

**§ 67.12**

**40 CFR Ch. I (7-1-03 Edition)**

NW., Washington, DC 20460, together with adequate provision for maintaining such capability. Such capability may be provided by trained State personnel or through qualified contractors;

(4) Except as provided in paragraph (a)(6) of this section, an administrative hearing whenever the owner or operator of a source submits a petition for reconsideration of a notice of non-compliance on the ground that the source either is not in violation of applicable legal requirements, or is entitled to an exemption, or both, or submits a petition to challenge a recalculation of the penalty by the State, provided that such petitions raise issues of fact that would require a hearing under part 66. This hearing need not conform to the requirements of 5 U.S.C. 554 as long as its procedures provide for:

(i) An initial decision by the hearing officer on the record;

(ii) A hearing officer who has not performed investigative or litigating functions in any enforcement action against the source owner or operator in question;

(iii) Opportunity for public participation on reasonable notice, including intervention, by interested persons;

(iv) Opportunity for cross-examination or an equivalent opportunity for confrontation between persons advocating differing positions on material factual matters; and

(v) An initial decision by the hearing officer within ninety days of commencement of the hearing unless such period is extended upon agreement of the parties.

(5) Explicit provision for:

(i) Notice to the Administrator of any determination granting an exemption, or finding a source in violation of applicable legal requirements, and any penalty calculation and payment schedule approved or calculated by the State, together with any information necessary to verify its accuracy;

(ii) Within 30 days of receipt of a request from the Administrator, transmission of a copy of the record of the hearing held under paragraph (a)(4) or (6) of this section, including any proffered evidence and a ruling on its ad-

missibility and the State's decision on the merits; and

(iii) Additional reporting and record-keeping, if necessary, adequate to enable the Administrator to review the State's administration of the program and determine whether it conforms to the Act and to part 66 of these regulations. Such requirements will be specified in the Notice of Delegation to the State.

(6) A hearing on the question of whether the owner or operator of a source is entitled to an exemption pursuant to § 66.32 or 66.33 may be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions to the petitioner by members of the public shall be afforded. A record of the hearing shall be made, and the decision of the hearing officer made in writing within a reasonable period of time after the close of the hearing.

(c) The State may delegate all or part of its responsibilities under its program to a local governmental agency to implement the program within the jurisdiction of the local agency, *Provided* that the program of the local government agency meets the requirements of this section.

(d) No State penalty program or program of one of its agents shall be disapproved because it is more stringent than the program established by part 66 or by section 120 where the State or local agent concludes that it has independent authority under State or local law to implement and administer the more stringent portions of the program.

[45 FR 50117, July 28, 1980, as amended at 54 FR 25259, June 14, 1989]

**§ 67.12 Application for approval of programs.**

A state that wishes to administer a section 120 program shall submit an application in writing to the Administrator describing its proposed program. All necessary supporting materials shall accompany the application.

**§ 67.13 Approval.**

(a) The Administrator shall evaluate any application submitted under § 67.12 and shall: