
40 C.F.R. § 78.1

Purpose and scope.

(a)

(1)

(i) This part shall govern appeals of any final decision of the Administrator under:

(A) Part 72, 73, 74, 75, 76, or 77 of this chapter;

(B) Subparts A through J of part 97 of this chapter;

(C) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter; subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter; or State regulations approved under § 51.123(o)(1) or (2) or (aa)(1) or (2) or § 51.124(o)(1) or (2) of this chapter;

(D) Subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter or State regulations approved under § 52.38(a)(4) or (5) or (b)(4), (5), (8), (9), (11), or (12) or § 52.39(e), (f), (h), or (i) of this chapter; or

(E) Subpart RR of part 98 of this chapter.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, matters listed in § 78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed.

(iii) All references in paragraph (b) of this section and in § 78.3 to subparts AA through II of part 96 of this chapter, subparts AAA through 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 § 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.

(iv) All references in paragraph (b) of this section and in § 78.3 to subpart AAAAA of part 97 of this chapter, subpart BBBBB of part 97 of this chapter, subpart CCCCC of part 97 of this chapter, subpart DDDDD of part 97 of this chapter, subpart EEEEE of part 97 of this chapter, and subpart GGGGG of part 97 of this chapter shall be read to include the comparable provisions in State regulations approved under § 52.38(a)(4) or (5) of this chapter, § 52.38(b)(4) or (5) of this chapter, § 52.39(e) or (f) of this chapter, § 52.39(h) or (i) of this chapter, § 52.38(b)(8) or (9) of this chapter, and § 52.38(b)(11) or (12) 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 subpart F of part 73 of this chapter;
- (v) The decision on the sale or return of allowances and transfer of proceeds under subpart E of part 73 of this chapter; 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;

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