



OZONE LAYER PROTECTION REGULATIONS 2007

No. 2007/8

Provision	Arrangement	Page
Part 1- Preliminary		1
1 Title.....		1
2 Interpretation.....		1
3 Objectives		2
Part 2- Prohibitions		2
4 Prohibitions on importation.....		2
5 Prohibitions on the importation of certain goods.....		3
6 Prohibitions on manufacture or sale.....		3
7 Prohibitions on exportation.....		4
Part 3- Permits		4
8 Permits.....		4
9 General provisions in relation to permits		4
10 General principles for consideration of permit applications		5
Part 4- Miscellaneous		5
11 Seizure of substances and goods.....		5
12 Forfeiture of seized substances and goods		6
13 Public Notice.....		6
14 Offences and penalties		6
SCHEDULE 1.....		7
SCHEDULE 2.....		7

OZONE LAYER PROTECTION REGULATIONS 2007

PURSUANT to section 32(2)(d) of the Environment Act 2003 the Cabinet of Ministers makes the following regulations

Part 1- Preliminary

1 Title

These are the Ozone Layer Protection Regulations 2007.

2 Interpretation

In these Regulations-

“Act” means the Environment Act 2003;

“aerosol spray” and “aerosol” means any substance packed under pressure in a container with a device for releasing it directly into the atmosphere as a foam or fine spray, or a liquid or solid stream;

"Montreal Protocol" means the Montreal Protocol on Substances that Deplete the Ozone Layer adopted at Montreal in 1987 and includes any amendments to, or substitutions of that Protocol that are, or will become, binding on Niue;

"non-party country" means a country that is not a party to the Montreal Protocol but is determined in accordance with the Montreal Protocol to be compliant with Articles 2, 2A, 2C, 2E and Article 4 of the Protocol;

"other CFC" means any fully halogenated CFC specified in Part III of Schedule 2;

"plastic foam" means any plastics in cellular mass which are formed with the use of any gas or volatile liquid introduced into liquid plastic to make bubbles;

"sale" means every method of disposition for valuable consideration (including barter), and includes -

- (a) the disposition to an agent for sale on consignment;
- (b) offering for sale or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting any of these things to be done;
- (c) disposal by way of lottery, raffle or game of chance;

"solvent" means any aqueous or organic product designed to clean a component or assembly by dissolving the contaminants present on its surface;

"Vienna Convention" means the Vienna Convention for the Protection of the Ozone Layer adopted at Vienna in 1985 and includes any amendments to, or substitutions of that Convention that are, or will become binding on Niue;

3 Objectives

The objectives of these regulations are to-

- (a) implement Niue's obligations under the Vienna Convention and the Montreal Protocol;
- (b) provide controls on the import or use of ozone depleting substances; and
- (c) establish a system for the application and granting of permits.

Part 2- Prohibitions

4 Prohibitions on importation

Subject to regulation 8, the importation into Niue of the following is prohibited -

- (a) any bulk CFC, halon, carbon tetrachloride, methyl chloroform, other CFC, or HBFC whether alone or in a mixture;

- (b) any bulk methyl bromide whether alone or in a mixture; and
- (c) any bulk HCFCs, whether alone or in a mixture.

5 Prohibitions on the importation of certain goods

(1) Subject to regulation 8, the importation into Niue of the following goods is prohibited-

- (a) any aerosol spray that contains any controlled substance, including methyl bromide;
- (b) any plastic foam, or any goods that contain plastic foam, that is or are manufactured using any CFC (including any extruded polystyrene foam, polystyrene boardstock and any thermoformed plastic packaging such as supermarket meat/produce trays, egg cartons, fast-food containers, disposable plates and cups, horticultural packaging trays and packaging netting);
- (c) any dry-cleaning machine that contains or is designed to use any controlled substance as a solvent;
- (d) any fire extinguisher that contains any controlled substance;
- (e) any dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain any CFC at the time they are imported;
- (f) any air-conditioning or refrigeration units, whether fitted to a vehicle or as mechanical components intended for use in or on a vehicle and which contain CFCs at the time they are imported into Niue.

