

**§ 67.31**

**40 CFR Ch. I (7-1-02 Edition)**

with an approved program if he determines that the State or its local agent has failed to issue such notice, provided that he shall first give 30 days notice to the State of his intent to issue a notice of noncompliance to the owner or operator of the source in question unless the State or its agent does so first. Any notice issued by the Administrator pursuant to this section shall be deemed to be issued pursuant to the provisions of part 66.

(b) The issuance of a notice of non-compliance shall operate to withdraw EPA delegation of authority to the State with respect to the particular facility in question.

(c) If the Administrator determines that the State or local agent has issued a notice of noncompliance but has failed to pursue diligently subsequent steps for the assessment and collection of the penalty, he shall notify the State of his intent to withdraw delegation of authority to the State with respect to the facility in question and take appropriate actions pursuant to part 66 unless the State or local agent, within 30 days, takes appropriate action in accordance with the requirements of this part. In either case the penalty will be calculated from the date of the State notice.

**Subpart D—EPA Review of State Compliance or Exemption Decisions**

**§ 67.31 Review by the Administrator.**

(a) The Administrator may, on his own initiative, review any determination by a State or its agent that a source owner or operator is or is not in compliance with applicable legal requirements or is or is not entitled to an exemption, to determine whether that determination conforms to the requirements of the Act and part 66 (as modified by § 67.11).

(b) The Administrator shall review any such determination upon receipt of a petition alleging that the State's determination does not conform to the requirements of the Act and part 66 (as modified by § 67.11). Such petition must be filed within 20 days of issuance of the State's decision.

(c) The Administrator shall give notice in writing to the State or local

agent, to the owner or operator of the source, and to the petitioner of his intent to review the determination. Such notice shall be given within 90 days of the Administrator's receipt of the State or local agent's determination. Unless otherwise provided, such notice shall not withdraw EPA's delegation of authority to the State or local agent over the particular facility in question.

(d) No such State determination shall become final until the expiration of 90 days after the Administrator's receipt of the notice required by § 67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination shall, upon expiration of such period, constitute final action of the Administrator under section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(e) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

**§ 67.32 Procedure where no formal State hearing was held.**

(a) In reviewing a decision that a source is in compliance with applicable legal requirements or entitled to an exemption for which no hearing conforming to § 67.11(b) (4) or (6) was held, the Administrator shall evaluate the accuracy and adequacy of the documents transmitted to him pursuant to § 67.11(b)(5) and shall invite submission of comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of section 120. If the Administrator concludes that the petition of the source owner or operator presented information which, if true, would have altered the owner or operator's liability for a penalty, he shall upon notice to the State