acting as a Settlement Judge. EPA believes the parties can greatly benefit from the input of the Settlement Judge's unique assessment of litigation risk, which, in the Agency's experience, carries significant weight among parties and often drives quick resolution of the issues. After receiving this valuable input from the Settlement Judge, the parties would then be empowered to decide for themselves the best, most efficient process to resolve their disputes, whether it be through further mediation, an EAB appeal or litigation in federal court.

In addition, EPA's proposals to reform the current permit appeal process go hand-in-hand with the newly proposed ADR process. By modifying and expediting the appeal process, EPA hopes to make an EAB appeal a more attractive, less time-consuming option for the parties to resolve permit disputes.

In proposing this new process, EPA recognizes that it is fundamentally changing the administrative exhaustion requirement. However, based on the changes to EAB permit reviews over time and the documented success of ADR processes, EPA ultimately believes that an ADR-focused, party-driven process will resolve disputes faster and result in better outcomes (either through ADR, streamlined Board adjudication or expedited judicial review).

Lastly, EPA is proposing several measured reforms designed to better align the Board's role with its delegated authority from the Administrator. The Administrator is given the authority to issue permits under each of the relevant statutes implicated in EPA's proposal. In creating the EAB, the Administrator delegated a portion of this authority to the Board. By providing the Administrator with tools to exercise his or her statutory authority in the first instance together with some appropriate checks and balances on how the Board exercises its delegated authority, the measures included in today's proposal are designed to better reflect how the Administrator exercises or delegates his or her permitting authority.

D. What provisions of the CFR is EPA proposing to revise?

EPA proposes to revise the following provisions of the CFR:

- 40 CFR 1.25(e) (Environmental Appeals Board).
- 40 CFR 22.44 (appeals from the terminations of NPDES and RCRA permits).
- 40 CFR part 23 (judicial review provisions).
- 40 CFR 49.159(d) (appeals from Federal Minor New Source Review permit decisions made by Regional Administrators in Indian Country under the Clean Air Act).
- 40 CFR 49.172(d) (appeals from Federal Major Non-Attainment New Source Review permit decisions by Regional Administrators in Indian County under the Clean Air Act).
- 40 CFR 52.21(q) (appeals from PSD permit decisions made by Regional Administrators and delegated states under the Clean Air Act).
- 40 CFR 55.6(a)(3) (appeals of Outer Continental Shelf permit decisions made by Regional Administrators).
- 40 CFR 71.11(*l*) (appeals from Title V operating permit decisions made by

Regional Administrators and delegated states under the Clean Air Act).

- 40 CFR 78.3(b)(1) (appeals from certain acid rain permitting decisions made by Regional Administrators).
- 40 CFR 124.16 & 124.19 (appeals from NPDES permit decisions made by Regional Administrators and Administrative Law Judges under the Clean Water Act; appeals from permit decisions made by Regional Administrators under RCRA; appeals from PSD permit decisions made by Regional Administrators and delegated states under the Clean Air Act; appeals of Outer Continental Shelf permit decisions made by Regional Administrators; appeals from UIC permit decisions made by Regional Administrators under the Safe Drinking Water Act).
- 40 CFR part 222 (appeals from ocean dumping permit decisions made by Regional Administrators under the Marine Protection, Research, and Sanctuaries Act).
- 40 CFR 270.42(f) & 270.155 (appeals from Remedial Action Plan decisions under RCRA).

E. What regulatory text has EPA included in this proposal?

EPA has included proposed regulatory text for 40 CFR part 124 that would effectuate the proposed ADR process for most permit appeals. The Agency has provided this regulatory text to show the public how the substance of the newly proposed ADR process would be implemented. While this proposal makes clear that the proposed ADR process would apply to each of the permit decisions listed in section I.B. of this document, EPA has not included proposed conforming regulatory text for the following sections:

- 40 CFR 49.159(d) (appeals from Federal Minor New Source Review permit decisions in Indian Country under the Clean Air Act).
- 40 CFR 49.172(d) (appeals from Federal Major Non-Attainment New Source Review permit decisions in Indian County under the Clean Air Act).
- 40 CFR 52.21(q) (appeals from PSD permit decisions made by Regional Administrators and delegated states under the Clean Air Act).
- 40 CFR 55.6(a)(3) (appeals of Outer Continental Shelf permit decisions).
- 40 CFR 71.11(l) (appeals from Title V operating permit decisions made by Regional Administrators and delegated states under the Clean Air Act).
- 40 CFR 78.3(b)(1) (appeals from certain acid rain permitting decisions).
- 40 CFR part 222 (appeals from ocean dumping permit decisions under the Marine Protection, Research, and Sanctuaries Act).
- 40 CFR 270.42(f) & 270.155 (appeals from Remedial Action Plan decisions under RCRA)

EPA seeks comment on how to conform the above-cited sections with the proposed revisions to part 124. EPA could conform those sections by cross-referencing the proposed revisions in part 124 (requiring persons to file a notice of dispute under proposed § 124.19) or by drafting separate regulatory text that would create an identical ADR exhaustion process within each of those sections.

IV. Request for Comment

EPA solicits comment on all aspects of the proposed regulation and the bases articulated for it above.

Except for the proposal regarding the Administrator's legal interpretations (Section III, A.8. of this document), EPA is not soliciting comment on any functions of the EAB unrelated to permit appeals. For example, EPA is not soliciting comment on enforcement appeals or any other aspect of the EAB's work not specifically proposed today. With the exception of the proposals discussed above—for which EPA solicits comment—nothing in today's proposal would change the processes for having an appeal adjudicated by the EAB (should the parties agree to proceed with an appeal before the EAB). Therefore, EPA does not solicit comment on the unchanged aspects of the permit appeal processes.

V. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 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. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because it relates to ''agency organization, management or personnel.''

C. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

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).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1536, 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.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have a 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.

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

This action does not have tribal implications as specified in Executive Order 13175.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''convered 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.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

This action is not subject to Executive Order 12898 (59 Fed 7629, Feb. 16, 1994) because it does not establish an environmental health or safety standard.

List of Subjects

40 CFR Part 1

Organization and functions (Government agencies).

40 CFR Part 22

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

40 CFR Part 23

Administrative practice and procedure, Air pollution control, Courts, Hazardous substances, Hazardous waste, Pesticides and pests, Radiation protection, Water pollution control, Water supply.

40 CFR Part 49

Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and Recordkeeping requirements.

40 CFR part 52

Administrative practice and procedure, Air pollution control, Ammonia, Carbon monoxide, Environmental protection, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 55

Administrative practice and procedure, Air pollution control, Continental shelf, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 78

Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 124

Administrative practice and procedures, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 222

Administrative practice and procedures, Water pollution control.

Dated: November 6, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to revise 40 CFR parts 1, 22, 23, 49, 52, 55, 71, 78, 124, and 222 as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C 552.

■ 2. Amend § 1.25 by revising paragraph (e)(2) and adding paragraph (e)(4) to read as follows:

§ 1.25 Staff offices.

* * * * *

(e)(2) *Functions.* (i) The Environmental Appeals Board shall exercise any authority expressly delegated to it in this title. With respect to any matter for which authority has not been expressly delegated to the Environmental Appeals Board, the Environmental Appeals Board shall, at the Administrator's request, provide advice and consultation, make findings of fact and conclusions of law, prepare a recommended decision, or serve as the final decisionmaker, as the Administrator deems appropriate.

(ii) In performing its functions, the Environmental Appeals Board may consult with any EPA employee concerning any matter governed by the rules set forth in this title, provided such consultation does not violate applicable *ex parte* rules in this title.

(iii) The Administrator may limit the Environmental Appeals Board's authority to interpret statutes and regulations otherwise delegated to it in this title by issuing, through the General Counsel, a binding legal interpretation of any applicable statute or regulation. Nothing in this section limits the Administrator's authority to review or change any EAB decision.

* * * * *

(4) *Term.* (i) Each member of the Environmental Appeals Board is appointed to a twelve-year term, with an option for renewal at the end of that twelve-year period. Nothing in this paragraph prevents a member of the Environmental Appeals Board from resigning before the expiration of the member's twelve-year term. Similarly, nothing in this paragraph forecloses the Administrator from reassigning a member of the Environmental Appeals Board to another position prior to the expiration of the member's renewable twelve-year term.

(ii) If a member of the Environmental Appeals Board resigns before the expiration of the member's term, the replacement member will serve for the remaining portion of the term, with an option for renewal at the end of the term.

