

(b) The following requirements shall in no event be stayed due to any appeal of a decision of the Administrator and shall be fully effective and enforceable:

(1) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(2) Any standard requirements under § 72.9 of this chapter;

(3) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under part 75 of this chapter;

(4) Uncontested provisions of the decision; and

(5) The terms of a certificate of representation submitted by a designated representative under part 72, subpart B of this chapter or a certification statement submitted by an authorized account representative under part 73, subpart C of this chapter.

(c) The permit shield under § 72.51 of this chapter shall continue to be in effect.

(d) The Environmental Appeals Board or Presiding Officer shall specify which provisions of the decision shall be stayed.

**§ 78.8 Consolidation and severance of appeals proceedings.**

(a) The Environmental Appeals Board or Presiding Officer has the discretion to consolidate, in whole or in part, two or more proceedings under this part whenever it appears that a joint proceeding on any or all of the matters at issue in the proceedings will be in the interest of justice, will expedite or simplify consideration of the issues, and will not prejudice any party. Consolidation of proceedings under this paragraph (a) will not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) The Environmental Appeals Board or Presiding Officer has the discretion to sever issues or parties from a proceeding under this part whenever it appears that separate proceedings will be in the interest of justice, will expedite or simplify consideration of the issues, and will not prejudice any party.

**§ 78.9 Notice of the filing of petition for administrative review.**

The Administrator will publish in the FEDERAL REGISTER a notice stating that a petition for administrative review of a decision of the Administrator has been filed and specifying any request in the petition for an evidentiary hearing.

**§ 78.10 Ex parte communications during pendency of a hearing.**

(a)(1) No party or interested person outside EPA, representative of a party or interested person, or member of the EPA trial staff shall make, or knowingly cause to be made, to any member of the decisional body an *ex parte* communication on the merits of a proceeding under this part.

(2) No member of the decisional body shall make, or knowingly cause to be made, to any party or interested person outside EPA, representative of a party or interested person, or member of the EPA trial staff, an *ex parte* communication on the merits of any proceeding under this part.

(3) A member of the decisional body who receives, makes, or knowingly causes to be made an *ex parte* communication prohibited by this paragraph shall file with the Environmental Appeals Board (or, if the proceeding is pending before an Administrative Law Judge, with the Hearing Clerk) for inclusion in the record of the proceeding under this part any such written *ex parte* communications and memoranda stating the substance of any such oral *ex parte* communication.

(b) Whenever any member of the decisional body receives an *ex parte* communication made, or knowingly caused to be made by a party or representative of a party to a proceeding under this part, the person presiding over the proceedings then in progress may, to the extent consistent with justice, require the party to show good cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of these *ex parte* communications.

(c) The prohibitions of paragraph (a) of this section shall begin to apply upon publication by the Administrator