

§ 7661f. Small business stationary source technical and environmental compliance assistance program

(a) Plan revisions

Consistent with sections 7410 and 7412 of this title, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 7410 of this title, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after November 15, 1990. The Administrator shall approve such program if it includes each of the following:

(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this chapter.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this chapter.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this chapter in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this chapter in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this chapter.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this chapter, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this chapter.

(7) Procedures for consideration of requests from a small business stationary source for modification of—

(A) any work practice or technological method of compliance, or

(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date,

based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this chapter, including the re-

quirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(b) Program

The Administrator shall establish within 9 months after November 15, 1990, a small business stationary source technical and environmental compliance assistance program. Such program shall—

(1) assist the States in the development of the program required under subsection (a) (relating to assistance for small business stationary sources);

(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

(3) provide for implementation of the program provisions required under subsection (a)(4) in any State that fails to submit such a program under that subsection.

(c) Eligibility

(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term “small business stationary source” means a stationary source that—

(A) is owned or operated by a person that employs 100 or fewer individuals,¹

(B) is a small business concern as defined in the Small Business Act [15 U.S.C. 631 et seq.];

(C) is not a major stationary source;

(D) does not emit 50 tons or more per year of any regulated pollutant; and

(E) emits less than 75 tons per year of all regulated pollutants.

(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs² (C), (D), or (E) of paragraph (1) but which does not emit more than 100 tons per year of all regulated pollutants.

(3)(A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

¹ So in original. The comma probably should be a semicolon.

² So in original. Probably should be “subparagraph”.

(d) Monitoring

The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the "Ombudsman") to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall—

(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,³ the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(e) Compliance Advisory Panel

(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the "Panel") on the State level of not less than 7 individuals. This Panel shall—

(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,³ the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(2) The Panel shall consist of—

(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 mem-

ber each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, 2 members each shall be selected by the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

(C) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

(f) Fees

The State (or the Administrator) may reduce any fee required under this chapter to take into account the financial resources of small business stationary sources.

(g) Continuous emission monitors

In developing regulations and CTGs under this chapter that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this chapter, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of subchapter IV-A provisions relating to continuous emissions monitoring.

(h) Control technique guidelines

The Administrator shall consider, consistent with the requirements of this chapter, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) to be treated as small business stationary sources) in developing CTGs applicable to such sources under this chapter.

(July 14, 1955, ch. 360, title V, § 507, as added Pub. L. 101-549, title V, § 501, Nov. 15, 1990, 104 Stat. 2645.)

Editorial Notes

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (c)(1)(B), is Pub. L. 85-536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Paperwork Reduction Act, referred to in subsecs. (d)(2) and (e)(1)(B), probably means the Paperwork Reduction Act of 1980, Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Regulatory Flexibility Act, referred to in subsecs. (d)(2) and (e)(1)(B), is Pub. L. 96-354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (§ 601 et seq.) of Title 5, Government Organization and

³ See References in Text note below.

Employees. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

The Equal Access to Justice Act, referred to in subsecs. (d)(2) and (e)(1)(B), is title II of Pub. L. 96-481, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5.

SUBCHAPTER VI—STRATOSPHERIC OZONE PROTECTION

§ 7671. Definitions

As used in this subchapter—

(1) Appliance

The term “appliance” means any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(2) Baseline year

The term “baseline year” means—

(A) the calendar year 1986, in the case of any class I substance listed in Group I or II under section 7671a(a) of this title,

(B) the calendar year 1989, in the case of any class I substance listed in Group III, IV, or V under section 7671a(a) of this title, and

(C) a representative calendar year selected by the Administrator, in the case of—

(i) any substance added to the list of class I substances after the publication of the initial list under section 7671a(a) of this title, and

(ii) any class II substance.

(3) Class I substance

The term “class I substance” means each of the substances listed as provided in section 7671a(a) of this title.

(4) Class II substance

The term “class II substance” means each of the substances listed as provided in section 7671a(b) of this title.

(5) Commissioner

The term “Commissioner” means the Commissioner of the Food and Drug Administration.

(6) Consumption

The term “consumption” means, with respect to any substance, the amount of that substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol. Such term shall be construed in a manner consistent with the Montreal Protocol.

(7) Import

The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) Medical device

The term “medical device” means any device (as defined in the Federal Food, Drug, and

Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and

(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

(9) Montreal Protocol

The terms “Montreal Protocol” and “the Protocol” mean the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

(10) Ozone-depletion potential

The term “ozone-depletion potential” means a factor established by the Administrator to reflect the ozone-depletion potential of a substance, on a mass per kilogram basis, as compared to chlorofluorocarbon-11 (CFC-11). Such factor shall be based upon the substance’s atmospheric lifetime, the molecular weight of bromine and chlorine, and the substance’s ability to be photolytically disassociated, and upon other factors determined to be an accurate measure of relative ozone-depletion potential.

(11) Produce, produced, and production

The terms “produce”, “produced”, and “production”, refer to the manufacture of a substance from any raw material or feedstock chemical, but such terms do not include—

(A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or

(B) the reuse or recycling of a substance.

(July 14, 1955, ch. 360, title VI, §601, as added Pub. L. 101-549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2649.)

Editorial Notes

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in par. (8), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

§ 7671a. Listing of class I and class II substances

(a) List of class I substances

Within 60 days after November 15, 1990, the Administrator shall publish an initial list of class I substances, which list shall contain the following substances:

Group I
chlorofluorocarbon-11 (CFC-11)