

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

Select Legislative Instrument No. 265, 2013

I, Quentin Bryce AC CVO, Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

Dated 12 December 2013

Quentin Bryce

Governor‑General

By Her Excellency’s Command

Greg Hunt

Minister for the Environment

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1 Name of regulation

 This regulation is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013*.

2 Commencement

 Each provision of this regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 4 and anything in this regulation not elsewhere covered by this table | The day after this regulation is registered. |  |
| 2. Schedule 1 | The day after this regulation is registered. |  |
| 3. Schedule 2 | 1 January 2014. | 1 January 2014 |
| 4. Schedule 3 | 1 March 2014. | 1 March 2014 |

3 Authority

 This regulation is made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.*

4 Schedule(s)

 Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments commencing day after registration

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

1 Paragraph 3C(5)(b)

Repeal the paragraph, substitute:

 (b) the total gas charge of one or more of the following in that consignment is less than 10 kilograms:

 (i) HCFC;

 (ii) HFC;

 (iii) PFC;

 (iv) sulfur hexafluoride; and

2 Regulation 6

Repeal the regulation.

3 Subregulation 70(2)

Omit “paragraph 10(1)(a)”, substitute “subclause 10(1A)”.

4 Subregulations 131(2) and (3)

Repeal the subregulations, substitute:

 (2) A relevant authority may grant a licence to an applicant only if the authority is satisfied that the applicant:

 (a) holds a qualification mentioned in the item of Table 131 that relates to the licence (a ***relevant qualification***); or

 (b) holds a certificate (however described) granted by a registered training organisation, certifying that:

 (i) the organisation recognises that the applicant’s prior learning is equivalent to a relevant qualification; or

 (ii) the applicant has demonstrated to the organisation that his or her current competencies are equivalent to a relevant qualification; or

 (c) holds a qualification that previously entitled the applicant to hold a licence of that kind; or

 (d) has the knowledge, ability and experience necessary to competently carry out the work covered by the licence.

5 Regulation 133

Repeal the regulation, substitute:

133 Restricted refrigeration and air conditioning licence

 A relevant authority may, on application, grant a restricted refrigeration and air conditioning licence to a person, entitling the person to carry out specified work in relation to RAC equipment, if the authority is satisfied that the person:

 (a) can competently carry out the work; and

 (b) does not meet the conditions for the grant of a licence under regulation 131 that would entitle the person to carry out the work.

6 Subregulation 134(1)

Omit “refrigerant handling licence (called a ***refrigeration and air conditioning trainee licence***)”, substitute “refrigeration and air conditioning trainee licence”.

7 Paragraph 134(1)(c)

Omit “subregulation 131(3)”, substitute “paragraph 131(2)(d)”.

8 Subparagraph 302(1A)(c)(i)

Repeal the subparagraph, substitute:

 (i) is, under Part 66 of the *Civil Aviation Safety Regulations 1998* (which is about aircraft engineer licences), a category A licence holder, a category B1 licence holder or a category B2 licence holder; and

9 Subparagraph 302(1A)(c)(ii)

Omit “PRMPFES43A”, substitute “CPPFES2043A”.

10 At the end of the Regulations

Add:

Part 10—Transitional provisions

Division 1—Amendments made by the Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013

950 Application of amendment of subregulation 3C(5)

 The amendment of subregulation 3C(5) made by Schedule 1 to the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013* applies in relation to applications for ODS/SGG equipment licences that are made on or after the commencement of the amendment.

951 Saving of licences granted under regulations 131 and 134

 The amendments of regulations 131 and 134 made by Schedule 1 to the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013* do not affect the validity of a licence granted under either of those regulations before the commencement of that Schedule.

952 Application of regulation 133

 Regulation 133, as in force immediately after the commencement of Schedule 1 to the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013*, applies, and is taken always to have applied, to the grant of licences on and after 1 January 2005.

Schedule 2—Amendments commencing 1 January 2014

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

1 At the end of Division 6A.1

Add:

102 Considerations in deciding whether someone is a fit and proper person to hold a permit

 (1) This regulation sets out matters a decision‑maker must consider in deciding whether a person is a fit and proper person to hold a permit of one of the following kinds:

 (a) an RAC industry permit under Division 6A.2;

 (b) a feedstock permit under Division 6A.3;

 (c) a fire protection industry permit under Division 6A.4.

Note: This affects what is information that is needed to make, or relevant to, such a decision, and so affects provisions about giving a decision‑maker such information, as well as affecting provisions about the decision‑maker being satisfied that the person is or is not a fit and proper person to hold the licence.

Decision relating to grant of the permit

 (2) If the decision relates to the grant of the permit, the matters are as follows:

 (a) the matters described in paragraphs 16(5)(aa) to (eb) of the Act;

 (b) any order made, under section 19B of the *Crimes Act 1914*, relating to:

 (i) the person and an offence described in paragraph 16(5)(a) or (b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; or

 (ii) if the person is a body corporate—an executive officer of the body corporate and an offence described in paragraph 16(5)(bb) or (bc) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*;

 (c) any suspension or cancellation of another permit of the same kind held:

 (i) by the person; or

 (ii) if the person is a body corporate—by an executive officer of the body corporate;

 (d) any contravention of a condition of another permit of the same kind held:

 (i) by the person; or

 (ii) if the person is a body corporate—by an executive officer of the body corporate.

Decision relating to cancellation or suspension of the permit

 (3) If the decision relates to the cancellation or suspension of the permit, the matters are as follows:

 (a) the matters described in paragraphs 20(2)(aa) to (g) of the Act;

 (b) any order made, under section 19B of the *Crimes Act 1914*, relating to:

 (i) the person and an offence described in paragraph 20(2)(a) or (b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; or

 (ii) if the person is a body corporate—an executive officer of the body corporate and an offence described in paragraph 20(2)(bb) or (bc) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*;

 (c) any earlier suspension of the permit;

 (d) any contravention of a condition of the permit;

 (e) any suspension or cancellation of another permit of the same kind held by the person;

 (f) any contravention of a condition of another permit of the same kind held by the person.

This regulation does not limit considerations

 (4) This regulation does not limit matters that the decision‑maker may consider.

2 Regulation 122

Repeal the regulation, substitute:

122 Requirement for grant of RAC industry permit

 A relevant authority must not grant an RAC industry permit to a person unless the authority is satisfied that:

 (a) granting the permit is not contrary to Australia’s international obligations, or the Commonwealth’s policies, relating to the use or disposal of scheduled substances; and

 (b) the person is a fit and proper person to hold the permit.

3 Regulation 200 (at the end of the definition of *Non‑QPS Exemption List*)

Add:

 ; and (j) for the year 2014—the document called *Exemption List for Non‑QPS Applications of Methyl Bromide in 2014*, published by the Department, as in force on 1 January 2014.

4 Subregulation 213(6) (at the end of the definition of *Non‑QPS Intermediate Supplier List*)

Add:

 ; and (j) for the year 2014—the document called *Intermediate Supplier List for Non‑QPS Applications of Methyl Bromide in 2014*, published by the Department, as in force on 1 January 2014.

5 Regulation 243

Repeal the regulation.

6 Regulation 314

Repeal the regulation, substitute:

314 Requirement for grant of fire protection industry permit

 The Fire Protection Industry (ODS & SGG) Board must not grant a fire protection industry permit to a person unless the Board is satisfied that:

 (a) granting the permit is not contrary to Australia’s international obligations, or the Commonwealth’s policies, relating to the use or disposal of scheduled substances; and

 (b) the person is a fit and proper person to hold the permit.

7 At the end of Division 1 of Part 10

Add:

953 Application of amendments affecting regulations 102, 122, 243 and 314

 (1) This regulation deals with the application of the following amendments made by Schedule 2 to the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013*:

 (a) the addition of regulation 102;

 (b) the repeal and substitution of regulations 122 and 314;

 (c) the repeal of regulation 243.

 (2) The amendments apply in relation to:

 (a) the grant of permits as a result of applications made after the commencement of that Schedule; and

 (b) the cancellation and suspension of permits after that commencement (whether the permits were granted before, on or after that commencement).

Schedule 3—Amendments commencing 1 March 2014

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

1 Subregulation 5(2)

After “retained”, insert “, on the licensee’s main business premises,”.

2 After Part 7

Insert:

Part 8—Enforcement

906 Definitions for this Part

 In this Part:

***appointed inspector*** means a person appointed as an inspector under section 49 of the Act.

***contravene a provision subject to an infringement notice*** under this Part means:

 (a) commit an offence against a provision mentioned in paragraph 65AA(1)(a) of the Act; or

 (b) contravene a civil penalty provision.

907 When an infringement notice may be given

 (1) If an appointed inspector has reasonable grounds to believe that a person has contravened a provision subject to an infringement notice under this Part, the appointed inspector may give to the person an infringement notice for the alleged contravention.

 (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

 (3) A single infringement notice must relate only to a single contravention of a single provision unless subregulation (4) applies.

 (4) An appointed inspector may give a person a single infringement notice relating to multiple contraventions of a single provision if:

 (a) the provision requires the person to do a thing within a particular period or before a particular time; and

 (b) the person fails or refuses to do that thing within that period or before that time; and

 (c) the failure or refusal occurs on more than 1 day; and

 (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

 (5) If a single provision can constitute both a civil penalty provision and an offence provision, the infringement notice must relate to the provision as an offence provision.

