

# Kigali Amendment: Final determination on proposed adverse decision on special permits to import new bulk hydrofluorocarbons

<b>Date:</b>	19 September 2019
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1. This decision is made under r 40(4)(a) of the Ozone Layer Protection Regulations 1996 (OLPR) regarding a decision made under r 7H to consider applications for special permits to import bulk hydrofluorocarbons (HFCs).
2. The EPA delegated decision making power under r 7C(1) to myself, the Chief Executive, on 14 February 2019.

## Background

3. In 2016, New Zealand agreed to the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer. Amendments were made to the Ozone Layer Protection Regulations 1996 (“the Regulations”) on 14 December 2018 to give effect to the Protocol’s Kigali Amendment. The Regulations give the EPA the ability to issue permits for the import, export, and exemption of 18 HFCs with high global warming potential.
4. The annual cap on imports of new bulk HFCs is split into two categories: the grandparented category, which accounts for up to 80% of the total amount that New Zealand can import, and the special category which accounts for at least the other 20%. The grandparented category is only available to those who have been granted grandparented eligibility by the EPA.
5. The EPA received 14 applications for special permits for 2020. All of these applications were accepted and processed in accordance with r 7H. The applicants were informed of the proposed decision, including their proposed allocations, on 20 August 2019.

## Legal Framework

6. In accordance with r 40(2), the EPA notified applicants of the proposed decision on 20 August 2019. This notification set out the grounds for the proposed decision, and the process for applicants to follow if they wished to submit on that proposed decision before it is finally determined.
7. Under r 40(4), the EPA shall finally determine whether or not to make the proposed decision, and notify the people directly affected of the EPA’s decision, the date on which this will take effect, and the right to appeal.
8. Regulation 40 addresses the right of persons affected by proposed adverse decisions. Under r 40(1), adverse decision means “*any decision under the Act or these regulations in respect of which there is a right to appeal pursuant to regulation 41*”.

9. Under r 41(1)(a) and r 41(1)(b), in any case where the EPA declines to issue a permit applied for under the Regulations; or issues a permit that the applicant considers unsatisfactory for any reason, the person directly affected may appeal against the decision to the High Court.

## Summary of submissions

### Refrigeration Specialties

10. On 9 September 2019, the EPA received a submission from Refrigeration Specialties (application reference OLPAK-0000014). They stated that the proposed condition regarding reporting for imports throughout 2020 was not feasible. The condition was worded as follows:

*“The permit holder must submit, no later than 31 January of each year, the substances and quantities imported under this permit.”*

Based on the feedback received, and to improve clarity, I have changed the condition to:

*“The permit holder must submit, no later than 31 January 2021, the substances and quantities imported under this permit in 2020.”*

11. I anticipate that this will clarify the intent and requirements in relation to the reporting requirements.

## Other responses

12. The EPA has had two applicants enquire as to whether the list of each applicant’s allocation of the ‘special pool’ will be publically released. This information was released as part of the grandparented eligibility as this was required for the administration of the decision, as eligibility holders have the ability to transfer eligibility to other persons. At this time, it is not my intention to make this information available, as the decision documents available set out my decision, and more specific information is likely to be commercially sensitive, and knowledge of this information will not assist in the administration of the decision, as there is no ability to transfer special permits.
13. Additionally, the EPA received an email from an applicant requesting their permit be issued in accordance with the proposed decision. Based on the submissions received, I have determined to issue their permit in accordance with the proposed decision.

## Decision

14. Having considered the submissions received, I have found that the information provided in the received submission indicates that the decision made by the EPA on 20 August 2019 is neither incorrect nor inconsistent with the requirements scheme and purpose of OLPR and the Ozone Layer Protection Act 1996 (OLPA) above. Accordingly, under r 40(4)(a) the decisions made for special permits under r 7H are finally determined, with the additional clarification regarding the condition mentioned above, and shall take effect on 1 January 2020.

Decision approved by	Role	Signature	Date
Dr Allan L Freeth	Chief Executive, Environmental Protection Authority	 Environmental Protection Authority 100 The Rialto Centre	18/09/2019