

§ 67.42

(c) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

§ 67.42 Procedure where no formal State hearing was held.

(a) In reviewing a penalty calculation for which no hearing conforming to the requirements of § 67.11(b)(4) was held, the Administrator shall evaluate the accuracy and adequacy of the data contained in the documents transmitted to him pursuant to § 67.11(b)(5) and shall invite comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of section 120. If the Administrator concludes that the petition of the source owner or operator for reconsideration of a recalculation presented information which, if true, would have altered the amount of the penalty calculated, he shall upon notice to the State schedule a hearing in accordance with subpart F of part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a hearing within 15 days of receipt of the notice.

(c) If the Administrator concludes that the determination of the State or local agent not to hold a hearing was proper but that the penalty calculation does not conform to the requirements of the Act or of part 66, he shall by written notice revoke the determination and issue a notice of recalculation to the source owner or operator pursuant to § 66.51. A copy of the notice of recalculation shall be provided to the State or local agent. The notice of recalculation shall constitute final administrative action by EPA under authority of section 120 unless the source owner or operator petitions for reconsideration under § 66.52, in which case it shall operate as a withdrawal by EPA of its delegation of authority to the

40 CFR Ch. I (7-1-07 Edition)

State or local agent over the facility in question.

(d) Unless otherwise provided in the Administrator's notice, noncompliance penalties finally determined to be owed shall be paid to the State or local agent.

§ 67.43 Procedure where a formal State hearing was held.

(a) In reviewing a penalty calculation for which a hearing conforming to § 67.11(b)(4) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of the determination and shall evaluate the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator finds that the State determination conformed to the requirements of the Act, part 66 (as modified by § 67.11), the Technical Support Document, and the Instruction Manual, his determination shall constitute a final action pursuant to section 120. If the Administrator finds that the State determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or to the Technical Support Document or Instruction Manual, the findings shall constitute proposed findings, and the notice shall invite participants to file exceptions to his proposed findings and, if necessary, schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument, the Administrator shall affirm, modify, or revoke his proposed findings that the State or local agent's determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual. The decision shall be in writing. Notice and a copy of the decision, which shall constitute final administrative action by EPA pursuant to section 120, shall be provided to the source owner or operator and to all other participants in the State hearing.

(d) If the Administrator finds that deficiencies in the State or local agent's hearing record prevent him