**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. 265, 2013**

Issued by Authority of the Minister for the Environment

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

*Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013*

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Ozone Act) controls the manufacture, import, export, use and destruction of ozone depleting substances (ODSs) and synthetic greenhouse gases (SGGs). The Ozone Act implements Australia’s obligations under the *Vienna Convention for the Protection of the Ozone Layer*, the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*.

Section 70 of the Ozone 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. In addition, paragraph 65AA(1)(a) of the Ozone Act enables the regulations to make provision enabling a person who is alleged to have committed an offence against specified provisions of the Ozone Act to pay a specified penalty to the Commonwealth as an alternative to prosecution.

The *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) contain controls relating to licensing, import, export, manufacture, and disposal of scheduled substances.

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013* (the Regulation) is to:

1. amend the record keeping requirements under regulations 5 and 6 of the Principal Regulations to require a licensee who holds a license to import, export or manufacture ozone depleting substances or synthetic greenhouse gas to keep records at their principal place of business (this is currently not specified), and remove the requirement for each page of a record kept by a licensee to show the licensee’s licence number and the page number (see Schedules 1 and 3 to the Regulation);
2. align the provisions for assessing whether someone is a fit and proper person to hold a permit under Part 6A (Disposal and use of scheduled substances) of the Principal Regulations with equivalent provisions in the Ozone Act. These amendments also ensure that a consistent fit and proper person test is used for all types of permits granted under Part 6A of the Principal Regulations (see Schedule 2 to the Regulation);
3. clarify the circumstances in which refrigerant handling and restricted refrigeration and air conditioning licences can be issued, and clarify that transitional licences issued under regulation 133 may be issued for a specified activity and for work done at a specified place or on specified equipment (see Schedule 1 to the Regulation);
4. establish a framework for issuing and administering infringement notices to allow infringement notices to be issued for contraventions of the offence and civil penalty provisions relating to breach of import, export, manufacturing, licence conditions and reporting requirements listed in paragraph 65AA(1)(a) of the Ozone Act (see Schedule 3 to the Regulation);
5. update the references in the Principal Regulations to superseded aircraft engineering maintenance licences and units of competency overseen by the Civil Aviation Safety Authority (the CASA) (see Schedule 1 to the Regulation);
6. insert a reference to the Exemption List for Non-Quarantine and Pre-Shipment

(Non-QPS) Applications of Methyl Bromide for 2014. The Non-QPS exemption list specifies the individual holders of critical use exemptions, their nominated suppliers (who they may only purchase their Non-QPS stocks of methyl bromide from in the exemption year) and the maximum quantity of methyl bromide that they may purchase from that supplier for that year. This amendment allows the supply and use of methyl bromide for Non-QPS category uses by critical use exemption holders during 2014. In 2014, critical use exemptions in Australia will be restricted to the strawberry runner industry and packaged rice industry (see Schedule 2 to the Regulation); and

1. correct drafting errors in the Principal Regulations to ensure that references to the provisions in the Ozone Act and substances listed in Schedule 1 to the Ozone Act are reflected in the Principal Regulations (see Schedule 1 to the Regulation).

The Department of the Environment (the Department) consulted with stakeholders when the Ozone Act was amended to prescribe the circumstances in which infringement notices may be issued under the Ozone Act. Whilst the amendments in the Regulation are machinery in nature, the Department contacted major industry groups to notify them of the framework for infringement notices. No concerns have been raised.

The amendments to update the references to aircraft engineering licences and units of competency overseen by the CASA have been prepared in consultation with the CASA. No consultation has taken place with respect to the remainder of the amendments as they are minor and machinery in nature and do not substantially change the law, nor do they impose any additional regulatory burden on businesses.

The Ozone Actspecifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

Details of the Regulation are set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments   
Act 2003*.

Sections 1 to 4 and Schedule 1 to the Regulation commence on the day after the Regulation is registered on the Federal Register of Legislative Instruments. Schedule 2 to the Regulation commences on 1 January 2014. Schedule 3 to the Regulation commences on 1 March 2014. The commencement date for Schedule 3 is delayed to ensure licensees have adequate time to comply with the new requirements to keep existing records at their main business premises.

