

§ 67.41

to the source owner or operator and to all other participants in the State hearing. The decision shall constitute a final administrative action by EPA under authority of section 120.

(d) If the Administrator finds that deficiencies in the hearing record prevent him from determining whether the determination of the State or local agent conformed to the requirements of the Act and part 66 (as modified by § 67.11), he shall notify the State or local agent of his finding and specify what deficiencies exist and schedule a hearing pursuant to subpart E 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 supplemental hearing to correct the deficiencies within 15 days of receipt of the notice.

(e) If the Administrator concludes that the source is in violation of applicable legal requirements or is not entitled to an exemption, or both, and unless otherwise ordered in the decision, the source owner or operator shall submit a penalty calculation to the State within 45 days of receipt of the notice of determination.

Subpart E—EPA Review of State Penalty Assessments

§ 67.41 When EPA may review.

(a) The Administrator may on his own initiative or on petition review any initial, interim, or final penalty calculation made or approved by the State or local agent to determine whether it conforms to the requirements of the Act, of part 66, of the Technical Support Document and the Instruction Manual. The Administrator shall notify the State or local agent in writing of his intention to review the calculation within 60 days of receipt by EPA of the calculation or any item considered by the State in making or approving such calculation, whichever occurs later.

(b) No such State determination shall become final until the expiration of 90 days after the Administrator's receipt of the notice required by § 67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination

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shall, upon expiration of such period, constitute final action of the Administrator under section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(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