



PERMANENT MISSION OF THE FEDERATED STATES OF MICRONESIA  
TO THE UNITED NATIONS

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The Permanent Mission of the Federated States of Micronesia to the United Nations presents its compliments to the International Law Commission and has the honor to submit the Comments of the Government of the Federated States of Micronesia on the topic of "Protection of the atmosphere."

The Permanent Mission of the Federated States of Micronesia to the United Nations avails itself of this opportunity to extend to the International Law Commission the assurances of its highest consideration.



International Law Commission  
GENEVA, SWITZERLAND

INTERNATIONAL LAW COMMISSION

**PROTECTION OF THE ATMOSPHERE**

COMMENTS FROM THE GOVERNMENT OF  
THE FEDERATED STATES OF MICRONESIA

31 JANUARY 2015

1. The Government of the Federated States of Micronesia (FSM) welcomes the opportunity to present Comments to the International Law Commission (ILC) on the topic of the protection of the atmosphere. Of all the challenges facing humankind today, the protection of the atmosphere is perhaps the most pressing. It is certainly the gravest environmental challenge of our lifetime, one that will bedevil future generations if it is not addressed in a comprehensive and effective manner in this generation. The work of the ILC on the topic of the protection of the atmosphere is therefore timely and necessary.
2. As a preliminary matter, the FSM affirms the assertion of Special Rapporteur Mr. Shinya Murase that the atmosphere is a singular entity containing “the planet’s largest single natural resource; it is indispensable to the survival of humankind.”<sup>1</sup> The Intergovernmental Panel on Climate Change—a group of climate change experts tasked by the United Nations Environment Programme to assess the status of planetary climate and determine the causes of changes to that climate—defines the atmosphere as a gaseous envelope surrounding the planet, a definition that the FSM adopts for these Comments. That gaseous envelope is what makes life possible on the planet. Natural elements in the atmosphere regulate planetary climate and shield humankind from harmful interstellar substances and energies. The precise balance necessary for that regulation is disrupted by the activities of humankind, particularly through air pollution that triggers acid rain and produces suffocating smog conditions; the rampant use of hydrofluorocarbons and other substances that deplete the ozone layer and expose humankind to harmful solar radiation; and the unprecedented spewing of carbon dioxide and other greenhouse gases into the atmosphere at a rate that undermines the atmosphere’s ability to regulate the planet’s temperature, leading to a warmer planet, rising sea levels, and a host of other environmental ills.
3. As another preliminary matter, there is no question that the atmosphere must be protected, particularly from the consequences of human activities. Unfortunately, as Mr. Murase notes, although there are a number of international environmental agreements that deal with various atmospheric issues, “they remain a patchwork of instruments. There is no legal framework at present that covers the entire range of atmospheric environmental problems in a comprehensive and systematic manner.”<sup>2</sup> Only through the establishment of a comprehensive global regime to regulate the protection of the atmosphere in a robust manner can we safeguard the livelihoods—and the lives—of present and future generations of humankind. By codifying and progressively developing international law elements regarding the protection of the atmosphere, the ILC will greatly contribute to the establishment of such a global regime.
4. As a further preliminary matter, the FSM supports Mr. Murase’s recommendation to focus the work of the ILC on air pollution, ozone layer depletion, and climate change. Those three issues are the subjects of a number of international environmental law regimes, but those regimes (as noted above) are a “patchwork” of instruments rather

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<sup>1</sup> International Law Commission, First report on the protection of the atmosphere, Prepared by Mr. Shinya Murase, Special Rapporteur, Sixty-sixth session, U.N. Doc. A/CN.4/667 (2014), para. 12.

<sup>2</sup> Id.

than a unified global regime addressing the ailments of the atmosphere in a comprehensive manner. The FSM's Comments to the ILC will echo Mr. Murase's approach by focusing on those three issues.

5. As a final preliminary matter, the FSM strongly agrees with Mr. Murase that the protection of the atmosphere is a "common concern of humankind."<sup>3</sup> Specifically, as Mr. Murase notes, it is appropriate to conclude that "the atmosphere has the legal status of an international resource, whether shared or common, indispensable for sustaining life on earth, human health and welfare, crops and the integrity of ecosystem; and that consequently its protection is a common concern of humankind."<sup>4</sup> As defined by scientists, the atmosphere is a unitary whole spanning and regulating the entire planet. Harmful effects to the atmosphere in one part of the planet will lead to the deterioration of the atmosphere's regulatory abilities in other parts of the planet. Those harmful effects are increasingly anthropogenic, largely the result of the introduction of harmful substances into the atmosphere by humans. By necessary implication, then, each State has an *erga omnes* obligation to protect the atmosphere.
6. The Federated States of Micronesia Environmental Protection Act—originally adopted in 1982 and amended into its current form in 2012—provides the framework under which the FSM operates to regulate human impacts on the FSM's natural environment. As the Act proclaims:

It is the policy of the Federated States of Micronesia to use all practicable means, consistent with other considerations of national policy, to improve and coordinate governmental plans, functions, programs, and resources to the end that the inhabitants of the Federated States of Micronesia may:

- (a) fulfill the *responsibilities for each generation as trustee for the environment for succeeding generations*;
- (b) enjoy safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences;
- (d) preserve important historic, cultural, and natural aspects of our Micronesian heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice; and
- (e) remain *responsible members of the global community* by complying with the international legal obligations accepted by the Federated States of Micronesia upon ratifying or acceding to international environment agreements.<sup>5</sup>

The Act further proclaims that "each person has a responsibility to contribute to the preservation and enhancement of the environment."<sup>6</sup> The Act defines "person" to include:

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<sup>3</sup> Id., para. 90.

<sup>4</sup> Id.

<sup>5</sup> Federated States of Micronesia Environmental Protection Act, 25 F.S.M.C. § 102(1) (2012) (hereinafter "FSM EPA") (emphases added). For the full Act, see Appendix I *infra*.

<sup>6</sup> Id., § 102(3).

the Federated States of Micronesia, a State, municipality, political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Federated States of Micronesia or any State or country, lessee or other occupant of property, or individual, acting singly or as a group.<sup>7</sup>

7. Taken as a whole, the Act emphasizes the collective responsibility of virtually every facet of public and private life in the FSM to protect, preserve, and enhance the natural environment. The Act underscores the intergenerational impact of environmental degradation and affirms the FSM's commitment to being a responsible member of the global community with regard to the implementation of international environmental legal obligations.<sup>8</sup>

8. A major focus of the Act is on the regulation of pollutants. The Act defines the term "pollutant" to mean:

one or more substances or forms of energy which, *when present in the air*, land, or water, are or may be harmful or injurious to human health, welfare, or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.<sup>9</sup>

This broad definition of "pollutant" allows the Director of the FSM Office of Environment and Emergency Management (OEEM) to prescribe rather expansive regulations and take other necessary steps to deter the introduction of substances into, *inter alia*, the atmosphere ("air") that might pose risks to "human health, welfare, or safety." Some of those steps include ordering and reviewing environmental impact statements from entities whose activities "may significantly affect the quality of the environment" within the FSM;<sup>10</sup> entering any establishment or property suspected of introducing pollutants in the natural environment and seizing any substances, materials, goods, or equipment that may have been used in such an introduction;<sup>11</sup> and pursuing

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<sup>7</sup> Id., § 103(4).

<sup>8</sup> The original version of the FSM Environmental Protection Act, as adopted in 1982, emphasized even more explicitly the interconnectedness of all aspects of the environment and the collective intergenerational responsibility of humankind for the protection of the environment. According to the 1982 Act (which was later amended for streamlining rather than revisionary purposes):

The Federated States of Micronesia, recognizing the *profound impact of man's activity on the interrelations of all components of the natural environment*, particularly the profound influences of population growth and redistribution, cultural change, resource exploitation, and new expanding technological advances, and recognizing further the *critical importance of restoring and maintaining environmental quality for the overall welfare and development of man*, declares that it is the continuing policy of the Federated States of Micronesia, in cooperation with State and municipal governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to *create and maintain conditions under which man and nature can exist in productive harmony*, and fulfill the social, economic, and other requirements of *present and future generations* of the Federated States of Micronesia.

Federated States of Micronesia Environmental Protection Act, 25 F.S.M.C. § 502(1) (1982) (*later amended*) (emphases added).

<sup>9</sup> FSM EPA, *supra* note 5, § 103(5) (emphasis added).

<sup>10</sup> Id., § 302(1).

<sup>11</sup> Id., § 303.

enforcement actions against parties responsible for the introduction, including the imposition of a civil penalty up to \$100,000 for each day the pollutant is introduced.<sup>12</sup>

9. Transboundary air pollution has been a longstanding concern of the FSM. In December 2009, drawing on the expansive language in the FSM Environmental Protection Act regarding pollutants, the FSM OEEM formally requested the Czech Republic to issue a Transboundary Environmental Impact Assessment (TEIA) of the renewal plans for a Czech power plant that was one of the largest coal-fired power plants in Europe. The FSM aimed to block the expansion of the power plant unless it was retrofitted with climate-friendly technology. In April 2011, the Czech Republic issued a TEIA that ordered the power plant to offset additional greenhouse gas emissions generated by the plant's expansion. Despite being located halfway around the world from the Czech Republic, the FSM was deemed by the Czech Republic to be an "affected State" under the laws of the Czech Republic.<sup>13</sup> The effects of the introduction of harmful substances into the atmosphere by Czech power plants posed a threat to the FSM's air quality, thereby underscoring the truly planetary nature of the atmosphere.
  
10. In October 2013, the FSM delivered a statement to the Sixth Committee of the United Nations General Assembly in which the FSM asserted, *inter alia*, that "[e]ach State has a due diligence obligation under international law to take all necessary steps to prevent the probable infliction of significant physical harms by that State's hazardous activities on another State's environment, people, and property."<sup>14</sup> The statement emphasized the FSM's "ancient concerns for the fragility of its environment and the interconnectedness of Nature"—concerns motivated by the truism that in "close-knit communities with limited resources, the activities of one community tend to affect the ability of other communities to enjoy their own resources."<sup>15</sup> In that light, the FSM called for the adoption of a binding international convention that incorporates the ILC's draft articles and draft principles on, respectively, the prevention of transboundary harm from hazardous activities and the allocation of loss in case of such harm. Even without a convention, the FSM encouraged all States to put the draft articles and draft principles into greater use in their domestic decision making processes and international affairs. The statement's embrace of a robust interpretation and application of the so-called "prevention rule" exemplified the commitment of the FSM to taking all

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<sup>12</sup> *Id.*, § 304.

<sup>13</sup> For a press release from the Czech Ministry of the Environment announcing the TEIA assessment, *see* Press Release, Czech Republic Ministry of the Environment, 'Czech Ministry of the Environment has issued an affirmative statement on comprehensive refurbishment of the Prunéřov II power plant' (20 April 2010), [http://www.mzp.cz/en/news\\_100430\\_statement\\_Prunerov](http://www.mzp.cz/en/news_100430_statement_Prunerov) (last visited 6 September 2012). For background on, and analysis of, the TEIA litigation, *see* Paulo A. Lopes, 'FSM vs. Czech: A New "Standing" for Climate Change?', 10 *Sustainable Dev. L. & Pol'y* 24, 58–9; *see also* Maddie Oatman, 'Micronesia Challenges Europe's Dirty Energy' (2011), <http://motherjones.com/blue-marble/2011/05/micronesia-climate-change-litigation-conference> (last visited 30 January 2015); Press Release, Greenpeace International Press Release, Threatened Pacific Island Nation makes legal history by challenging European carbon emitter (23 May 2011), <http://www.greenpeace.org/international/en/press/releases/Threatened-Pacific-Island-Nation-makes-legal-history-by-challenging-European-carbon-emitter/> (last visited 30 January 2015).

<sup>14</sup> H.E. Ambassador Jane J. Chigiya, Permanent Representative, Permanent Mission of the Federated States of Micronesia to the United Nations, Statement to the Sixth Committee of the United Nations General Assembly, agenda item 83: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in case of such harm (Oct. 22, 2013) (transcript available at <http://papersmart.unmeetings.org/media2/703099/micronesia-83.pdf>) (last visited 30 January 2015).

<sup>15</sup> *Id.*

legal and policy measures necessary to protect the FSM from harms inflicted on the atmosphere by other States.

11. The depletion of the ozone layer is also a longstanding concern for the FSM. The ozone layer is the part of the atmosphere that contains most of the planet's ozone gases. Those gases, when organized in the ozone layer, shield life on Earth from harmful interstellar substances and energies, particularly ultraviolet radiation from the Sun. The FSM is a Party to the 1985 Vienna Convention for the Protection of the Ozone Layer, as well as the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. Both instruments—the former a framework convention, the latter an implementing protocol—target the production and consumption of certain substances (e.g., chlorofluorocarbons, halons) whose use severely depletes the ozone layer. The Montreal Protocol, in particular, explicitly obligates States to gradually phase out their production and consumption of targeted substances. Originally, the Protocol targeted eight ozone-depleting substances—five types of chlorofluorocarbons (CFCs) and three types of halons—but subsequent Meetings of the Parties to the Protocol adopted amendments and adjustments to the Protocol that targeted additional substances for phase-out, including hydrochlorofluorocarbons (HCFCs) and methyl bromide.
12. In September 2012, the FSM OEEM adopted extensive regulations to regulate the import, export, manufacture, and sale of ozone depleting substances in the FSM in accordance with the Montreal Protocol. The regulations contain a Schedule listing all the ozone depleting substances subject to the regulations, including CFCs, HFCs, halons, and methyl bromide. The regulations prohibit the importation into the FSM of any controlled substances (as well as any goods containing any controlled substances) unless the importer secures a permit from the Director of the FSM OEEM.<sup>16</sup> The regulations also prohibit the export of any controlled substances from the FSM unless the exporter first secures the written approval of the Director of the FSM OEEM—an approval which can be given only for controlled substances being exported to other countries for safe disposal.<sup>17</sup> The regulations further prohibit the manufacture within the FSM of any controlled substances as well as any aerosol sprays, plastic foam, dry-cleaning machines, and fire extinguishers that contain the controlled substances.<sup>18</sup> Finally, the regulations prohibit (with limited exceptions) the sale in the FSM of any controlled substances or goods containing those substances.<sup>19</sup> Violators of the regulations may suffer civil penalties up to \$50,000 for each infraction.<sup>20</sup>
13. There is no component of the fight to protect the planetary atmosphere that commands the attention and efforts of the FSM more prominently than climate change. As a small island developing State (SIDS) already grappling with rising sea levels and intense typhoons, the FSM is keenly aware of the impact of anthropogenic greenhouse gas

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<sup>16</sup> Regulations to Protect the Ozone Layer in Compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer, regulations 2.1-2.2 (2012) (hereinafter “ODS Regulations”). The Director, in considering whether to grant an import permit, must “have regard to (a) the obligations of the [FSM] under the Montreal Protocol; (b) the need to phase out controlled substances, except for essential uses; and (c) whether any alternative products are available to be used instead of the ozone depleting substances.” *Id.*, regulation 3.1(1). For the full text of the Regulations, *see* Appendix IV *infra*.

<sup>17</sup> ODS Regulations, *supra* note 16, regulation 2.4.

<sup>18</sup> *Id.*, regulation 2.5.

<sup>19</sup> *Id.*, regulations 2.6-2.7.