**Statement of Compatibility with Human Rights**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Ozone Protection and Synthetic Greenhouse Gas Management Amendment   
(Various Matters) Regulation 2013**

**Overview of the Legislative Instrument**

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013* (the Regulation) amends the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) to: require licence records pertaining to the import, export or manufacture of ozone depleting substances or synthetic greenhouse gas to be kept at a licensee’s principal place of business; align the fit and proper person test in the Principal Regulations with equivalent provisions in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; clarify requirements for transitional licences that may be issued for a specified activity and for work done at a specified place or on specified equipment; establish a framework for issuing and administering infringement notices under the Principal Regulations and insert a reference to the Exemption List for Non-Quarantine and Pre-Shipment (Non-QPS) Applications of Methyl Bromide for 2014.

**Human rights implications**

The Regulation has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.* The Regulation does not engage any of the applicable rights or freedoms.

**Conclusion**

The Regulation is compatible with Australia’s human rights obligations.

**The Hon Greg Hunt MP**

**Minister for the Environment**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Ozone Protection and Synthetic Greenhouse Gas Management Amendment   
(SGG for Manufacture) Regulation 2013**

**Overview of the Legislative Instrument**

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (SGG for Manufacture) Regulation 2013* (the Regulation) amends the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* to prescribe, for the purposes of paragraph 13(1A)(b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, circumstances in which a controlled substances licence will not be required where Synthetic Greenhouse Gases (SGGs) are used in a manufacturing process that does not result in the emission of the SGGs. As a consequence, a person importing or manufacturing SGGs for use in these circumstances would not be liable to pay the levies imposed under the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.

**Human rights implications**

The Regulation has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.* The Regulation does not engage any of the applicable rights or freedoms.

**Conclusion**

The Regulation is compatible with Australia’s human rights obligations.

**The Hon Amanda Rishworth MP,**

**Parliamentary Secretary for Sustainability and Urban Water**

**ATTACHMENT**

**Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013***

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013* (the Regulation).

**Section 2 – Commencement**

This section provides that sections 1 – 4 and Schedule 1 to the Regulation commence the day after the Regulation is registered on the Federal Register of Legislative Instruments. Schedule 2 to the Regulation commences on 1 January 2014 and Schedule 3 to the Regulation commences on 1 March 2014.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Ozone Act)*.*

**Section 4 – Schedule(s)**

This section provides that each instrument specified in a Schedule to the Regulation is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

**Schedule 1 – Amendments commencing on the day after registration**

Item 1 - Paragraph 3C(5)(b)

Currently, paragraph 3C(5)(b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) provides that the Minister or an Senior Executive Service (SES) employee of the Department may waive part of the application fee for an ozone depleting substance (ODS)/synthetic greenhouse gas (SGG) equipment licence if satisfied that the criteria in paragraphs 3C(5)(a) – (d) are met. Paragraph 3C(5)(b) of the Principal Regulations requires the total hydrochlorofluorocarbon (HCFC) and hydrofluorocarbon (HFC) in the single consignment to be less than 10kg to qualify for consideration for a low volume fee waiver.

In July 2011, the Ozone Act was amended to include sulfur hexafluoride and perfluorocarbons **(**PFCs) in the definition of SGG. References to the ‘pre-charged equipment licence’ were replaced with ‘ODS/SGG equipment licence’, extending the application of the licence to a broader range of equipment or products which contain an SGG, including equipment containing sulfur hexafluoride and PFCs.

This item adds a reference to sulfur hexafluoride (as defined in section 7 of the Ozone Act) and PFC (as defined in section 7 of the Ozone Act) to paragraph 3C(5)(b) of the Principal Regulations so that the total HFC, HCFC, sulfur hexafluoride and PFC charge in the single consignment must be less than 10kg to qualify for consideration for a low volume fee waiver.

**Item 2 – Regulation 6**

Currently, regulation 6 of the Principal Regulations provides that a record kept by a licensee must show the licensee’s licence number on each page, with each page numbered. This item repeals regulation 6 as the current requirement does not confer an identified benefit for compliance and enforcement purposes. The repeal of regulation 6 results in a reduction in the administrative burden for companies which keep electronic records in Portable Document Format.

