provided that the designated representative of any source or unit as appropriate subject to such order shall advise the Administrator within 30 days of issuance of the order that the order will result in such excess emissions.


PART 78—APPEAL PROCEDURES

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AUTHORITY: 42 U.S.C. 7401, 7403, 7410, 7411, 7426, 7601, and 7651, et seq.

SOURCE: 58 FR 3760, Jan. 11, 1993, unless otherwise noted.

§ 78.1 Purpose and scope.

(a)(1) This part shall govern appeals of any final decision of the Administrator under subpart HHHH of part 60 of this chapter or State regulations approved under §51.123(aa)(1) or (2) of this chapter, or part 97 of this chapter; provided that matters listed in §78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed. All references in paragraph (b) of this section and in §78.3 to subpart HHHH of part 60 of this chapter, subparts AA through II of part 96 of this chapter, subparts AAA through III of part 96 of this chapter, subparts AAAA through IIII of part 96 of this chapter shall be read to include the comparable provisions in State regulations approved under §60.24(h)(6)(i) or (ii) of this chapter, §51.123(o)(1) or (2) of this chapter, §51.124(o)(1) or (2) of this chapter, and §51.123(aa)(1) or (2) of this chapter, respectively.

(b) The decisions of the Administrator that may be appealed include but are not limited to:

(1) Under part 72 of this chapter;

(i) The determination of incompleteness of an Acid Rain permit application;

(ii) The issuance or denial of an Acid Rain permit and approval or disapproval of a compliance option by the Administrator;

(iii) The approval or disapproval of an early ranking application for Phase I extension under §72.42 of this chapter;

(iv) The final determination of whether a technology is a qualified repowering technology under §72.44 of this chapter;

(v) [Reserved]

(vi) The approval or disapproval of a permit revision;

(vii) The decision on the deduction or return of allowances under §§72.41, 72.42, 72.43, 72.44, 72.91(b), and 72.92 (a) and (c) of this chapter; and

(viii) The failure to issue an Acid Rain permit in accordance with the deadline under §72.74(b) of this chapter.
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(2) Under part 73 of this chapter,

(i) The correction of an error in an Allowance Tracking System account;

(ii) The decision on the allocation of allowances from the Conservation and Renewable Energy Reserve;

(iii) The decision on the allocation of allowances under regulations implementing sections 404(e), 405(g)(4), 405(i)(2), and 410(h) of the Act;

(iv) The decision on the allocation of allowances under part 73, subpart F of this chapter;

(v) The decision on the sale or return of allowances and transfer of proceeds under part 73, subpart E; and

(vi) The decision on the deduction of allowances under §73.35(b) of this chapter.

(3) Under part 74 of this chapter,

(i) The determination of incompleteness of an opt-in permit application;

(ii) The issuance or denial of an opt-in permit and approval or disapproval of the transfer of allowances for the replacement of thermal energy;

(iii) The approval or disapproval of a permit revision to an opt-in permit;

(iv) The decision on the deduction or return of allowances under part 74, subpart E;

(4) Under part 75 of this chapter,

(i) The decision on a petition for approval of an alternative monitoring system;

(ii) The approval or disapproval of a monitoring system certification or recertification;

(iii) The finalization of annual emissions data, including retroactive adjustment based on audit;

(iv) The determination of the percentage of emissions reduction achieved by qualifying Phase I technology; and

(v) The determination on the acceptability of parametric missing data procedures for a unit equipped with add-on controls for sulfur dioxide and nitrogen oxides in accordance with part 75 of this chapter.

(5) Under part 77 of this chapter, the determination of incompleteness of an offset plan and the approval or disapproval of an offset plan under §77.4 of this chapter and the deduction of allowances under §77.5(c) of this chapter.

(6) Under part 97 of this chapter:

(i) The adjustment of the information in a compliance certification or other submission and the deduction or transfer of NOx allowances based on the information, as adjusted, under §97.31 of this chapter;

(ii) The decision on the allocation of NOx allowances to a NOx Budget unit under §97.41(b), (c), (d), or (e) of this chapter;

(iii) The decision on the allocation of NOx allowances to a NOx Budget unit from the compliance supplement pool under §97.43 of this chapter;

(iv) The decision on the deduction of NOx allowances under §97.54 of this chapter;

(v) The decision on the transfer of NOx allowances under §97.61 of this chapter;

(vi) The decision on a petition for approval of an alternative monitoring system;

(vii) The approval or disapproval of a monitoring system certification or recertification under §97.61 of this chapter;

(viii) The finalization of control period emissions data, including retroactive adjustment based on audit;

(ix) The approval or disapproval of a petition under §97.75 of this chapter;

(x) The determination of the sufficiency of the monitoring plan for a NOx Budget opt-in unit;

(xi) The decision on a request for withdrawal of a NOx Budget opt-in unit from the NOx Budget Trading Program under §97.86 of this chapter;

(xii) The decision on the deduction of NOx allowances under §97.87 of this chapter; and

(xiii) The decision on the allocation of NOx allowances to a NOx Budget opt-in unit under §97.88 of this chapter.

