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of excess emissions, the penalty amount, and the check or money order number of the payment.

(c) If an excess emissions penalty due under this part is not paid on or before the applicable deadline under paragraph (a) of this section, the penalty shall be subject to interest charges in accordance with the Debt Collection Act (31 U.S.C. 3717). Interest shall begin to accrue on the date on which the Administrator mails, to the designated representative of the source or unit as appropriate with excess emissions, a demand notice for the payment.

(d)(1) Except for wire transfers made in accordance with paragraph (d)(2) of this section, payments of penalties shall be made by money order, cashier's check, certified check, or U.S. Treasury check made payable to the "U.S. EPA."

(2) Payments made under paragraph (c)(1) of this section shall be mailed to the following address, unless the Administrator has notified the designated representative of a different address: U.S. EPA: Headquarters Accounting Operations Branch, Acid Rain Excess Emissions Penalties, P.O. Box 952491, St. Louis, MO 63195-2491.

(3) Payments of penalties of \$25,000 or more may be made by wire transfer to the U.S. Treasury at the Federal Reserve Bank of New York.

(e) If the Administrator determines that overpayment has been made, he or she will refund the overpayment without interest, as promptly as administratively possible.

(f) Excess emissions in any year resulting directly from an order issued in that year under section 110(f) of the Act shall not be subject to the penalty payment requirements of this section; *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.

[58 FR 3757, Jan. 11, 1993, as amended at 60 FR 17131, Apr. 4, 1995; 62 FR 55487, Oct. 24, 1997; 70 FR 25337, May 12, 2005]

PART 78—APPEAL PROCEDURES

Sec.

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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 § 60.24(h)(6)(i) or (ii) of this chapter, part 72, 73, 74, 75, 76, or 77 of this chapter, subparts AA through II of part 96 of this chapter or State regulations approved under § 51.123(o)(1) or (2) of this chapter, subparts AAA through III of part 96 of this chapter or State regulations approved under § 51.124(o)(1) or (2) of this chapter, subparts AAAA through IIII of part 96 of this chapter or State regulations approved under § 51.123(aa)(1) or (2) of this chapter, part 97 of this chapter, or subpart RR of part 98; 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

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III of part 96 of this chapter, and 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.

(2) Filing an appeal, and exhausting administrative remedies, under this part shall be a prerequisite to seeking judicial review. For purposes of judicial review, final agency action occurs only when a decision appealable under this part is issued and the procedures under this part for appealing the decision are exhausted.

(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.

(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 Renewal 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 subpart E of part 74 of this chapter;

(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 NO_x allowances based on the information, as adjusted, under § 97.31 of this chapter;

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

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

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

(v) The decision on the transfer of NO_x 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 § 97.71 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 NO_x Budget opt-in unit;

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

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

(xiii) The decision on the allocation of NO_x allowances to a NO_x 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 NO_x allowances under § 96.141(b)(2) or (c)(2) of this chapter.

(ii) The decision on the deduction of CAIR NO_x allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_x allowances based on the information as adjusted, under § 96.154 of this chapter;

(iii) The correction of an error in a CAIR NO_x Allowance Tracking System account under § 96.156 of this chapter;

(iv) The decision on the transfer of CAIR NO_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 SO₂ allowances, and the adjustment of the information in a submission

and the decision on the deduction or transfer of CAIR SO₂ allowances based on the information as adjusted, under § 96.254 of this chapter;

(ii) The correction of an error in a CAIR SO₂ Allowance Tracking System account under § 96.256 of this chapter;

(iii) The decision on the transfer of CAIR SO₂ 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 § 96.275 of this chapter.

(9) Under subparts AAAA through IIII of part 96 of this chapter,

(i) The decision on the allocation of CAIR NO_x Ozone Season allowances under § 96.341(b)(2) or (c)(2) of this chapter.

(ii) The decision on the deduction of CAIR NO_x Ozone Season allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_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_x Ozone Season Allowance Tracking System account under § 96.356 of this chapter;

(iv) The decision on the transfer of CAIR NO_x Ozone Season allowances under § 96.361;

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

(vi) The approval or disapproval of a petition under § 96.375 of this chapter.

(10) Under subparts AA through II of part 97 of this chapter,

(i) The decision on the allocation of CAIR NO_x allowances under subpart EE of part 97 of this chapter.

(ii) The decision on the deduction of CAIR NO_x allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_x allowances based on the information as adjusted, under § 97.154 of this chapter;

(iii) The correction of an error in a CAIR NO_x Allowance Tracking System account under § 97.156 of this chapter;

(iv) The decision on the transfer of CAIR NO_x allowances under § 97.161 of this chapter;

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(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 SO₂ allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR SO₂ allowances based on the information as adjusted, under § 97.254 of this chapter;

(ii) The correction of an error in a CAIR SO₂ Allowance Tracking System account under § 97.256 of this chapter;

(iii) The decision on the transfer of CAIR SO₂ 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 AAAA through IIII of part 97 of this chapter,

(i) The decision on the allocation of CAIR NO_x Ozone Season allowances under subpart EEEE of part 97 of this chapter.

