

§ 22.39

opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to §22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope.* This section shall apply, in conjunction with §§22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§22.1 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by for-

40 CFR Ch. I (7-1-07 Edition)

warding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

§ 22.40 [Reserved]

§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) *Scope.* This section shall apply, in conjunction with §§22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2647). Where inconsistencies exist between this section and §§22.1 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives