

### § 66.34

waived. In making such finding the Administrator shall consider whether:

(1) The violation was *de minimis* in nature and duration within the meaning of § 66.32;

(2) The air pollution control equipment, process equipment, or processes, including appropriate back-up systems, were designed, and have been maintained and operated in a manner consistent with good practice for minimizing emissions;

(3) Repair of the malfunctioning equipment was undertaken and carried out in an expeditious fashion as soon as the owner or operator knew or should have known that the malfunction existed or that applicable emission limitations were being violated or were likely to be violated;

(4) All practicable steps were taken to minimize the impact of the excess emissions (including any bypass) on ambient air quality;

(5) The excess emissions were not part of a pattern indicative of inadequate design, operation, or maintenance;

(6) Off-shift and overtime labor were utilized where necessary to ensure that repairs were made as expeditiously as possible or that emissions were minimized to the maximum extent possible; and

(7) The level of economic savings, if any, accruing to the source owner or operator was *de minimis*.

(c) Any activity that could have been foreseen, avoided or planned for, or any breakdown that could have been avoided by the exercise of reasonable diligence shall not constitute grounds for an exemption under this section. Such activities include, but are not limited to, sudden breakdowns avoidable by better maintenance procedures, phasing in and out of process equipment and routine maintenance.

(d) A hearing on any petition for an exemption based upon the unavoidable breakdown of pollution control equipment shall be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a

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reasonable period of time after the close of the hearing.

#### § 66.34 Termination of exemptions.

(a) Exemptions pursuant to § 66.31(a) (1), (2), (3), and (5) will cease to be effective upon termination or revocation of the order on which the exemption is based.

(b) Exemptions pursuant to § 66.31(a)(4) will cease to be effective when the order or decree is terminated or revoked, or the inability to comply ceases to be for reasons entirely beyond the control of the source owner or operator as defined in § 66.31(c).

(c) Exemptions granted pursuant to § 66.32 or § 66.33 shall terminate at the time specified in the exemption.

(d) The Administrator shall notify the source owner or operator, in writing, that the exemption has terminated, and shall specify the date from which the penalty shall be calculated. The notice shall be transmitted as required by § 66.12. The source owner or operator shall respond to this notice within 45 days of its receipt and in the form provided in § 66.13.

#### § 66.35 Revocation of exemptions.

(a) The Administrator may upon notice and opportunity for a hearing revoke an exemption granted to the owner or operator of any source at any time in accordance with paragraphs (b) and (c) below.

(b) An exemption may be revoked and a penalty for the period of non-exempted noncompliance assessed if:

(1) The grounds for the exemption no longer exist or never did exist, or

(2) In the case of an exemption under § 66.31, the source owner or operator has failed to comply with any interim emission control requirements or schedules of compliance (including increments of progress) contained in the extension, order, suspension or EPA-approved consent decree on which the exemption was based.

(c) The Administrator shall provide the source owner or operator written notice containing the information required by § 66.12 and a statement of the reasons for revocation. The notice shall also specify the date from which the source owner or operator must calculate a penalty. The notice shall be

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transmitted as required by § 66.12. The source owner or operator shall respond to this notice within 45 days of its receipt and in the form provided in § 66.13.

### Subpart E—Decisions on Exemption Requests and Challenges to Notices of Noncompliance

#### § 66.41 Decision on petitions.

(a) Within thirty days after receiving a petition filed under § 66.13, the Administrator shall notify the source owner or operator in writing that:

(1) The petition demonstrates that the source owner or operator is entitled to part or all of the relief requested and that the notice of noncompliance is withdrawn or modified accordingly;

(2) The petition does not contain sufficient information to demonstrate that the source owner or operator is entitled to part or all of the relief requested. The Administrator shall specify what deficiencies exist and request that the source owner or operator supplement his petition within thirty days of receipt of that request. If the petition is not supplemented adequately within this time, or, if supplemented adequately, still fails to demonstrate entitlement to relief, the Administrator shall grant a hearing under paragraph (a)(3) of this section. Any supplemental material provided pursuant to the Administrator's request shall be evaluated as provided in paragraphs (a)(1) and (a)(3) of this section.

(3) A hearing is granted on the issue of whether the source is in violation of applicable legal requirements or is entitled to an exemption under §§ 66.31, 66.32, 66.33, or on both.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

#### § 66.42 Procedure for hearings.

(a) Except as provided in §§ 66.32 and 66.33, hearings granted under § 66.41(a)(3) shall be held as provided in Subpart J.

(b) If hearings are granted pursuant to both § 66.32 or § 66.33 and under Subpart J, a consolidated hearing in accordance with Subpart J shall be held. At the consolidated hearing the issues

that would otherwise have been considered at a hearing under § 66.32 or § 66.33 shall be considered pursuant to the procedures for a hearing provided in those sections.

(c) The Presiding Officer at a hearing granted under § 66.41 shall issue an initial decision within 90 days after the Administrator grants the hearing, unless the duration of the hearing or the deadline for decision is extended by the Presiding Officer upon agreement of the parties. Failure to issue a decision (whether or not by consent) within 90 days shall not affect the validity of the proceedings or the accrual of penalties in any manner.

#### § 66.43 Final decision; submission of penalty calculation.

Within forty-five days after EPA has notified the owner or operator of a source of the final Agency decision that it is in violation of applicable legal requirements or is not entitled to an exemption, the owner or operator shall submit the information required by § 66.13(a), including appropriate compliance and payment schedules and extra interest owed for the period of delay. The penalty shall be calculated from the date of receipt of the original notice of noncompliance.

### Subpart F—Review of Penalty Calculation

#### § 66.51 Action upon receipt of penalty calculation.

(a) Within thirty days after receipt of a penalty calculation provided pursuant to § 66.13(a)(1) or § 66.43, the Administrator shall notify the source owner or operator in writing, that:

(1) The penalty is provisionally accepted as calculated, subject to any recalculation that may be necessary under § 66.72 after the source has achieved compliance; or

(2) The penalty is incorrect and has been recalculated based on the data provided by the source owner or operator, or other data. The Administrator shall provide a brief statement of the basis for the recalculation and shall identify when and where any supporting data may be examined. The Administrator shall also notify the source