

Regulation on the Administration of Ozone Depleting Substances

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Order of the State Council of the People's Republic of China

(No.573)

The Regulation on the Administration of Ozone Depleting Substances, which was adopted at the 104th executive meeting of the State Council on March 24, 2010, is hereby promulgated, and shall come into force on June 1, 2010.

Premier: Wen Jiabao

April 8, 2010

Regulation on the Administration of Ozone Depleting Substances

Chapter I General Provisions

Article 1 To strengthen the administration of ozone depleting substances, fulfill the obligations of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, protect the ozone layer and eco-environment, and maintain people's health, this Regulation is formulated pursuant to the Air Pollution Prevention and Control Law of the People's Republic of China.

Article 2 The term "ozone depleting substances" as mentioned in this Regulation refers to chemicals which damage the ozone layer and are in the Checklist of Ozone Depleting Substances under National Control.

The Checklist of Ozone Depleting Substances under National Control shall be made, adjusted and published by the environmental protection department under the State Council together with other competent departments under the State Council.

Article 3 This Regulation shall apply to the production, sales, consumption and import/export of ozone depleting substances inside the People's Republic of China.

The term "production" as mentioned in the preceding paragraph refers to the producing activities of ozone depleting substances. The term "consumption" as mentioned in the preceding paragraph refers to the use of ozone depleting substances for productions and business operations, excluding the use of products containing ozone depleting substances.

Article 4 The environmental protection department under the State Council is in charge of the supervision and administration of ozone depleting substances around the whole nation.

The commerce department under the State Council, the General Administration of Customs and other relevant departments shall, under this Regulation, take charge of the supervision and administration of ozone depleting substances within their respective scope of functions and duties.

The environmental protection departments and commerce departments of the local people's governments at or above the county level shall, under this Regulation, take charge of the supervision and administration of ozone depleting substances in their respective administrative regions within their respective scope of functions and duties.

Article 5 The state will gradually reduce ozone depleting substances used as refrigerants, foaming agents, extinguishing agents, solvents, detergents, processing agents, pesticides, aerosols and expansion agents till they are finally eliminated.

The environmental protection department under the State Council shall, together with other relevant departments under the State Council, draft a National Plan for Gradually Eliminating Ozone Depleting Substances (hereinafter referred to as the National Plan) and implement it upon the approval of the State Council.

Article 6 The environmental protection department under the State Council shall, together with other relevant departments under the State Council, based on the National Plan and the elimination progress of ozone depleting substances, determine and publish a category of construction projects producing or consuming ozone depleting substances whose building, rebuilding or expansion is restricted or prohibited, and make and publish a category of ozone depleting substances whose production, consumption or import/export is restricted or prohibited.

Any party that needs to produce or consume for special purposes any ozone depleting substances whose production or consumption is prohibited under the preceding paragraph shall submit an application to the environmental protection department under the State Council and other relevant departments under the State Council for approval pursuant to the special purpose provisions of the Montreal Protocol on Substances that Deplete the Ozone Layer.

Article 7 The state exercises total quantity control and quota management to the production, consumption and import/export of ozone depleting substances. The environmental protection department under the State Council shall, based on the National Plan and the elimination progress of ozone depleting substances, decide and announce the national annual production, consumption and import/export quota of ozone depleting substances together with other relevant departments under the State Council

Article 8 The state encourages and supports the scientific research, technological development, promotion and application of substitutes and substitution technologies of ozone depleting substances.

The environmental protection department under the State Council shall, together with other relevant departments under the State Council, make, adjust and publish the National Catalogue of Recommended Substitutes for Ozone Depleting Substances.

The development, production and consumption of the substitutes for ozone depleting substances shall conform to the national industrial policies, and enjoy preferential policies according to the relevant state provisions. The state will give rewards to entities and individuals that make extraordinary achievements in the elimination of ozone depleting substances.

