

ACT NO. 40 OF 2020

I assent.

J. K. KONROTE
President

[11 December 2020]

AN ACT**TO AMEND THE OZONE DEPLETING SUBSTANCES ACT 1998**

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Ozone Depleting Substances (Amendment) Act 2020.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Ozone Depleting Substances Act 1998 is referred to as the “Principal Act”.

Long title amended

2. The Principal Act is amended in the long title after “DEPLETING SUBSTANCES” by inserting “AND SUBSTANCES WITH HIGH GLOBAL WARMING POTENTIAL”.

Section 5 amended

3. Section 5 of the Principal Act is amended by—

- (a) in the definition of “controlled substance”, deleting “listed in the Schedule” and substituting “and any substance with high global warming potential listed in Schedule 1”; and

(b) inserting the following new definition—

““HCFC chiller” means any equipment containing a controlled substance listed in Part 2 of Schedule 1 that removes heat from a liquid by way of vapour compression, the absorption refrigeration cycle, air or processed water so that the liquid can be circulated through a heat exchanger to cool confined spaces;”.

Section 12 amended

4. Section 12(2)(b) of the Principal Act is amended by deleting “Vienna Convention for the protection of the Ozone Layer and Montreal Protocol on substances not deplete the Ozone layer” and substituting “Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer”.

Section 14 amended

5. Section 14 of the Principal Act is amended by—

(a) deleting “the Schedule” wherever it appears and substituting “Schedule 1”;

(b) deleting subsection (2) and substituting the following—

“(2) No person shall import, export or manufacture any controlled substance in bulk listed in Part 2 of Schedule 1 with effect from 1 January 2030.”; and

(c) after subsection 7, inserting the following new subsections—

“(7A) No person shall import, export or manufacture any HCFC chiller with effect from 1 January 2021.

(7B) No person shall manufacture any controlled substance listed in Part 3 of Schedule 1 with effect from 1 January 2021.

(7C) No person shall import any controlled substance listed in Part 3 of Schedule 1 from a State that is not a party to the Montreal Protocol on Substances that Deplete the Ozone Layer with effect from 1 January 2033.

(7D) No person shall export any controlled substance listed in Part 3 of Schedule 1 to a State that is not a party to the Montreal Protocol on Substances that Deplete the Ozone Layer with effect from 1 January 2033.

(7E) No person shall import, export, manufacture, sell, store, process, purchase for resale or dispose of, as the case may be, any of the substances listed in Schedule 2.”.

Section 14A inserted

6. The Principal Act is amended after section 14 by inserting the following new section—

“Exemptions by the Director

14A.—(1) Notwithstanding section 14, the Director may exempt any person from the requirement to comply with any limitation or prohibition under section 14.

(2) The exemption under subsection (1) must be determined in accordance with the exemptions provided for under the Montreal Protocol on Substances that Deplete the Ozone Layer.”.

Sections 22A and 22B inserted

7. The Principal Act is amended after section 22 by inserting the following new sections—

“Fixed penalty notice

22A.—(1) Subject to this section, where the Director has reason to believe that a person has committed an offence under this Act, the Director may institute proceedings in respect of the alleged commission of the offence by issuing that person with a fixed penalty notice.

(2) A fixed penalty notice issued under subsection (1) must—

- (a) name the person to whom the fixed penalty notice is issued;
- (b) specify the particulars of the offence;
- (c) specify the fixed penalty that the person named on the fixed penalty notice is required to pay; and
- (d) specify any other information prescribed by regulations.

(3) Nothing in this section is taken to prevent the institution of proceedings under any provision of this Act.

Regulations for the issuance of fixed penalty notices

22B. The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of fixed penalty notices under section 22A, including—

- (a) the offences for which fixed penalty notices may be issued;
- (b) the fixed penalties for prescribed offences;
- (c) the manner, form and timeframes for which fixed penalty notices are to be issued;
- (d) the actions a person may undertake on receipt of a fixed penalty notice; and
- (e) the penalties that a person to whom a fixed penalty notice has been issued may be liable to.”.

