

## Environmental Protection Agency

## § 66.22

be calculated and (ii) a copy of the Technical Support Document and the Manual;

(4) Notice of the right to petition for a hearing to challenge the finding of noncompliance or to claim an exemption; and

(5) Notice that the penalty continues to accrue during the pendency of any hearings granted under this part or Part 67.

(b) Each notice of noncompliance shall be transmitted to the source owner or operator either by personal service or by registered or certified mail, return receipt requested.

### **§ 66.13 Duties of source owner or operator upon receipt of a notice of noncompliance.**

(a) Within forty-five days after receiving a notice of noncompliance a source owner or operator shall either:

(1) Calculate the amount of the penalty owed and the appropriate quarterly payment schedule, as provided in the Technical Support Document and Instruction Manual, and transmit that calculation, together with supporting data sufficient to allow verification of the penalty calculation, to the Administrator; or

(2) Submit a petition for reconsideration, alleging that the source is not in violation of applicable legal requirements or that the source owner or operator is entitled to an exemption pursuant to §§ 66.31 through 66.33, or both. A source owner or operator must present both grounds in the petition if he wishes to preserve a claim to an exemption in the event that the source is found to be in violation. Issues relating to the existence of a violation or entitlement to an exemption not raised in the petition shall be deemed waived.

(b) Any submittal pursuant to this subsection shall specify the identity of the person responsible for the payment of any noncompliance penalty, and to whom any reimbursement, if necessary, shall be sent.

(c) A source owner or operator may amend any petition for reconsideration pursuant to paragraph (a) of this section within 45 days from receipt of a notice of noncompliance. Amendment of such petition after 45 days will be permitted only if based on unforesee-

able conditions occurring after termination of the 45 day period, or upon consent of the Administrator.

### **Subpart C—Calculation of Noncompliance Penalties**

#### **§ 66.21 How to calculate the penalty.**

(a) All noncompliance penalties shall be calculated in accordance with the Technical Support Document and the Manual.

(b) Where the Administrator determines that no existing technology or other emissions control method results in emission levels which satisfy the applicable legal requirement, the penalty calculation shall be based on the cost of the capital equipment, operation and maintenance practices, or other methods of control which best approximates the degree of control required. In such a case, the Administrator may include in the penalty the costs of participation in an EPA approved research and development program where he determines that such participation would be appropriate. Information on appropriate research and development programs will be available from the regional offices or from the Office of Research and Development.

#### **§ 66.22 Contracting out penalty calculation.**

Upon the failure of a source owner or operator, who does not submit a petition for reconsideration as provided in § 66.13(a)(2), to submit the information described in § 66.13(a)(1) within 45 days of receipt of a notice of noncompliance, or upon submission of incorrect information as determined pursuant to § 66.51, the Administrator may enter into a contract with any qualified person who is not an affiliated entity and who has no financial interest in the owner or operator of the source to assist in determining the amount of the penalty assessment or payment schedule with respect to such source owner or operator. The cost of this contract may be added to the penalty to be assessed against the owner or operator of the source. The data used in calculating the penalty shall be furnished to the source owner or operator at the time that the penalty calculation is reported.