PART 124—PROCEDURES FOR DECISIONMAKING

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

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

Subpart A—General Program Requirements

■ 4. Amend § 124.16 by revising the first sentences of paragraphs (a)(1) and (a)(2)(ii), and by revising paragraph (b)(1) to read as follows:

§ 124.16 Stays of contested permit conditions.

(a) * * *

(1) If a notice of dispute of a RCRA, UIC, or NPDES permit under § 124.19 of this part is filed, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. * * *

(2) * * *

(ii) The Regional Administrator shall, as soon as possible after receiving notification from the EAB of the filing of a notice of dispute, notify the EAB, the applicant, and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in paragraph (a)(2)(i) of this section. * * *

(b) * * *

(1) A stay may be granted based on the grounds that a dispute to the Administrator under § 124.19 of one permit may result in changes to another EPA-issued permit only when each of the permits involved has been disputed to the Administrator.

* * * * *

■ 5. Revise § 124.19 to read as follows:

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

(a) *Disputing a permit decision*—(1) *Initiating a dispute.* Disputing a RCRA, UIC, NPDES, or PSD final permit decision issued under § 124.15 of this part, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter, is commenced by filing a notice of dispute with the Clerk of the Environmental Appeals Board within the time prescribed in paragraph (a)(3) of this section.

(2) *Who may file?* Any person who filed comments on the draft permit or participated in a public hearing on the draft permit may file a notice of dispute as provided in this section. Additionally, any person who failed to file comments or failed to participate in the public hearing on the draft permit may dispute any permit conditions set forth in the final permit decision, but only to the extent that those final permit conditions reflect changes from the proposed draft permit.

(3) *Filing deadline.* A notice of dispute must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a RCRA, UIC, NPDES, or PSD final permit decision under § 124.15 or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter. A notice is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.

(4) *Notice contents.* (i) A notice of dispute must identify the contested permit condition or other specific challenge to the permit decision and clearly set forth the party's contentions for why the permit decision should be reviewed.

(ii) A notice of dispute may not exceed 20 double-space pages.

(iii) A person filing a notice of dispute must certify that:

(A) The person filed comments on the draft permit or participated in a public hearing on the draft permit; or

(B) The disputed conditions in the final permit reflect changes from the proposed draft permit.

(b) *Response(s) to a notice of dispute.* (1) The Regional Administrator must file a response to the notice of dispute within 21 days after the service of the petition.

(2) A permit applicant who did not file a notice of dispute but who wishes to participate in the dispute process must file a notice of appearance and a response. Such documents must be filed by the deadline provided in paragraph (b)(1) of this section.

(3) The State or Tribal authority where the permitted facility or site is or is proposed to be located (if that authority is not the permit issuer) must also file a notice of appearance and a response if it wishes to participate in the dispute process. Such response must be filed by the deadline provided in paragraph (b)(1) of this section.

(4) *Response contents.* (i) A response must respond to the issues raised in the notice of dispute.

(ii) A response may not exceed 20 double-spaced pages.

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

(1) *Caption and other filing requirements.* Every document filed with the Environmental Appeals Board must specifically identify in the caption the permit applicant, the permitted facility, and the permit number. All documents that are filed must be signed by the person filing the documents or the representative of the person filing the documents. Each filing must also indicate the signer's name, address, and telephone number, as well as an email address, and facsimile number, if any.

(2) *Method of filing.* Unless otherwise permitted under these rules, documents must be filed either by using the Environmental Appeals Board's electronic filing system, by U.S. mail, or by hand delivery or courier (including delivery by U.S. Express Mail or by a commercial delivery service).

(i) *Electronic filing.* Documents that are filed electronically must be submitted using the Environmental Appeals Board's electronic filing system, subject to any appropriate conditions and limitations imposed by order of the Environmental Appeals Board. All documents filed electronically must include the full name of the person filing below the signature line. Compliance with Environmental Appeals Board electronic filing requirements constitutes compliance with applicable signature requirements.

(ii) *Filing by U.S. Mail.* Documents that are sent by U.S. Postal Service (except by U.S. Express Mail) must be sent to the official mailing address of the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue NW, Mail Code 1103M, Washington, DC 20460–0001. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the Environmental Appeals Board clearly identifying the documents that are being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address.

(iii) *Filing by hand delivery or courier.* Documents delivered by hand or courier (including deliveries by U.S. Express Mail or by a commercial delivery service) must be delivered to the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, WJC East Building, 1201 Constitution Avenue NW, Room 3332, Washington, DC 20004.

(3) *Service*—(i) *Service information.* The first document filed by any person must contain the name, mailing address, telephone number, and email address of an individual authorized to receive service relating to the proceeding. Parties must 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 satisfies the requirements of paragraph (i)(3) of this section.

(ii) *Service requirements for parties.* A party must serve the notice of dispute on the Regional Administrator, the permit applicant and the state or tribal authority where the permitted facility or site is (or is proposed to be) located (if the applicant, state or tribal authority is not the disputing party). Once a dispute 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 email. A party who consents to service by facsimile or

other electronic means must file an acknowledgement of its consent (identifying the type of electronic means agreed to and the electronic address to be used) with the Clerk of the Environmental Appeals Board. The Environmental Appeals Board may by order authorize or require service by facsimile, email, or other electronic means, subject to any appropriate conditions and limitations.

(iii) *Service of rulings, orders, and decisions.* The Clerk of the Environmental Appeals Board must serve copies of rulings, orders, and decisions on all parties. Service may be made by U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), EPA's internal mail, any reliable commercial delivery service, or electronic means (including but not necessarily limited to facsimile and email).

(4) *Proof of service.* A certificate of service must be appended to each document filed stating the names of persons served, the date and manner of service, as well as the electronic, mailing, or hand delivery address, or facsimile number, as appropriate.

(d) *Dispute resolution process.* (1) Upon receipt of a notice of dispute under paragraph (a)(3) of this section, the Clerk of the Environmental Appeals Board shall assign one of the Board's judges to act as the Settlement Judge for the dispute.

(2) *Convening of parties*—(i) *Timing.* The Settlement Judge shall convene all parties to the dispute, either in-person or via video conference, within 30 days from the deadline provided in paragraph (b)(1) of this section. This deadline may be extended by unanimous consent of the parties.

(ii) *Issue summaries.* (A) No later than 10 days before the date of the convening, each party must submit a brief written submission (no more than 15 double-spaced pages) summarizing the issues in dispute and its positions on those issues. In addition to identifying any jurisdictional or policy issues, these submissions should include any background information that might facilitate settlement discussions. The submissions should also include discussions of what the parties seek from ADR and their perspective on what a successful agreement might include.

(B) Unless authorized by the submitting party, the issue summaries may not be shared with any other party.

(iii) *Initial mediation.* (A) Each party must meet with the Settlement Judge in a private session at or before the convening meeting. In the private session, the Settlement Judge shall provide each party with a confidential, oral assessment of the strengths and weaknesses of their case. Unless authorized by the communicating party, the Settlement Judge may not disclose any information provided in private session.

(B) Following the private sessions, the parties may engage in direct discussions to resolve the dispute.

(3) *Concluding the resolution process.*

(i) At the conclusion of the convening meeting, or no later than 30 days after the deadline provided in paragraph (b)(1) of this section, the parties may decide by unanimous agreement to:

(A) Continue mediation under the Environmental Appeals Board's alternative dispute resolution program; or

(B) Proceed with an appeal under § 124.20 of this chapter.

(ii) If the parties fail to agree to continue mediation or to proceed with an appeal under section 124.20 of this chapter, the Clerk of the Environmental Appeals Board shall dismiss the dispute.

(iii) If all parties agree to continue mediation under paragraph (d)(3)(i) of this section, the following provisions apply:

(A) The parties may decide by unanimous agreement at any time during the mediation process to proceed with an appeal under § 124.20 of this chapter.

(B) The Clerk of the Environmental Appeals Board may dismiss the notice of dispute and end the mediation process if:

(*1*) The Settlement Judge determines that the mediation has not made substantial progress or that mediation is no longer appropriate; or

(2) Any party to the mediation no longer wishes to participate.

(4) *Parties to unanimous agreement.* Under this section, the Regional Administrator is not considered a party when determining the unanimous agreement of the parties.

(e) *Withdrawal of permit or portions of permit by Regional Administrator.* The Regional Administrator, at any time prior to 30 days after the Regional Administrator files its response to the notice of dispute under paragraph (b) of this section, may, upon notification to the Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit that are not withdrawn and that are not stayed under § 124.16(a) continue to apply. If the Settlement Judge has convened an initial meeting of the parties under paragraph (d)(2) of this section, the Regional Administrator may not unilaterally withdraw the permit, but instead must request that the Environmental Appeals Board grant a voluntary remand of the permit or any portion thereof.

(f) *Request for dismissal of dispute.* The disputing party, by motion, may request to have the Environmental Appeals Board dismiss its dispute. The motion must briefly state the reason for its request.

(g) *Judicial review.* (1) Filing a notice of dispute under paragraph (a)(1) of this section and participating in the convening meeting under paragraph (d)(2) of this section are, under 5 U.S.C. 704, a prerequisite to seeking judicial review of the final agency action.

(2) For purposes of judicial review under the appropriate Act, final agency action on a RCRA, UIC, NPDES, or PSD permit occurs when:

(i) A notice of dispute is dismissed under paragraph (d)(4) or (d)(5)(ii) of this section; or

(ii) When agency review procedures under § 124.20 of this chapter are exhausted and the Regional Administrator subsequently issues a final permit decision under § 124.20(i)(2) of this chapter.

(h) *General NPDES permits.* (1) Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of a general permit in further Agency proceedings. Instead, they may do either of the following:

(i) Challenge the general permit by filing an action in court; or

(ii) Apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 of this chapter and may then petition the Environmental Appeals Board to review the individual permit as provided by this section.

(2) As provided in § 122.28(b)(3) of this chapter, any interested person may also petition the Director to require an individual NPDES permit for any discharger eligible for authorization to discharge under an NPDES general permit.

■ 6. Revise § 124.20 to read as follows:

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

(a) *Appealing a permit decision*—(1) *Initiating an appeal.* An appeal of a RCRA, UIC, NPDES, or PSD final permit decision issued under § 124.15 of this part, or a decision to deny a permit for

the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter, is commenced by filing a notice with the Clerk of the Environmental Appeals Board indicating that all parties to the dispute resolution process agree to proceed with an appeal under this section.

(2) *What may be appealed?* An appeal under this section is limited to only those issues or permit conditions that the parties to the dispute resolution process agreed to appeal.

(3) *Administrative record.* The Regional Administrator must file a certified index of the administrative record and the relevant portions of the administrative record within 30 days after the service of the notice under paragraph (a)(1) of this section.

(b) *Opening brief.* (1) *Filing the brief.* A party that filed a notice of dispute under § 124.19(a)(1) of this chapter may file an opening brief within 30 days after service of the notice under paragraph (a)(1) of this section.

(2) *Contents of the brief.* In addition to meeting the requirements in paragraph (e) of this section, the opening brief must:

(i) Identify the contested permit condition or other specific challenge to the permit decision;

(ii) Demonstrate that each challenge to the permit decision is based on a finding of fact or conclusion of law that is clearly erroneous; and

(iii) 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 brief was raised during the public comment period (including any public hearing) to the extent required by § 124.13. For each issue raised that was not raised previously, the brief must explain why such issues were not required to be raised during the public comment period as provided in § 124.13. Additionally, if the brief raises an issue that the Regional Administrator addressed in the response to comments document issued pursuant to § 124.17, then it must provide a citation to the relevant comment and response and explain why the Regional Administrator's response to the comment was clearly erroneous.

(c) *Answering brief(s).* (1) The Regional Administrator must file an answering brief within 30 days after service of the opening briefing. The answering 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) A permit applicant that participated in the dispute resolution process may file an answering brief that responds to the arguments raised by the appellant within 30 days after service of the opening brief.

(3) If the State or Tribal authority where the permitted facility or site is or is proposed to be located (if that authority is not the permit issuer) participated in the dispute resolution process, it may file an answering brief within 30 days after service of the opening brief.

(d) *Replies.* (1) In PSD and other new source permit appeals, the Environmental Appeals Board will apply a presumption against the filing of a reply brief. By motion, appellant may seek leave of the Environmental Appeals Board to file a reply to the answering brief, which the Environmental Appeals Board, in its discretion, may grant. The motion must be filed simultaneously with the proposed reply within 10 days after service of the answering brief. In its motion, appellant must specify those arguments in the response to which appellant seeks to reply and the reasons appellant believes it is necessary to file a reply to those arguments. Appellant may not raise new issues or arguments in the motion or in the reply.

