

# **Agricultural and Veterinary Chemicals (Administration) Amendment Regulations 2004 (No. 1) 2004 No. 242**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 2004 No. 242**

Minute No. \_\_\_\_\_ of 2004 - Parliamentary Secretary to the Minister for Agriculture Fisheries and Forestry

Subject - *Agricultural and Veterinary Chemicals (Administration) Act 1992*

*Agricultural and Veterinary Chemicals (Administration) Amendment Regulations 2004 (No. 1)*

Section 73 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (the Act) provides that the Governor-General may make regulations prescribing all 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.

On 20 May 2004, the Australian Government deposited instruments of ratification with the United Nations for:

- the Stockholm Convention on Persistent Organic Pollutants (the Stockholm Convention); and
- the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention).

Both Conventions will enter into force for Australia on 18 August 2004.

Sections 69CA, 69CB and 69C of the Act allow certain matters to be prescribed by regulation to enable Australia to meet its obligations under international agreements. The matters that may be prescribed by regulation for the purposes of the Act include:

- (1) international agreements to which Australia is a party;
- (2) information to be provided by a person who imports, manufactures, uses, otherwise deals with and/or exports a chemical:
  - a. subject to:
    - (i) an international agreement to which Australia is a party; or
    - (ii) an international agreement that has not entered into force for Australia; or
  - b. under consideration for inclusion in such an agreement;
- (3) chemicals covered by such international agreements;
- (4) the period of time within which the aforementioned information must be provided;
- (5) prohibition on:

- a. the import of the chemical into Australia;
- b. the manufacture or use of the chemical in Australia;
- c. any other dealing with the chemical in Australia; and
- d. the export of the chemical from Australia.

The Regulations provide a generic framework to implement controls on information requirements, importation, manufacture, use, other dealings and exportation of chemicals subject to international agreements. The Regulations, as a result, implement the necessary controls as they relate to specified active constituents, or chemical products containing the active constituents, to enable Australia to meet its obligations as a Party to the two Conventions.

Each Convention requires specific, but differing controls, that are identified for each active constituent listed in Schedule 1 to the Regulations. The information provisions and the control of activities provisions allow Australia to comply with the objectives of the Conventions by enabling the Department of Agriculture, Fisheries and Forestry to understand how the relevant chemicals are used within Australia, by whom, and their trade into and out of Australia.

For the Stockholm Convention, the Regulations implement obligations by way of information provisions and controls on importation, manufacture, use and exportation. For the Rotterdam Convention, the Regulations implement exportation obligations on relevant chemicals. No additional importation controls are necessary under the Rotterdam Convention as importation of these chemicals is already regulated under the National Registration Scheme for Agricultural and Veterinary Chemicals.

Details of the Regulations are in the [Attachment](#).

The Regulations commence on 18 August 2004, the date the Rotterdam Convention and the Stockholm Convention enter into force for Australia.

Authority:     *Section 73 of the Agricultural and Veterinary Chemicals (Administration) Act 1992*

## **Attachment**

### **DETAILS OF THE *AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) AMENDMENT REGULATIONS 2004 (NO. 1)***

#### **Regulation 1**

Regulation 1 provides for the Regulations to be named the Agricultural and Veterinary Chemicals (*Administration*) Amendment Regulations 2004 (No. 1).

#### **Regulation 2**

Regulation 2 provides that the Regulations commence on 18 August 2004, which is the date that the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) and the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) enter into force for Australia.

#### **Regulation 3**

Regulation 3 provides that Schedule 1 amends the Agricultural and Veterinary Chemicals (Administration) Regulations (the Principal Regulations).

### **SCHEDULE 1 - Amendments**

#### **Item [1] Before regulation 1**

A new Part 1 heading "Preliminary" is inserted into the Principal Regulations in line with other amendments in these Regulations that separate the Principal Regulations into five different parts.

#### **Item [2] Regulation 1**

Item 2 renumbers regulation 1 as regulation 1.1 and amends the name of the Principal Regulations to be the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* in line with current drafting practice.

