

Final Decision

for special permits for the import of new bulk hydrofluorocarbons for 2021

**under regulation 7H of the Ozone
Layer Protection Regulations 1996**

SEPTEMBER 2020



**Environmental
Protection Authority**
Te Mana Rauhi Taiao

New Zealand Government

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Background

The Environmental Protection Authority (EPA) administers the permitting function associated with the Montreal Protocol, implemented in New Zealand through the Ozone Layer Protection Act 1996 (OLPA) and associated regulations. In October 2016 the Parties to the Montreal Protocol, including New Zealand, adopted the Kigali Amendment (Amendment) to phase down hydrofluorocarbons (HFCs) with high global warming potential.

HFCs are commonly used refrigerants, and so this amendment has implications for supermarkets, refrigerated transport, and air-conditioning in vehicles. The Amendment, if implemented as intended, will contribute to climate change initiatives to prevent up to 0.5°C of global temperature increase by 2100.

HFCs are also separately managed through the Emissions Trading Scheme (ETS) for a different purpose. Persons seeking to import or export HFCs are required to apply to the EPA's Hazardous Substances Applications team for permits under OLPA, and engage separately through the ETS to meet their obligations under the Climate Change Response Act 2002.

The Ozone Layer Protection Regulations 1996 (Regulations) were amended on 1 October 2018 to give effect to the Kigali Amendment. The Regulations set out a limit on the amount of new bulk HFCs that are able to be imported, and provide a phase down schedule for New Zealand. Of the total amount of new bulk HFCs that can be imported, the Regulations allow up to 80 percent to be allocated through grandparented eligibility, and the remainder, a minimum of 20 percent, to be made available for allocation through special permits.

In terms of wider management of refrigerants, on 29 July 2020, Associate Environment Minister Eugenie Sage announced that refrigerants were to be included as a 'priority product' under the Waste Minimisation Act 2008. Priority product is defined as a product that could cause significant environmental harm when it becomes waste, or that will benefit from "reduction, reuse, recycling, recovery or treatment"¹ and is able to be managed under a product stewardship scheme. Therefore it is noted that there may be additional stewardship schemes and regulations coming for importers of new bulk HFCs.

Process followed

Application forms for special permits were available on the EPA website from 21 December 2018. Applications for the 2021 calendar year opened on 1 January 2020, and closed on 1 July 2020. Applications for special permits for the 2021 calendar year closed on 1 July 2020, in accordance with r 7H(2). Applications received after this date were unable to be accepted for processing. For the 2021 calendar year, the EPA received 15 applications for special permits.

The EPA acknowledged all applications, and undertook an initial assessment of each application to ensure all required information had been provided and that evidence had been supplied in support of the application. The EPA issued requests for further information to all applicants. All information was

¹ From section 9 of the WMA 2008

due by 20 July 2020. One applicant requested, on 15 July 2020, a one week extension to allow for further collation and supply of further information, however due to constrained timeframes to meet industry directed timelines, the extension was given until 1pm on 21 July 2020. Information received after this date was not considered as part of this process. This extension was notified and extended to all other applicants on 17 July 2020.

All applications were assessed based on the information and evidence provided as at 1pm on 21 July 2020. Application information was assessed against the matters specified in r 7H(3) of the Regulations, and s 9C of the OLPA, and allocation of the special permit pool was determined based on these matters. Each application was considered individually, and then across all applicants. The special permitting assessment across all applicants has been considered through a single decision memo. The individual assessments are included in the confidential appendices.

On 21 August 2020, the proposed decision was released. Applicants were notified that they had 15 working days in which they could put forward a submission on the proposed decision in accordance with r 40(2). The EPA received no submissions in this period, and therefore no changes have been made.

Legislative assessment

The requirements for the import and export of HFCs to be permitted is established through the Ozone Layer Protection Act 1996, and the Ozone Layer Protection Regulations 1996.

The assessment below discusses the relevant requirements for the assessment for special permits for HFCs only, and is not a full assessment of all requirements for HFCs.

Ozone Layer Protection Act 1996

4 Purpose of Act

- (1) *The purpose of this Act is to –*
 - (a) *help protect human health and the environment from adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer;*
 - (b) *phase out ozone depleting substances as soon as possible except for essential uses;*
 - (c) *give effect to New Zealand’s obligations under the Convention and the Protocol*
- (2) *Every person exercising any power or discretion under this Act shall act in a manner consistent with that purpose.*

The assessment of applications has been completed in accordance with section 4.

9B Refusal of permit to import substance

- (1) *This section and sections 9C and 9D apply if regulations made under section 16 allow the importation of substances or goods under the authority of a permit granted by the Environmental Protection Authority.*
- (2) *The Environmental Protection Authority may refuse to grant a permit if the Authority considers-*
 - (a) *After considering the matters set out in 9C, the EPA considers that granting the permit would be inconsistent with the scheme of the regulations*
 - (b) *The applicant has been convicted of an offence against OLPA, or an offence that involves an ozone depleting substance*
 - (c) *The information supplied in the application is incorrect.*

The assessment of applications considered section 9B, on whether it would be appropriate to refuse to grant a permit.

