

EXPLANATORY STATEMENT

Issued by the authority of the delegate for the Minister for the Environment and Water

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota–2026-2027) Determination 2025

Legislative Authority

Subregulation 51(4) of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations) provides that the Minister may, by legislative instrument, determine requirements for a person to be entitled to an amount of non-grandfathered quota for each of the calendar years in the period, and the amount, or the method for working out the amount, of non-grandfathered quota to which a person is entitled for each of the years. The period is the hydrofluorocarbon (HFC) quota allocation period.

Paragraph 51(5)(a) of the OPSGGM Regulations provides that in making a determination under subregulation 51(4), the Minister must have regard to Australia's international obligations, and the policies of the Commonwealth Government, in relation to the manufacture, importation, or consumption of scheduled substances. The Minister had regard to these matters in making the *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota–2026-2027) Determination 2025* (the Determination). The method for allocation of non-grandfathered quota meets the Australian Government competition requirements.

Under section 67A of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act), the Minister may delegate any or all of their powers and functions under that Act or the OPSGGM Regulations to an SES employee in the Department of Climate Change, Energy, the Environment and Water (the Department). On 30 July 2024, the Minister for the Environment and Water signed an instrument of delegation under section 67A of the OPSGGM Act, nominating SES Band 1 and above in the Department as appropriate delegates to make an instrument under subregulation 51(4) of the OPSGGM Regulations.

Purpose

The purpose of the Determination is to specify:

- (a) who is entitled to non-grandfathered quota for the fifth HFC quota allocation period (2026 and 2027);
- (b) the amount of non-grandfathered quota to be allocated to the Commonwealth; and
- (c) the method for working out the amount of non-grandfathered quota to be allocated to eligible applicants, and the amount each eligible applicant is entitled to.

Background

The OPSGGM Act and the OPSGGM Regulations implement Australia's international obligations under the *Vienna Convention for the Protection of the Ozone Layer*, the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and the *United Nations Framework Convention on Climate Change*. The OPSGGM Act and OPSGGM Regulations do this by controlling the import, export, manufacture and use of substances covered by the OPSGGM Act. The import and manufacture of certain products containing, or

designed to contain, some of these controlled substances is also prohibited under the OPSGGM Act unless the correct licence or exemption is held.

HFCs are a type of synthetic greenhouse gas, mostly used in refrigeration and air conditioning equipment. HFCs generally have a high global warming potential, meaning they have a greater ability to trap heat in the atmosphere compared to a similar mass of carbon dioxide.

Part IVA of the OPSGGM Act and Part 4A of the OPSGGM Regulations provide for the phase-down of HFCs through a reducing import quota system over 18 years. From 1 January 2018, a person must have been allocated a HFC quota to be able to import bulk HFC gas into Australia.

HFC quota for a 2 year quota allocation period is divided between a ‘grandfathered’ percentage (95% for 2026 and 2027) and a ‘non-grandfathered’ percentage (5% for 2026 and 2027). The grandfathered percentage can only be allocated to established market participants. The non-grandfathered percentage is not subject to the same limitation.

Subregulation 51(1) of the OPSGGM Regulations sets out the criteria that a person must satisfy to be entitled to non-grandfathered quota. This includes meeting the requirements of a ministerial determination made under subregulation 51(4) for the relevant quota allocation period.

The non-grandfathered HFC import quota will be divided equally among all applicants after deducting 130 CO₂e tonnes for the Commonwealth, as represented by the Department. Twenty-eight (28) applications were received for the 2024-2025 quota allocation period and twenty-two (22) applications were received for the 2022-2023 quota allocation period.

Consultation

Industry stakeholders (including HFC importers and industry peak bodies) were advised via email in June 2025 that the Department intended to use the same method of allocating non-grandfathered quota in the fifth HFC quota allocation period as was applied in the fourth period. Current quota holders were requested to confirm if they wish to continue participating in the HFC quota allocation, and industry peak bodies were advised to circulate the information among their networks. The email to peak bodies requested potential applicants that currently do not hold any quota to contact the Department by 20 June 2025, and advised that the Department planned to review the overall approach to allocating non-grandfathered quota in coming years.

During the two-week consultation period, 13 responses were received. These were mainly from current quota holders regarding their intention to retain their quota allocation, or companies interested in applying for the fifth HFC quota allocation period. One entity raised concerns about the domestic price of HFCs, which will be considered in a future strategic review of ongoing use of non-grandfathered quota. This future review will involve more intensive consultation.

No contentious issues with the allocation approach were raised during the present consultation or consultations for the previous determinations made in 2023, 2021, 2019 and 2017. Businesses can also manage quota allocations through commercial arrangements, for instance by purchasing quota from other licence holders.

Details/Operation

Details of the Determination are set out in Attachment A.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination is exempt from sunseting under section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* as its primary purpose is to give effect to an international obligation of Australia – the obligation under the Kigali Amendment to the Montreal Protocol to phase-down the import of HFCs from 1 January 2018.

The Determination is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota–2026-2027) Determination 2025

Section 1 – Name

This section provides that the title of the instrument is the *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota–2026-2027) Determination 2025* (the Determination).

Section 2 – Commencement

This section provides that the Determination commences on the day after it is registered.

Section 3 – Authority

This section provides that the Determination is made under subregulation 51(4) of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the OPSGGM Regulations).

Section 4 – Definitions

This section defines terms used in the Determination, including by reference to the definitions of those terms in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the OPSGGM Act) and the OPSGGM Regulations.

Key terms that are defined in this section are *eligible applicant* and *eligible applicant entitlement amount*.

Section 5 – Simplified outline of this instrument

This section provides that the non-grandfathered HFC import quota will be divided equally among all eligible applicants after deducting 130 CO₂e tonnes for the Commonwealth, as represented by the Department of Climate Change, Energy, the Environment and Water (the Department).

Section 6 – Entitlement

Section 6 prescribes requirements for the purposes of paragraph 51(4)(a) of the OPSGGM Regulations. Paragraph 51(4)(a) of the OPSGGM Regulations provides that the Minister may determine the requirements for a person to be entitled to an amount of non-grandfathered quota for each of the calendar years in an HFC quota allocation period.

Under paragraph 6(a), a person is entitled to non-grandfathered quota for the 2026-2027 HFC quota allocation period if that person is an eligible applicant and makes an application for non-grandfathered quota for that quota allocation period. *Eligible applicant* is defined in section 5 of the Determination as a person that satisfies the criteria set out in subsection 51(1) of the OPSGGM Regulations, other than the Commonwealth.

In addition, under paragraph 6(b), the Commonwealth, as represented by the Department, is entitled to an amount of quota for each of the calendar years in the 2026-2027 HFC quota allocation period. The intention is that the Department will be able to transfer its allocated non-grandfathered quota to users in certain limited circumstances. It is intended that such users will

be occasional or one-off importers, who do not normally hold HFC quota and who require, for research or test purposes, a small amount of a type and/or purity of HFC that is difficult or impossible to purchase from a supplier within Australia.

Section 7 – Amount

Paragraph 51(4)(b) of the OPSGGM Regulations provides that the Minister may determine the amount, or method for working out the amount, of non-grandfathered quota to which a person is entitled for each of the calendar years in an HFC quota allocation period.

Section 7(a) prescribes, for the purposes of paragraph 51(4)(b) of the OPSGGM Regulations, that the amount of non-grandfathered quota to which an eligible applicant is entitled is the eligible applicant entitlement amount. The *eligible applicant entitlement amount* is defined in section 5 of the Determination as the non-grandfathered HFC industry limit minus the allocation reserved for the Commonwealth, divided equally between all the eligible applicants that have made an application for non-grandfathered quota.

Section 7(b) prescribes, for the purposes of paragraph 51(4)(b) of the OPSGGM Regulations, the amount of non-grandfathered quota to which the Commonwealth, as represented by the Department, is entitled. That amount is 130 CO₂e tonnes.

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 (Non-grandfathered Quota–2026-2027) Determination 2025

This Determination is 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

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* implement the Australian Government’s commitment under the Kigali Amendment to the *Montreal Protocol on Substances that Deplete the Ozone Layer* to phase-down the import of hydrofluorocarbons (HFCs) from 1 January 2018. From 1 January 2018, a person must have been allocated a HFC quota to be able to import bulk HFCs into Australia.

The *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota–2026-2027) Determination 2025* (the Determination) prescribes requirements for a person to be entitled to an amount of non-grandfathered HFC quota, and methods for working out the amount of non-grandfathered quota to which a person is entitled for each of the years in the fifth HFC quota allocation period (2026 and 2027).

Human rights implications

The Determination does not engage with any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.

Bronwyn Battison
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