

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 254

Issued by the authority of the Minister for the Environment and Heritage

Subject – *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2005 (No. 3)

Section 70 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) provides in part 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.

Subsection 45A (1) of the Act provides, in part, that regulations may be made that:

- regulate the sale, purchase, acquisition and disposal of scheduled substances; and
- regulate the storage, use or handling of scheduled substances.

The main purpose of the Regulations is to prescribe who can sell and purchase methyl bromide, an ozone depleting substance, for non-quarantine and non-pre-shipment (non-QPS) purposes and in what quantities. The Regulations will also:

- prescribe the qualification required for a restricted domestic refrigeration and air conditioning appliances licence; and
- prescribe the equipment that halon may be used in as fire fighting equipment. Halon is an ozone depleting substance controlled under Schedule 1 to the Act.

Methyl bromide is controlled under Schedule 1 to the Act. It contributes to the depletion of the ozone layer when released into the atmosphere and most uses of methyl bromide are emissive by nature. *The Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) currently regulate the supply and end use of methyl bromide through record keeping and reporting systems.

Quarantine and pre-shipment (QPS) use of methyl bromide relates to the fumigation of goods after they are imported or before they are exported to prevent the spread of pests, weeds and diseases. In a feedstock use, methyl bromide is converted from its original composition to manufacture a different chemical, without atmospheric emissions. Non-QPS uses are all other uses of methyl bromide that do not fall within the QPS or feedstock definitions and the Regulations deal with this type of use.

The Regulations are consistent with Australia's obligations under the *Montreal Protocol on Substances That Deplete the Ozone Layer* (the Protocol) by ensuring stocks of methyl bromide are only sold and used for authorised purposes. Under the Protocol non-QPS uses of methyl bromide were phased out from 1 January 2005 except where Parties to the Protocol granted a critical use exemption.

The Regulations are an instrument of a minor or machinery nature and will not substantially alter existing arrangements. To this end, consultation was not considered appropriate or necessary.

Details of the Regulations are set out in the Attachment.

The Regulations specify strict liability offences. As the Regulations relate to the environment and public health, strict liability for the offence is considered necessary to ensure the integrity of the regulatory regime and to provide an adequate deterrent for breaches. This is consistent with the offence provisions in the Principal Regulations.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Regulations 1 to 3 and Schedule 1 to the Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments and Schedule 2 to the Regulations will commence on 1 January 2006.

Authority: Section 70 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2005 (No. 3)*

Regulation 1	Provides that the Regulations are to be known as the <i>Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2005 (No. 3)</i> .
Regulation 2	Provides that regulations 1 to 3 and Schedule 1 to the Regulations will commence on the day after they are registered and Schedule 2 to the Regulations commence on 1 January 2006.
Regulation 3	Provides that the <i>Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995</i> (the Principal Regulations) are amended in accordance with the amendments contained in Schedule 1 and Schedule 2.
Schedule 1	<p>Item 1 amends item 4 of column 4 in Table 131 of the Principal Regulations to specify that the qualification MEM20198 Certificate II in Engineering Production (Domestic) entitles the holder to a Restricted domestic refrigeration and air conditioning appliances licence.</p> <p>Item 2 amends <u>subregulation 304 (4)</u> of the Principal Regulations to clarify that a person must not possess halon for use in fire protection equipment unless the equipment:</p> <ul style="list-style-type: none"> ▪ is used by the Defence Force in: <ul style="list-style-type: none"> - a Collins Class submarine; or - an armoured fighting vehicle; or ▪ if other than a portable fire extinguisher, is used by the Defence Force in: <ul style="list-style-type: none"> - an FFG 7 Class destroyer; or - an ANZAC Class Frigate; or ▪ is installed in, or carried in an aircraft; or ▪ is included in an enclosed space containing machinery, including the pump room, of a vessel: <ul style="list-style-type: none"> - of more than 500 tonnes dead weight; or - that is entered in the Australian Register of Ships established under the <i>Shipping Registration Act 1981</i>. <p>The note under existing subregulation 304 (4) does not change.</p>
Schedule 2	<p>Item 1 substitutes the definition of <i>exempt person</i> in <u>regulation 200</u>, which means a person who is shown as an exempt person on the Non-QPS Exemption List for the year.</p> <p>Item 2 substitutes the definition in paragraph (a) of <i>nominated supplier</i> in <u>regulation 200</u>, which means, for an exempt person for a year, a person shown as a nominated supplier for the exempt person on the Non-QPS Exemption List for the year.</p> <p>Item 3 substitutes the definition for <i>Non-QPS Exemption List</i> in <u>regulation 200</u>, including the note, which means, for the year 2005 the document called 'Exemption List for Non-QPS Applications of Methyl Bromide' as in force on 1 May 2005, and means for the year 2006 the</p>

document called 'Exemption List for Non-QPS Applications of Methyl Bromide in 2006' as in force on 1 January 2006. The note provides the internet address for viewing the Non-QPS Exemption List.

Item 4 substitutes the definition of ***allocated amount*** in regulation 211, which means, for the year to which the Non-QPS Exemption List relates, the amount of methyl bromide set out in a Non-QPS Exemption List for an exempt person and the person's nominated supplier (or one of the person's nominated suppliers).

Item 5 substitutes the offence in subregulation 212 (1), except the penalty, which states that a person who uses methyl bromide for a non-QPS application during a year is guilty of an offence if the person is not an exempt person for the year or acting on behalf of an exempt person for the year.

Item 6 substitutes regulation 213 of the Principal Regulations.

Subregulation 213 (1) makes it an offence for a supplier, other than an importer, to sell methyl bromide to a buyer during a year:

- who signs a declaration stating the methyl bromide is for a non-QPS application; and
- if subregulations 213 (2), 213 (3) and 213 (4) are not satisfied in relation to the sale.

Subregulation 213 (2) prescribes that a buyer must be an exempt person for the year or a nominated supplier for an exempt person for the year.

Subregulation 213 (3) prescribes that if the buyer is or acting on behalf of an exempt person for the year, the supplier must be a nominated supplier for the exempt person. The supplier must also ensure that the total amount of methyl bromide the supplier sells to the exempt person during the year for non-QPS applications is equal to or less than the exempt person's allocated amount for the supplier for the year.

Subregulation 213 (4) prescribes that if the buyer is a nominated supplier for an exempt person for the year, that the supplier must be an intermediate supplier for the buyer for the year. The supplier must ensure that the total amount of methyl bromide the supplier sells to the buyer during the year is equal to or less than the allocated amounts that the buyer is entitled to supply to exempt persons for non-QPS applications for the year.

Subregulation 213 (5) clarifies that if a buyer is an exempt person for a year and also a nominated supplier for an exempt person for the year, the amount of methyl bromide that the supplier may sell to that buyer during the year for non-QPS applications is the sum of the total amounts in subregulations 213 (3) and 213 (4).

Subregulation 213 (6) provides definitions to be used to interpret regulation 213. The subregulation provides that:

importer means a licensee who holds a controlled substances licence that allows the licensee to import methyl bromide and is subject to a condition

that methyl bromide imported for non-QPS applications may only be supplied to a person or persons specified on the licence.

intermediate supplier means, in relation to a buyer, a person who is shown as an intermediate supplier for the buyer on the document called Non-QPS Intermediate Supplier List for the year.

Non-QPS Intermediate Supplier List means for the year 2005 the document called 'Intermediate Supplier List for Non-QPS Applications of Methyl Bromide' as in force on 1 January 2005, and means for the year 2006 the document called 'Intermediate Supplier List for Non-QPS Applications of Methyl Bromide in 2006', as in force on 1 January 2006. The note provides the internet address for viewing the Non-QPS Intermediate Supplier List.

Subregulation 213 (7) provides that the offence in subregulation 213 (1) is a strict liability offence. The maximum penalty for breaching this subregulation is ten penalty units. One penalty unit is \$110 under the *Crimes Act 1914*.

Item 7 amends subregulation 231 (1) to clarify that an exempt person for a year must report all their use of methyl bromide during the report period within 14 days after the end of a report period in the year.