#### **Item [3] Regulation 2**

Regulation 2 is renumbered as regulation 1.2 as a consequential change to Item 2.

#### **Item [4] Regulation 3**

Item 3 substitutes regulation 3 of the Principal Regulations with new regulations 1.3, 1.4 and 1.5 and a new Part 2 and Part 3.

#### **Regulation 1.3 Interpretation**

Additional definitions are provided to define terms that are used in Parts 2-5 of the Regulations that are not covered in either the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (the Act) or the *Agricultural and Veterinary Chemicals Code Act 1994*. The existing definitions in the Principal Regulations are amended, including the following Significant terms:

(a) ***controlled chemical*** - this refers to an active constituent or a chemical product listed in Schedule 1 or to a chemical product containing an active constituent listed in Schedule 1 that is controlled by Part 3 of the Regulations.

(b) ***import decision*** - this refers to a decision made by a Party to the Rotterdam Convention under Article 10 indicating whether the country consents to the import of the listed chemical. The decision is given in response to the listing of a chemical in Annex III of the Convention and may be 'no consent' where no import is allowed; 'consent' where import is allowed; or 'consent with conditions' where the import is allowed if the specified conditions are met. This decision allows the authorised officer to determine whether exports to Parties are permitted and any conditions pertaining to the export.

(c) ***prescribed chemical*** - this is defined to mean an active constituent or chemical product, or a chemical product containing the active constituent that has been prescribed by the Regulations.

Subregulation 1.3(2) provides that unless a contrary meaning is provided, a term used in the Regulations has the same meaning as given in an identified international agreement or arrangement.

Subregulation 1.3(3) provides that a reference in the Regulations to an active constituent is a reference: to an active constituent for either a proposed or an existing chemical product consistent with the meaning used in the Act.

#### **Regulation 1.4 Meaning of authorised officer**

The regulation provides that an authorised officer is an officer of the Department of Agriculture, Fisheries and Forestry who has been authorised by the Secretary for the purposes of the relevant provision of the Regulations. An authorised officer is able to grant permissions under Part 3 of the Regulations.

#### **Regulation 1.5 Meaning of generic information about a person**

Regulation 1.5 identifies the information that must be provided by a person in relation to the import, manufacture, use, other dealings with, or export of chemicals that are subject to the Regulations. The regulation requires the person to provide to the Department of Agriculture, Fisheries and Forestry any changes to the provided information within 30 days.

### **PART 2 PROVIDING INFORMATION ABOUT CERTAIN ACTIVE CONSTITUENTS AND CHEMICAL PRODUCTS**

Section 69CA of the Act allows for information to be sought on prescribed active constituents or chemical products on importation, manufacture or use, other dealings or exportation for any international agreement or arrangement to which Australia is a party. It requires that the relevant international agreement or arrangement and the relevant active constituent or chemical product be prescribed.

Section 69CB of the Act allows for similar information to be sought for international agreements or arrangements to which Australia is not yet a Party, or for active constituents or chemical products that are the subject of consideration by such an agreement or an international organisation. It requires that the active constituent or chemical products be prescribed.

#### **Regulation 2.05 Prescribed international agreements (Act, s69CA (1))**

The regulation identifies the Rotterdam and Stockholm Conventions as prescribed international agreements for the provision of information under subsection 69CA (1) of the Act.

#### **Regulation 2.10 Prescribed chemicals (Act, s69CA (2))**

The regulation provides that an active constituent included in Schedule 1 is a prescribed active constituent for the purposes of subsection 69CA(2) of the Act if so listed and described in Schedule 1. It also notes that each item in Schedule 1 identifies the relevant international agreement or arrangement as required under subsection 69CA(3) of the Act.

#### **Regulation 2.15 Prescribed chemicals (Act, s69CB (1))**

The regulation provides that an active constituent included as an item in Schedule 1 is a prescribed active constituent for the purposes of subsection 69CB(2) of the Act if so listed and described in Schedule 1.

