

## § 66.91

(6) A decision by the Administrator upon completion of any review of a State action pursuant to part 67.

(b) The actions listed in paragraph (a) of this section constitute final Agency action only if all administrative remedies have been exhausted. To exhaust administrative remedies, a source owner or operator must first petition for reconsideration of the decision in question and, if unsuccessful after hearing or after denial of hearing, appeal the decision in question to the Environmental Appeals Board. The action becomes final upon the completion of review by the Environmental Appeals Board and notice thereof to the owner or operator of the source.

(c) Where a petition seeks reconsideration both of the finding of noncompliance and of the finding of liability on the ground that the source owner or operator is entitled to an exemption, both questions must be decided before any review by the Environmental Appeals Board is sought, except on agreement of the parties.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985; 57 FR 5329, Feb. 13, 1992]

### Subpart J—Supplemental Rules for Formal Adjudicatory Hearings

#### § 66.91 Applicability of supplemental rules.

The Supplemental Rules in this subpart, in conjunction with the Consolidated Rules of Practice (40 CFR part 22) shall govern all hearings held under this part. To the extent that the provisions of these Supplemental Rules or any other provision of this part are inconsistent with the Consolidated Rules, the provisions of this part shall govern.

#### § 66.92 Commencement of hearings.

(a) The provisions of 40 CFR 22.08 (Consolidated Rules of Practice) shall become applicable when the Administrator grants a hearing.

(b) Upon granting a hearing the Administrator shall immediately transmit to the appropriate Regional Hearing Clerk two copies of the notice granting the hearing and:

(1) In the case of a hearing pursuant to § 66.42, two copies of the notice of

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noncompliance under § 66.11 (or the revocation notice under § 66.34) and of the petition of the owner or operator under § 66.13, together with supporting documents; and

(2) In the case of a hearing pursuant to § 66.53 or § 66.73, two copies of the penalty calculation of the source owner or operator provided pursuant to § 66.13(a) or § 66.72, and of any Agency recalculation pursuant to § 66.51(a)(2) or § 66.72(b)(2), and of the petition of the source owner or operator for reconsideration pursuant to § 66.52 or § 66.73, together with supporting documents.

(3) The Regional Hearing Clerk shall open and maintain the official file of the proceeding upon receipt of the documents referred to in paragraphs (b)(1) and (2) of this section.

(c) Upon granting a hearing the Administrator shall request the Chief Administrative Law Judge to designate an Administrative Law Judge to serve as the Presiding Officer. The Chief Administrative Law Judge shall make this designation within seven days of receiving the request, and shall notify the Regional Hearing Clerk of his action. The Regional Hearing Clerk shall forward to the Presiding Officer one set of the documents described in paragraph (b).

#### § 66.93 Time limits.

The Presiding Officer upon designation shall notify the parties and shall, if appropriate, schedule a prehearing conference (or alternative procedures) under 40 CFR 22.19 and shall notify the parties of the date of hearing under 40 CFR 22.21. The Presiding Officer shall issue an initial decision no later than ninety days after the hearing is granted, unless an extension of the hearing schedule or of the deadline for decision is agreed to by the parties. To that end, the Presiding Officer may establish such deadlines as are reasonable and necessary. Failure to issue a decision within 90 days or further extended deadline (whether or not by consent) shall not affect the validity of the proceedings.

#### § 66.94 Presentation of evidence.

(a) In hearings pursuant to § 66.42 EPA shall present evidence of violation of applicable legal requirements. The