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the issues proposed to be raised in the hearing.

(b) On the Administrator's own motion or on the request of any person, the Administrator may, at his or her discretion, hold a public hearing whenever the Administrator finds that such a hearing will contribute to the decision-making process by clarifying one or more significant issues affecting the draft permit or denial of a draft permit. Public hearings will not be held on issues under § 72.66(c) (1) and (2).

(c) During a public hearing under this section, any person may submit oral or written comments concerning the draft permit or denial of a draft permit. The Administrator may set reasonable limits on the time allowed for oral statements and will require the submission of a written summary of each oral statement.

(d) The Administrator will assure that a record is made of the hearing.

§ 72.68 Response to comments.

(a) The Administrator will consider comments on the draft permit or denial of a draft permit that are received during the public comment period and any public hearing. The Administrator is not required to consider comments otherwise received.

(b) In issuing or denying an Acid Rain permit, the Administrator will:

(1) Identify any permit provision or portion of the statement of basis that has been changed and the reasons for the change; and

(2) Briefly describe and respond to relevant comments under paragraph (a) of this section.

§ 72.69 Issuance and effective date of acid rain permits.

(a) After the close of the public comment period, the Administrator will issue or deny an Acid Rain permit. The Administrator will serve a copy of any Acid Rain permit and the response to comments on the designated representative for the source covered by the issuance or denial and serve written notice of the issuance or denial on the air pollution control agencies of affected States and any interested person. The Administrator will also give notice in the FEDERAL REGISTER.

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(b)(1) The term of every Acid Rain permit shall be 5 years commencing on its effective date.

(2) Every Acid Rain permit for Phase I shall take effect on January 1, 1995.

[58 FR 3650, Jan. 11, 1993, as amended at 62 FR 55482, Oct. 24, 1997]

Subpart G—Acid Rain Phase II Implementation

§ 72.70 Relationship to title V operating permit program.

(a) *Scope.* This subpart sets forth criteria for approval of State operating permit programs and acceptance of State Acid Rain programs, the procedure for including State Acid Rain programs in a title V operating permit program, and the requirements with which State permitting authorities with accepted programs shall comply, and with which the Administrator will comply in the absence of an accepted State program, to issue Phase II Acid Rain permits.

(b) *Relationship to operating permit program.* Each State permitting authority with an affected source shall act in accordance with this part and parts 70, 74, 76, and 78 of this chapter for the purpose of incorporating Acid Rain Program requirements into each affected source's operating permit. To the extent that this part or part 74, 76, or 78 of this chapter is inconsistent with the requirements of part 70 of this chapter, this part and parts 74, 76, and 78 of this chapter shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain portion of an operating permit.

[62 FR 55482, Oct. 24, 1997, as amended at 66 FR 12978, Mar. 1, 2001]

§ 72.71 Acceptance of State Acid Rain programs—general.

(a) Each State shall submit, to the Administrator for review and acceptance, a State Acid Rain program meeting the requirements of §§ 72.72 and 72.73.

(b) The Administrator will review each State Acid Rain program or portion of a State Acid Rain program and accept, by notice in the FEDERAL REGISTER, all or a portion of such program

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to the extent that it meets the requirements of §§ 72.72 and 72.73. At his or her discretion, the Administrator may accept, with conditions and by notice in the FEDERAL REGISTER, all or a portion of such program despite the failure to meet requirements of §§ 72.72 and 72.73. On the later of the date of publication of such notice in the FEDERAL REGISTER or the date on which the State operating permit program is approved under part 70 of this chapter, the State Acid Rain program accepted by the Administrator will become a portion of the approved State operating permit program. Before accepting or rejecting all or a portion of a State Acid Rain Program, the Administrator will provide notice and opportunity for public comment on such acceptance or rejection.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Administrator will issue all Acid Rain permits for Phase I. The Administrator reserves the right to delegate the remaining administration and enforcement of Acid Rain permits for Phase I to approved State operating permit programs.

(2) The State permitting authority will issue an opt-in permit for a combustion or process source subject to its jurisdiction if, on the date on which the combustion or process source submits an opt-in permit application, the State permitting authority has opt-in regulations accepted under paragraph (b) of this section and an approved operating permits program under part 70 of this chapter.

[62 FR 55482, Oct. 24, 1997]

§ 72.72 Criteria for State operating permit program.

A State operating permit program (including a State Acid Rain program) shall meet the following criteria. Any aspect of a State operating permits program or any implementation of a State operating permit program that fails to meet these criteria shall be grounds for nonacceptance or withdrawal of all or part of the Acid Rain portion of an approved State operating permit program by the Administrator or for disapproval or withdrawal of approval of the State operating permit program by the Administrator.

(a) *Non-Interference with Acid Rain Program.* The State operating permit program shall not include or implement any measures that would interfere with the Acid Rain Program. In particular, the State program shall not restrict or interfere with allowance trading and shall not interfere with the Administrator's decision on an offset plan. Aspects and implementation of the State program that would constitute interference with the Acid Rain Program, and are thus prohibited, include but are not limited to:

(1) Prohibitions, inconsistent with the Acid Rain Program, on the acquisition or transfer of allowances by an affected unit or affected source under the jurisdiction of the State permitting authority;

(2) Restrictions, inconsistent with the Acid Rain Program, on an affected unit's or an affected source's ability to sell or otherwise obligate its allowances;

(3) Requirements that an affected unit or affected source maintain a balance of allowances in excess of the level determined to be prudent by any utility regulatory authority with jurisdiction over the owners of the affected unit or affected source;

(4) Failing to notify the Administrator of any State administrative or judicial appeals of, or decisions covering, Acid Rain permit provisions that might affect Acid Rain Program requirements;

(5) Issuing an order, inconsistent with the Acid Rain Program, interpreting Acid Rain Program requirements as not applicable to an affected source or an affected unit in whole or in part or otherwise adjusting the requirements;

(6) Withholding approval of any compliance option that meets the requirements of the Acid Rain Program; or

(7) Any other aspect of implementation that the Administrator determines would hinder the operation of the Acid Rain Program.

(b) The State operating permit program shall require the following provisions, which are adopted to the extent that this paragraph (b) is incorporated by reference or is otherwise included in the State operating permit program.