

## Environmental Protection Agency

## § 66.22

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

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the source owner or operator at the time that the penalty calculation is reported.

### § 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