

Environmental Protection Agency

§ 23.2

(1) The assessment of a penalty under sections 309(g)(2)(A) and 311(b)(6)(B)(i) of the Clean Water Act (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300h-2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§ 22.11, 22.16(c), 22.21(a), and 22.29. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

§ 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

§ 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to § 22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

PART 23—JUDICIAL REVIEW UNDER EPA—ADMINISTERED STATUTES

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AUTHORITY: Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j-7(a)(2), 300j-9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 348; 28 U.S.C. 2112(a), 2343, 2344.

SOURCE: 50 FR 7270, Feb. 21, 1985, unless otherwise noted.

§ 23.1 Definitions.

As used in this part, the term:

(a) *Federal Register document* means a document intended for publication in the Federal Register and bearing in its heading an identification code including the letters *FRL*.

(b) *Administrator* means the Administrator or any official exercising authority delegated by the Administrator.

(c) *General Counsel* means the General Counsel of EPA or any official exercising authority delegated by the General Counsel.

[50 FR 7270, Feb. 21, 1985, as amended at 53 FR 29322, Aug. 3, 1988]

§ 23.2 Timing of Administrator's action under Clean Water Act.

Unless the Administrator otherwise explicitly provides in a particular promulgation or approval action, the time and date of the Administrator's action