Article 9 Entities and individuals have the right to report violations of this Regulation to the environmental protection departments or other relevant departments of the local people's governments at or above the county level. These departments shall, immediately after receiving tip-offs, investigate and

handle them, keep confidential the tipsters' information, and give rewards to them if the reported violations are verified as true.

Chapter II Production, Distribution and Consumption

Article 10 Entities producing or consuming ozone depleting substances shall obtain a production or consumption quota permit under this Regulation. However, if a consumer is under any of the following circumstances, it is not required to get a consumption quota permit:

1. A maintenance entity needs to use ozone depleting substances to maintain the cooling devices, cooling systems or extinguishing systems;
2. A lab needs to use a small quantity of ozone depleting substances for experimental analysis;
3. An entry/exit inspection and quarantine body needs to use ozone depleting substances for quarantine purposes to prevent the entry or exit of harmful organisms; or
4. Any other circumstances under which the party concerned is not required to get a consumption quota permit as specified by the environmental protection department under the State Council.

Article 11 Entities producing or consuming ozone depleting substances shall meet the conditions prescribed by laws and administrative regulations and also:

1. Have made achievements in the legal production or consumption of the ozone depleting substances in question;
2. Have sites, facilities, equipment and professional technicians for the production or consumption of the ozone depleting substances in question;
3. Have environmental protection devices that pass the check of the competent environmental protection department; and
4. Have sound management rules for production and business operations.

Item 1 of the preceding paragraph is not applicable to entities which use ozone depleting substances for the special purposes as mentioned in Article 6 of this Regulation.

Article 12 An entity producing or consuming ozone depleting substances shall submit a written application to the environmental protection department under the State Council for the production or

consumption quota of the next year before October 31 of each year, and submit evidentiary materials to prove that it meets the conditions prescribed in Article 11 of this Regulation.

The environmental protection department under the State Council shall, based on the annual total quota of the state for the production or consumption of ozone depleting substances and the applicant's achievements made in the production or consumption of the ozone depleting substances in question, decide the applicant's production or consumption quota of the next year, and finish the examination before December 20 of each year. If the applicant meets the prescribed conditions, it shall issue a production or consumption quota permit for the next year to the applicant, publish an announcement and make a copy to other relevant departments under the State Council and the environmental protection department of the people's government of the province, autonomous region or municipality directly under the Central Government at the locality of the applicant; if not, it shall notify the applicant in writing and give reasons.

Article 13 A production or consumption quota permit shall contain:

1. The name, address, legal representative or person in charge of the producer or consumer;
2. The variety, use and quantity of the ozone depleting substances permitted to be used or consumed;
3. Term of validity; and
4. The organ issuing the permit, the date of issuance, and the serial number of the permit.

Article 14 Where an entity producing or using ozone depleting substances needs to adjust its quota, it shall apply to the environmental protection department under the State Council for handling the change of quota.

The environmental protection department under the State Council shall examine the application according to the conditions and basis prescribed in Articles 11 and 12 of this Regulation and finish examination within 20 workdays after accepting the application. If the applicant meets the prescribed conditions, it shall adjust the applicant's quota and make an announcement thereon; if not, it shall notify the applicant in writing and give reasons.

Article 15 A producer of ozone depleting substances may not produce ozone depleting substances beyond the variety, quantity or term indicated in its production quota permit, or produce or sell ozone depleting substances beyond the uses indicated in its production quota permit.

It is prohibited to produce ozone depleting substances without a production quota permit.

Article 16 An entity which has obtained a consumption quota permit under this Regulation may not use ozone depleting substances beyond the variety, uses, quantity and term indicated in its consumption quota permit.

Except for the circumstances under which a consumption quota permit is not required as prescribed in Article 10 of this Regulation, it is prohibited to consume ozone depleting substances without a consumption quota permit.

Article 17 An entity which sells ozone depleting substances shall go through the archive-filing formalities as required by the environmental protection department under the State Council.

The environmental protection department under the State Council shall make an announcement on sales entities of ozone depleting substances which have gone through the archive-filing formalities.

Article 18 Unless for import/export under this Regulation, ozone depleting substances can only be purchased or sold between entities producing, selling or consuming ozone depleting substances which meet the prescribed conditions of this Regulation.

Article 19 Entities engaging in the maintenance and discard of the cooling devices, cooling systems or extinguishing systems which contain ozone depleting substances shall go through the archive-filing formalities at the environmental protection departments of the local people's governments at or above the county level.

Entities that engage in the recycling, reutilization or destruction of ozone depleting substances shall go through the archive-filing formalities at the environmental protection departments of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government at the places where they are located.

Article 20 Entities producing or consuming ozone depleting substances shall take necessary measures as required by the environmental protection department under the State Council to prevent or reduce the leakage or discharge of ozone depleting substances.

Entities engaging in the maintenance and discard of the cooling devices, cooling systems or extinguishing systems which contain ozone depleting substances shall recycle or reutilize ozone depleting substances or hire entities engaging in the recycling, reutilization or destruction of ozone depleting substances for the harmless treatment of ozone depleting substances according to the provisions of the environmental protection department under the State Council.

Entities engaging in the recycling, reutilization or destruction of ozone depleting substances shall subject ozone depleting substances to harmless treatment according to the provisions of the environmental protection department under the State Council, and may not directly discharge them to the air.

Article 21 Entities engaging in the production, sales, consumption, recycling, reutilization or destruction of ozone depleting substances and entities engaging in the maintenance or discard of the cooling devices, cooling systems or extinguishing systems which contain ozone depleting substances shall keep integrity of the source materials about their production and operation activities for at least three years, and file the relevant data according to the requirements of the environmental protection department under the State Council.

Chapter III Import and Export

Article 22 The state exercises control over the import and export of ozone depleting substances, and subjects them to directory management. The environmental protection department under the State Council shall, together with the commerce department under the State Council and the General Administration of Customs, make, adjust and publish the Directory of Ozone Depleting Substances Whose Import and Export Are under National Control.

An entity importing or exporting ozone depleting substances which is listed in the Directory of Ozone Depleting Substances Whose Import and Export Are under National Control shall apply to the national ozone depleting substance import/export administration for an import/export quota, obtain an import/export examination and approval form, and submit materials about the variety, quantity, source and uses of the ozone depleting substances to be imported/exported.

Article 23 The national ozone depleting substance import/export administration shall, within 20 workdays after accepting an application, finish examination and make a decision of approval or disapproval. In the

case of approval, it shall issue an import/export examination and approval form to the applicant; in the case of disapproval, it shall notify the applicant in writing and give reasons.

An import/export examination and approval form shall be valid for at most 90 days, and can be used only in the valid period and in the year when it is issued.

Article 24 An entity which obtains an import/export examination and approval form shall apply for an import/export license according to the provisions of the commerce department under the State Council and handle the customs formalities upon the strength of the import/export license. For ozone depleting substances in the Catalogue of Import and Export Commodities Subject to Inspection and Quarantine by the Entry-Exit Inspection and Quarantine Institutions, the entry-exit inspection and quarantine institutions shall make inspections by law.

To import/export ozone depleting substances between a zone under special customs supervision or a bonded area under the customs supervision inside the People's Republic of China and an overseas area, the importer/exporter shall apply for an import/export examination and approval form and an import/export license under this Regulation. It is not required to get these documents if ozone depleting substances are to be circulated between a zone under special customs supervision or a bonded area under the customs supervision inside the People's Republic of China and another area inside China or between zones under special customs supervision or/and bonded areas under the customs supervision.

Chapter IV Supervision and Inspection

Article 25 The environmental protection departments and other relevant departments of the people's governments at or above the county level shall, pursuant to this Regulation, supervise and inspect the production, sales, consumption and import/export of ozone depleting substances within their respective functions and duties.

Article 26 The environmental protection departments and other relevant departments of the people's governments at or above the county level can take the following measures in the process of supervision and inspection:

1. Asking the inspectee to provide the relevant materials;
2. Asking the inspectee to make an explanation on matters concerning the implementation of this Regulation;

3. Entering the inspectee's production, operation or storage premise for investigation and evidence collection;
4. Ordering the inspectee to stop its violation of this Regulation and to fulfill the statutory obligations; and
5. Detaining or seizing the illegally produced, sold, consumed or imported/exported ozone depleting substances and the facilities, equipment, raw materials and products used to produce ozone depleting substances.

The inspectee shall be cooperative, truthfully report the relevant information and provide the required materials, and may not refuse or impede the inspection.

Article 27 The environmental protection departments and other relevant departments of the people's governments at or above the county level shall assign at least two supervisors or inspectors for a supervision or inspection activity. The supervisors or inspectors shall produce their valid certificates for administrative law enforcement.

The functionaries of the environmental protection departments and other relevant departments of the people's governments at or above the county level shall be obliged to keep confidential the trade secrets they know from supervision and inspection activities.

Article 28 The environmental protection department under the State Council shall set up an ozone depleting substance information management system to collect, summarize and release data about the production, consumption and import/export of ozone depleting substances.

The environmental protection departments of the local people's governments at or above the county level shall report the violations of this Regulation as discovered in the process of supervision and inspection and the handling results thereof to the environmental protection department under the State Council level by level.

The other relevant departments of the local people's governments at or above the county level shall report the violations of this Regulation as discovered in the process of supervision and inspection and the handling results thereof to the competent departments under the State Council level by level, and the competent departments under the State Council shall make a copy of the said reports to the environmental protection department under the State Council in a timely manner.

Article 29 Where the environmental protection department or any other relevant department of a local people's government at or above the county level fails to investigate any violation of this Regulation, its superior authorities can order it to investigate or directly investigate the violation.

Chapter V Legal Responsibility

Article 30 Where any department responsible for the supervision and administration of ozone depleting substances or any staff member thereof commits any of the following acts, the directly responsible person in charge and other directly liable persons shall be given a sanction and, if any crime is constituted, shall be subject to criminal liability:

1. Issuing any ozone depleting substances production or consumption quota permit in violation of this Regulation;
2. Issuing any import/export examination and approval form or any import/export license of ozone depleting substances in violation of this Regulation;
3. Failing to investigate and punish any violation of this Regulation after discovering it;
4. Asking for and taking money or goods from the relevant persons or seeking for other benefits in the process of handling the administrative licensing issues for the production, consumption or import/export of ozone depleting substances or in the process of supervision and inspection; or
5. Any other act of engaging in malpractice for illegal gains, abusing powers or neglecting duties.

Article 31 Where any entity produces ozone depleting substances without a production quota permit, the environmental protection department of the local people's government at or above the county level shall order it to stop the illegal act, confiscate its raw materials to be used for the illegal production of ozone depleting substances, illegally produced ozone depleting substances and illegal gains, demolish or destroy its equipment and facilities used for the illegal production of ozone depleting substances, and impose a fine of 1 million yuan.

Article 32 Where an entity which is required to apply for a consumption quota permit under this Regulation consumes ozone depleting substances without one, the environmental protection department of the local people's government at or above the county level shall order it to stop the illegal act, confiscate the illegally used ozone depleting substances, the products produced with the illegally used ozone depleting substances and the illegal gains, and impose a fine of 200,000 yuan; if the circumstances are serious, the department shall impose a fine of 500,000 yuan and demolish or destroy its equipment and facilities used for the illegal consumption of ozone depleting substances.