9C Consideration of application for permit to import substance

The Environmental Protection Authority must, in considering an application for a permit, have regard to the following matters to the extent that they are relevant:

- (a) *the amount of the substance that is available for allocation:*
- (b) *the total amount of the substance for which applications have been received:*
- (c) *the importance of the use to which the substance will be put:*
- (d) *whether there is a viable alternative to the use of the substance that would be less harmful to the environment.*

These matters have been considered throughout the assessment and have been included in the assessment matrix where appropriate.

9D Conditions on permits to import substance

If the regulations authorise the Environmental Protection Authority to impose conditions on the grant of a permit, the conditions may address the following matters:

- (a) *The use to which the substance will be put in New Zealand:*
- (b) *Restriction or prohibition on transfer of an entitlement arising from a permit:*
- (c) *The provision of information (including photographs) to the Environmental Protection Authority concerning the identification, movement, and location of the substance and compliance with conditions*
- (d) *The insurance requirements relating to the importation of the substance and its presence in New Zealand:*
- (e) *Control and ownership of the substance:*
- (f) *Restriction or prohibition on the grant of a security interest in the substance:*
- (g) *The labelling, packaging, handling, storage, transport, processing, or disposal of the substance:*
- (h) *Liability for the substance if it cannot be used for the purpose for which it was imported.*

The conditions proposed are in accordance with the above matters.

12A Environmental Protection Authority may approve forms

The Environmental Protection Authority may approve forms for the purposes of this Act.

Forms for special permit applications for HFCs were approved under delegated authority on 21 December 2018 and have been available on the EPA website since 21 December 2018.

Ozone Layer Protection Regulations 1996 (the Regulations)

7A Prohibition on importation of bulk HFCs without permit

- (1) *On and from 1 January 2020, a person must not import a bulk HFC into New Zealand unless authorised to do so by –*
 - (a) *A grandparented permit to import new bulk HFCs issued under regulation 7G (see regulations 7B to 7F for who is eligible to apply for a grandparented permit); or*
 - (b) *A special permit to import new bulk HFCs issued under regulation 7H; or*
 - (c) *An exporter's permit to import new bulk HFCs issued under regulation 7I; or*
 - (d) *A permit to import recycled HFCs issued under regulation 7J.*
- (2) *See regulation 29(f) for exemptions that may be granted by the EPA.*

The assessment undertaken has allowed for applicants to be considered for permits under r 7H

7H Special permits to import new bulk HFCs

- (1) *Any person may apply to the EPA for a special permit to import new bulk HFCs.*
- (2) *The application must be in the approved form and must be made no later than the 1 July of the year before the first calendar year to which the permit relates.*
- (3) *The application must –*
 - (a) *State the extent to which the applicants eligibility to import new bulk HFCs under regulation 7C, 7D or 7F (if any) has been used or accounted for; and*
 - (b) *Provide evidence of the applicants commitment to use, in a timely manner, cost effective alternatives to HFCs; and*
 - (c) *Provide evidence of the applicants commitment to obtain a transfer of an eligibility to import new bulk HFCs under regulation 7D; and*
 - (d) *Provide evidence of energy efficiency or other environmental advantages (if any) from granting a special permit to the applicant; and*
 - (e) *Provide evidence of adverse economic or social impacts (if any) from refusal to grant a special permit to the applicant.*
- (4) *The EPA may, on receipt of an application, grant a special permit.*
- (5) *The permit must state –*
 - (a) *The period to which the permit relates, which must not be more than 3 calendar years; and*
 - (b) *The amount of new bulk HFCs that the permit allows the applicant to import; and*
 - (c) *Any conditions relevant to the permit.*

(6) The EPA may, at any time, revoke a special permit if the EPA is satisfied that the information specified in the application was not, or is no longer, correct.

The EPA received applications for special permits and has assessed them in accordance with r 7H. The detailed assessments against the relevant matters are included in the confidential appendices.

7K Maximum allocation of new bulk HFCs

The EPA must ensure that the total carbon dioxide equivalent tonnes of new bulk HFCs allowed to be imported for a calendar year by permits granted under regulations 7G and 7H does not exceed the limit specified in Schedule 6 for the calendar year.

The assessment was carried out in accordance with r 7K and the maximum allocation in schedule 6.

There have been no revocations of grandparented eligibility in 2020. As such, 20% of the maximum allocation in schedule 6 applies. For 2021, the allocation available for special permits is 235,540.0000 carbon dioxide equivalent tonnes (CO₂-e tonnes).

Schedule 1

Part 10 of schedule 1 of the Regulations contains the HFCs that are controlled, including their chemical formulae and 100-year global warming potentials. The assessment has been undertaken in accordance with this schedule.

Schedule 6

Schedule 6 of the Regulations sets out the maximum allocation of new bulk HFCs phasing down from 2020 until 2036.