908 Matters to be included in an infringement notice

 (1) An infringement notice must:

 (a) be identified by a unique number; and

 (b) state the day on which it is given; and

 (c) state the name of the person to whom the notice is given; and

 (d) state the name and contact details of the person who gave the notice, and that the person is an appointed inspector for the purposes of issuing the infringement notice; and

 (e) give brief details of the alleged contravention, including:

 (i) the provision that was allegedly contravened; and

 (ii) the maximum penalty that a court could impose if the provision were contravened; and

 (iii) the time (if known) and day of, and the place of, the alleged contravention; and

 (f) state the amount that is payable under the notice; and

 (g) give an explanation of how payment of the amount is to be made; and

 (h) state that, if the person to whom the notice is givenpays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):

 (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or

 (ii) if the provision is an offence provision that can also constitute a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a civil penalty order will not be brought, in relation to the alleged contravention; or

 (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and

 (i) state that payment of the amount is not an admission of guilt or liability; and

 (j) state that the person may apply to the Secretary to have the period in which to pay the amount extended; and

 (k) state that the person may choose not to pay the amount and, if the person does so:

 (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

 (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or

 (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and

 (l) set out how the notice can be withdrawn; and

 (m) state that if the notice is withdrawn:

 (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

 (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or

 (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and

 (n) state that the person may make written representations to the Secretary seeking the withdrawal of the notice.

 (2) The amount to be stated in the notice for the purposes of paragraph (1)(f) for the alleged contravention of the provision by the person must be the lesser of:

 (a) one‑fifth of the maximum penalty that a court could impose on the person for that contravention; and

 (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.

909 Extension of time to pay amount

 (1) A person to whom an infringement notice has been given may apply to the Secretary for an extension of the period referred to in paragraph 908(1)(h).

 (2) If the application is made before the end of that period, the Secretary may, in writing, extend that period. The Secretary may do so before or after the end of that period.

 (3) If the Secretary extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 908(1)(h) is taken to be a reference to that period so extended.

 (4) If the Secretary does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 908(1)(h) is taken to be a reference to the period that ends on the later of the following days:

 (a) the day that is the last day of the period referred to in paragraph 908(1)(h);

 (b) the day that is 7 days after the day the person was given notice of the Secretary’s decision not to extend.

 (5) The Secretary may extend the period more than once under subregulation (2).

910 Withdrawal of an infringement notice

Representations seeking withdrawal of notice

 (1) A person to whom an infringement notice has been given may make written representations to the Secretary seeking the withdrawal of the notice.

Withdrawal of notice

 (2) The Secretary may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

 (3) When deciding whether or not to withdraw an infringement notice (the ***relevant infringement notice***), the Secretary:

 (a) must take into account any written representations seeking the withdrawal that were given by the person to the Secretary; and

 (b) may take into account the following:

 (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Part;

 (ii) the circumstances of the alleged contravention;

 (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this Part if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;

 (iv) any other matter the Secretary considers relevant.

Notice of withdrawal

 (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:

 (a) the person’s name and address; and

 (b) the day the infringement notice was given; and

 (c) the identifying number of the infringement notice; and

 (d) that the infringement notice is withdrawn; and

 (e) that:

 (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

 (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or

 (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

 (5) If:

 (a) the Secretary withdraws the infringement notice; and

 (b) the person has already paid the amount stated in the notice;

the Commonwealth must refund to the person an amount equal to the amount paid.

911 Effect of payment of amount

 (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice to the Commonwealth before the end of the period referred to in paragraph 908(1)(h):

 (a) any liability of the person for the alleged contravention is discharged; and

 (b) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and

 (c) if the provision is an offence provision and can also constitute a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a civil penalty order may not be brought, in relation to the alleged contravention; and

 (d) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and

 (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and

 (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.

 (2) Subregulation (1) does not apply if the notice has been withdrawn.

912 Effect of this Part

 This Part does not:

 (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

 (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:

 (i) the person does not comply with an infringement notice given to the person for the contravention; or

 (ii) an infringement notice is not given to the person for the contravention; or

 (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

 (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

 (d) limit a court’s discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.

913 Delegation of Secretary’s powers and functions under this Part

 (1) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Part to an SES employee or acting SES employee in the Department.

 (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

3 At the end of Division 1 of Part 10

Add:

954 Application of amendment of subregulation 5(2)

 The amendment of subregulation 5(2) made by Schedule 3 to the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013* applies in relation to records created before, on or after the commencement of the amendment.

955 Application of Part 8

 Part 8 applies in relation to contraventions of provisions subject to an infringement notice under that Part whether the contraventions occurred before, on or after the commencement of that Part.