

Ozone Depleting Substances Act 1998

FIJI

OZONE DEPLETING SUBSTANCES ACT

NO. 26 OF 1998

ARRANGEMENT OF SECTIONS

SECTION

Part I-PRELIMINARY

1. Short title
2. Commencement
3. Application of Act
4. Act to bind Government
5. Interpretation
6. Non-derogation
7. Contracting out

Part II-ADMINISTRATION

8. Establishment of Ozone Depleting Substance Unit
9. Functions of Director
10. Duties of Director
11. Powers of Director
12. Ozone Layer Protection Fund
13. National Policy for the Protection of the Ozone Layer

Part III-PHASING OUT OF CONTROLLED SUBSTANCES

14. Limitation and prohibitions

Part IV-MANAGEMENT OF CONTROLLED SUBSTANCES

15. Recovery of controlled substances
16. Importation, storage and processing
17. Licensing of persons to handle controlled substances
18. Other duties and responsibilities

Part V-PENALTIES AND ENFORCEMENT

19. Limitation period
20. Other offences
21. Continuing offence
22. Additional penalties

Part VI-MISCELLANEOUS

23. Employee protection
 24. Liability of directors, etc.
 25. Regulations
- Schedule - List of Controlled Substances

**OZONE DEPLETING SUBSTANCES ACT
NO. 26 OF 1998**

I assent.
K.K.T. MARA
President
[19 June 1998]

**AN ACT
TO REGULATE THE IMPORTATION, EXPORTATION, SALE, STORAGE AND
USE OF OZONE DEPLETING SUBSTANCES AND TO GIVE EFFECT TO FIJI'S
OBLIGATIONS UNDER THE VIENNA CONVENTION FOR THE PROTECTION
OF THE OZONE LAYER AND THE MONTREAL PROTOCOL ON SUBSTANCES
THAT DEplete THE OZONE LAYER, AND FOR RELATED MATTERS**

ENACTED by the Parliament of Fiji-

Part I-PRELIMINARY

Short title

1. This Act may be cited as the Ozone Depleting Substances Act 1998.

Commencement

2.-(1) This Act shall come into force on the day or days appointed by the Minister and published in the Gazette.

(2) The Minister may appoint different dates for the coming into force of the provisions of this Act.

Application of Act

3. This Act applies to-

- (a) any aircraft, ship or thing while in Fiji's territory;
- (b) any person in Fiji irrespective of the person's nationality or citizenship.

Act to bind Government

4. This Act shall bind the Government, including Government departments and statutory authorities.

Interpretation

5. In this Act, unless the contrary intention appears-

"controlled substance" means any ozone depleting substance listed in the Schedule;

"controlled substance in bulk" means any controlled substance in a non processed form whether alone or in a mixture, but does not include any such substance-

(a) that is in a manufactured product other than a container used for the transportation or storage of the substance; or

(b) that is in a manufactured product that is used solely for human health or safety;

"Director" means the Director of Environment;

"environment" means the components of the earth and includes-

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c);

"Fund" means the Ozone Layer Protection Fund established by section 12;

"facility" means any facility or operation engaged in manufacturing, processing, transportation, storage and packaging, mining, quarrying, sand extraction, coral mining, tourism, commerce, the preparation or processing of any agricultural produce or food, or any other activity undertaken for financial gain, and includes any activity that may be conducted at or in residential premises;

"National Policy" means the National Policy for the Protection of the Ozone Layer formulated under section 13;

"Unit" means the Ozone Depleting Substances Unit established under section 8.

Non-derogation

6. This Act is in addition to and does not derogate from the provisions of any other Act.

Contracting out

7.-(1) This Act applies notwithstanding anything to the contrary contained in any contract or agreement entered into or after the commencement of this Act.

(2) A contractor agreement which purports to exclude or limit the application of this Act or exclude or limit the rights or entitlements of a person under this Act is, to that extent, void.

(3) A person who urges, prevails upon, persuades or offers an inducement to another person to enter into a contract or agreement whereby that other person would, but for this section, consent or agree to the application of this Act being excluded or limited in respect of that other person, or to waive or limit that other person's rights, benefits or entitlements under this Act, commits an offence and is liable on conviction to the penalties provided in Part V.

