

§ 66.43

§ 66.41(a)(3) shall be held as provided in Subpart J.

(b) If hearings are granted pursuant to both § 66.32 or § 66.33 and under Subpart J, a consolidated hearing in accordance with Subpart J shall be held. At the consolidated hearing the issues that would otherwise have been considered at a hearing under § 66.32 or § 66.33 shall be considered pursuant to the procedures for a hearing provided in those sections.

(c) The Presiding Officer at a hearing granted under § 66.41 shall issue an initial decision within 90 days after the Administrator grants the hearing, unless the duration of the hearing or the deadline for decision is extended by the Presiding Officer upon agreement of the parties. Failure to issue a decision (whether or not by consent) within 90 days shall not affect the validity of the proceedings or the accrual of penalties in any manner.

§ 66.43 Final decision; submission of penalty calculation.

Within forty-five days after EPA has notified the owner or operator of a source of the final Agency decision that it is in violation of applicable legal requirements or is not entitled to an exemption, the owner or operator shall submit the information required by § 66.13(a), including appropriate compliance and payment schedules and extra interest owed for the period of delay. The penalty shall be calculated from the date of receipt of the original notice of noncompliance.

Subpart F—Review of Penalty Calculation

§ 66.51 Action upon receipt of penalty calculation.

(a) Within thirty days after receipt of a penalty calculation provided pursuant to § 66.13(a)(1) or § 66.43, the Administrator shall notify the source owner or operator in writing, that:

(1) The penalty is provisionally accepted as calculated, subject to any recalculation that may be necessary under § 66.72 after the source has achieved compliance; or

(2) The penalty is incorrect and has been recalculated based on the data provided by the source owner or oper-

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ator, or other data. The Administrator shall provide a brief statement of the basis for the recalculation and shall identify when and where any supporting data may be examined. The Administrator shall also notify the source owner or operator of the right to petition for a hearing under § 66.52; or

(3) The source owner or operator has not submitted any calculation, or the information submitted is inadequate to enable EPA to verify the owner or operator's penalty calculation. The Administrator shall specify what deficiencies exist and request the source owner or operator to supplement his submission within thirty days of receipt of that request. If an inadequate supplemental submission is made within this time, EPA may calculate the penalty itself or as provided in § 66.22.

(b) Supplemental material provided pursuant to paragraph (a)(3) of this section shall be evaluated as provided in paragraph (a).

§ 66.52 Petitions for reconsideration of calculation.

Within forty-five days after receipt of notice under § 66.51(a)(2) that the penalty has been recalculated by EPA, a source owner or operator who wishes to challenge EPA's recalculation shall petition in writing for reconsideration. A statement of all arguments on which the owner or operator relies, including all necessary supporting data and a substitute penalty calculation and payment schedule shall be included in or accompany this petition. Issues not raised in the petition shall be deemed waived.

§ 66.53 Decisions on petitions.

Within thirty days after receiving a petition for reconsideration under § 66.52 the Administrator shall:

(a) Accept the penalty calculation of the owner or operator to the extent the Administrator concludes it is correct; or

(b) Grant a hearing to the extent he does not conclude that the petition is correct.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]