<sup>20</sup> *See, generally, id.*, Part IV.

emissions on the atmosphere. The atmosphere is comprised of a range of gases that absorb radiation from the Sun and keep the planet's temperature at an appropriately warm level. An overabundance of those gases causes the planet's temperature to rise beyond acceptable levels, unleashing a slew of environmental effects and threatening the livelihoods and lives of all humankind. If the protection of the atmosphere is an obligation *erga omnes* for all States, then tackling climate change must form a core component of the discharge of that obligation. Indeed, the preamble of the 1992 United Nations Framework Convention on Climate Change (UNFCCC) explicitly acknowledges that "change in the Earth's climate and its adverse effects are a common concern of humankind."<sup>21</sup>

14. The FSM is a State Party to the UNFCCC, as well as to its Kyoto Protocol. The FSM has been an active participant in multilateral climate change negotiations, joining ranks with other SIDS and like-minded allies to push for legally binding emissions reductions commitments from all States as well as a robust loss and damage mechanism to compensate SIDS like the FSM for the ravages of climate change caused primarily by the emissions of developed States. The FSM is one of a handful of States to ratify the Doha Amendment to the Kyoto Protocol in order to extend the emissions reductions commitment period of the Protocol until a new regime becomes operational in 2020. The FSM is also the first State Party to the Montreal Protocol to submit an innovative proposal to address the dangerous growth in production and consumption of hydrofluorocarbons (HFCs) by phasing down those substances under the Montreal Protocol. HFCs inflict significant physical effects on the atmosphere, contributing to global warming at a more dangerous rate than carbon dioxide emissions. Once a Meeting of Parties to the Montreal Protocol adopts the FSM's proposal on HFCs, the FSM will amend its domestic regulations to incorporate coverage of the import, export, manufacture, and sale of HFCs in the FSM.
15. The FSM operates under a Nationwide Integrated Disaster Risk Management and Climate Change Policy, which the FSM formally adopted in 2009. The focus of the Policy is to "mitigate climate change especially at the international level, and adaptation at the national, state and community levels to reduce the FSM's vulnerability to climate change adverse impacts."<sup>22</sup> The Policy has several main goals for the multilateral climate change negotiations process, including advocating for a "post Kyoto [Protocol] carbon dioxide emission reduction [regime] that will keep temperature rise to less than 1.5 degrees Celsius by 2020 and beyond";<sup>23</sup> requiring "all development activities in [the] FSM to take into account projected climatic changes";<sup>24</sup> and insisting that "developed country Parties responsible for climate change . . . provide sufficient and sustainable financial and other appropriate resources to support adaptation, mitigation and other climate related measures."<sup>25</sup>
16. Domestically, the FSM's Climate Change Policy calls for the mainstreaming of climate change into all the policies, strategies, and action plans produced and implemented by

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<sup>21</sup> United Nations Framework Convention on Climate Change preamble, para. 1, May 9, 1992, 1771 U.N.T.S. 107.

<sup>22</sup> Federated States of Micronesia Nationwide Integrated Disaster Risk Management and Climate Change Policy, Part I (2009) (hereinafter "CC Policy"). For the full text of the Policy, *see* Appendix III *infra*.

<sup>23</sup> CC Policy, *supra* note 22, Part III(1)(a).

<sup>24</sup> *Id.*, Part III(2)(a).

<sup>25</sup> *Id.*, Part III(4)(c).

all the sectors of the FSM National Government.<sup>26</sup> This mainstreaming effort “requires the committed and sustainable support of all levels of government in the FSM, the civil societies, individuals, the private sector, communities and traditional leaders.”<sup>27</sup>

Although ambitious, this approach is critical for ensuring that the FSM does all that it can to avoid contributing to climate change, as well as to adapt as extensively as possible to the effects of climate change in the FSM.

17. In January 2014, the FSM adopted a Climate Change Act, a landmark piece of legislation that draws on the FSM’s Nationwide Integrated Disaster Risk Management and Climate Change Policy to establish an “overarching framework for further detailed legislation on climate change.”<sup>28</sup> The Act legally obligates various Departments and Offices in the FSM National Government to “prepare plans and policies on climate change consistent with the provisions of the [FSM Climate Change] Policy,”<sup>29</sup> particularly those provisions calling for the mainstreaming of climate change concerns in the decisions and activities of all relevant sectors in the FSM National Government. The first consolidated report articulating those plans and policies is being drafted by the FSM OEEM and will be publicized within this calendar year.
18. The FSM Climate Change Act is the most recent entry in a series of domestic legislation and other measures adopted and taken by the FSM to protect, preserve, and enhance its natural environment, beginning with the Environmental Protection Act and including a number of initiatives that implement various obligations of the FSM under its multilateral environmental agreements. The protection of the atmosphere—particularly from transboundary air pollution, ozone layer depletion, and climate change—is part and parcel of the FSM’s efforts to safeguard its natural environment. Micronesia fully endorses the concept of the atmosphere as a singular whole, a system whose components are all affected by the actions of a few States—or even those of a solitary one. If a small island developing State can take significant steps to minimize the harms its activities pose to the atmosphere—and thus to its natural environment—then all other States must shoulder and discharge the same burden and obligation. International law mandates this approach.

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<sup>26</sup> *Id.*, Part IV(1). The sectors covered by the Policy include: environment, energy, infrastructure, disaster management, water resources, transportation, agriculture/forestry, marine/coastal resources, health, education, tourism, gender, and weather services. *Id.*, Part IV(2).

<sup>27</sup> *Id.*, Part VI.

<sup>28</sup> Federated States of Micronesia Climate Change Act, Public Law No. 18-34, section 1 (2014).

<sup>29</sup> Federated States of Micronesia Climate Change Act, 25 F.S.M.C. § 802(1) (2014). The Departments and Offices are: the Department of Resources and Development; the Office of Environment and Energy Management; the Department of Transportation, Communications and Infrastructure; the Department of Health and Social Affairs; the Department of Education; the Department of Finance and Administration; the Office of Statistics, Budget and Economic Management; and the Department of Foreign Affairs. *Id.* For the full text of the Act, *see* Appendix II *infra*.

**APPENDIX I**

**FSM ENVIRONMENTAL PROTECTION ACT**

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**CODE OF THE FEDERATED STATES OF MICRONESIA**

**TITLE 25**

**ENVIRONMENTAL PROTECTION**

**SUBTITLE I**

**FSM ENVIRONMENTAL PROTECTION ACT**

**CHAPTERS**

- 1 General Provisions (§§ 101-103)**
- 2 FSM Environmental Protection Board (§§ 201-210)**
- 3 Enforcement (§§ 301-308)**

**CHAPTER 1**

**General Provisions**

**SECTIONS**

- § 101. Short title.**
- § 102. Public policy.**
- § 103. Definitions.**

**§ 101. Short title.**

This subtitle may be cited as the Federated States of Micronesia Environmental Protection Act.

**§ 102. Public policy.**

(1) It is the policy of the Federated States of Micronesia to use all practicable means, consistent with other considerations of national policy, to improve and coordinate

governmental plans, functions, programs, and resources to the end that the inhabitants of the Federated States of Micronesia may:

(a) fulfill the responsibilities for each generation as trustee of the environment for succeeding generations;

(b) enjoy safe, healthful, productive, and aesthetical and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences;

(d) preserve important historic, cultural, and natural aspects of our Micronesian heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice; and

(e) remain responsible members of the global community by complying with the international legal obligations accepted by the Federated States of Micronesia upon ratifying or acceding to international environment agreements.

(2) The effort to protect and preserve the environment will be carried forward in close consultation with the States in the formulation of policy, enforcement, and other activities.

(3) The Federated States of Micronesia recognizes that each person has a responsibility to contribute to the preservation and enhancement of the environment.

### **§ 103. Definitions.**

The following words, for the purpose of this subtitle, shall have the following meanings:

(1) “Director” means the Director of the Office of Environment and Emergency Management;

(2) “Exclusive Economic Zone” means the exclusive economic zone defined in title 18 of this code;

(3) “Office” means the Office of Environment and Emergency Management of the Federated States of Micronesia;

(4) “Person” means the Federated States of Micronesia, a State, municipality, political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Federated States of Micronesia or any State or country, lessee or other occupant of property, or individual, acting singly or as a group;

(5) “Pollutant” means one or more substances or forms of energy which, when present in the air, land, or water, are or may be harmful or injurious to human health, welfare,

or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

## CHAPTER 2

### FSM Environmental Protection Office

#### SECTIONS

§§ 201-205. [RESERVED]

§ 206. Technical assistance.

§ 207. [RESERVED]

§ 208. Reports.

§ 209. General powers and duties of the Office.

§ 210. Specific powers and duties of the Office.

§§ 201-205. [RESERVED].

§ 206. Technical assistance.

The President shall provide the Office with necessary technical and legal assistance through departments, offices, and agencies of the National Government.

§ 207. [RESERVED].

§ 208. Reports.

The Director shall transmit to the President and Congress, no later than September 30<sup>th</sup> of each year, an environmental quality report for the preceding calendar year, covering the status and conditions of the environment of the Federated States of Micronesia, and a review of the programs and activities of the National Government, state governments, municipal governments and nongovernmental entities, with particular reference to their effect on the environment of the Federated States of Micronesia.

**§ 209. General powers and duties of the Office.**

The Office shall have the power and duty to protect the environment, human health, welfare, and safety and to abate, control, and prohibit pollution or contamination of air, land, and water in accordance with this subtitle and with the regulations adopted and promulgated pursuant to this subtitle, including measures undertaken to prohibit or regulate the testing, storage, use, disposal, import and export of radioactive, toxic chemical, or other harmful substances. The Office shall balance the needs of economic and social development with those of environmental quality and shall adopt regulations and pursue policies which, to the maximum extent possible, promote both these needs and the policies set forth in section 102 of this subtitle.

**§ 210. Specific powers and duties of the Office.**

For the purposes set forth in section 209 of this chapter, the Director is authorized and empowered to:

(1) Adopt, approve, amend, revise, promulgate, and repeal regulations to effect the purposes of this subtitle, and enforce such regulations which shall have the force and effect of law. These may include regulations to give effect to the obligations contained in the following international environmental treaties ratified by the Federated States of Micronesia:

(a) Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and Their Disposal;

(b) Montreal Protocol on Substances that Deplete the Ozone Layer;

(c) Stockholm Convention on Persistent Organic Pollutants; and

(d) Waigani Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes within the South Pacific Region.

(2) In accordance with regulations adopted under this section may collect fees from persons submitting applications or receiving permits or licenses. Fees collected under this subsection shall be paid to the Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia;

(3) Accept appropriations, loans, and grants from any appropriate sources, public or private, which shall not be expended for other than the purposes of this subtitle;

(4) Adopt and provide for the continuing administration of nationwide programs for the protection of the environment, human health, welfare, and safety of the Federated States of Micronesia, and from time to time review and modify such programs as necessary; and

(5) Collect information and establish recordkeeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this subtitle.

## **CHAPTER 3**

### **Enforcement**

#### **SECTIONS**

- § 301. Cooperative agreements.**
- § 302. Environmental impact statements.**
- § 303. Right of entry and seizure.**
- § 304. Violation—Enforcement action.**
- § 305. Administrative procedure applicable.**
- § 306. Judicial review.**
- § 307. False statement.**
- § 308. Authorized officers.**

#### **§ 301. Cooperative agreements.**

The Director is authorized to enter into written cooperative agreements with the States or state agencies to assist in achieving the purposes set out in this subtitle. The Director is authorized to enter into written cooperative agreements with the departments or agencies of the National Government of the Federated States of Micronesia to assist in achieving the purposes of this subtitle.

#### **§ 302. Environmental impact statements.**

(1) Any person, prior to taking any action that may significantly affect the quality of the environment within the Exclusive Economic Zone of the Federated States of Micronesia, or within the boundaries of the National Capital Complex at Palikir, must submit an environmental impact statement to the Director, in accordance with regulations established by the Director.

(2) The environmental impact statements required by subsection (1) of this section are public documents, and must include a detailed statement on:

- (a) the environmental impact of the proposed action;
- (b) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (c) the alternatives to the proposed action;
- (d) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
- (e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

**§ 303. Right of entry and seizure.**

(1) Whenever it is necessary for the purposes of this subtitle, the Director, or any officer, agent, or employee when duly authorized by the Director or by court order, may, at reasonable times, enter any establishment or upon any property.

(2) Whenever it is necessary for the purposes of this subtitle, the Director, or any officer, agent, or employee when duly authorized by the Director, may seize any substance, materials, goods or equipment which the Director, or any officer, agent, or employee reasonably suspects is the subject of a breach of any provision of this subtitle or regulations made pursuant to this subtitle.

(3) Any substance, materials, goods or equipment seized under this section:

(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 has been satisfied by its owner, or the person from whom it has been seized, that it is not and has not been the subject of any breach of this subtitle or regulations made pursuant to this subtitle.

(4) Where it is agreed by the owner of the substance, materials, goods or equipment that they are the subject of a breach of this subtitle or regulations made pursuant to this subtitle, or where the owner has not satisfied the Director under subsection (3) of this section within six months of the date of seizure, the substance, materials, goods or equipment may be disposed of or destroyed in a manner determined by the Director.

**§ 304. Violation—Enforcement action.**

Any person who violates any provision of this subtitle, or any permit, regulation, standard, or order issued or promulgated under this subtitle, shall be subject to enforcement action by the Office. Such enforcement action may include, but is not limited to:

(1) An order to cease and desist from the violation, or to comply within a specific time period;

(2) An order to clean up or abate the effects of any pollutant;

(3) The imposition of a civil penalty up to \$100,000 for each day of the violation. Penalties collected under this subsection shall be paid to the Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia;

(4) A civil action commenced in the Trial Division of the Federated States of Micronesia Supreme Court to enjoin the violation;

(5) A civil action for damages commenced in the Trial Division of the Federated States of Micronesia Supreme Court. Such action may be in addition to any civil penalties imposed hereunder. In determining such damages, the Court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurred, and corrective action, if any, taken by the violator. Damages collected under this subsection shall be paid to the Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia; and

(6) Conducting a public hearing to determine the authenticity of the facts upon which the alleged violation is based, adequate notice of which and opportunity to appear and be heard at which shall be afforded to all interested persons.

### **§ 305. Administrative procedure applicable.**

The provisions of sections 304 and 307 of this chapter shall be interpreted consistently with the provisions of any law concerning administrative procedure which is or may hereafter become Federated States of Micronesia law. In the event of conflict between the two, the provisions of the latter shall supersede and be controlling.

### **§ 306. Judicial review.**

(1) Any person who is or will be adversely affected by the enforcement of any standard, policy, regulation, permit, order, or penalty imposed under this subtitle or regulations made pursuant to this subtitle and who alleges its invalidity may file a petition for a declaratory judgment thereon in the Trial Division of the Federated States of Micronesia Supreme Court.

(2) The Court shall declare the standard, policy, regulation, permit, order, or penalty invalid if it finds that it exceeds the statutory authority of the Director, or that it is arbitrary and capricious.

**§ 307. False statement.**

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subtitle, or by any permit, regulation, or order issued under this subtitle, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subtitle or by a permit, regulation, or any order issued under this subtitle, is guilty of a felony, and upon conviction thereof, shall be punished by a fine of not more than \$100,000, or by imprisonment for a maximum of ten years, or by both.

**§ 308. Authorized officers.**

Agreements made under section 301 of this subtitle may include the authorization by the Director of officers of national and state government agencies to perform the duties and exercise the powers provided in this subtitle or in regulations adopted and promulgated pursuant to this subtitle.

APPENDIX II

FSM CLIMATE CHANGE ACT

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CODE OF THE FEDERATED STATES OF MICRONESIA

TITLE 25

ENVIRONMENTAL PROTECTION

SUBTITLE II

CHAPTER 8

Climate Change

SECTIONS

- § 801. Short Title.
- § 802. Mainstreaming of obligations.
- § 803. Reporting Obligations.

§ 801. Short Title.

This chapter is known and may be cited as the “Federated States of Micronesia Climate Change Act.

§ 802. Mainstreaming of obligations.

(1) By October 1, 2014, the following departments and agencies shall prepare plans and policies on climate change consistent with the provisions of the CC Policy:

- Department of Resources and Development;
- Office of Environment and Emergency Management;
- Department of Transportation, Communications and Infrastructure;
- Department of Health and Social Affairs;
- Department of Education;
- Department of Finance and Administration;
- Office of Statistics, Budget and Economic Management; and
- Department of Foreign Affairs;

(2) The Office of Environment and Emergency Management shall coordinate the implementation of the CC Policy; and gather, make publicly available, and keep the required plans and policies from the departments and agencies mentioned in subsection (1).

(3) The Office of Environment and Emergency Management shall advise the President and represent the Executive on any public hearing called by Congress on the progress of implementation of the CC Policy.

**§ 803. Reporting Obligations.**

(1) Every year starting with Fiscal Year 2015 the President of the Federated States of Micronesia shall submit a report to Congress on the progress of the implementation of the CC Policy, and recommend additional legislation where applicable and necessary.

(2) The President in the April 1 submission to Congress of the national budget request may as necessary request funding to include specific line items for the implementation of the CC Policy.

## APPENDIX III

# NATIONWIDE CLIMATE CHANGE POLICY 2009

## THE FEDERATED STATES OF MICRONESIA

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### I. Policy Statement

The focus of this Policy is to mitigate climate change especially at the international level, and adaptation at the national, state and community levels to reduce the FSM's vulnerability to climate change adverse impacts. In this context, FSM affirms its social and cultural identity and its people's rights and desire to continue to live sustainably on their islands.

### II. Vision

FSM strives for global agreement on stabilization of greenhouse gases (GHGs) and non-GHG warmers at levels that would achieve the objective (Art. 2) of the climate convention (UNFCCC), and with a view to ultimately see the planet return to its preindustrial conditions. To that effect, FSM is committed to address the adverse impacts of climate change on communities to ensure sustainable livelihood and preserve natural heritage, diverse customs, traditions and natural resources in all the islands.

### III. Goals

The main goals of this Policy are:

#### 1. Mitigation

- a. To advocate a post Kyoto carbon dioxide emission reduction that will keep temperature rise to less than 1.5 degrees Celsius by 2020 and beyond.
- b. To urgently address the global reduction and/or destruction of GHGs and non-GHG warmers through "fast action" strategies.
- c. To maintain and enhance FSM as a negative carbon country through effective management of our natural sinks, bio-sequestration (biochar), promotion of renewable energy and energy efficiency, and other appropriate means.
- d. To prioritize actions that address both mitigation and adaptation such as water development using renewable energy (solar water desalination) and other relevant actions.
- e. To encourage and strengthen the application of traditional knowledge on transportation practices and other areas.

#### 2. Adaptation

- a. To require all development activities in FSM to take into account projected climatic changes in the design and implementation as stipulated in the FSM Strategic Development Plan/Infrastructure Development Plan (SDP/IDP).
- b. To use eco-system based approaches where applicable.

- c. To encourage and strengthen the application of traditional knowledge on conservation practices and other relevant areas.
  - d. To develop and implement appropriate strategies to improve food production and other relevant sectors.
3. Technology Transfer
- a. To optimize the use of local technologies where available.
  - b. To identify technologies that are locally appropriate.
  - c. To enhance easy access to, and sustainable use of new technologies.
4. Finance
- a. To maximize the use of local resources through establishment of sustainable financing mechanism to support adaptation, mitigation and resource management initiatives.
  - b. To increase local financial support from governments, private sector, and non-governmental organizations to enhance capacities to respond to climate change challenges.
  - c. To insist that developed country Parties responsible for climate change, based on the polluters-pay principle (moral and equity), to provide sufficient and sustainable financial and other appropriate resources, to support adaptation, mitigation and other climate related measures now and in the future.
  - d. To negotiate that such assistance provided in item 4c above shall be in addition to existing and future Overseas Development Assistance (ODAs).
5. Capacity building and Training
- a. To promote, facilitate and develop training programs focused on climate change for scientific, technical and managerial personnel.
  - b. To provide opportunities to access technical skills and knowledge to address and respond to climate change and its impacts.
6. Education and Public Awareness
- a. Education
    - 1) To develop and disseminate education materials on climate change and its effects.
    - 2) To develop and integrate climate change and its effect into intermediate, primary and secondary education curriculums.
  - b. Public Awareness
    - 1) To promote, facilitate and implement public awareness programs on climate change and its effects at national, state and community levels by using relevant mediums, i.e. radio spots, newspaper, workshops etc.
    - 2) To provide public access to information on climate change and its effects.
    - 3) To promote public participation in addressing climate change and its effects by facilitating feedback, debate, partnership in activities and linking with other environment related events, i.e.

National Environment Day, World Clean Up Day, National Women's Day, etc.

#### **IV. IMPLEMENTATION**

1. Mainstreaming:

The first step in the implementation of this Policy is to integrate climate change into other policies, strategies and action plans including disaster preparedness and mitigation. This will build upon what has been done in the SDP/IDP and will extend to other sectors as necessary. While different sectors are at different stages of development and/or updating, it is crucial that all relevant sectoral plans should complete the integration of climate change within one year after the effective date of this Policy.

2. Sectoral Action Plans:

It is vital that indicators, including actual and planned costs, are identified in the Action Plans to be used to gauge both our needs and progress toward meeting our policy goals for climate change. While the following sectors have been identified to integrate and therefore implement climate change actions, there may be others that are not included. Such sectors must perform the same regardless of their exclusion. The identified offices for each sector are also the designated lead and responsible agency for that sector.

- a. Environment (Office of Environment & Emergency Management (OEEM)).
- b. Energy (Department of Resources and Development (R&D)).
- c. Infrastructure (Department of Transportation, Communication & Infrastructure (DTC&I)).
- d. Disaster Management (OEEM).
- e. Water Resources (DTC&I).
- f. Transportation (DTC&I).
- g. Agriculture/Forestry including Food Security (R&D).
- h. Marine/Coastal Resources and Pelagic Fisheries (R&D & National Oceanic Resource Management Authority).
- i. Health (Department of Health & Social Affairs (H&SA)).
- j. Education (Department of Education).
- k. Tourism (R&D).
- l. Gender (HS&A).
- m. Weather Services (Office of the President).

#### **V. MONITORING, EVALUATION AND UPDATING**

1. Monitoring:

Each responsible department/office will monitor its progress toward attainment of goals in Sectoral Action Plans. The Office of Environment will consolidate all monitoring reports.

2. Evaluation:

This Policy will be evaluated every year or sooner if necessary. The Office of Environment and Emergency Management is responsible for performing the evaluation with assistance from all sectors.

3. Updating:

This Policy will be updated after completion of evaluation or sooner if necessary.

**VI. SUPPORT**

To successfully attain the goals of this Policy requires the committed and sustainable support of all levels of governments in the FSM, the civil societies, individuals, the private sector, communities and traditional leaders. In addition, the assistance and support from regional and international organizations and donor partners underpin the timely delivery of the goals of this Policy. In this respect, the responsible agencies for the implementation of this Policy are directed to engage all our partners for assistance and support.

**VII. APPROVAL**

This FSM Nationwide Climate Change Policy 2009 is hereby approved and becomes effective this:

1<sup>st</sup> Day of December 2009.

SIGNED: \_\_\_\_\_ s/ H.E. Emanuel Mori  
President  
The Federated States of Micronesia

## APPENDIX IV

### Regulations

#### To protect the ozone layer in compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer

#### THE FEDERATED STATES OF MICRONESIA

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##### PART I. GENERAL PROVISIONS

1.1 Authority. This regulation is issued pursuant to section 210(1)(b) of title 25 of the Code of the Federated States of Micronesia.

1.2 Purpose. The purpose of these regulations is to regulate the import, export, manufacture and sale of ozone depleting substances in accordance with the Montreal Protocol.

