

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

Date:	15 September 2020
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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 Acting General Manager, Hazardous Substances and New Organisms, on 26 June 2020.

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 exempt the transshipment, 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 15 applications for special permits for 2021. 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 21 August 2020.

Legal Framework

6. In accordance with r 40(2), the EPA notified applicants of the proposed decision on 21 August 2020. 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 was 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

10. No submissions were received during the submission period.

Other responses

11. The EPA received an email from one applicant who resubmitted a special permit application in order to match their approved quantity from the proposed decision. The applicant withdrew the application and requested that their permit be issued in accordance with the proposed decision.

Decision

12. As no submissions were received, I have found that the information provided in the proposed decision indicates that the decision made by the EPA on 21 August 2020 is neither incorrect nor inconsistent with the requirements scheme and purpose of OLPR and the Ozone Layer Protection Act 1996 (OLPA) above, and so approve the proposed decision.

Decision approved by	Role	Signature	Date
Dr Clark Ehlers	Acting General Manager, HSNO, Environmental Protection Authority	 <small>Environmental Protection Authority Ke mana hāwhiri tātou</small>	29 September 2020