#### **Regulation 2.20 Prescribed information - import (Act, ss69CA (2)(a) and 69CB (2)(a))**

The regulation prescribes the information to be provided on the importation of a prescribed chemical. The information sought is the generic information on the importer (specified in regulation 1.5), the technical and common names of the chemical, the name of the country/ies from which the chemical is to be exported, the intended use in Australia, the total quantity imported in any calendar year (or part) and any other relevant information identified in Schedule 1.

#### **Regulation 2.25 Prescribed information - manufacture (Act, ss69CA (2)(b) and 69CB (2)(b))**

The regulation prescribes the information to be provided on the manufacture of a prescribed chemical. The information sought is the generic information on the manufacturer (specified in regulation 1.5), the technical and common names of the chemical, the place of manufacture, the intended use in Australia, the total quantity manufactured in any calendar year (or part) and any other relevant information identified in Schedule 1.

#### **Regulation 2.30 Prescribed information - use (Act, ss69CA (2)(b) and 69CB (2)(b))**

The regulation is reserved to enable information to be prescribed in relation to the use of prescribed chemicals in the future for the purposes of subsections 69CA (2)(b) and 69CB (2)(b) as required.

#### **Regulation 2.35 Prescribed information - other dealings (Act, ss69CA (2)(c) and 69CB (2)(c))**

The regulation is reserved to enable information to be prescribed in relation to other dealings with prescribed chemicals in the future for the purpose of subsections 69CA (2)(c) and 69CB (2)(c) as required.

#### **Regulation 2.40 Prescribed information - export (Act, ss69CA (2)(d) and 69CB (2)(d))**

The regulation prescribes the information to be provided on the export of a prescribed chemical. The information prescribed is the generic information on the exporter (specified in regulation 1.5), the technical and common names of the chemical, the name of the country/ies to which

the chemical is to be exported, the total quantity exported in any calendar year (or part) and any other relevant information identified in Schedule 1.

### **Regulation 2.45 Prescribed period for giving prescribed information (Act, ss69CA (5) and 69CB 5))**

Subsections 69CA (5) and 69CB (5) of the Act provide that information provided to the Department of Agriculture, Fisheries and Forestry for the purposes of sections 69CA or 69CB as the case may be, must be provided within the period prescribed in the regulations.

Regulation 2.45 prescribes the period within which information must be provided for the purposes of subsection 69CA (5) and 69CB (5) of the Act.

Subregulation 2.45 (1) provides that the prescribed period commences on the date that a notice is published in the *Gazette* requiring that the prescribed information be provided and ends 30 days after the notice is published. This notice period applies to the provision of information prescribed in respect of either an active constituent that is already the subject of an international agreement or arrangement to which Australia is a party; or an active constituent that is under consideration for inclusion in such an agreement; or which is included in an agreement to which Australia is not a party. The information sought relates to any calendar year (or part) as specified in the *Gazette* notice.

Subregulation 2.45 (2) prescribes the period within which information must be provided for the purposes of subsection 69CA (5) and 69CB (5) of the Act for active constituents that are already identified in Schedule 1 as prescribed chemicals. The subregulation provides that the prescribed information relating to annual imports, manufacture and exports together with generic information on the importer, exporter or manufacturer must be provided by 28 February of the next calendar year.

## **PART 3 PROHIBITION ON IMPORT, MANUFACTURE ETC OF CERTAIN ACTIVE CONSTITUENTS AND CHEMICAL PRODUCTS**

Section 69C of the Act provides that when an active constituent is the subject of an international agreement or arrangement, certain activities - importation, manufacture, use, other dealings, or export - may be prohibited either absolutely or subject to conditions or restrictions.

### **Division 3.1 GENERAL**

#### **Regulation 3.05 Prescribed international agreements (Act, s69C)**

The regulation prescribes both the Rotterdam and Stockholm Conventions for the purposes of section 69C of the Act.

#### **Regulation 3.10 Effect of grant of permissions or multiple permits**

The regulation provides that a permission or multiple permit granted under the Regulations will not excuse compliance with any other legislative requirements.