(2) The importation into Niue from a non-party country, of any of the following goods containing any controlled substance (other than any HCFC or methyl bromide) is prohibited -

- (a) Refrigerators and freezers;
- (b) Dehumidifiers and domestic and commercial refrigeration, air conditioning and heat pump equipment;
- (c) Air conditioning and heat pump units;
- (d) Automobile and truck air conditioning units (whether incorporated in vehicles or not);
- (e) Ice machines and water coolers;
- (f) Aerosol products (other than medical aerosols);
- (g) Portable fire extinguishers;
- (h) Insulation boards, panels and pipe covers; and
- (i) Pre-polymers (a reactive mixture of isocyanate and polyol to which chlorofluorocarbons are added to make rigid plastic foams).

6 Prohibitions on manufacture or sale

The manufacture or sale of the following goods is prohibited-

- (a) any controlled substance;
- (b) any aerosol spray that contains any controlled substance;
- (c) any plastic foam, or any goods that contain plastic foam, that is or are manufactured using any CFC;

- (d) any dry cleaning machine that contains any controlled substance;
- (e) any fire extinguisher that contains any controlled substance;
- (f) any dehumidifiers, refrigerators, freezers, air conditioners, supermarket display cases, heat pumps and water coolers that contain any CFCs or halons; or
- (g) any air-conditioning or refrigeration units whether fitted to a vehicle or as mechanical components intended for use in, or on, a vehicle and which contain CFCs.

7 Prohibitions on exportation

The exportation of any bulk controlled substance to a non-party country is prohibited.

Part 3- Permits

8 Permits

(1) The following permits may be granted in accordance with these regulations-

- (a) Exemption permits;
- (b) Human health or safety permits; or
- (c) HCFC permits.

(2) Exemption permits entitle the holder to import and sell-

- (a) any goods that may contain controlled substances as specified in regulation 4(a) and regulation 4(c); or
- (b) any controlled substance that is used only as packaging or a part of packaging of any other goods; or
- (c) goods that are personal or household effects and in respect of which the officer is satisfied that they are not intended for any other person whether by way of gift or sale.

(3) Human health or safety permits entitle the holder to import, sell or exchange any controlled substance, or goods containing any CFC, halon, methyl chloroform, or carbon tetrachloride where it is found necessary for the preservation of human health or safety.

(4) HCFC permits shall allow the importation of bulk HCFC whether alone or in a mixture and shall be subject to the import reduction levels for developing countries prescribed under the Montreal Protocol.

9 General provisions in relation to permits

(1) The following are the requirements for all matters related to permits issued under this Part of the Regulations-

- (a) a permit application shall be made to the Director on the approved form;

- (b) all applications shall be accompanied by a fee of \$20 and such additional fees approved by Cabinet, except for applications made on behalf of another Government department or agency;
- (c) a permit may not be transferred;
- (d) the permit holder shall submit a report in writing to the Director by 30 January of each year specifying the amount of any controlled substance imported in the previous year, the uses to which the controlled substance was put, and any other matter that the Minister may require to be included in the report;
- (e) any permit shall be subject to such conditions as may be imposed by Cabinet, including any condition requiring compliance with any approval, permission, licence or accreditation available in another country relating to any controlled substance, any equipment used in relation to a controlled substance, or the manner in which a controlled substance may be used;
- (f) Cabinet may revoke any permit if it is satisfied that the permit holder-
 - (i) has been convicted of any offence against these Regulations or any other offence involving ozone depleting substances; or
 - (ii) provided any false or misleading information in relation to the application for the permit;
 - (iii) for non-performance under the terms and conditions of the permit or use of the permit;
- (g) subject to regulation 13, all permits shall be valid for 12 months from the date of issue.

10 General principles for consideration of permit applications

The Minister, with the approval of Cabinet, in determining whether or not to grant a permit on application shall give regard to the following;

- (a) the obligations of Niue under the Vienna Convention and the Montreal Protocol;
- (b) the need to phase out ozone depleting substances, except for essential uses;
- (c) the availability for use, any alternative products made of non-ozone depleting substances;
- (d) any requirement that may be imposed in relation to the use of any ozone depleting substance so as to minimise its effect on the ozone layer.

Part 4- Miscellaneous

11 Seizure of substances and goods

- (1) Any officer, in the course of exercising a power under the Environment Act 2003 or the Customs Act 1966, may seize any controlled substance, any

goods containing any controlled substance or any equipment using or used in connection with any controlled substance, and in respect of which he or she reasonably suspects there is a breach of any of these Regulations.

(2) Any controlled substance, goods or equipment seized under this regulation –

- (a) shall be stored at a place, and in a manner in accordance with a direction given by the Director; and
- (b) may be retained until such time as the Director is satisfied by its owner, or the person from whom it has been seized, that it is not or has not been the subject of any breach of a prohibition under these Regulations.

(3) Where it is agreed by the owner of the controlled substance, goods or equipment that they are in breach of a prohibition under these Regulations, or where the owner has not satisfied the Director under paragraph (2) within 6 months from the date of seizure, the controlled substance, goods or equipment may be disposed of or destroyed in a manner directed by the Director.

12 Forfeiture of seized substances and goods

Where any person is convicted of an offence against these Regulations, the court may order that any controlled substance, goods or equipment in relation to which the offence was committed, shall be forfeited to Government and to be disposed of in a manner determined by the Director.

13 Public Notice

The Director may issue a public notice requiring that any controlled substance, any goods containing any controlled substances or any equipment using or used in connection with any controlled substance–

- (a) be stored or handled in accordance with any direction of the Director;
- (b) be delivered at a designated time to a designated place for storage or disposal;
- (c) be otherwise disposed of or destroyed in accordance with any direction of the Director.

14 Offences and penalties

(1) Any person who–

- (a) contravenes any prohibition under these Regulations;
- (b) aids or abets any person in contravention of any prohibition under these Regulations; or
- (c) conspires with any person to do any act in contravention of any prohibition under these Regulations,

commits an offence, and shall be liable upon conviction to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding 6 months, or both.

- (2) Any person who fails to comply with-
- (a) any condition of a permit issued under regulation 9; or
 - (b) a notice given by the Director under regulation 13,
- commits an offence, and shall be liable upon conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 6 months, or both.
- (3) Any person who, in the course of servicing any equipment used in relation to any controlled substance, wilfully or negligently permits any controlled substance to be discharged into the atmosphere commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 6 months, or both.

SCHEDULE 1

- Vienna Convention for the protection of the ozone layer adopted at Vienna, 1985.
- Montreal Protocol on substances that deplete the ozone layer adopted at Montreal in 1987.

SCHEDULE 2

CONTROLLED SUBSTANCES

PART I

CFCs (CHLOROFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CFCl ₃	CFC-11	1.0
CF ₂ Cl ₂	CFC-12	1.0
C ₂ F ₃ Cl ₃	CFC-113	0.8
C ₂ F ₄ Cl ₂	CFC-114	1.0
C ₂ F ₅ Cl	CFC-115	0.6

PART II

HALONS

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF ₂ BrCl	Halon 1211	3.0
CF ₃ Br	Halon 1301	10.0
C ₂ F ₄ Br ₂	Halon 2402	6.0

PART III

OTHER CFCs (CHLOROFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF ₃ Cl	CFC-13	1.0
C ₂ FCl ₅	CFC-111	1.0
C ₂ F ₂ Cl ₄	CFC-112	1.0
C ₃ FCl ₇	CFC-211	1.0
C ₃ F ₂ Cl ₆	CFC-212	1.0
C ₃ F ₃ Cl ₅	CFC-213	1.0
C ₃ F ₄ Cl ₄	CFC-214	1.0
C ₃ F ₅ Cl ₃	CFC-215	1.0
C ₃ F ₆ Cl ₂	CFC-216	1.0
C ₃ F ₇ Cl	CFC-217	1.0

PART IV
CARBON TETRACHLORIDE

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CCl ₄	Carbon tetrachloride	1.1

PART V
METHYL CHLOROFORM

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
C ₂ H ₃ Cl ₃	1,1,1-trichloroethane	0.1

This formula does not refer to 1,1,2-trichloroethane.