1.3 Interpretation.

As used in these regulations the term:

“aerosol spray” and “aerosol” mean 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;

“bulk,” in relation to any controlled substance, -

(a) means any controlled substance that is acquired in a non-processed form, whether alone or in a mixture; and

(b) includes any controlled substance that is acquired in a non-processed form, whether alone or in a mixture, that has been recovered, cleaned (by filtering or drying) or reclaimed (by filtering, drying, distillation or chemical treatment); but

(c) excludes any controlled substance that is in a manufactured product;

“carbon tetrachloride” means the substance specified in Part IV of the Schedule;

“CFC” means any substance specified in Part I or Part III of the Schedule;

“controlled substance” means any substance specified in the Schedule;

“Director” means the Director of the Office of Environment and Emergency Management of the Government of the Federated States of Micronesia;

“export” and “exportation” means to take or cause to be taken out of the Federated States of Micronesia;

“goods” means any product made with, or containing, any controlled substance, but does not include any bulk controlled substance;

“government” includes the Government of the Federated States of Micronesia and the Governments of the States of Kosrae, Pohnpei, Chuuk and Yap;

“halon” means any substance specified in Part II of the Schedule;

“HBFC” means any substance specified in Part VI of the Schedule;

“HCFC” means any substance specified in Part VII of the Schedule;

“import” and “importation” means to bring or cause to be brought into the Federated States of Micronesia’

“methyl bromide” means the substance specified in Part VIII of the Schedule;

“methyl chloroform” means the substance specified in Part V of the Schedule;

“Montreal Protocol” means the Montreal Protocol on Substances that Deplete the Ozone Layer and includes any amendments to, or substitutions of, that Protocol that are, or will become, binding on the Federated States of Micronesia;

“non-complying country” means

(a) any country that is not a party to the Montreal Protocol,

(b) a country that has not been determined, in accordance with the Montreal Protocol, to be a country that is in full compliance with Articles 2, 2A to 2E, and Article 4 of that Protocol, and any certificate given by the Secretary of Foreign Affairs to the effect that any country is or is not a complying country shall be conclusive evidence of that fact;

“Office” means the Office of Environment and Emergency Management of the Government of the Federated States of Micronesia;

“person” means the Federated States of Micronesia, a State, municipality, political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Federated States of Micronesia or any State or country, lessee or other occupant of property, or individual acting singly or as a group;

“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;

“ore-shipment applications” mean any treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing or exporting country;

“quarantine applications” mean any treatments to prevent the introduction, establishment or spread of quarantine pests (including diseases), or to ensure their official control;

“sale” means every method of disposition for valuable consideration (including barter), and includes – the disposition to an agent for sale on consignment; 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; disposal by way of lottery, raffle or game of chance and “sell” and “sold” shall have corresponding meanings;

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

## **PART II. Prohibitions Relating to Controlled Substances**

### **2.1 Prohibitions on Importation of Controlled Substances**

The importation into the Federated States of Micronesia of any bulk controlled substance is prohibited, except pursuant to a valid permit issued under Part III of these regulations.

### **2.2 Prohibitions on the Importation of Certain Goods**

(1) The importation into the Federated States of Micronesia of the following goods is prohibited, except pursuant to a valid permit issued under Part III of these regulations:

- (a) any aerosol spray that contains any controlled substance, other than methyl bromide;
- (b) any dry-cleaning machine that contains or is designed to use any controlled substance as a solvent;
- (c) any fire extinguisher that contains any controlled substance;
- (d) any dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain any CFCs or halons;
- (e) any air-condition or refrigeration units whether fitted to a vehicle or as mechanical components intended for use in, or on, a vehicle and which contain CFCs;
- (f) any plastic foam, or any goods that contain plastic foam, that is or are manufactured using a controlled substance specific in Part I or Part II of the Schedule including any:
  - (i) extruded polystyrene foam;
  - (ii) polystyrene boardstock;
  - (iii) thermoformed plastic packaging such as supermarket meat or produce trays, egg cartons, fast-food containers, disposable plates and cups, horticultural packaging trays and packaging netting.

### 2.3 Exemptions in Relation to Imports

(1) The following exemptions may be given in relation to imports referred to in regulation 2.1 and 2.2, in accordance with a valid permit issued under Part II of these regulations:

- (a) a Quarantine and Pre-shipment Permit in relation to methyl bromide;
- (b) a Medical Health or Safety Permit;
- (c) an HFC permit.

(2) Nothing in these regulations shall make it unlawful for any person to

- (a) import any controlled substance, or any goods containing any controlled substance, that is or are used only as packaging, or part of the packaging, of any other imported goods; or
- (b) import any goods that are personal or household effects, and in respect of which an officer is satisfied that they are not intended for any other person, or for gift, sale or exchange, provided that no bulk controlled substance may be considered a personal effect.

### 2.4 Prohibitions on Export

(1) The exportation from the Federated States of Micronesia of any bulk controlled substance to any country is prohibited except in accordance with written approval provided by the Director pursuant to this regulation.

(2) Any person who intends to export any bulk controlled substance must apply to the Director for approval, and is to provide particulars of:

- (a) the substance to be exported;
- (b) the date and amount of the intended export;
- (c) the destination city and country, and the receiving body of the substance; and
- (d) the intended use or disposal of the substance at its destinations.

(3) The Director may approve the export of any bulk controlled substance, including controlled substances retrieved from vehicles, goods and equipment in the Federated States of Micronesia, which is to be exported for the purposes of safe disposal in another country. Applications to export controlled substances for any purpose other than safe disposal shall not be approved.

(4) An approval given by the Director under sub-regulation (3) must be consistent with the Federated States of Micronesia's obligations under the Montreal Protocol, and must include conditions requiring the storage, movement and disposal of the controlled substance to be undertaken in accordance with international best practice.

## 2.5 Prohibitions on Manufacture, and on Negligent Installation, Operation or Service.

(1) The manufacture within the Federated States of Micronesia of the following substances or goods is prohibited

- (a) any bulk 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 or is designed to use any controlled substance as a solvent; and
- (e) any fire extinguisher that contains any controlled substance.

(2) No person may, in the course of installing, operating, servicing, dismantling or otherwise handling any equipment used in relation to any controlled substance, willfully or negligently permit any controlled substance to be discharged into the atmosphere.

## 2.6 Prohibitions on Sales

Subject to regulation 2.7, the sale in the Federated States of Micronesia of any bulk controlled substance or any goods specified in regulation 22 is prohibited.

## 2.7 Exemptions in Relation to Sales

Nothing in regulation 2.6 shall make it unlawful for a person to sell any –

- (a) second hand goods; or
- (b) goods or substances in respect of which a permit granted under Part III of these regulations applies provided that the sale does not breach any applicable permit conditions.

## **PART III. Registrations and Permits**

### 3.1 General Provisions in Relation to Permits and Registrations

(1) When considering the grant of a permit or regulation under this Part, the Director must have regard to -

- (a) the obligations of the Federated States of Micronesia under the Montreal Protocol;
- (b) the need to phase out ozone depleting substances, except for essential uses; and
- (c) whether any alternative products are available to be used instead of the ozone depleting substance.

(2) The following requirements shall apply to all permits and registrations issued under these regulations –

- (a) an application shall be made to the Director on a form approved from time to time by the Director;
- (b) the applicant shall provide any information required by the Director;
- (c) applications for permits and permit renewals shall be accompanied by a fee of \$200 except in relation to an application made by any Department or agency of Government, which shall be exempt from fees;
- (d) no fees may be charged for registrations;
- (e) permits and registrations may not be transferred;
- (f) all permit holders shall submit a report to the Director on or before 31 March of the year following the calendar year to which the permit applies and the report shall specify –
  - (i) the amount of any controlled substance imported or consumed under the permit,
  - (ii) the uses to which the controlled substance was put, and
  - (iii) any other matter that the Director may from time to time require to be included in the report;
- (g) permits and registrations shall be subject to such conditions as may be determined by the Director, including any condition requiring compliance with any approval, permission, licence, code of practice or accreditation available in the Federated States of Micronesia or another country relating to –
  - (i) any controlled substance,
  - (ii) any equipment used in relation to a controlled substance, or
  - (iii) the manner in which a controlled substance may be used;
- (h) the Director may revoke any permit or registration if he is satisfied that the permit or registration holder
  - (i) has breached these regulations or committed any other offense involving controlled substances; or
  - (ii) provided false or misleading information in relation to the application for the permit or registration;
- (i) subject to regulation 3.1(h), a permit shall be valid for a specified calendar year, and may be renewed for periods not exceeding one calendar year; and its issue, and may be renewed for periods not exceeding 12 months; and
- (j) nothing in these regulations exempts imports under permits issued pursuant to these regulations from being subject to the Customs Act or any other applicable law.

### 3.2 Quarantine and Pre-Shipments Permits

The Director, after consulting the Secretary of the Department of Resources and Development, may grant a permit under this regulation in relation to the importation of methyl bromide where satisfied that the methyl bromide is to be used for legitimate quarantine or pre-shipment applications and that the Federated States of Micronesia will not be thereby in breach of its obligations under the Montreal Protocol.

### 3.3 Medical, Health or Safety Permits

The Director, after consulting the Secretary of the Department of Health and Social Affairs, may grant a permit under this regulation in relation to the importation of any goods containing

a controlled substance where satisfied that it has a medical application relating to the protection of human life or health, or is otherwise necessary for human health and safety and that the Federated States of Micronesia will not be thereby in breach of its obligations under the Montreal Protocol.

#### 3.4 Registration of HCFC Importers

- (1) Any person who wishes to import bulk HCFC shall first apply to the Director to be registered as an Approved Importer.
- (2) The Director may approve applications under sub-regulation (1) if satisfied that the person has
  - (a) not breached these regulations or committed any other offense involving controlled substances; and
  - (b) not provided any false or misleading information in relation to the application to be registered.
- (3) The Director may register a person as an Approved Importer for a period of up to three years, provided that in the event the person commits an offense under these regulations or any other offense involving controlled substances the Director may cancel the registration.
- (4) The Director shall keep a register of Approved Importers and make it available at the premises of the Office or through any other mechanism considered appropriate.

#### 3.5 Registration of HCFC Handlers

- (1) Any person who intends to sell, store, process, recover or recycle HCFC, or refill equipment using HCFC, must first apply to the Director to be registered as an Approved HCFC Handler.
- (2) The Director may approve an application under sub-regulation (1) if satisfied that the application:
  - (a) has not been convicted of any offense against this regulation or any other offense involving controlled substances;
  - (b) has not provided any false or misleading information in relation to the application; and
  - (c) has the necessary skills, trained staff and equipment to:
    - (i) minimize emissions of the controlled substance; and
    - (ii) recover, store and deal with controlled substancesin a manner that does not contravene any obligation or requirements under the Convention and the Montreal Protocol and is in accordance with accepted best practice.
- (3) The Director may impose conditions on any registration approved under this regulation, including conditions requiring applications to attain suitable accreditation relating to the handling of controlled substances, the use of any equipment used in relation to controlled substances, or the manner in which controlled substances may be handled.

(4) The Director may register a person as an Approved HCFC Handler for a period of up to three years, provided that in the event the person commits an offense under these regulations or any other offense involving controlled substances the Director may cancel the registration.

(5) The Director shall keep a register of Approved Facilities, and make it available at the premises of the Office or through any other mechanism considered appropriate.

(6) It is prohibited for any person, other than Approved HCFC Handlers, to sell, store, process, recover or recycle HCFC, or refill equipment using HCFC.

### 3.6 HCFC Import permits

(1) Any person who intends to import bulk HCFC must apply to the Director for an HCFC import permit.

(2) The Director may issue a permit allowing the importation of bulk HCFC if satisfied that the Federated States of Micronesia will not be thereby in breach of its obligations under the Vienna Convention or the Montreal Protocol, and in particular the Director may not issue a permit if such issuance would allow the importation of a volume of bulk HCFC that exceeds the total allowable volume of HCFC specified in Part IX of the Schedule for the calendar year to which the permit, if granted, would apply.

(3) The Director must consider the need to provide access to bulk HCFC to persons in all states of the Federated States of Micronesia and may refuse to issue a permit if such issuance may prevent such access by persons in one or more states.

(4) Any permit under this regulation shall

- (a) be issued only for importation in a specified calendar year;
- (b) be issued only to a person that is registered as an Approved Importer;
- (c) specify the maximum amount of HCFC that may be imported by the permit holder in the calendar year to which the permit relates; and
- (d) be subject to the condition that the bulk HCFC must not be sold to persons who are not Approved HCFC Handlers, and any other conditions as may be imposed by the Director.

### 3.7 Registration of HCFC Importers

No permit issued under this Part shall operate to allow the importation of –

- (a) any dry-cleaning machine which contains or is designed to use any bulk controlled substance as a solvent;
- (b) any goods specified in regulation 2.2 imported from any non-complying country; and
- (c) any aerosol or fire extinguisher prohibited by these Regulations, except where the Director is satisfied, after consulting the Secretary of the Department of Health and Social Affairs, that importing the aerosol or fire extinguisher is necessary for human health or safety.

## **PART IV. Administration and Enforcement**

#### 4.1 Administration and Enforcement.

These regulations shall be administered and enforced in accordance with sections 303 to 308 inclusive of title 25 of the Code of the Federated States of Micronesia.

#### 4.2 Offenses

(1) A person who:

- (a) acts in contravention of any requirement or prohibition of Regulation 2; or
- (b) aids or abets any person in contravening any requirement or prohibition of Regulation 2; or
- (c) conspires with any person to do any act in contravention of any requirement or prohibition of Regulation 2

is in breach of these regulations and is liable to enforcement action pursuant to sections 303 to 307 of title 25 of the Code of the Federated States of Micronesia and a maximum civil penalty of \$50,000.

(2) A person who fails to comply with a condition or a permit or registration under Regulation 3 is in breach of these regulations and is liable to enforcement action pursuant to sections 303 to 307 of title 25 of the Code of the Federated States of Micronesia and a maximum civil penalty of \$10,000.

(3) A person who

- (a) hinders or obstructs an officer, duly authorized under section 308 of title 25 of the Code of the Federated States of Micronesia to administer or enforce these regulations, in the performance of his or her duties under these regulations, or the exercise of a power under these regulations; or
- (b) induces or incites any other person to act in contravention of sub-regulation (3)(a); or
- (c) by words or conduct falsely represent that he or she is an officer duly authorized under section 308 of title 25 of the Code of the Federated States of Micronesia to administer or enforce these regulations; or
- (d) provides false or misleading information:
  - (i) to an officer duly authorized under section 308 of title 25 of the Code of the Federated States of Micronesia to administer or enforce these regulations while they are exercising a power under these regulations; or
  - (ii) in any application made under these regulations; or
  - (iii) in any report required to be provided under these regulations,

is in breach of these regulations and is liable to enforcement action pursuant to sections 303 to 307 of title 25 of the Code of the Federated States of Micronesia and a maximum civil penalty of \$5,000.

**SCHEDULE - CONTROLLED SUBSTANCES**

**PART I  
CFCs (CHLOROFLUOROCARBONS)**

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

**PART II  
HALONS**

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

**PART III  
OTHER CFCS (CHLOROFLUOROCARBONS)**

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

**PART IV**  
CARBON TETRACHLORIDE

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

**PART V**  
METHYL CHLOROFORM

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
C <sub>2</sub> H <sub>3</sub> Cl <sub>3</sub>	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 <sub>r2</sub>	(HBFC-22B1)	1	1.00
CHF <sub>2</sub> Br		1	0.74
CH <sub>2</sub> FBr		1	0.73
C <sub>2</sub> HFBr <sub>4</sub>		2	0.3-0.8
C <sub>2</sub> HF <sub>2</sub> Br <sub>3</sub>		3	0.5-1.8
C <sub>2</sub> HF <sub>3</sub> Br <sub>2</sub>		3	0.4-1.6
C <sub>2</sub> HF <sub>4</sub> Br		2	0.7-1.2
C <sub>2</sub> H <sub>2</sub> FBr <sub>3</sub>		3	0.1-1.1
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>2</sub>		4	0.2-1.5
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Br		3	0.7-1.6
C <sub>2</sub> H <sub>3</sub> FBr <sub>2</sub>		3	0.1-1.7
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Br		3	0.2-1.1
C <sub>2</sub> H <sub>4</sub> FBr		2	0.07-0.1
C <sub>3</sub> HFBr <sub>6</sub>		5	0.3-1.5
C <sub>3</sub> HF <sub>2</sub> Br <sub>5</sub>		9	0.2-1.9
C <sub>3</sub> HF <sub>3</sub> Br <sub>4</sub>		12	0.3-1.8
C <sub>3</sub> HF <sub>4</sub> Br <sub>3</sub>		12	0.5-2.2
C <sub>3</sub> HF <sub>5</sub> Br <sub>2</sub>		9	0.9-2.0
C <sub>3</sub> HF <sub>6</sub> Br		5	0.7-3.3
C <sub>3</sub> H <sub>2</sub> FBr <sub>5</sub>		9	0.1-1.9
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>4</sub>		16	0.2-2.1
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>3</sub>		18	0.2-5.6
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Br <sub>2</sub>	16	0.3-7.5	

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C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Br	8	0.9-1.4
C <sub>3</sub> H <sub>3</sub> FBr <sub>4</sub>	12	0.08-1.9
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Br <sub>3</sub>	18	0.1-3.1
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Br <sub>2</sub>	18	0.1-2.5
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Br	12	0.3-4.4
C <sub>3</sub> H <sub>4</sub> FBr <sub>3</sub>	12	0.03-0.3
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Br <sub>2</sub>	16	0.1-1.0
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Br	12	0.07-0.8
C <sub>3</sub> H <sub>5</sub> FBr <sub>2</sub>	9	0.04-0.4
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Br	9	0.07-0.8
C <sub>3</sub> H <sub>6</sub> 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 <sub>2</sub>	(HCFC-21)	1	0.04
CHF <sub>2</sub> Cl	(HCFC-22)	1	0.055
CH <sub>2</sub> FCl	(HCFC-31)	1	0.02
C <sub>2</sub> HFCl <sub>4</sub>	(HCFC-121)	2	0.01-0.04
C <sub>2</sub> HF <sub>2</sub> Cl <sub>3</sub>	(HCFC-122)	3	0.02-0.08
C <sub>2</sub> HF <sub>3</sub> Cl <sub>2</sub>	(HCFC-123)	3	0.02-0.06
CHCl <sub>2</sub> CF <sub>3</sub>	(HCFC-123)	-	0.02
C <sub>2</sub> HF <sub>4</sub> Cl	(HCFC-124)	2	0.02-0.04
CHFClCF <sub>3</sub>	(HCFC-124)	-	0.022
C <sub>2</sub> H <sub>2</sub> FCl <sub>3</sub>	(HCFC-131)	3	0.007-0.05
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-132)	4	0.008-0.05
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Cl	(HCFC-133)	3	0.02-0.06
C <sub>2</sub> H <sub>3</sub> FCl <sub>2</sub>	(HCFC-141)	3	0.005-0.07
CH <sub>3</sub> CFCl <sub>2</sub>	(HCFC-141b)	-	0.11
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Cl	(HCFC-142)	3	0.008-0.07
CH <sub>3</sub> CF <sub>2</sub> Cl	(HCFC-142b)	-	0.065
C <sub>2</sub> H <sub>4</sub> FCl	(HCFC-151)	2	0.003-0.005
C <sub>3</sub> HFCl <sub>6</sub>	(HCFC-221)	5	0.015-0.07
C <sub>3</sub> HF <sub>2</sub> Cl <sub>5</sub>	(HCFC-222)	9	0.01-0.09
C <sub>3</sub> HF <sub>3</sub> Cl <sub>4</sub>	(HCFC-223)	12	0.01-0.08
C <sub>3</sub> HF <sub>4</sub> Cl <sub>3</sub>	(HCFC-224)	12	0.01-0.09
C <sub>3</sub> HF <sub>5</sub> Cl <sub>2</sub>	(HCFC-225)	9	0.02-0.07
CF <sub>3</sub> CF <sub>2</sub> CHCl <sub>2</sub>	(HCFC-225ca)	-	0.025
CF <sub>2</sub> ClCF <sub>2</sub> CHClF	(HCFC-225cb)	-	0.033
C <sub>3</sub> HF <sub>6</sub> Cl	(HCFC-226)	5	0.02-0.10
C <sub>3</sub> H <sub>2</sub> FCl <sub>5</sub>	(HCFC-231)	9	0.05-0.09
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	(HCFC-232)	16	0.008-0.10

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C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	(HCFC-233)	18	0.007-0.23
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	(HCFC-234)	16	0.01-0.28
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Cl	(HCFC-235)	9	0.03-0.52
C <sub>3</sub> H <sub>3</sub> FCl <sub>4</sub>	(HCFC-241)	12	0.004-0.09
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl <sub>3</sub>	(HCFC-242)	18	0.005-0.13
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Cl <sub>2</sub>	(HCFC-243)	18	0.007-0.12
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Cl	(HCFC-244)	12	0.009-0.14
C <sub>3</sub> H <sub>4</sub> FCl <sub>3</sub>	(HCFC-251)	12	0.001-0.01
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-252)	16	0.005-0.04
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Cl	(HCFC-253)	12	0.003-0.03
C <sub>3</sub> H <sub>3</sub> FCl <sub>2</sub>	(HCFC-261)	9	0.002-0.02
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl	(HCFC-262)	9	0.002-0.02
C <sub>3</sub> H <sub>6</sub> FCl	(HCFC-271)	5	0.001-0.03

**PART VIII**  
METHYL BROMIDE

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

\* Notes

Ozone depleting potential is determined in accordance with the relevant Annexes to the Montreal Protocol.

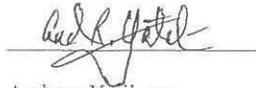
Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range 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.

**PART IX**  
**FEDERATED STATES OF MICRONESIA HCFC PHASE-OUT SCHEDULE**

	Year								
	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total allowable volume of HCFC in Metric Tonnes	2.40	2.30	2.20	2.00	1.90	1.80	1.70	1.60	1.50
Total allowable volume of HCFC in Pounds	5290	5070	4850	4410	4190	3970	3750	3530	3310

ADOPTION OF REGULATIONS ON OZONE DEPLETING SUBSTANCES

Pursuant to the authority vested in me by section 210 of Title 25 of the Code of Federated States of Micronesia, these *Regulations To Protect The Ozone Layer In Compliance With The Montreal Protocol On Substances That Deplete The Ozone Layer* are hereby adopted, subject to approval by the President.



Date: 17 September 2012

Andrew Yatilman  
Director  
Office of Environment and Emergency Management  
Federated States of Micronesia

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These Regulations have been reviewed by the Department of Justice and are found to be in proper legal form.

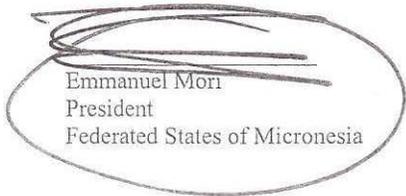


Date: 18 September 2012

Johnson Asher  
Acting Attorney General  
Federated States of Micronesia

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These *Regulations To Protect The Ozone Layer In Compliance With The Montreal Protocol On Substances That Deplete The Ozone Layer*, which have been promulgated by the Director of the Office of Environment and Emergency Management in accordance with law are hereby approved and shall become effective immediately.



Date: 19<sup>th</sup> September 2012

Emmanuel Mori  
President  
Federated States of Micronesia