Section 25 amended

8. Section 25(1) of the Principal Act is amended after paragraph (e) by inserting the following new paragraph—

“(ea) prescribe penalties not exceeding a fine of \$500,000 or imprisonment for a term not exceeding 10 years or both;”.

Schedule amended

9. The Schedule to the Principal Act is amended by—

- (a) deleting “SCHEDULE” and substituting “SCHEDULE 1”;
- (b) in Part 1, deleting Group I and substituting the following—

“Group I – any of the following Chlorofluorocarbons whether virgin, recycled or in a mixture—

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential</i>	<i>100-Year Global Warming Potential</i>
CFCl_3	CFC-11	1.0	4,750
CF_2Cl_2	CFC-12	1.0	10,900
$\text{C}_2\text{F}_3\text{Cl}_3$	CFC-113	0.8	6,130
$\text{C}_2\text{F}_4\text{Cl}_2$	CFC-114	1.0	10,000
$\text{C}_2\text{F}_5\text{Cl}$	CFC-115	0.6	7,370
CF_3Cl	CFC-13	1.0	
C_2FCl_5	CFC-111	1.0	
$\text{C}_2\text{F}_2\text{Cl}_4$	CFC-112	1.0	
C_3FCl_7	CFC-211	1.0	
$\text{C}_3\text{F}_2\text{Cl}_6$	CFC-212	1.0	
$\text{C}_3\text{F}_3\text{Cl}_5$	CFC-213	1.0	
$\text{C}_3\text{F}_4\text{Cl}_4$	CFC-214	1.0	
$\text{C}_3\text{F}_5\text{Cl}_3$	CFC-215	1.0	
$\text{C}_3\text{F}_6\text{Cl}_2$	CFC-216	1.0	
$\text{C}_3\text{F}_7\text{Cl}$	CFC-217	1.0	

”;

- (c) in Part 2, deleting Group I and substituting the following—

“Group I – HCFCs – any of the following Hydrochlorofluorocarbons whether virgin, recycled or in a mixture—

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone Depleting Potential*</i>	<i>100-Year Global Warming Potential***</i>
CHFC_2	HCFC-21**	1	0.04	151
CHF_2Cl	HCFC-22**	1	0.055	1,810
CH_2FCl	HCFC-31	1	0.02	
C_2HFC_4	HCFC-121	2	0.01-0.04	
$\text{C}_2\text{HF}_2\text{Cl}_3$	HCFC-122	3	0.02-0.08	
$\text{C}_2\text{HF}_3\text{Cl}_2$	HCFC-123	3	0.02-0.06	77
CHCl_2CF_3	HCFC-123**	-	0.02	
$\text{C}_2\text{HF}_4\text{Cl}$	HCFC-124	2	0.02-0.04	609

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone Depleting Potential*</i>	<i>100-Year Global Warming Potential***</i>
CHFClCF ₃	HCFC-124**	-	0.022	
C ₂ H ₂ FCI ₃	HCFC-131	3	0.007-0.05	
C ₂ H ₂ F ₂ Cl ₂	HCFC-132	4	0.008-0.05	
C ₂ H ₂ F ₃ Cl	HCFC-133	3	0.02-0.06	
C ₂ H ₃ FCI ₂	HCFC-141	3	0.005-0.07	
CH ₃ CFCl ₂	HCFC-141b**	-	0.11	725
C ₂ H ₄ FCI	HCFC-151	2	0.003-0.005	
C ₃ HFCI ₆	HCFC-221	5	0.015-0.07	
C ₃ HF ₂ Cl ₅	HCFC-222	9	0.01-0.09	
C ₃ HF ₃ Cl ₄	HCFC-223	12	0.01-0.08	
C ₃ HF ₄ Cl ₃	HCFC-224	12	0.01-0.09	
C ₃ HF ₅ Cl ₂	HCFC-225	9	0.02-0.07	
CF ₃ CF ₂ CHCl ₂	HCFC-225ca**	-	0.025	122
CF ₂ ClCF ₂ CHClF	HCFC-225cb**	-	0.033	595
C ₃ HF ₆ Cl	HCFC-226	5	0.02-0.10	
C ₃ H ₂ FCI ₅	HCFC-231	9	0.05-0.09	
C ₃ H ₂ F ₂ Cl ₄	HCFC-232	16	0.008-0.10	
C ₃ H ₂ F ₃ Cl ₃	HCFC-233	18	0.007-0.23	
C ₃ H ₂ F ₄ Cl ₂	HCFC-234	16	0.01-0.28	
C ₃ H ₂ F ₅ Cl	HCFC-235	9	0.03-0.52	
C ₃ H ₃ FCI ₄	HCFC-241	12	0.004-0.09	
C ₃ H ₃ F ₂ Cl ₃	HCFC-242	18	0.005-0.13	
C ₃ H ₃ F ₃ Cl ₂	HCFC-243	18	0.007-0.12	
C ₃ H ₃ F ₄ Cl	HCFC-244	12	0.009-0.14	
C ₃ H ₄ FCI ₃	HCFC-251	12	0.001-0.01	
C ₃ H ₄ F ₂ Cl ₂	HCFC-252	16	0.005-0.04	
C ₃ H ₄ F ₃ Cl	HCFC-253	12	0.003-0.03	
C ₃ H ₅ FCI ₂	HCFC-261	9	0.002-0.02	
C ₃ H ₅ F ₂ Cl	HCFC-262	9	0.002-0.02	
C ₃ H ₆ FCI	HCFC-271	5	0.001-0.03	