Part II-ADMINISTRATION

Ozone Depleting Substances Unit

8.-(1) The Minister must establish, within the Department responsible for the environment, the Ozone Depleting Substances Unit to assist the Director in the performance of his functions.

(2) The Unit is to consist of staff or personnel necessary to carry out the functions, duties and powers of the Unit.

Functions of the Director

9. The Functions of the Director are-

- (a) to formulate and implement the Government's strategy and action plan with regard to the phasing out of any controlled substance;
- (b) to survey, assess and analyse the situation with regard to consumption and use of any controlled substance;
- (c) to analyse possible future demands for any controlled substance;
- (d) to administer the Fund established by section 12.

Duties of the Director

10. Director, in the performance of his functions under section 9, must-

- (a) establish a regular monitoring and audit process for data collection concerning the use of controlled substances, and monitor compliance with the phase-out date specified in the National Policy;
- (b) accredit services that may be permitted to recover, recycle or handle any controlled substance;
- (c) promote public and industry awareness and training programmes concerning the management of any controlled substance; and
- (d) implement and review Fiji's programme and action plan formulated under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer.

Powers of the Director

11. The Director, with the approval of the Minister, may-

- (a) appoint inspectors or environmental auditors to verify compliance with the requirements of this Part;
- (b) establish codes of practice, standards, guidelines or operational procedures to manage the use of any controlled substance;
- (c) administer the licence or permit requirements or conditions under the provisions of this Act;
- (d) establish a Central Storage Facility for the deposit of halons.

Ozone Layer Protection Fund

12.-(1) This section establishes the Ozone Layer Protection Fund which will consist of-

- (a) all money appropriated by Parliament for the purposes of the Fund or required to be paid into the Fund by or under any other Act;
- (b) fees paid under this Act; and
- (c) all money paid from any source outside Government for the purposes of this Act,

and which will be dealt with as a special account under section 58 of the Finance Act.

(2) The objects and purposes of the Fund are for-

- (a) programmes for the establishment or management of any strategy or action plan required for the protection of the ozone layer; and
- (b) the administration of programmes to be established to give effect to the Vienna Convention for the protection of the Ozone Layer and Montreal Protocol on substances not deplete the Ozone layer.

(3) The money standing to the credit of the Fund may, subject to the Finance Act, be applied by the Minister to programmes or purposes as defined under subsection (2), in accordance with the National Policy.

National Policy for the Protection of the Ozone Layer

13.-(1) The Minister must formulate a National Policy for the Protection of the Ozone Layer and ensure that the formulation of the National Policy is undertaken through the broadest possible consultation and participation.

(2) The National Policy must take into account the ecological, economic, social and cultural realities and contain-

(a) an analysis of future demand for any controlled substance;

(b) an evaluation of options concerning the phasing-out of any controlled substance;

(c) an estimation of incremental costs for the phase-out of any controlled substance;

(d) the target year for phasing out of the consumption of any controlled substance;

(e) a strategy containing mechanisms, programmes and initiatives that are to be implemented to give effect to the National Policy which shall provide for the following-

(i) the promotion of economic incentives;

(ii) the establishment of public awareness programmes;

(iii) the establishment of a training programme on the recycling and reduction of any controlled substance; and

(iv) any other relevant matter;

(f) a review of the social, environmental, human health and economic impacts of the National Policy and implementation programme; mechanisms that are to be employed to manage or mitigate any undesirable social, environmental or economic impacts of the implementation programme;

(h) mechanisms that are to be employed to monitor and manage the implementation of the National Policy and implementation programme, and to ensure its periodic review; and

(i) any other relevant matter.

Part III-PHASING OUT OF CONTROLLED SUBSTANCES

Limitations and prohibitions

14.-(1) No person shall import, export, store, dispose of, or manufacture any controlled substance in bulk listed in Part I of the Schedule with effect from 1st January 2000.

(2) No person shall import, export, store, dispose of, or manufacture any controlled substance in bulk listed in Part II of the Schedule with effect from 1st January 2031.

(3) No person shall import, export, sell or install halons or halon fire extinguishers with effect from 1st July, 1998.

(4) No person shall refill halon fire extinguishers in non-essential applications with effect

from 1st July, 1998.

(5) Notwithstanding subsection (4), no person shall refill halon fire extinguishers in any circumstances with effect from 1st January, 1999.

(6) No person shall, with effect from 1st July, 1998-

(a) import or export any motor-vehicle that incorporates automotive air-conditioners which contain any controlled substance listed in Part I of the Schedule; or

(b) import, export or sell any automotive air-conditioner which contains any controlled substance listed in Part I of the Schedule.

(7) No person shall export or import any air-conditioner, air conditioner unit, refrigerator or refrigeration unit, including any compressor, that contains or uses any controlled substance listed in Part I of the Schedule with effect from 1st July 1998.

(8) A person who contravenes a provision of this section commits an offence and is liable on conviction to the penalties provided in Part V.

Part IV-MANAGEMENT OF CONTROLLED SUBSTANCES

Recovery of controlled substances

15.-(1) This section shall come into force no later than 12 months after the commencement of this Act, on a date to be appointed under section 2(2).

(2) A person shall not recover, recycle or refill halon unless licensed under section 18.

(3) A licensee who recovers, recycles or refills halon shall-

(a) undertake the recovery, recycling or refilling by means of equipment approved by the Director; and

(b) deposit the halon at the Central Storage Facility established by the Director under section 11(d) or other facility approved by the Director.

(4) A licensee who owns or is in control of a refrigeration and air-conditioning service workshop registers under section 16, including a motor garage that undertake refilling of automobile air-conditioners, shall use a recovery and recycling unit approved by the Director.

Importation, storage and processing

16.-(1) This section shall come into force within 12 months after the commencement of this Act, on a date to be appointed under section 2(2).

(2) No person shall sell, store, process or purchase for resale any controlled substance in any premises or facility unless a permit is issued for the use of the premises or facility.

(3) No person may import any controlled substance or any apparatus or equipment which contains a controlled substance, without a permit issued by the Director.

(4) A person who intends to use any premises or facility for the sale, storage, processing or purchasing for resale any controlled substance may apply for a permit to the Director in the prescribed form.

(5) The Director, in accordance with regulations made under section 25(1), may issue permits required under this section, and may, with the approval of the Minister, establish-

(a) standards pertaining to the storage or processing of any controlled substances on any premises;

(b) requirements for the training of employees in the management and handling of any controlled substance.

(6) Upon receipt of any application under subsection (4), the Director must cause the premises or facilities to be inspected to determine if-

(a) there is adequate provision for the safe storage or processing of controlled substances; and

(b) employee training in the management of controlled substances has been undertaken by the person making the application.

(7) Upon completion of an inspection undertaken under subsection (6), the Director may-

(a) issue a permit;

(b) issue a permit subject to conditions; or

(c) refuse the application.

(8) A person who is aggrieved with the decision of the Director may, in writing, appeal to the Minister within 21 days from the date of the decision.

(9) A permit issued under subsection (3) shall be in the form prescribed.

(10) The Director may, cancel a permit if the Director is satisfied that the premises or facility have failed to comply with any requirement under this Act, or any conditions of a permit.

(11) If any requirement or condition contained in a permit is not complied with, the Director may issue directions necessary for the immediate cessation of the sale, storage or processing of any controlled substance.

(12) A person who sells, stores or processes any controlled substance shall keep and maintain records that provide a full and accurate description of the controlled substances that are sold, stored or processed at the premises, and shall submit a report to the Director at least once every year.

(13) A person who owns or is in control of a business activity used for the sale, storage or processing of any controlled substance shall ensure-

(a) that all the controlled substances on the premises or facility are managed in accordance with the requirements of this Part, and any directions or guidelines issued by the Director;

(b) that the controlled substance storage areas or against unauthorised access;

(c) that a daily inspection of the controlled substance storage areas is carried out by a senior authorised person to ensure no leakage of any controlled substance is occurring.

(14) The Director may-

(a) inspect any premises or facility to ensure compliance with any permit issued under this Part or any standard and procedures established under this Part;

(b) require annual audits by a qualified environmental auditor of any premises or facility in respect of which a permit has been issued under this section; and

(c) carry out spot checks to ensure compliance with any requirement under this Part.

(15) A person who contravenes a provision of this section commits an offence and is liable on conviction to the penalties provided in Part V.

Licensing of persons to handle controlled substances

17.-(1) This section shall come into force no later than 12 months after the commencement of this Act, on a date to be appointed under section 2(2).

(2) A person shall not undertake the recycling, recharging, or capturing of any controlled substance unless licensed.

(3) A person who wishes to be licensed under this Act may apply to the Director in the prescribed form.

(4) The Director shall, with the approval of the Minister, establish procedures and requirements for the licensing and training of persons required to be licensed under this Act.

(5) The Minister may, by regulation prescribe the procedure, form and fees for applying for a licence required by subsection (2), for the form, duration and renewal of a licence, and the conditions to be attached to any licence, including the undergoing of training in the handling of controlled substances.

(6) A person who contravenes a provision of this section, or any condition of a licence issued under it, commits an offence and is liable on conviction to the penalties provided in Part V.

Other duties and responsibilities

18.-(1) A person who owns or is in control of any disposable apparatus or equipment that contains any controlled substance shall, where possible, ensure that the controlled substance is recovered prior to disposal of the apparatus or equipment.

(2) A person who, without reasonable cause, contravenes subsection (1), commits an offence and is liable on conviction to the penalties provided in Part V.

(3) A person who owns or is in control of any apparatus or equipment that contains any controlled substance shall ensure that when the apparatus or equipment is serviced or repaired, the controlled substance, where practicable, is replaced with a suitable substitute that

is not a controlled substance.

(4) A person who discharges or releases, or causes or permits the discharge or release of any controlled substance into the environment, commits an offence and is liable on conviction to the penalties provided in Part V.

(5) A person who is responsible for or becomes aware of the discharge or release of a controlled substance shall immediately report the circumstances of the discharge or release to the Director.

(6) A report required to be made under subsection (5) shall contain the following information-

- (a) the time and location of the discharge or release;
- (b) the event to which the discharge or release is directly attributable;
- (c) the description and quantity of the controlled substance that was discharged or released;
- (d) the measures that have been taken to stop or reduce the discharge or release.

(7) A person who-

- (a) contravenes subsection (5); or
- (b) knowingly makes a report under subsection (5) containing any information that is false or misleading;

commits an offence and is liable on conviction to the penalties provided in Part V.

(8) Where a person is charged with an offence under subsection (4), it is a defence to prove, on the balance of probabilities, that-

- (a) the discharge or release, as the case may be, occurred without the negligence or deliberate act of that person; and
- (b) as soon as possible in the circumstances after the discharge or release occurred, all reasonable steps were taken to prevent, or if it could not be prevented, to stop or reduce the discharge or release of the controlled substance.

(9) It is a defence for a person charged with an offence under subsection (4) in the case of a discharge or release from premises of which the person is the occupier, to prove, on the balance of probabilities, that-

- (a) the discharge or release was caused by the act or omission of another person who was in that place without the permission (express or implied) of the occupier; and
- (b) the person had taken all reasonable steps to prevent that other person who actually caused the discharge or release from obtaining access to the premises.

Part V-PENALTIES AND ENFORCEMENT

Limitation period

19.-(1) Subject to subsection (2), no prosecution for an offence under this Act is to be

commenced after 12 months from the date of the commission of the offence.

(2) The Director may apply to the court for leave to commence prosecution after 12 months if evidence of the offence first came to the attention of the Director after that period.

Other offences

20.-(1) A person who-

(a) is required to provide information under this Act but provides false or misleading information;

(b) does not submit any report or provide information as required pursuant to this Act;

(c) submits any false or misleading report in respect of any tests or inspections required pursuant to this Act;

(d) hinders or obstructs an inspector or environmental auditor who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act; or

(e) obstructs or fails to give all reasonable assistance to an inspector or environmental auditor who is exercising powers or carrying out duties, or attempting to do so, pursuant to the requirements of this Act,

commits an offence and is liable on conviction to a fine of \$10,000 and imprisonment for 12 months.

(2) A person who is convicted of an offence under section 18(4) where the discharge or release of the controlled substance is from a ship, aircraft or vehicle or from any industrial or commercial premises, is liable on conviction-

(a) for a first offence, to a fine of \$10,000 and imprisonment for 12 months;

(b) for a second or subsequent offence, to a fine of \$20,000 and imprisonment for 2 years, or both;

(c) for a case of gross negligence, or in a case which results in severe damage to the environment, to a fine of \$100,000 and imprisonment for 5 years or both;

(d) for a second or subsequent offence involving a case of gross negligence, or in a case which results in severe damage to the environment, to a fine of \$500,000 and imprisonment for 10 years.

(3) A person who is convicted of an offence under section 14(1) or (2), 16(15) or 17(6) is liable on conviction to a fine of \$100,000 and imprisonment for 5 years.

(4) A person who commits an offence against this Act for which no penalty is provided is liable on conviction, to a fine of \$2,000.

Continuing offences

21. Where an offence under this Act is committed and continues for more than one day, the offender is liable on further conviction to a fine not exceeding 10% of the maximum fine for that offence for every day after the date of the commission of the original offence during which the act constituting the offence continues.

Additional penalties

22. Where an offender has pleaded guilty to or been convicted of an offence under section 18(4), the court may, in addition to any penalty imposed under this Act, having regard to the nature of the offence and the circumstances surrounding its commission, make an order-

- (a) directing the seizure and forfeiture of any ship, aircraft, vehicle or thing used in the commission of the offence;
- (b) directing the closure for up to 12 months of any premises or facility from which the discharge or release occurred;
- (c) requiring the offender to comply with any other conditions as the court considers appropriate.

Part VI-MISCELLANEOUS

Employee protection

23.-(1) No employer shall-

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose a penalty on an employee;
- (d) intimidate or coerce an employee,

because the employee has reported or proposes to report to any person an act or omission that contravenes, or that the employee has reasonable grounds to believe may contravene, this Act.

(2) An employer who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$20,000 and imprisonment for 12 months.

Liability of directors etc.

24. Where a corporation commits an offence under this Act, any officer, director, employee or agent of the corporation who directed, authorised, assented to, acquiesced in or participated in the commission of the offence is a party to and commits the offence, and is liable on conviction to the penalties provided in Part V.

Regulations

25.-(1) The Minister may make regulations necessary to give effect to the provisions of this Act and in particular to-

- (a) give effect to the National Policy and implementation programme formulated under this Act;
- (b) establish procedures, standards, codes of practice, programmes and fiscal incentives to give effect to the National Policy and to the implementation programme formulated under this Act;
- (c) establish an eco-labelling programme for any controlled substance;
- (d) provide for the prohibition of the use of halons in any building or construction material;
- (e) prescribe fees that may be required to be paid under this Act or the regulations;
- (f) amend the Schedules to this Act;

(g) prescribe forms of licence, or any other matter required to be prescribed under this Act.

(2) The Minister responsible for Finance must, on the advice of the Minister, make regulations under the Customs Act to-

(a) prohibit the importation of any controlled substance or of any apparatus or equipment containing a controlled substance without an import permit issued by the Director under section 16;

(b) provide for the variation of import duties in order to encourage the importation of equipment that does not contain or use controlled substances.

SCHEDULE
(Section 5)
CONTROLLED SUBSTANCES
PART I

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>
CFC1 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
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

Group II – any Bromofluorocarbon or "Halon", including-

<i>Chemical</i>	<i>Substance</i>	<i>Ozone Depleting</i>
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<i>Formula</i>		<i>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

Group III- Carbon tetrachloride

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

Group IV –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 II

Group I- HCFCs- any of the following hydrochlorofluorocarbons whether virgin, recycled or in a mixture-

<i>Substance</i>	<i>Chemical Formula</i>	<i>Common Name</i>	<i>Ozone Depleting Potential</i>
Dichlorofluoromethane	CHFCl	HCFC-21	0.04
Monochlorodifluoromethane	CHF ₂ Cl	HCFC-22	0.055
Monochlorofluoromethane	CH ₂ FCl	HCFC-31	0.02
Tetrachlorofluoroethane	C ₂ HCl ₄ F	HCFC-121	0.01-0.04
Trichlorodifluoroethane	C ₂ HCl ₃ F ₂	HCFC-122	0.02-0.08
Dichlorotrifluoroethane	C ₂ HCl ₂ F ₃	HCFC-123	0.02-0.06
Monochlorotetrafluoroethane	C ₂ HClF ₄	HCFC-124	0.02-0.04
Trichlorofluoroethane	C ₂ HCl ₃ F	HCFC-131	0.007-0.05
Dichlorodifluoroethane	C ₂ HCl ₂ F ₂	HCFC-132	0.008-0.05
Monochlorotrifluoroethane	CHClF ₃	HCFC-133	0.02-0.06
Dichlorofluoroethane	C ₂ H ₂ Cl ₂ F	HCFC-141	0.05-0.07
Monochlorodifluoroethane	C ₂ H ₃ ClF ₂	HCFC-142	0.008-0.07
Chlorofluoroethane	C ₂ H ₄ ClF ₃	HCFC-151	0.003-0.005
Hexachlorofluoropropane	C ₃ HCl ₆ F	HCFC-221	0.015-0.07
Pentachlorodifluoropropane	C ₃ HCl ₅ F ₂	HCFC-222	0.01-0.09
Tetrachlorotrifluoropropane	C ₃ HCl ₄ F ₃	HCFC-223	0.01-0.08
Trichlorotetrafluoropropane	C ₃ HCl ₃ F ₄	HCFC-224	0.01-0.09
Dichloropentafluoropropane	C ₃ HCl ₂ F ₅	HCFC-225	0.02-0.07

Monochlorohexafluoropropane	$C^3HF^5C^2$	HCFC-226	0.02-0.10
Pentachlorofluoropropane	$C^3HF^6Cl^1$	HCFC-231	0.05-0.09
Tetrachlorodifluoropropane	$C^3H^2FCl^5$	HCFC-232	0.008-0.10
Trichlorotrifluoropropane	$C^3H^2F^2Cl^4$	HCFC-233	0.007-0.23
Dichlorotetrafluoropropane	$C^3H^2F^3Cl^3$	HCFC-234	0.01-0.28
Monochloropentafluoropropane	$C^3H^2F^4C^2$	HCFC-235	0.03-0.52
Tetrachlorofluoropropane	$C^3H^2F^5Cl^1$	HCFC-241	0.004-0.09
Trichlorodifluoropropane	$C^3H^3FCl^4$	HCFC-242	0.005-0.13
Dichlorotrifluoropropane	$C^3H^3F^2Cl^3$	HCFC-243	0.007-0.12
Monochlorotetrafluoropropane	$C^3H^3F^3Cl^2$	HCFC-244	0.009-0.14
Trichlorofluoropropane	$C^3H^3F^4Cl$	HCFC-251	0.001-0.01
Dichlorodifluoropropane	$C^3H^4FCl^3$	HCFC-252	0.005-0.04
Monochlorotrifluoropropane	$C^3H^4F^2Cl^2$	HCFC-253	0.003-0.03
Dichlorofluoropropane	$C^3H^4F^3Cl$	HCFC-261	0.002-0.02
Monochlorodifluoropropane	$C^3H^5FC^2$	HCFC-262	0.002-0.02
Monochlorofluoropropane	$C^3H^5F^2C^1_1$	HCFC-271	0.001-0.03

Group II

Methyl Bromide CH_3Br MBr 0.7

Passed by the House of Representative this Eighteenth day of May, in the year of our Lord One Thousand, Nine Hundred and Ninety-Eight.

Passed by the Senate this Third day of June in the year of our Lord One Thousand, Nine Hundred and Ninety-Eight.