PART VI
HBFCs (HYDROBROMOFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHFB ₂	(HBFC-22B1)	1	1.00
CHF ₂ Br		1	0.74
CH ₂ FBr		1	0.73
C ₂ HFB ₄		2	0.3-0.8
C ₂ HF ₂ Br ₃		3	0.5-1.8
C ₂ HF ₃ Br ₂		3	0.4-1.6
C ₂ HF ₄ Br		2	0.7-1.2
C ₂ H ₂ FB ₃		3	0.1-1.1
C ₂ H ₂ F ₂ Br ₂		4	0.2-1.5
C ₂ H ₂ F ₃ Br		3	0.7-1.6
C ₂ H ₃ FB ₂		3	0.1-1.7
C ₂ H ₃ F ₂ Br		3	0.2-1.1
C ₂ H ₄ FBr		2	0.07-0.1
C ₃ HFB ₆		5	0.3-1.5
C ₃ HF ₂ Br ₅		9	0.2-1.9
C ₃ HF ₃ Br ₄		12	0.3-1.8

C ₃ HF ₄ Br ₃	12	0.5-2.2
C ₃ HF ₅ Br ₂	9	0.9-2.0
C ₃ HF ₆ Br	5	0.7-3.3
C ₃ H ₂ FBr ₅	9	0.1-1.9
C ₃ H ₂ F ₂ Br ₄	16	0.2-2.1
C ₃ H ₂ F ₃ Br ₃	18	0.2-5.6
C ₃ H ₂ F ₄ Br ₂	16	0.3-7.5
C ₃ H ₂ F ₅ Br	8	0.9-1.4
C ₃ H ₃ FBr ₄	12	0.08-1.9
C ₃ H ₃ F ₂ Br ₃	18	0.1-3.1
C ₃ H ₃ F ₃ Br ₂	18	0.1-2.5
C ₃ H ₃ F ₄ Br	12	0.3-4.4
C ₃ H ₄ FBr ₃	12	0.03-0.3
C ₃ H ₄ F ₂ Br ₂	16	0.1-1.0
C ₃ H ₄ F ₃ Br	12	0.07-0.8
C ₃ H ₅ FBr ₂	9	0.04-0.4
C ₃ H ₅ F ₂ Br	9	0.07-0.8
C ₃ H ₆ FBr	5	0.02-0.7

PART VII

HCFCs (HYDROCHLOROFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHFCl ₂	(HCFC-21)	1	0.04
CHF ₂ Cl	(HCFC-22)	1	0.055
CH ₂ FCI	(HCFC-31)	1	0.02
C ₂ HFCl ₄	(HCFC-121)	2	0.01-0.04
C ₂ HF ₂ Cl ₃	(HCFC-122)	3	0.02-0.08
C ₂ HF ₃ Cl ₂	(HCFC-123)	3	0.02-0.06
CHCl ₂ CF ₃	(HCFC-123)	-	0.02
C ₂ HF ₄ Cl	(HCFC-124)	2	0.02-0.04
CHFCICF 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
C ₂ H ₃ F ₂ Cl	(HCFC-142)	3	0.008-0.07
CH ₃ CF ₂ Cl	(HCFC-142b)	-	0.065
C ₂ H ₄ FCI	(HCFC-151)	2	0.003-0.005
C ₃ HFCl 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
CF ₂ ClCF ₂ CHClF	(HCFC-225cb)	-	0.033
C ₃ HF ₆ Cl	(HCFC-226)	5	0.02-0.10
C ₃ H ₂ FCl 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 FCl 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 FCl 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 FCl 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

PART VIII METHYL BROMIDE

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone-Depleting Potential</i>
CH ₃ Br	(Mono) bromomethane	0.6

* Notes

Ozone depleting potential (ODP) is determined in accordance with the relevant Annexes to the Montreal Protocol

Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs 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 ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP

Approved by the Cabinet of Ministers at the Cabinet Chambers, Fale Fono,
Alofi this

20th day of September 2007

Signed by Hon. Young Mititaiagimene Vivian
Premier

A large, stylized handwritten signature in black ink, likely belonging to the Premier mentioned in the text.

Countersigned by Georgina Tukiuha
Clerk to Cabinet

A smaller, more cursive handwritten signature in black ink, likely belonging to the Clerk to Cabinet mentioned in the text.