*Where a range of Ozone Depleting Potentials is indicated, the highest value in that range shall be used for the purposes of the Montreal Protocol on Substances that Deplete the Ozone Layer. The Ozone Depleting Potentials listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the Ozone Depleting Potential of the isomer with the highest Ozone Depleting Potential, and the lower value is

the estimate of the Ozone Depleting Potential of the isomer with the lowest Ozone Depleting Potential.

** Identifies the most commercially viable substances with Ozone Depleting Potential values listed against them to be used for the purposes of the Montreal Protocol on Substances that Deplete the Ozone Layer.

*** For substances for which no Global Warming Potential is indicated, the default value 0 applies until a Global Warming Potential value is included.”; and

(d) after Part 2, inserting the following new Part—

“PART 3

Group I — HFCs — any of the following Hydrofluorocarbons whether virgin, recycled or in a mixture—

<i>Chemical Formula</i>	<i>Substance</i>	<i>100-Year Global Warming Potential</i>
CHF_2CHF_2	HFC-134	1,100
CH_2FCF_3	HFC-134a	1,430
CH_2FCHF_2	HFC-143	353
$\text{CHF}_2\text{CH}_2\text{CF}_3$	HFC-245fa	1,030
$\text{CF}_3\text{CH}_2\text{CF}_2\text{CH}_3$	HFC-365mfc	794
$\text{CF}_3\text{CHF}_2\text{CF}_3$	HFC-227ea	3,220
$\text{CH}_2\text{FCF}_2\text{CF}_3$	HFC-236cb	1,340
$\text{CHF}_2\text{CHF}_2\text{CF}_3$	HFC-236ea	1,370
$\text{CF}_3\text{CH}_2\text{CF}_3$	HFC-236fa	9,810
$\text{CH}_2\text{FCF}_2\text{CHF}_2$	HFC-245ca	693
$\text{CF}_3\text{CHFCH}_2\text{CF}_2\text{CF}_3$	HFC-43-10mee	1,640
CH_2F_2	HFC-32	675
CHF_2CF_3	HFC-125	3,500
CH_3CF_3	HFC-143a	4,470
CH_3F	HFC-41	92
$\text{CH}_2\text{FCH}_2\text{F}$	HFC-152	53
CH_3CHF_2	HFC-152a	124

Group II — Trifluoromethane

<i>Chemical Formula</i>	<i>Substance</i>	<i>100-Year Global Warming Potential</i>
CHF_3	HFC-23	14,800

”.

Schedule 2 inserted

10. The Principal Act is amended after Schedule 1 by inserting the following new Schedule—

“SCHEDULE 2
(Section 14(7E))

PROHIBITED SUBSTANCES

1. No person shall import, export or manufacture HCFC-142 with effect from 1 January 2021.”.

Passed by the Parliament of the Republic of Fiji this 11th day of December 2020.