Item 3 – Sub-regulation 70(2)

Subregulation 70(2) of the Principal Regulations refers to paragraph 10(1)(a) of Schedule 4 to the Ozone Act. Schedule 4 to the Ozone Act provides controls on the manufacture and import of products containing or using scheduled substances (i.e. substances listed in Schedule 1 to the Ozone Act). Paragraph 10(1)(a) of Schedule 4 provides that a person must not manufacture or import refrigeration or air-conditioning (RAC) equipment if the equipment is charged with or operates using a CFC or HCFC refrigerant. Subclause 10(1A) of Schedule 4 provides that subclause 10(1) does not apply to equipment specified in the Principal Regulations.

This item amends subregulation 70(2) to correctly refer to subclause 10(1A) of Schedule 4 to the Ozone Act instead of paragraph 10(1)(a) of Schedule 4 to the Ozone Act.

**Item 4 – Sub-regulations 131(2) and (3)**

Currently, subregulation 131(1) of the Principal Regulations provides that a relevant authority may grant a licence mentioned in column 2 of Table 131 entitling that person to engage in work described in column 3 of the item.

Subregulation 131(2) sets out a list of matters which the relevant authority must be satisfied of before issuing a licence under subregulation 131(1). Subregulation 131(3) additionally provides that the relevant authority may grant a licence to an applicant if the relevant authority is satisfied that the applicant has the knowledge, ability and experience necessary to competently carry out the work covered by the licence.

This item repeals subregulations 131(2) and (3) and replaces them with a new subregulation 131(2) which incorporates the requirements of current subregulations 131(2) and (3). New subregulation 131(2) clarifies that current subregulation 131(3) does not provide an additional, stand alone ground for the relevant authority to issue a licence under regulation 131, but rather is intended to qualify the circumstances in which a licence may be issued under   
subregulation 131(2).

**Item 5 – Regulation 133**

Currently, regulation 133 of the Principal Regulations allows the relevant authority to issue a restricted RAC licence entitling a person to carry out work at a specified kind of place, or on specified RAC equipment, or both if the work to be covered requires skills and knowledge outside of the scope of those required for a licence under regulation 131 and the person provides evidence that he or she is able to carry out the work in an appropriate manner.

This item replaces current regulation 133 with a new regulation 133 which clarifies that a restricted RAC licence may be issued for work that requires a subset of the knowledge and skills required for a licence under regulation 131 in circumstances where the person does not meet the conditions for the grant of a licence under regulation 131 and the relevant authority is satisfied that the person can competently carry out the work.

This item allows a restricted RAC licence to be issued for a specified activity, as well as work done at a specified place or on specified equipment, and reflects the circumstances in which licences of this type have been issued since 1 January 2005 (the commencement date for regulation 133).

**Item 6 – Subregulation 134(1)**

This item amends subregulation 134(1) to remove the reference to “refrigerant handling licence (called a refrigeration and air conditioning trainee licence)” and replaces it with the term “refrigeration and air conditioning trainee licence”. This term is only used in regulation 134 and so does not require further definition.

**Item 7 – Subregulation 134(1)(c)**

This item is required as a consequence of Item 4 of Schedule 1 to the Regulation and amends the reference to subregulation 131(3) in paragraph 134(1)(c) with a reference to   
paragraph 131(2)(d).

**Item 8 – Subparagraph 302(1A)(c)(i) and Item 9 – Subparagraph 302(1A)(c)(ii)**

Currently, subregulation 302(1) of the Principal Regulations provides that a person commits an offence if the person handles an extinguishing agent that is, or has been, used in fire protection equipment unless the person holds an extinguishing agent handling licence or a special circumstances exemption that covers the handling of the agent. Currently, subregulation 302(1A) sets out the circumstances when subregulation 302(1) will not apply. In particular,   
subparagraphs 302(1A)(c)(i) – (ii) provide that subregulation 302(1) will not apply if a person holds an aircraft maintenance engineer licence under regulation 31 of the *Civil Aviation Regulations 1988* and has completed the unit of competency PRMPFES43A ‘Prevent ozone depleting substance and synthetic greenhouse gas emissions’.