(2) In all other permit appeals under this section, appellant may file a reply within 15 days after service of the answering brief. Appellant may not raise new issues or arguments in the reply.

(e) *Content and form of briefs*—(1) *Content requirements.* All briefs filed under this section must contain, under appropriate headings:

(i) A table of contents, with page references;

(ii) A table of authorities with references to the pages of the brief where they are cited;

(iii) A table of attachments, if required under paragraph (e)(2) of this section; and

(iv) A statement of compliance with the word limitation.

(2) *Attachments.* Parts of the record to which the parties wish to direct the Environmental Appeals Board's attention may be appended to the brief submitted. If the brief includes attachments, a table must be included that provides the title of each appended document and assigns a label identifying where it may be found (*e.g.,* Excerpts from the Response to Comments Document — Attachment 1).

(3) *Length.* Unless otherwise ordered by the Environmental Appeals Board, opening briefs and answering briefs may not exceed 14,000 words, and all other briefs may not exceed 7,000 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 30-page limit for petitions and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, and any attachments do not count toward the word limitation. The Environmental Appeals Board may exclude any opening brief, answering brief, or other brief 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 to file a longer brief. Such requests are discouraged and will be granted only in unusual circumstances.

(f) *Motions*—(1) *In general.* A request for an order or other relief must be made by written motion unless these rules prescribe another form.

(2) *Contents of a motion.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. 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.

(3) *Response to motion.* Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within 15 days after service of the motion unless the Environmental Appeals Board shortens or extends the time for response.

(4) *Reply.* Any reply to a response filed under paragraph (f)(3) of this section must be filed within 10 days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response.

(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.

(6) *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.

(g) *Motions for extension of time.* (1) 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.

(2) Each party may only file one motion for extension and the requested extension may not exceed 30 days.

(h) *Filing and service requirements.* Documents filed under this section must be filed and serviced in accordance with the requirements of § 124.19(c) of this chapter.

(i) *Final disposition.* (1) The Environmental Appeals Board shall issue its decision on a permit appeal by the later date occurring 60 days after the date on which:

(i) The final brief has been submitted; or

(ii) Oral argument is concluded.

(2) Any written opinion issued by the Environmental Appeals Board should only be as long as necessary to address the specific issues presented to the Board in the appeal.

(3) The Regional Administrator must issue a final permit decision:

(i) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(ii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(4) The Regional Administrator must promptly publish notice of any final agency action regarding a PSD permit in the **Federal Register**.

(j) *Motions for reconsideration or clarification.* Motions to reconsider or clarify any final disposition of the Environmental Appeals Board must be filed within 10 days after service of that disposition. Motions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for clarification must set forth with specificity the portion of the decision for which clarification is being sought and the reason clarification is necessary. Motions for reconsideration or clarification under this provision must be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration or clarification directed to the Administrator, rather than the Environmental Appeals Board, will not be considered, unless such motion relates to a matter that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.2 and for which the Administrator has issued the final order. A motion for reconsideration or clarification does not stay the effective date of the final order unless the Environmental Appeals Board specifically so orders.

(k) *Board authority.* In exercising its duties and responsibilities under this part, the Environmental Appeals Board may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part including, but not limited to, imposing procedural sanctions against a party who, without adequate justification, fails or refuses to comply with this part or an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding. Additionally, for good cause, the Board may relax or suspend the filing requirements prescribed by these rules or Board order.

■ 7. Revise § 124.20 to read as follows:

§ 124.20 Computation of time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

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

[FR Doc. 2019–24940 Filed 12–2–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0656; FRL–10002–64–Region 7]

Air Plan Approval; Missouri; Sampling Methods for Air Pollution Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revisions to the State Implementation Plan (SIP) submitted by the State of Missouri to EPA on October 25, 2019. The purpose of the revisions is to provide a more efficient way to perform emissions sampling on air pollution sources throughout Missouri. The State is requesting approval of incorporating by reference the federally defined methods for stack testing. These proposed revisions are administrative in nature and do not affect the stringency of the SIP.

DATES: Comments must be received on or before January 2, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2019–0656 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jan Simpson, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7089; email address *simpson.jan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents