

(8 May 2014 – to date)

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004

(Gazette No. 27318, Notice No. 163. Commencement date: 11 September 2005 – save for sections 21, 22, 36 to 49, 51(1)(e), 51(1)(f), 51(3), 60 and 61 [Government Notice R898, Gazette No. 28016])

REGULATIONS REGARDING THE PHASING-OUT AND MANAGEMENT OF OZONE- DEPLETING SUBSTANCES

Government Notice 351 in Government Gazette 37621 dated 8 May 2014. Commencement date: 8 May 2014.

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby make Regulations Regarding the Phasing-out and Management of Ozone Depleting Substances under section 53(a) and (e), read with sections 55(1)(a) and 55(2) of the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004), as set out in the Schedule hereto.

(Signed)

BOMO EDITH EDNA MOLEWA

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

SCHEDULE

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Prepared by:

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CHAPTER 1 DEFINITIONS AND PURPOSE OF REGULATIONS

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), has that meaning, and unless the context indicates otherwise-

"critical use(s)" means the use(s) necessary for health, safety or critical functioning of society, and there are no available technically and economically feasible alternative substitutes that are acceptable;

"destruction" means a process, when applied to ozone depleting substances, resulting in the permanent transformation or decomposition of all or a significant portion of such substances;

"export" has the meaning assigned to it in section 1 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);

"feedstock" means any ozone depleting substance that undergoes chemical transformation in a process in which it is entirely converted from its original composition and whose emissions are insignificant;

"HCFC" means hydrochloroflourocarbons;

"import" has the meaning assigned to it in section 1 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);

"**processing agent**" means an ozone depleting substance used as chemical processing agent and where emissions are insignificant;

"**stockpiling**" means to store ozone depleting substances for a period longer than 18 months and;

"**reclaim or reclamation**" means the extraction or retrieval of an ozone depleting substance for reuse.

2. Purpose of Regulations

The purpose of these Regulations is to regulate the management and phasing out of the ozone depleting substances.

CHAPTER 2 PROHIBITIONS AND PHASE OUT SCHEDULES

3. Prohibition of production, importation, exportation, use or placing on the market of ozone-depleting substances and equipment

(1) A person is prohibited from producing, importing, exporting, using or placing on the market any of the following ozone-depleting substances including equipment or products containing such substances, unless it is for critical use-

- (a) Chlorofluorocarbons;
- (b) bromochlorofluorocarbons;
- (c) halons;
- (d) carbon tetrachloride;
- (e) 1,1,1 trichloroethane;
- (f) hydrobromofluorocarbons; and
- (g) bromochloromethane.

(2) Sub-regulation (1) does not apply to-

- (a) the placing on the market and use of halons that have been reclaimed from existing fire protection systems before the coming into effect of these regulations; and

- (b) the placing on the market and use of halons for critical use.
- (3) A person wanting to use recovered halons in existing fire protection systems, after the date of coming effect of these Regulations, must apply for approval to the Director-General.
- (4) The application contemplated in sub-regulation (3) must be done in a letter format and include the following information-
 - (a) applicant's name and contact details;
 - (b) brief description of applicant business activity in relation to the use of halons;
 - (c) quantities of halons requested for use in existing fire protection systems or placing on the market; and
 - (d) measures in place to reduce the emissions.
- (5) The Director General may upon receipt of the application contemplated in sub-regulation (4) in writing-
 - (a) grant approval and provide a reference number and any conditions or
 - (b) requirements which must be adhered to;
 - (b) refuse the application and provide reasons for the decision; or
(Publishers Note – Incorrect numbering as published in the original Government Gazette)
 - (c) require the applicant to make amendments, and specify the timeframe within which the applicant must resubmit.
- (6) The provisions of sub-regulation (1) are not applicable to the use, export or placing on the market of products or equipment containing the ozone depleting substances contemplated in sub-regulation (1) which were manufactured or imported before the coming into effect of these Regulations.
- (7) No person is allowed to import, place on the market or use methyl bromide after 1 January 2015, unless it is for critical use.

4. General prohibition of stockpiling

- (1) The stockpiling of the ozone-depleting substances, listed in Appendix A to these Regulations, is prohibited.

- (2) A person who is in possession of a stockpile of ozone-depleting substances contemplated in sub-regulation (1) on the date of coming into effect of these regulations must, within 12 months of coming into effect of these Regulations, submit to the Director-General a stockpile abatement plan which must at least contain the following information-
- (a) the name of the stockpile owner;
 - (b) the physical address where the stockpile is located;
 - (c) the legal persona's registration number;
 - (d) the type of the substances stockpiled;
 - (e) the quantity of each type;
 - (f) a proposal on how the owner intends to eliminate the stockpile; and
 - (g) time frames for complete elimination of the stockpile.
- (3) The Director-General may, upon receipt of the stockpile abatement plan, in writing-
- (a) approve the plan, provide the reference number and notify the applicant of the approval; or
 - (b) require for amendments to be effected on the plan and a revised plan to be resubmitted within a specified time frame.
- (4) Failure to submit the amended stockpile abatement plan in accordance to sub regulation (3)(b) is regarded as failure to submit a plan.
- (5) A person whose stockpile abatement plan has been approved in accordance with sub-regulation 3(a) must-
- (a) adhere to the stockpile abatement plan; and
 - (b) notify the Director-General of any changes in any material detail which has been provided as part of the plan, within 30 days of such change taking place.

5. Phase out schedule for HCFCs, HCFC-141b and equipment charged with HCFC 22

- (1) The following is the phase out schedule for hydrochlorofluorocarbons -

- (a) the hydrochloroflourocarbons [*sic*] which an importer place on the market or use per annum, in the period from 01 January 2014 to 31 December 2015, must not exceed 90 percent of the baseline consumption of HCFCs;
 - (b) the hydrochloroflourocarbons [*sic*] which an importer place on the market or use per annum, in the period from 01 January 2016 to 31 December 2020, must not exceed 65 percent of the baseline consumption of HCFCs;
 - (c) the hydrochloroflourocarbons [*sic*] which an importer place on the market or use per annum, in the period from 01 January 2021 to 31 December 2025, must not exceed 32.5 percent of the baseline consumption of HCFCs;
 - (d) the hydrochloroflourocarbons [*sic*] which an importer place on the market or use per annum, in the period from 01 January 2026 to 31 December 2030, must not exceed 2.5 percent of the baseline consumption of HCFCs;
 - (e) from 01 January 2031 until 31 December 2040, 2.5 percent of the baseline consumption must only be used for servicing activities; and
 - (f) from 01 January 2040 no person is allowed to import, place on the market, or use HCFCs.
- (2) A person is prohibited from-
- (a) importing HCFC-141b either in pure form or as a component of blended chemicals, for the purpose of placing on the market or use in the production of polyurethane foams or as solvents or any other application, from 1 January 2016;
 - (b) importing any new or used refrigeration and air-conditioning systems or equipment containing HCFC-22 or any refrigerant or refrigerant blend containing any HCFC, from 1 July 2014; and
 - (c) using HCFC-22 ,or any other refrigerant containing HCFCs, either in pure form or as a component of blended refrigerants, in the construction, assembly or installation of any new refrigeration or air-conditioning system or equipment, from 1 January 2015.

CHAPTER 3

RECLAMATION, DESTRUCTION, DISCHARGE OR RELEASE OF OZONE DEPLETING SUBSTANCES

6. Reclamation or destruction of ozone depleting substances

A person who reclaims or destroys any ozone depleting substances must ensure that the substances are not released into the environment.

7. Discharge or release of ozone depleting substances

A person must not discharge or release ozone depleting substances into the atmosphere.

CHAPTER 4 INFORMATION MANAGEMENT

8. Importers or exporters of ozone depleting substances

- (1) A person who imports or exports of ozone depleting substances listed in Appendix A must, annually, at the end of January every year, report to the Department the total quantities imported or exported for the previous year.
- (2) The report contemplated in sub-regulation (1) must be in a table format, containing the following information-
 - (a) the name of the importer or exporter;
 - (b) the physical address of the importer or exporter;
 - (c) the name, surname and contact details of the person in charge of the import or export;
 - (d) the import or export permit number, issued in terms of the International Trade Administration Commission Act, 2002 (Act No. 71 of 2002);
 - (e) the total quantities of ozone depleting substances imported or exported for the reporting period in question;
- (3) Before the end of January every year, every user who has been granted approval for a critical use must, for each ozone depleting substance, report to the Department annually the nature of the use, the quantities used during the previous year and the quantities held in stock.
- (4) An importer or exporter contemplated in sub-regulation (1) must keep a copy of the annual report for 5 years after submission to the Department.

CHAPTER 5 GENERAL MATTERS

9. Offences and penalties

- (1) A person is guilty of an offence if that person-

- (a) contravenes regulations 3, 4, 5, 6, 7 or 8 of these Regulations;
- (b) Intentionally supplies false or misleading information in any application contemplated under these regulations;
- (c) contravenes or fails to comply with a. condition or requirement of an approval issued in terms of these Regulations.
- (2) A person convicted of an offence contemplated in sub-regulation (1) is liable in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years and in respect of both instances to both such fine and such imprisonment.

10. Short title and commencement

These Regulations are called the Regulations regarding the Phasing- Out and Management of Ozone Depleting Substances and come into operation on the date of publication.

APPENDIX-A: OZONE DEPLETING SUBSTANCES

LIST OF OZONE DEPLETING SUBSTANCES
1,1,1- Trichloroethane (methyl chloroform)
Bromomethane (Methyl Bromide)
Carbon Tetrachloride
Trichlorofluoromethane (CFC 11)
Dichlorodifluoromethane (CFC 12)
Trichlorotrifluoroethanes (CFC 113)
Dichlorotetrafluoroethanes (CFC 114)
Chlorotrifluoromethane
Pentachlorofluoroethane
Tetrachlorodifluoroethanes
Heptachlorofluoropropanes
Hexachlorodifluoropropanes
Pentachlorotrifluoropropanes
Tetrachlorotrifluoropropanes
Trichloropentafluoropropanes
Dichlorohexafluoropropanes

Prepared by:

In partnership with:

LIST OF OZONE DEPLETING SUBSTANCES
Chloroheptafluoropropanes
Other derivatives perhalogenated only with fluorine and chlorine
Bromochlorodifluoromethane (Halon 1211), bromotrifluoromethane (Halon 1301) and dibromotetrafluoroethanes (Halon 2402)
Chlorodifluoromethane [<i>sic</i>] (HCFC 22)
Dichlorotrifluoroethanes [<i>sic</i>]
Chlorotetrafluoroethanes
Dichlorofluoroethanes
Dichlorodifluoroethanes
Dichloropentafluoropropanes
Other derivatives of methane, ethane or propane, halogenated only with fluorine and chlorine
Derivatives of methane, ethane or propane, halogenated only with fluorine and bromine
Insecticides, containing bromomethane (methyl bromide) or Bromochloromethane
Fungicides, other, containing bromomethane (methyl bromide) or Bromochloromethane
Herbicides, anti-sprouting products and plant-growth regulators, other, containing bromomethane (methyl bromide) or bromochloromethane
Disinfectants, other, containing bromomethane (methyl bromide) or Bromochloromethane
Other: containing bromomethane (methyl bromide) or bromochloromethane
Preparations and charges for fire-extinguishers; charged fire extinguishing grenades: other, containing bromochlorodifluoromethane, bromotrifluoromethane or dibromotetrafluoroethanes
Other, containing methane, ethane or propane hydrobromofluorocarbons (HBFCs)
Other, containing methane, ethane or propane hydrochlorofluorocarbons (HCFCs)
Other, containing bromochloromethane
Organic composite solvents and thinners, not elsewhere specified or included; prepared plant or varnish removers: Containing methane, ethane or propane chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluorocarbons (HCFCs)
Containing methane, ethane or propane hydrochlorofluorocarbons (HCFCs), but not containing chlorofluorocarbons (CFCs)
Containing carbon tetrachloride, bromochloromethane or 1,1,1- trichloroethane (methyl chloroform)
Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products, not elsewhere specified or included); Containing chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluorocarbons (HCFCs), perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs)
Containing bromochlorodifluoromethane, bromotrifluoromethane or dibromotetrafluoroethanes

LIST OF OZONE DEPLETING SUBSTANCES
Containing hydrobromofluorocarbons (HBFCs)
Containing hydrochlorofluorocarbons (HCFCs), whether or not containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs)
Containing carbon tetrachloride
Containing 1,1,1-trichloroethane (methyl chloroform)
Containing bromomethane (methyl bromide) or bromochloromethane