Regulation 31 of the *Civil Aviation Regulations 1988* has been repealed and an equivalent aircraft maintenance engineering licence is now issued under Part 66 of the *Civil Aviation Safety Regulations 1998.*  In addition, the reference to the unit of competency PRMPFES43A ‘Prevent ozone depleting substance and synthetic greenhouse gas emissions’ has been superseded with the unit of competency CPPFES2043A ‘Prevent ozone depleting substance and synthetic greenhouse gas emissions’.

Items 8 and 9 amend current subparagraphs 302(1A)(c)(i) and (ii) of the Principal Regulations to refer to aircraft engineer licences issued under Part 66 of the *Civil Aviation Safety Regulations 1998* and the current unit of competency CPPFES2043A ‘Prevent ozone depleting substance and synthetic greenhouse gas emissions’.

**Item 10 – At the end of the Regulations**

Item 10 adds Part 10 (Transitional Provisions) to the Principal Regulations.

Regulation 950 clarifies that the amendment to subregulation 3C(5) made by Schedule 1 to the Regulation applies to applications for ODS/SGG equipment licences that are made on or after the commencement of the amendment.

Regulation 951 clarifies that the amendment of regulations 131 and 134 made by Schedule 1 to the Regulation does not affect the validity of a licence granted under either of those regulations before commencement of Schedule 1.

Regulation 952 clarifies the application of regulation 133, as amended by the Item 5 of Schedule 1 to the Regulation, to restricted RAC licences granted on and after 1 January 2005 (which was the commencement date for regulation 133). This provision has the effect that amended regulation 133 applies retrospectively to licences granted on and after 1 January 2005 and would be required to avoid any doubt regarding the validity of restricted RAC licences issued since 1 January 2005.

Section 12 of the *Legislative Instruments Act 2003* provides that a regulation with retrospective application will have no effect if it takes effect before the date of registration and, as a result, the rights of a person (other than the Commonwealth or an authority of the Commonwealth) would be affected so as to disadvantage that person; or liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

Ensuring the validity of any existing licences issued under regulation 133 does not disadvantage or impose liabilities on those persons who hold such a licence, but confers a benefit by ensuring that they are authorised to carry out the work covered by the licence. As such, the rights and liabilities of a person are not adversely affected by the retrospective application of amendments to regulation 133.

**Schedule 2 – Amendments commencing on 1 January 2014**

**Item 1- At the end of Division 6A.1**

Currently, Part 6A of the Principal Regulations deals with the acquisition, sale, purchase, storage, use, handling and disposal of gases used for RAC (Division 6A.2); methyl bromide (Division 6A.3); and substances used for fire protection (Division 6A.4). Each division places restrictions on these substances by imposing requirements to obtain permits to deal with these gasses.

When assessing an application for a RAC industry permit (relating to refrigeration and air conditioning), a feedstock permit (for methyl bromide) or a fire protection industry permit, the relevant authority must consider whether the applicant is a fit and proper person to hold the permit. Currently, the Principal Regulations require the relevant authority to consider a number of matters in making this assessment, as set out in regulation 122 (RAC industry permits), regulation 243 (feedstock permits) and regulation 314 (fire protection industry permits).

This item inserts regulation 102 into the Principal Regulations to create a single fit and proper person test relating to all three permits. This item also aligns the matters which the relevant authority must consider with the equivalent provisions contained in subsections 16(5) and 20(2) of the Ozone Act.

Subregulation 102(2) sets out the matters which the decision-maker must consider in deciding whether the someone is a fit and proper person to be granted a permit, including the matters described in paragraphs 16(5)(aa) to (eb) of the Ozone Act (paragraph 102(2)(a)) and any order made against the applicant under section 19B of the *Crimes Act 1914* for an offence described in paragraphs 16(5)(a) or (b) , or 16(5)(bb) or (bc) of the Ozone Act (paragraph 102(2)(b)).