Article 33 Where any producer or consumer of ozone depleting substances commits any of the following acts, the environmental protection department of the people's government of the province, autonomous region or municipality directly under the Central Government at the locality of the entity shall order it to stop the illegal act, confiscate the illegally produced or consumed ozone depleting substances, the products produced with the illegally consumed ozone depleting substances and the illegal gains, concurrently impose a fine of 20,000 yuan up to 100,000 yuan, and apply to the environmental protection department under the State Council for cutting its production or consumption quota; if the circumstances are serious, the department shall impose a fine of 100,000 yuan up to 200,000 yuan and apply to the environmental protection department under the State Council for revoking its production or consumption quota permit:

1. Producing ozone depleting substances beyond the variety, quantity or term indicated in the production quota permit;
2. Producing or selling ozone depleting substances beyond the uses indicated in the production quota permit; or
3. Consuming ozone depleting substances beyond the variety, quantity, uses or term indicated in the consumption quota permit.

Article 34 Where an entity producing, selling or consuming ozone depleting substances sells/purchases ozone depleting substances to/from any entity which fails to meet the requirements of this Regulation, the environmental protection department of the local people's government at or above the county level shall order it to correct, confiscate the illegally sold or purchased ozone depleting substances and the illegal gains, impose a fine of three times the total market price of the sold or purchased ozone depleting substances. If the entity has obtained a production or consumption quota permit, the department shall apply to the environmental protection department under the State Council for cutting its production or consumption quota.

Article 35 Where an entity producing or consuming ozone depleting substances fails to take necessary measures to prevent or reduce the leakage or discharge of ozone depleting substances as required, the environmental protection department of the local people's government at or above the county level shall order it to correct within a certain time limit and impose a fine of 50,000 yuan; if it fails to correct within the said time limit, the department shall impose a fine of 100,000 yuan and apply to the environmental protection department under the State Council for cutting its production or consumption quota.

Article 36 Where an entity engaging in the maintenance and discard of the cooling devices, cooling systems or extinguishing systems which contain ozone depleting substances fails to recycle or reutilize ozone depleting substances or hire an entity which engages in the recycling, reutilization or destruction of

ozone depleting substances for the harmless treatment of ozone depleting substances, the environmental protection department of the local people's government at or above the county level shall order it to correct and impose a fine of three times the harmless treatment cost.

Article 37 Where an entity which engages in the recycling, reutilization or destruction of ozone depleting substances directly discharges ozone depleting substances to the atmosphere instead of subjecting them to harmless treatment as required, the environmental protection department of the local people's government at or above the county level shall order it to correct and impose a fine of three times the harmless treatment cost.

Article 38 Where any entity engaging in the production, sale, consumption, import/export, recycling, reutilization or destruction of ozone depleting substances or any entity engaging in the maintenance or discard of the cooling devices, cooling systems or extinguishing systems which contain ozone depleting substances commits any of the following acts, the environmental protection department of the local people's government at or above the county level shall order it to correct and impose a fine of 5,000 yuan up to 20,000 yuan upon it:

1. Failing to go through the archive-filing formalities at the competent environmental protection department when it is required to do so under this Regulation;
2. Failing to keep integrity of the source materials about its production and operation activities as required;
3. Failing to report in time, making false reports about or hiding the truth in making reports about data on its business operations; or
4. Failing to provide necessary materials according to the requirements of supervisors and inspectors.

Article 39 Where anyone refuses or impedes the supervision or inspection of the competent environmental protection department or any other relevant department or practices fraud in the process of supervision or inspection, the supervision or inspection department shall order the violator to correct and impose a fine of 10,000 yuan up to 20,000 yuan; if it is a violation against public security administration, the public security organ shall impose a public security administration punishment; if it constitutes a crime, the liable party shall be subject to criminal liability.

Article 40 Where any importer/exporter imports/exports ozone depleting substances without an import/export license or beyond the scope of the import/export license, the customs shall impose a punishment pursuant to the relevant laws or administrative regulations; if any crime is constituted, the liable party shall be subject to criminal liability.

Chapter VI Supplementary Provisions

Article 41 This Regulation shall come into force on June 1, 2010.