

Ozone Protection Amendment Regulations 2004 (No. 1) 2004 No. 16

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 16

ISSUED BY AUTHORITY OF THE MINISTER FOR THE ENVIRONMENT AND HERITAGE

Ozone Protection Amendment Regulations 2004 (No. 1)

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004

These regulations give effect to technical changes in Australia's regime for the control of ozone depleting substances and synthetic greenhouse gases, contained in the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003*.

Amendments for ozone protection and synthetic greenhouse gas management

Section 70 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 13 of the Act prohibits the manufacture, import or export of certain ozone depleting substances without a controlled substances licence that allows that activity. Paragraph 14(1)(aa) of the Act provides that an application for a licence must be accompanied by the prescribed fee, unless the fee has been waived in accordance with the regulations. These fees are currently prescribed in the *Ozone Protection Regulations 1995* (the Principal Regulations).

The purpose of the *Ozone Protection Amendment Regulations 2004 (No. 1)* is to:

- prescribe two circumstances, being the production and casting of magnesium and the production of aluminium, where the import or manufacture of synthetic greenhouse gases (SGGs) does not require a licence under section 13 of the Act;
- set the prescribed fee for an application to obtain a pre-charged equipment licence; and
- to set the prescribed fee for an application for an exemption under section 40.

A pre-charged equipment licence allows the licensee to import refrigeration and airconditioning equipment that is pre-charged with either hydrochlorofluorocarbons (HCFCs) or hydrofluorocarbons (HFCs). An exemption under section 40 allows a person to import or manufacture certain products listed in Schedule 4 to the Act. These products are ordinarily prohibited from being imported or manufactured by section 38 of the Act as they are manufactured with or contain ozone-depleting substances (ODS).

The *Ozone Protection Amendment Regulations 2004 (No. 1)* amend the existing regulation 6A to clarify that the fee is an application fee and also omits the prescribed form for an application for exemption under section 40. Under section 40, the application form is now a form approved by the Minister.

Import and manufacturing levy regulations

Section 5 of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and section 5 of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* provide that the Governor-General may make regulations fixing the rate of levy payable on the import and manufacture of hydrochlorofluorocarbons (HCFCs), synthetic greenhouse gases (SGGs) and methyl bromide. The rate of levy for the import and manufacture of HCFCs and methyl bromide are currently prescribed in the *Ozone Protection (Licence Fees - Imports) Regulations 1995* and the *Ozone Protection (Licence Fees - Manufacture) Regulations 1995* respectively.

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004* is to set the amount of levy payable on the import of ODS and SGGs controlled under the Act. The purpose of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004* is to set the amount of levy payable on the manufacture of ODS and SGGs controlled under the Act.

Part VIIIA of the Act provides that amounts equal to the licence fees collected under the Act and levies collected under the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* are deposited into the Ozone Protection and SGG Account and are used for:

- paying or reimbursing the Commonwealth for costs associated with the Act and the regulations;
- paying or reimbursing the Commonwealth for costs associated with furthering ODS phaseout programs and emission minimisation programs for ODS and SGGs; and
- paying or reimbursing the Commonwealth for costs associated with the management of the National Halon Bank.

The Ozone Protection and SGG Account is a Special Account subject to relevant provisions of the *Financial Management and Accountability Act 1997*.

The introduction of application fees for an exemption under section 40 of the Act and levies for the import and manufacture of SGGs would reflect the Government's intention that the *Ozone Protection and Synthetic Greenhouse Gas Management Act* should be revenue neutral. As these activities are new under the Act, additional revenue is required to meet this requirement.

Details of the Regulations are in the [Attachment](#).

The Act, the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* specify no conditions that need to be met before the power to make the Regulations may be exercised.

Each of the Regulations commence on gazettal.

Attachment

Details of the *Ozone Protection Amendment Regulations 2004 (No. 1)*

Regulation 1 Provides that the Regulations are to be known as the *Ozone Protection Amendment Regulations 2004 (No. 1)*.

Regulation 2 Provides that the Regulations commence upon gazettal.

Regulation 3 Provides that the *Ozone Protection Regulations 1995* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 Item 1 updates the citation of the Principal Regulations in line with the most recent amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act).

Item 2 substitutes the current Regulations 2, 3 and 4 with Regulations 2, 3, 3A, 3B, 3C and 4. Regulation 2 updates the definition of *Act* in the regulations in line with the most recent amendments to the Act.

Regulation 3 under item 2 prescribes two circumstances where, for the purposes of subsection 13(1A) of the Act, importing or manufacturing an SGG does not require a licence. The circumstances that are prescribed are where SGGs are manufactured or imported under a permit issued by the Minister under Regulation 3A and where SGGs are manufactured as a by-product of the manufacture of aluminium.

Regulation 3A specifies the circumstances where the Minister may issue a permit for a specified SGG for use in the production and casting of magnesium. The regulation provides that the Minister may issue a permit to a person if that person presents a purchase order or similar document from the person requesting the SGG, and this is accompanied by a statement from the person intending to use the SGG that it will be used for the casting of magnesium. The regulation provides that any permit issued must specify the time period in which the permit is valid. The regulation also allows the Minister to revoke the permit if the SGG could not be used for the purpose for which it was granted, or if there is reason to believe that some of the imported or manufactured SGG has been diverted to another purpose.

Sub-regulation 3B(1) under item 2 provides that the following fees for the application for a licence are prescribed:

- for a controlled substance licence - \$15 000;
- for an essential uses licence - \$3 000;
- for a used substance licence - \$15 000; and
- for a pre-charged equipment licence - \$3 000.

Although this sub-regulation replaces the previous Regulation prescribing licence application fees, the prescribed fee for a controlled substance licence, an essential uses licence and a used substance licence remain unchanged.

Sub-regulation 3B(2) also prescribes the circumstances in which the Minister may waive the payment of an application fee. The sub-regulation provides that the Minister may waive the payment of an application fee if the Minister is satisfied that the import, export or

manufacture is less than half a tonne and the import, export or manufacture is for test purposes.

Regulation 4 under item 2 provides that the prescribed fee for an exemption under section 40 of the Act is \$3 000.

Item 3 of Schedule 1 amends Regulation 6A by inserting the word "application" into the phrase "payment of the application fee". This would clarify that the Minister's decision to not waive an application fee for a licence is reviewable by the Administrative Appeals Tribunal.

Item 4 of Schedule 1 omits the Schedule to the regulations, which sets out the requirements for an application for an exemption under section 40.

Details of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004*

Regulation 1 Provides that the Regulations are to be known as the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004*.

Regulation 2 Provides that the Regulations commence upon gazettal.

Regulation 3 Repeals the *Ozone Protection (Licence Fees - Imports) Regulations 1995*, Statutory Rules 1995 No. 390. The repealed regulations are replaced by the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004*.

Regulation 4 Defines "Act" as the *Ozone and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

- Regulation 5 Provides that the following rates of import levy are prescribed:
- In the case of HCFCs - \$3 000 for each ODP tonne imported; and
- In the case of SGGs - \$165 for each tonne imported; and
- In the case of methyl bromide - \$135 for each tonne imported.

Details of the *Ozone Protection and synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004*

Regulation 1 Provides that the Regulations are to be known as the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004*.

Regulation 2 Provides that the Regulations commence upon gazettal.

Regulation 3 Repeals the *Ozone Protection (Licence Fees -Manufacture) Regulations 1995*, Statutory Rules 1995 No. 391. The repealed regulations are replaced by the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004*.

Regulation 4 Defines "Act" as the *Ozone and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.

Regulation 5 Provides that the following rates of manufacture levy are prescribed:

- In the case of HCFCs - \$3 000 for each ODP tonne manufactured; and
- In the case of SGGs - \$165 for each tonne manufactured; and
- In the case of methyl bromide - \$135 for each tonne manufactured.

* Quantities expressed in ODP tonnes are defined in section 10 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.