The decision-maker is also required to consider any suspension or cancellation of another permit of the same kind held by someone (paragraph 102(2)(c)) and a contravention of a condition of another permit of the same kind held by someone (paragraph 102(2)(d)). Whilst the decision-maker is required to consider these matters, it does not preclude the decision-maker from considering suspensions, cancellations or contraventions of other licences or permits issued under the Ozone Act or Principal Regulations.

Subregulation 102(3) sets out the matters that the decision-maker must consider when deciding whether to cancel or suspend a licence or permit on the grounds that someone is no longer a fit and proper person. These matters are similar to those under paragraph 102(2) and refer to section 20 of the Ozone Act (which sets out the matters which the Minister may take account of when deciding to cancel a licence issued under the Ozone Act).

Subregulation 102(4) clarifies that regulation 102 does not limit the matters which may be considered by the decision-maker.

Regulation 102 has effect subject to Part VIIC of the *Crimes Act 1914* relating to spent convictions.

**Item 2 – Regulation 122**

This item repeals regulation 122 and substitutes it with a new regulation 122 which sets out the matters that the relevant authority must be satisfied of before granting a RAC industry permit.

**Item 3 – Regulation 200 (at the end of the definition of *Non-QPS Exemption List*)and Item 4 – Subregulation 213(6) (at the end of the definition of *Non-QPS Intermediate Supplier List*)**

Methyl bromide is a controlled substance listed in Part VII of Schedule 1 to the Ozone Act. Methyl bromide contributes to the depletion of the ozone layer when released into the atmosphere, and most uses are emissive by nature. The Principal Regulations regulate the supply and end use of Non-Quarantine and Pre-Shipment (Non-QPS) methyl bromide through record keeping and reporting systems.

Australia’s obligations under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Montreal Protocol) require that stocks of methyl bromide are only sold and used for authorised purposes. Under the Montreal Protocol, Non-QPS uses of methyl bromide were phased out from 1 January 2005 except where critical use exemptions are granted by Parties to the Montreal Protocol (which in Australia in 2014, will be restricted to the strawberry runner industry and the packaged rice industry) or where an emergency use is granted by Parties to the Montreal Protocol.

These items amend the Principal Regulation to include references to the *Exemption List for Non-QPS Applications of Methyl Bromide in 2014* and the *Intermediate Supplier List for Non-QPS Applications of Methyl Bromide in 2014*. This allows the supply and use of methyl bromide for Non-QPS category uses by critical use exemption holders during 2014.

**Item 5 – Regulation 243**

This item repeals regulation 243 (which sets out the matters that the Minister must consider when deciding whether a person who holds, or is applying for, a feedstock permit is a fit and proper person to hold the permit). The repeal is required as a consequence of Item 1 of Schedule 2 to the Regulation.

**Item 6 – Regulation 314**

This item repeals regulation 314 and substitutes it with a new regulation 314. New regulation 314 sets out the matters that the Fire Protection Industry Board must be satisfied of before granting a fire protection industry permit.

**Item 7 – At the End of Division 1 of Part 10**

This item inserts regulation 953 into the Principal Regulations. Regulation 953 clarifies that the addition of regulation 102, the repeal and substitution of regulations 122 and 314 and the repeal of regulation 243 only apply in relation: to the grant of permits if the application was made after the commencement date of Schedule 2; and decisions on the cancellation and suspension of permits made after the commencement of Schedule 2 to the Regulation.

**Schedule 3 – Amendments commencing on 1 March 2014**

**Item 1 - Subregulation 5(2)**

Currently, regulation 5 of the Principal Regulations sets out the records to be kept by licensees with respect to quantities of each scheduled substance (i.e. those listed in Schedule 1 to the Ozone Act) manufactured, imported or exported by a licensee any time in a month. However, there is no requirement for the licensee’s records to be kept at a particular location.

Inspectors have found that when they inspect a site (i.e. in accordance with section 51 of the Ozone Act), the nominated contact person often does not have copies of required records. The required records are often kept by a broker or at another location. This item amends regulation 5 to require licensees to keep these records at their main business premises.

**Item 2 - After Part 7**

Section 65AA of the Ozone Act allows regulations to make provision for the issue of infringement notices for listed offences against the Ozone Act (these are listed in paragraph 65AA(1)(a) of the Ozone Act), a specified offence against the Principal Regulations, or for an alleged contravention of a civil penalty provision, as an alternative to prosecution.

This item inserts Part 8 (Enforcement) into the Principal Regulations which sets out the framework for issuing and administering infringement notices for contraventions of the offence and civil provisions listed in paragraph 65AA(1)(a) of the Ozone Act.

Regulation 906 defines certain terms used in Part 8 namely, ***appointed inspector*** and ***contravene a provision subject to an infringement notice.***

Regulation 907 sets out the circumstances when an infringement notice may be given. Under subregulation 907(1) an appointed inspector may issue an infringement notice where he or she has reasonable grounds to believe a person has contravened a provision subject to an infringement notice. The infringement notice must be given within 12 months after the day on which a contravention is alleged to have taken place (subregulation 907(2)) and a single infringement notice must relate to a single contravention of a single provision (subregulation 907(3)).

Subregulation 907(4) sets out the circumstances when an appointed inspector may give a person a single infringement notice relating to multiple contraventions of a single provision. Subregulation 907(5) provides that if a single provision can be both a civil penalty provision and an offence provision, the infringement notice must relate to the provision as an offence provision.

Subregulation 908(1) specifies a range of matters that must be included in each infringement notice. This includes a statement that if the infringement notice is paid within 28 days of it being issued, this does not constitute an admission of guilt but does preclude any further liability or proceedings related to the alleged contravention (unless the notice is subsequently withdrawn).

Subregulation 908(2) limits the amount payable under an infringement notice to the lesser amount of either one-fifth of the maximum penalty that a court could impose in relation to an alleged contravention or 12 penalty units for an individual or 60 penalty units for a body corporate. This ensures that infringement notices do not constitute a court sanction or an admission of guilt, remain a lesser remedy to alleged contraventions of the Ozone Act.

Regulation 909 allows a person who has received an infringement notice to apply to the Secretary for an extension of time to pay the infringement notice. The Secretary’s decision to extend the time for payment is a discretionary one (subregulation 909(2)) and the period may be extended by the Secretary more than once ((subregulation 909(5)).

Regulation 910 sets out the process for withdrawing infringement notices and list factors that the Secretary must and may take into account when considering whether to withdraw an infringement notice. A person may apply for an infringement notice to be withdrawn even if the person has already paid the infringement notice penalty. If the notice is withdrawn the amount paid must be refunded in accordance with subregulation 910(5).

Regulation 911 sets out the effect of payment of an infringement notice penalty namely, that its payment discharges all liability for the alleged contravention, without constituting an admission of fault. This is appropriate for an administrative remedy that may be discharged without adjudication by the courts. However, payment does not discharge liability if the notice is subsequently withdrawn and the amount refunded.

Regulation 912 clarifies that Part 8 does not require an infringement notice to be given for each suspected contravention of a provision subject to an infringement notice - they remain a discretionary remedy. Part 8 does not affect the liability of a person unless an infringement notice is issued and paid, and not withdrawn. Further, Part 8 does not limit a court’s ability to determine the amount of a penalty to be imposed on a person found to have contravened a provision subject to an infringement notice.

Regulation 913 allows the Secretary to delegate his or her powers and functions under Part 8 to a SES employee or an acting SES employee (subregulation 913(1)). Delegates need to comply with any directions of the Secretary (subregulation 913(2)).

**Item 3 - At the end of Division 1 of Part 10**

This item inserts regulation 954 into the Principal Regulations. Regulation 954 clarifies that the amendments to subregulation 5(2) requiring licensees to maintain records at their main business premises applies in relation to records created before, on or after the commencement of the amendment.

The commencement date of 1 March 2014 is intended to ensure that licensees have adequate time to comply with the requirement to keep existing records at their main business premises.

This item also inserts regulation 955 into the Principal Regulations. Regulation 955 clarifies that Part 8 applies in relation to contraventions of the provisions referred to in paragraph 65AA(1)(a) of the Ozone Act whether the contraventions occur before, on or after commencement of that Part.