

## Environmental Protection Agency

## §21.10

### §21.9 Appeals.

(a) An applicant aggrieved by a determination of a Regional Administrator under §21.5 may appeal in writing to the Deputy Administrator of the Environmental Protection Agency, within 30 days of the date of the determination from which an appeal is taken; *Provided*, That the Deputy Administrator may, on good cause shown, accept an appeal at a later time.

(b) The applicant in requesting such an appeal shall submit to the Deputy Administrator a copy of the complete application as reviewed by the Regional Administrator.

(c) The applicant should also provide information as to why it believes the determination made by the Regional Administrator to be in error.

(d) The Deputy Administrator shall act upon such appeal within 60 days of receipt of any complete application for a review of the determination.

(e) Where a State has been delegated certification authority, the procedure for appeals shall be established in the State submission required in §21.12.

### §21.10 Utilization of the statement.

(a) Statements issued by the Regional Administrator will be mailed to the small business applicant and to the district office of the Small Business Administration serving the geographic area where the business is located. It is the responsibility of the applicant to also forward the statement to SBA as part of the application for a loan.

(b) Any statement or determination issued under §21.5 shall not be altered, modified, changed, or destroyed by any applicant in the course of providing such statement to SBA. To do so can result in the revocation of any approval contained in the statement and subject the applicant to the penalties provided in 18 U.S.C. 1001.

(c) If an application for which a statement is issued under §21.5 is substantively changed in scope, concept, design, or capability prior to the approval by SBA of the financial assistance requested, the statement as issued shall be revoked. The applicant must resubmit a revised application under §21.3 and a new review must be conducted. Failure to meet the requirements of this paragraph could subject

the applicant to the penalties specified in 18 U.S.C. 1001 and 18 U.S.C. 286. A substantive change is one which materially affects the performance or capability of the proposed addition, alteration, or method of operation.

(d) An agency, Regional Administrator, or State issuing a statement under §21.5 shall retain a complete copy of the application for a period of five years after the date of issuance of the statement. The application shall be made available upon request for inspection or use at any time by any agency of the Federal Government.

(e) No application for a statement or for financial assistance under this section or statement issued under this section shall constitute or be construed as suspending, modifying, revising, abrogating or otherwise changing the requirements imposed on the applicant by the terms, conditions, limitations or schedules of compliance contained in an applicable standard, permit, or other provision established or authorized under the Act or any State or local statute, ordinance or code.

(f) No statement as issued and reviewed shall be construed as a waiver to the applicants fulfilling the requirements of any State or local law, statute, ordinance, or code (including building, health, or zoning codes).

(g) An amended application need not be submitted if the facility, property, or operation for which the statement is issued is sold, leased, rented, or transferred by the applicant to another party prior to approval by SBA of the financial assistance: *Provided*, That there is or will be no substantive change in the scope, concept, design, capability, or conduct of the facility or operation.

Comment: However, eligibility for financial assistance would be reexamined by SBA with regard to any such sale, lease, rental or transfer.

(h) The Regional Administrator may include in any statement a date of expiration, after which date the approval by the Regional Administrator contained in the statement shall no longer apply. The date of expiration shall not become effective if the applicant has submitted the statement to the SBA, prior to the date of expiration, as part

## § 21.11

## 40 CFR Ch. I (7-1-04 Edition)

of the application for financial assistance.

### § 21.11 Public participation.

(a) Applications shall not generally be subject to public notice, public comment, or public hearings. Applications during the period of review as stated in § 21.5, or during the period of appeal as provided in § 21.8, shall be available for public inspection. Approved applications as provided in § 21.10(d) shall be available for public inspection at all times during the five year period.

(b) The Regional Administrator, if he believes that the addition, alteration, or method of operation may adversely and significantly affect an interest of the public, shall provide for a public notice and/or public hearing on the application. The public notice and/or public hearing shall be conducted in accordance with the procedures specified for a permit under 40 CFR 125.32 and 125.34(b).

(c) Where the applicant is able to demonstrate to the satisfaction of the Regional Administrator that disclosure of certain information or parts thereof as provided in § 21.3(c)(5) would result in the divulging of methods or processes entitled to protection as trade secrets, the Regional Administrator shall treat the information or the particular part as confidential in accordance with the purposes of section 1905 of Title 18 of the United States Code and not release it to any unauthorized person. *Provided, however,* That if access to such information is subsequently requested by any person, there will be compliance with the procedures specified in 40 CFR part 2. Such information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out the Act or when relevant in any proceeding under the Act.

### § 21.12 State issued statements.

(a) Any State after the effective date of these regulations may submit to the Regional Administrator for his approval an application to conduct a program for issuing statements under this section.

(1) A State submission shall specify the organizational, legal, financial, and administrative resources and proce-

dures that it believes will enable it to conduct the program.

(2) The State program shall constitute an equivalent effort to that required of EPA under this section.

(3) The State organization responsible for conducting the program should be the State water pollution control agency, as defined in section 502 of the Act.

(4) The State submission shall propose a procedure for adjudicating applicant appeals as provided under § 21.9.

(5) The State submission shall identify any existing or potential conflicts of interest on the part of any personnel who will or may review or approve applications.

(i) A conflict of interest shall exist where the reviewing official is the spouse of or dependent (as defined in the Tax Code, 26 U.S.C. 152) of an owner, partner, or principal officer of the small business, or where he has or is receiving from the small business concern applicant 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangements.

(ii) If the State is unable to provide alternative parties to review or approve any application subject to conflict of interest, the Regional Administrator shall review and approve the application.

(b) The Regional Administrator, within 60 days after such application, shall approve any State program that conforms to the requirements of this section. Any such approval shall be after sufficient notice has been provided to the Regional Director of SBA.

(c) If the Regional Administrator disapproves the application, he shall notify the State, in writing, of any deficiency in its application. A State may resubmit an amended application at any later time.

(d) Upon approval of a State submission, EPA will suspend all review of applications and issuance of statements for small businesses in that State, pending transferral. *Provided, however,* That in the event of a State conflict of interest as identified in § 21.12(a)(4) of