Appeals

Provisions are set out in rr 40, 41, 42, 43 and schedule 1AA relating to appeals on decisions on special permits.

Applicants are able to make submissions to the EPA on the proposed decision if they consider the decision to be an adverse decision. Following consideration of submissions, the EPA will release the final decision. Appeals must be lodged with the High Court within 20 working days of notification of the final decision.

For the purposes of r 41(3), as the applications must be considered together, all applications for special permits are considered to start their processing time from 2 July 2020.

Methodology

The Regulations set out the phase down schedule for New Zealand in CO₂-e tonnes of HFCs.

For 2021, a net total of 1,177,700.0000 CO₂-e tonnes of HFCs is available across all permit types for new bulk HFCs. Of this, according to the Regulations, a minimum of 20 percent of New Zealand's limit is

available for allocation through special permits, and up to 80 percent is allocated through the grandparented eligibility process. Any permitted amounts must not exceed this cap. For 2021, 20 percent is available for allocation under r 7H, equating to a total of 235,540.0000 carbon dioxide equivalent tonnes.

Any person may apply for a special permit to import new bulk HFCs under r 7H. These applications must not be made later than 1 July of the year before the first calendar year to which the permit relates.

Special permits are assessed on the matters found under r 7H(3), and section 9C. An assessment against the matters listed under r 7H(3) and s 9C has been undertaken for each application, and an overall assessment of the applications is detailed in the confidential appendices. The applicants have been assigned an amount of the special pool, as outlined in Appendix 1, based on the assessment against the specified matters.

Assessment of applications

Fifteen applications were received by 1 July 2020.

The applications requested an overall total of 736,846.4363 CO₂-e tonnes. The amount available for allocation for 2021 is 235,540.0000 CO₂-e tonnes. There is insufficient allocation available for all applicants to receive their requests in full.

All applicants are seeking a term of one year. No evidence has been provided that supports a term of greater than one year.

Assessment Matrix

An assessment matrix was used to assist in determining proportional quantities for applicants. This matrix uses the scores indicated in the individual appendices, in the section titled 'evidence provided', to calculate a proportional scoring, that can be translated to a proportional quantity for each applicant. Each matter is rated on a scale of 1-5 based on the relevance and quality of the evidence provided. The scoring scale is as follows:

- 1 – Poor
- 2 – Somewhat poor
- 3 – Average
- 4 – Somewhat good
- 5 – Good

Applicants were required to provide evidence for each matter, if an applicant did not provide evidence for any matter, or if there was no relevant evidence, they were given a score of 1 for that matter.

Once the scores to the relevant matters were assigned, the scores across all applications were moderated together to ensure consistency and fairness. This moderation was completed over two days, and involved ten members of EPA staff.

Once moderated, the scores were entered into the assessment matrix, allowing a proportion of the total quantity available to be assigned to each applicant.

The decision on allocation is not constrained or determined by the output of the assessment matrix, and can be considered only as a guide of how consistent applications were when measured against the assessment matters.

Conditions

Conditions are to be listed on any granted permits as applicable to the individual permit holders. General conditions will be applied to all permits, unless individual circumstances warrant alternative wording.

Conditions:

1. This permit is valid for the 2021 calendar year only.
2. This permit allows the holder to import new bulk hydrofluorocarbons (HFCs) up to the amount listed on the permit.
3. Only the permit holder may use this permit.
4. When requested by the Environmental Protection Authority, the applicant must provide information concerning the identification, movement and location of the substances imported under this permit, and provide any other document required to demonstrate compliance with permit conditions within five working days.
5. Any suspected release to the atmosphere of a new bulk HFCs must be reported to the EPA within five working days.
6. The permit holder must submit, no later than 31 January 2022, the substances and quantities imported under this permit in 2021.


Advice:

7. The permit holder must be aware of, and comply with, any Emissions Trading Scheme requirements regarding HFCs as contained in the Climate Change Response Act 2002.

Final Decision

Pursuant to r 7H of the Ozone Layer Protection Regulations 1996 (the Regulations), I have considered the applications for special import permits for new bulk HFCs received by the EPA. I have considered each application; the information provided by each applicant, and the evidence supplied in support of each application under r 7H. I have considered the matters in r 7H(3), s 9C, as well as having taken into account the considerations in s 4 of the Ozone Layer Protection Act 1996 (the Act).

On the basis of the above, I consider that the allocations of special permits set out in Appendix One and detailed in Appendices Two and Three are consistent with the scheme and purpose of the Regulations and Act, and propose to decide accordingly.

Final Decision approved by	Role	Signature	Date
Dr Clark Ehlers	Acting General Manager, HSNO, Environmental Protection Authority		29 September 2020

Appendix 1: Summary of recommendations for special permits

This appendix contains a summary of each recommendation for applications for special permits.

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Appendix 2: Summary of individual assessments of applications for special permits

This appendix includes an individual summary of each application received.

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Appendix 3: Overall assessment summary

This appendix includes the overall assessment that weighs up the different applications.

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