(7) Under subparts AA through II of part 96 of this chapter,

(i) The decision on the allocation of CAIR NOx allowances under §96.141(b)(2) or (c)(2) of this chapter;

(ii) The decision on the deduction of CAIR NOx allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NOx allowances based on the information as adjusted, under §96.154 of this chapter;
(iii) The correction of an error in a CAIR NO\textsubscript{X} Allowance Tracking System account under §96.156 of this chapter;  
(iv) The decision on the transfer of CAIR NO\textsubscript{X} allowances under §96.161 of this chapter;  
(v) The finalization of control period emissions data, including retroactive adjustment based on audit;  
(vi) The approval or disapproval of a petition under §96.175 of this chapter.  
(8) Under subparts AAA through III of part 96 of this chapter,  
(i) The decision on the deduction of CAIR SO\textsubscript{2} allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR SO\textsubscript{2} allowances based on the information as adjusted, under §96.254 of this chapter;  
(ii) The correction of an error in a CAIR SO\textsubscript{2} Allowance Tracking System account under §96.256 of this chapter;  
(iii) The decision on the transfer of CAIR SO\textsubscript{2} allowances under §96.261 of this chapter;  
(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;  
(v) The approval or disapproval of a petition under §96.175 of this chapter.  
(9) Under subparts AAAA through IIII of part 96 of this chapter,  
(i) The decision on the allocation of CAIR NO\textsubscript{X} Ozone Season allowances under §96.341(b)(2) or (c)(2) of this chapter.  
(ii) The decision on the deduction of CAIR NO\textsubscript{X} Ozone Season allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO\textsubscript{X} Ozone Season allowances based on the information as adjusted, under §96.354 of this chapter;  
(iii) The correction of an error in a CAIR NO\textsubscript{X} Ozone Season Allowance Tracking System account under §96.356 of this chapter;  
(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;  
(v) The approval or disapproval of a petition under §96.275 of this chapter.  
(10) Under subparts AA through II of part 97 of this chapter,  
(i) The decision on the allocation of CAIR NO\textsubscript{X} allowances under subpart EE of part 97 of this chapter.  
(ii) The decision on the deduction of CAIR NO\textsubscript{X} allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO\textsubscript{X} allowances based on the information as adjusted, under §97.154 of this chapter;  
(iii) The correction of an error in a CAIR NO\textsubscript{X} Allowance Tracking System account under §97.156 of this chapter;  
(iv) The decision on the transfer of CAIR NO\textsubscript{X} allowances under §97.161 of this chapter;  
(v) The finalization of control period emissions data, including retroactive adjustment based on audit;  
(vi) The approval or disapproval of a petition under §97.175 of this chapter.  
(11) Under subparts AAA through III of part 97 of this chapter,  
(i) The decision on the deduction of CAIR SO\textsubscript{2} allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR SO\textsubscript{2} allowances based on the information as adjusted, under §97.254 of this chapter;  
(ii) The correction of an error in a CAIR SO\textsubscript{2} Allowance Tracking System account under §97.256 of this chapter;  
(iii) The decision on the transfer of CAIR SO\textsubscript{2} allowances under §97.261 of this chapter;  
(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;  
(v) The approval or disapproval of a petition under §97.275 of this chapter.  
(12) Under subparts AAA through IIII of part 97 of this chapter,  
(i) The decision on the allocation of CAIR NO\textsubscript{X} Ozone Season allowances under subpart EEEE of part 97 of this chapter.  
(ii) The decision on the deduction of CAIR NO\textsubscript{X} Ozone Season allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO\textsubscript{X} Ozone Season allowances based on the information as adjusted, under §97.354 of this chapter;  
(iii) The correction of an error in a CAIR NO\textsubscript{X} Ozone Season Allowance Tracking System account under §97.356 of this chapter;  
(iv) The decision on the transfer of CAIR NO\textsubscript{X} Ozone Season allowances under §97.361 of this chapter;  
(v) The finalization of control period emissions data, including retroactive adjustment based on audit;  
(vi) The approval or disapproval of a petition under §97.375 of this chapter.
§ 78.2 General.

Part 72 of this chapter, including §§72.2 (definitions), 72.3 (measurements, abbreviations, and acronyms), 72.4 (Federal authority), 72.5 (State authority), 72.6 (applicability), 72.7 (new units exemption), 72.8 (retired units exemption), 72.9 (standard requirements), 72.10 (availability of information), and 72.11 (computation of time), shall apply to appeals of any final decision of the Administrator under parts 72, 73, 74, 75, 76, or 77 of this chapter.


§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a)(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 74, 75, 76, and 77 of this chapter and that is appealable under §78.1(a) of this part:

(i) The designated representative for the unit covered by the decision;
(ii) The authorized account representative for an account covered by the decision; and
(iii) Any interested person.

(2) The following persons may petition for administrative review of a decision of the Administrator that is made under part 73 of this chapter and that is appealable under §78.1(a):

(i) The authorized account representative for any Allowance Tracking System account covered by the decision; and
(ii) With regard to the decision on the allocation of allowances from the Conservation and Renewable Energy Reserve, the certifying official whose application is covered by the decision.

(3) The following persons may petition for administrative review of a decision of the Administrator that is made under part 97 of this chapter and that is appealable under §78.1(a) of this part:

(i) The NOX authorized account representative for the unit or any NOX Allowance Tracking System account covered by the decision; or
(ii) Any interested person.

(4) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through II of part 96 of this chapter and that is appealable under §78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR NOX Allowance Tracking System account, covered by the decision; or
(ii) Any interested person.

(5) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through III of part 96 of this chapter and that is appealable under §78.1(a):