

§ 66.23 Interim recalculation of penalty.

(a) The Administrator, upon concluding that a previously approved penalty calculation no longer is accurate, may:

(1) Request, in writing, that the source owner or operator submit a revised calculation in the form specified in § 66.13(a). The Administrator shall respond to any information submitted in accordance with the provisions of § 66.51.

(2) Notify the source owner or operator, in writing, that the penalty has been recalculated based upon information in the Administrator's possession. The source owner or operator shall respond as provided in § 66.52.

(b) If a source owner or operator believes that, because of changed circumstances, a penalty calculation which has been accepted by EPA no longer is accurate, he may submit a revised penalty calculation and schedule to the Administrator. The revised calculation shall be in the form specified in § 66.13(a)(1). The Administrator shall respond in accordance with the provisions of § 66.51. The decision to accept the interim calculation or to grant a hearing on this issue shall be solely within the discretion of the Administrator.

Subpart D—Exemption Requests; Revocation of Exemptions

§ 66.31 Exemptions based on an order, extension or suspension.

(a) A source owner or operator who would otherwise be subject to a non-compliance penalty will be exempted from that penalty during the period for which, and upon a demonstration that, its noncompliance with applicable legal requirements is or was due solely to:

(1) A conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 113(d)(5) or section 119 of the Act as in effect before August 7, 1977.

(2) In the case of a coal-burning source, the issuance of a prohibition to that source against burning petroleum products or natural gas, or both, by

means of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, the Powerplant and Industrial Fuel Use Act, or under any legislation which amends or supersedes these provisions, *Provided*, That the source had received an extension under the second sentence of section 119(c)(1) of the Act as in effect before August 7, 1977.

(3) The use of innovative technology by the source owner or operator pursuant to an enforcement order under section 113(d)(4) of the Act.

(4) An inability to comply with an applicable legal requirement resulting from reasons entirely beyond the control of the owner or operator of such source or of any affiliated entity, *Provided*, That

(i) The source owner or operator has received an order under section 113(d) (or an order under section 113 issued before August 7, 1977) or a federal or EPA-approved State judicial decree or order which has the effect of permitting a delay in complying with the legal requirement at issue, and

(ii) That the source owner or operator meets the requirements of paragraphs (c) and (d) of this section.

(5) The existence of an energy or employment emergency demonstrated by issuance of an order under section 110(f) or 110(g) of the Act, unless such order is disapproved by EPA.

(b) To qualify for an exemption under this section, the source owner or operator must have received the order, extension or suspension or consent decree described in the paragraph of the section pursuant to which the exemption is claimed. No exemption may be sought which, if granted, would exceed the terms of the relevant extension, order, suspension, or consent decree, except as provided in paragraph (e) of this section. No exemption may be sought which is based on a claim that the source owner or operator is entitled to any such order, extension, suspension, or consent decree even though it has not been issued.

(c) In any exemption claim based on paragraph (a)(4) of this section, the source owner or operator must demonstrate:

(1) That the source owner or operator or an affiliated entity in no manner