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§ 66.4 Limitation on review of regulations.

No applicable legal requirement, which could have been reviewed or challenged by means of the timely filing of an appropriate petition, no provision of this part or part 67 or appendices A, B or C, may be challenged, reviewed or re-examined in any hearing conducted under this part or part 67. This limitation on review includes, but is not limited to:

(a) Arguments that the statute is more or less restrictive than the regulations, e.g., that exemptions other than those provided herein should be granted.

(b) Arguments that the economic model does not accurately calculate the economic benefits of noncompliance, or that parameters, terms and conditions other than those provided for in the model should be used or that evidence other than that described in the Technical Support Document for establishing inputs should be considered.

§ 66.5 Savings clause.

Proceedings under these regulations for imposition of a penalty under section 120 are in addition to any other proceedings related to permits, orders, payments, sanctions or other requirements of State or Federal law. No action under this part or part 67 shall affect in any way any administrative, civil or criminal enforcement proceeding brought under any provision of the Clean Air Act or State or local law.

§ 66.6 Effect of litigation; time limits.

(a) The existence of any litigation on the validity of these regulations shall not affect the authority of the Agency to issue notices of noncompliance or to conduct subsequent administrative proceedings under parts 66 and 67.

(b) Failure of the Environmental Appeals Board or the Presiding Officer at a hearing to meet any of the time limits contained in this part 66 and part 67 of this chapter shall not affect the validity of any proceeding under these regulations.

(c) The filing of any petition for reconsideration under this part or part 67 or the institution of EPA review of a State determination under part 67 shall

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not toll the accrual of noncompliance penalties. The penalty will be calculated from the date on which the source owner or operator receives a notice of noncompliance.

[45 FR 50110, July 28, 1980, as amended at 57 FR 5329, Feb. 13, 1992]

Subpart B—Notice of Noncompliance

§ 66.11 Issuance of notices of noncompliance.

(a) The Administrator shall issue a notice of noncompliance to the owner or operator of any source which he determines is in violation of applicable legal requirements and which is located in a State without an approved section 120 program.

(b) The Administrator shall send a notice of noncompliance to the owner or operator of any source located in a State with an approved section 120 program when he determines as provided in part 67 that the source is in violation of applicable legal requirements and the State has failed to send a notice of noncompliance to it, or has failed to pursue diligently any subsequent steps for the assessment or collection of the penalty.

(c) Failure of EPA or a State to issue a notice of noncompliance within 30 days after discovery of a violation shall not affect the obligation of a source owner or operator to pay a noncompliance penalty but shall affect the date from which the penalty is calculated. The penalty shall be calculated from the earliest date that the owner or operator of the source received a notice of noncompliance under this section, whether issued by EPA or the State.

§ 66.12 Content of notices of noncompliance.

(a) Each notice of noncompliance shall be in writing and shall include:

(1) A specific reference to each applicable legal requirement of which the source is in violation;

(2) A brief statement of the factual basis for the finding of violation, together with a reference to any supporting materials and a statement of when and where they may be inspected;

(3) Instructions on calculating the amount of the penalty owed and the

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schedule for payments. Such instructions shall include (i) a statement of the date from which penalties should 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 unforeseeable 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