(ii) The decision on the deduction of CAIR NO_x Ozone Season allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_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_x Ozone Season Allowance Tracking System account under § 97.356 of this chapter;

(iv) The decision on the transfer of CAIR NO_x Ozone Season allowances under § 97.361;

(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.

(13) Under subpart AAAAA of part 97 of this chapter,

(i) The decision on allocation of TR NO_x Annual allowances under § 97.411(a)(2) and (b) of this chapter.

(ii) The decision on the transfer of TR NO_x Annual allowances under § 97.423 of this chapter.

(iii) The decision on the deduction of TR NO_x Annual allowances under §§ 97.424 and 97.425 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.427 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of TR NO_x Annual allowances based on the information as adjusted under § 97.428 of this chapter.

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

(vii) The approval or disapproval of a petition under § 97.435 of this chapter.

(14) Under subpart BBBB of part 97 of this chapter,

(i) The decision on allocation of TR NO_x Ozone Season allowances under § 97.511(a)(2) and (b) of this chapter.

(ii) The decision on the transfer of TR NO_x Ozone Season allowances under § 97.523 of this chapter.

(iii) The decision on the deduction of TR NO_x Ozone Season allowances under §§ 97.524 and 97.525 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.527 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of TR NO_x Ozone Season allowances based on the information as adjusted under § 97.528 of this chapter.

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

(vii) The approval or disapproval of a petition under § 97.535 of this chapter.

(15) Under subpart CCCCC of part 97 of this chapter,

(i) The decision on allocation of TR SO₂ Group 1 allowances under § 97.611(a)(2) and (b) of this chapter.

(ii) The decision on the transfer of TR SO₂ Group 1 allowances under § 97.623 of this chapter.

(iii) The decision on the deduction of TR SO₂ Group 1 allowances under §§ 97.624 and 97.625 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.627 of this chapter.

(v) The adjustment of information in a submission and the decision on the

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deduction and transfer of TR SO₂ Group 1 allowances based on the information as adjusted under § 97.628 of this chapter.

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

(vii) The approval or disapproval of a petition under § 97.635 of this chapter.

(16) Under subpart DDDDD of part 97 of this chapter,

(i) The decision on allocation of TR SO₂ Group 2 allowances under § 97.711(a)(2) and (b) of this chapter.

(ii) The decision on the transfer of TR SO₂ Group 1 allowances under § 97.723 of this chapter.

(iii) The decision on the deduction of TR SO₂ Group 1 allowances under §§ 97.724 and 97.725 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.727 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of TR SO₂ Group 1 allowances based on the information as adjusted under § 97.728 of this chapter.

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

(vii) The approval or disapproval of a petition under § 97.735 of this chapter.

(17) Under subpart RR of part 98 of this chapter,

(i) A determination of eligibility for research and development exemption under § 98.440(d) of this chapter.

(ii) The approval or disapproval of a request for discontinuation of reporting under § 98.441(b) of this chapter.

(iii) The approval or disapproval of a geologic sequestration monitoring, reporting, and verification (MRV) plan under § 98.448(c) and § 98.448(d) of this chapter.

(c) In order to appeal a decision under paragraph (a) of this section, a person shall file a petition for administrative review with the Environmental Appeals Board under § 78.3. The Environmental Appeals Board will, consistent with § 78.6, either:

(1) Issue an order deciding the appeal; or

(2) Where there is a disputed issue of fact material to the contested portions of the decision, refer the proceeding to

the Chief Administrative Law Judge, who will designate an Administrative Law Judge to conduct an evidentiary hearing to decide the disputed issue of fact. If the proposed decision is contested or the Environmental Appeals Board decides to review the proposed decision, the Environmental Appeals Board will issue an order deciding the appeal.

(d) Questions arising at any stage of a proceeding that are not addressed in this part will be resolved at the discretion of the Environmental Appeals Board or the Presiding Officer.

[58 FR 3760, Jan. 11, 1993, as amended at 60 FR 17132, Apr. 4, 1995; 62 FR 55488, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001; 69 FR 21644, Apr. 21, 2004; 70 FR 25338, May 12, 2005; 71 FR 25379, Apr. 28, 2006; 72 FR 59205, Oct. 19, 2007; 75 FR 75078, Dec. 1, 2010; 76 FR 48378, Aug. 8, 2011]

§ 78.2 General.

(a) *Definitions.* (1) The terms used in this subpart with regard to a decision of the Administrator that is appealed under this section shall have the meaning as set forth in the regulations under which the Administrator made such decision and as set forth in paragraph (a)(2) of this section.

(2) *Interested person* means, with regard to a decision of the Administrator:

(i) Any person who submitted comments, or testified at a public hearing, pursuant to an opportunity for comment provided by the Administrator as part of the process of making such decision;

(ii) Who submitted objections pursuant to an opportunity for objections provided by the Administrator as part of the process of making such decision; or

(iii) Who submitted, to the Administrator and in a format prescribed by the Administrator, his or her name, service address, telephone number, and facsimile number and identified such decision in order to be placed on a list of persons interested in such decision;

(iv) Provided that the Administrator may update the list of interested persons from time to time by requesting additional written indication of continued interest from the persons listed and may delete from the list the name