

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Law Enforcement and Cyber Security

Customs Act 1901

Customs (Prohibited Exports) Amendment (Chemicals) Regulations 2018

The *Customs Act 1901* (the Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

Subsection 270(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters, which by the Act are required or permitted to be prescribed.

Section 112 of the Act provides, in part, that the Governor-General may, by regulation, prohibit the exportation of goods from Australia and the power may be exercised by prohibiting the exportation of goods absolutely or by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

Under regulation 4A of the *Customs (Prohibited Exports) Regulations 1958* (the Principal Regulations), the exportation from Australia of a chemical mentioned in Schedule 2, or a mixture or preparation of a chemical mentioned in Schedule 2, is prohibited unless, relevantly, a permission to export the chemical has been granted in writing by the Minister for Agriculture and Water Resources (the Minister), under the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*.

Schedule 2 to the Principal Regulations lists the goods, being certain chemicals, the exportation of which is prohibited unless certain permission is granted under regulation 4A.

The *Customs (Prohibited Exports) Amendment (Chemicals) Regulations 2018* (the Regulations) amend Schedule 2 to the Principal Regulations to add carbofuran and trichlorfon to the list of chemicals the exportation of which is prohibited unless permission is granted under regulation 4A.

The Regulations also make several consequential amendments to Schedule 2 of the Principal Regulations to list preparations containing particular combinations of chemicals in a new, separate part within the Schedule. This clearly distinguishes chemicals in their pure form from preparations containing particular combinations of chemicals.

Context and Background

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention) applies to banned or severely restricted chemicals and severely hazardous pesticides and provides a cooperative

framework for ensuring parties have information about substances to address risk and take informed decisions on chemical imports. Australia ratified the Convention on 20 May 2004.

Chemicals listed in Annex III of the Convention are subject to the Convention's Prior Informed Consent (PIC) procedure, which provides for information exchange between parties of their import and export requirements. The Convention does not require chemicals to be banned or phased out and does not alter domestic regulatory decisions on chemicals.

The Convention also requires the dissemination of national decisions made about the import and export of certain chemicals. Under the Convention, Australia is obliged to ensure exports from Australia comply with the import decisions of other states parties, six months after such decisions are conveyed.

In April-May 2017, the eighth Conference of the Parties to the Convention agreed by consensus to list four additional chemicals, including carbofuran and trichlorfon in Annex III of the Convention. Australia is obliged to ensure Australian exports comply with the import decisions of other parties by 12 June 2018 (as of six months after such decisions are conveyed by the Convention Secretariat, being those conveyed in PIC Circular XLVI (46) of 13 December 2017).

The minor treaty action for Australia to give effect to the listings of the four new chemicals in Annex III was endorsed by the Joint Standing Committee on Treaties on 26 March 2018.

These amendments to Schedule 2 of the Principal Regulations ensure Australia is meeting its obligations under the Convention regarding the listing of carbofuran and trichlorfon in the list of chemicals the exportation of which is prohibited without permission. Amendments to implement the listing of the remaining two industrial chemicals will be managed by the National Industrial Chemicals Notification and Assessment Scheme under the Department of Health.

The Regulations were developed in consultation with the Department of the Environment and Energy and the Department of Agriculture and Water Resources.

A regulatory impact statement (RIS) was not required (OBPR reference 23484).

Details of the *Customs (Prohibited Exports) Amendment (Chemicals) Regulations 2018*

Section 1 – Name

This section specifies the name of the Regulations as the *Customs (Prohibited Exports) Amendment (Chemicals) Regulations 2018*.

Section 2 – Commencement

This section provides that the Amendment Regulations commence the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section sets out that the Amendment Regulations are made under the *Customs Act 1901*.

Section 4 – Schedules

This section is a machinery clause that enables the Schedule to amend the Regulations. The Amendment Regulations contain one schedule.

Schedule 1 – Amendments

Customs (Prohibited Exports) Regulations 1958

Schedule 2 (note)

This item repeals the current note to Schedule 2 to the *Customs (Prohibited Exports) Regulations 1958* (the Principal Regulations) and substitutes a new note.

This amendment more clearly refers the reader to regulation 4A of the Principal Regulations as the provision that prohibits the exportation from Australia of a chemical mentioned in Schedule 2, or a mixture or preparation containing a chemical mentioned in Schedule 2 unless, relevantly, a permission to export the chemical has been granted in writing by the Minister or an authorised officer under this regulation, and the permission is produced to a Collector.

This item also inserts a new heading to the table in Schedule 2, as a consequence of the insertion below of new Part 2 to that table by item 6.

Item 2 – Schedule 2 (table item 3A)

This item repeals table item 3A of Schedule 2 to the Principal Regulations.

This is a consequential amendment to the amendment made by item 6 below, which lists mixtures or preparations containing certain combinations of chemicals in proposed new Part 2 of Schedule 2.

Item 3 – Schedule 2 (table item 4A)

This item repeals table item 4A in Schedule 2 to the Principal Regulations, and substitutes a new item 4A.

Table item 4A currently covers carbofuran in powder form, when made up of a certain percentage of carbofuran and other chemicals. New table item 4A covers carbofuran in its pure form only. Carbofuran in its powder form is covered by new Part 2 of Schedule 2 to the Principal Regulations (which deals with mixtures or preparations containing particular combinations of chemicals, inserted by item 6 below).

This item also specifies 1563-66-2 as the CAS registry number for carbofuran in its pure form. The CAS registry numbers are unique numerical identifiers assigned by the Chemical Abstracts Service (a division of the American Chemical Society) to every chemical substance described in open scientific literature (which currently includes all substances described from 1957 to the present).

Item 4 – Schedule 2 (table item 68A)

This item repeals table item 68A of Schedule 2 to the Principal Regulations.

Table item 68A covers thiram in dustable power made up of 7% or more of benomyl, 10% or more of carbofuran, and 15% or more of thiram.

This is a consequential amendment to the amendment made by item 6 below, which lists mixtures or preparations containing chemicals in proposed new Part 2 of Schedule 2 to the Principal Regulations.

Item 5 – Schedule 2 (at the end of the table)

This item inserts trichlorfon as new table item number 72 at the end of Part 1 of Schedule 2 to the Principal Regulations. This item also specifies 52-68-6 as the CAS registry number for that chemical.

Item 6 – At the end of Schedule 2 (before the note)

This item adds a new Part 2 to Schedule 2 of the Principal Regulations.

This item covers all mixtures and preparations containing chemicals that are currently covered by table items 3A, 4A and 68A of Schedule 2 to the Principal Regulations, specifically, benomyl, carbofuran and thiram in dustable power form made up of 7% or more of benomyl, 10% or more of carbofuran, and 15% or more of thiram.

Mixtures or preparations containing chemicals in a particular combination are listed in a separate Part of Schedule 2 of the Principal Regulations to chemicals in their pure form. This amendment clarifies the operation of the Schedule, especially for exporters of these chemicals.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Exports) Amendment (Chemicals) Regulations 2018

These Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

These Regulations amend Schedule 2 to the *Customs (Prohibited Exports) Regulations 1958* (the Principal Regulations) to add two new chemicals, carbofuran and trichlorfon, to the list of chemicals the exportation of which is prohibited unless permission is granted under regulation 4A.

The Regulations also made several consequential amendments to Schedule 2 of the Principal Regulations to list preparations containing particular combinations of chemicals in a new, separate part within the Schedule. This clearly distinguishes chemicals in their pure form from preparations containing particular combinations of chemicals.

These amendments ensure Australia is meeting its obligations under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention).

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

Hon Angus Taylor MP

Minister for Law Enforcement and Cyber Security