#### **Regulation 3.15 Notice to be given if additional information required**

The regulation requires additional information to be given by an applicant (as defined) if requested in writing by an authorised officer or the Minister. An authorised officer or the Minister may seek this information where necessary to allow a decision to be made on the application made by the applicant. The regulation stipulates that the additional information is to be provided

within 28 days of receipt of the written notice and that the application is taken to have been withdrawn if not provided within this time period. The Minister or authorised officer may extend the time period, but must do so in writing.

### **Regulation 3.20 Matters that may be considered when making decision**

The regulation outlines the matters that an authorised officer must take into account in making a decision about an application for permission or multiple permit to import, manufacture, use, export or otherwise deal with a chemical subject to the Regulations. These matters include whether the applicant has previously failed to comply with the Act; the Regulations, other agricultural and veterinary chemicals legislation; or the *Industrial Chemicals (Notification and Assessment) Act 1989* under which other chemicals relating to the Rotterdam and Stockholm Conventions are controlled; and regulations made under any of these Acts.

## **Division 3.2 IMPORT**

### **Subdivision 3.2.1 Absolute prohibition**

#### **Regulation 3. 45 Prohibited importation**

The regulation provides that the import of a controlled chemical is prohibited in all cases if the relevant item in Schedule 1 so indicates. Subregulation 3.45(2) provides that this absolute prohibition is prescribed for the purposes of subsection 69C(1) of the Act.

### **Subdivision 3.2.2 Prohibition subject to conditions**

#### **Regulation 3.50 Chemicals to which this Subdivision applies**

The regulation provides that Subdivision 3.2.2 applies to a controlled chemical if the relevant item in Schedule 1 states that its importation is prohibited without written permission. To allow for ease of reference in the Subdivision of the Regulations, the regulation identifies such a controlled chemical as an **import-prohibited chemical**.

#### **Regulation 3.55 Prohibition**

The regulation provides that the import of an import-prohibited chemical is prohibited without written permission from an authorised officer or the Minister. The permission must be provided to a Collector (at the Australian border). The regulation also provides that any condition or restriction given in Schedule 1 must be satisfied. The regulation allows Australia to fulfil its obligations under Article 3 of the Stockholm Convention.

A note indicates that a permission under regulation 3.55 must be produced to a Collector for the purposes of regulation 51 of the *Customs (Prohibited Imports) Regulations 1956*. A second note indicates that a multiple entry import permit is a permission for the purposes of the regulation.

Subregulation 3.55(2) prescribes the conditions or restrictions relating to the import. A note indicates that a penalty is applicable for import in contravention of a prescribed condition or restriction.

Subregulation 3.55(3) provides that permission to import an import-prohibited chemical granted under Division 3.2 is required in addition to any permission granted by the Australian Pesticides and Veterinary Medicines Authority (APVMA) under subsection 69B of the Act, or any other legislation. In some cases, two or more permissions may be required prior to import depending on other legislation relating to imports.

### **Regulation 3.60 Applications for permission to import import-prohibited chemicals**

The regulation sets out the information that must be provided in an application for permission to import an import-prohibited chemical.

Subregulation 3.60(2) requires an applicant to lodge an application on the approved form setting out the generic information about the applicant, the name of the active constituent or product, the quantity to be imported, the name of the exporting country and the intended use in Australia. An applicant may be required to submit additional information under regulation 3.15.

A note indicates that an authorised officer must give his/her decision in writing to the applicant under regulation 3.505.

### **Regulation 3.65 When permission may be granted**

The regulation provides that an authorised officer must be satisfied that:

- (a) in the case of chemicals subject to the Stockholm Convention, the importation of an import-prohibited chemical meets the conditions of environmentally sound disposal as set out in Article 6 under that Convention; or
- (b) the import of any other chemical is permitted under the relevant Convention.

If these conditions are not met, an authorised officer must not grant permission to import the import-prohibited chemical.

Subregulation 3.65(3) makes it clear that even though permission may have been granted by the APVMA, an authorised officer may refuse to grant a permission under this Division of the Regulations.

## **Division 3.3 MANUFACTURE**

### **Subdivision 3.3.1 Absolute prohibition**

#### **Regulation 3.100 Prohibited manufacture**

The regulation provides that the manufacture of a controlled chemical is prohibited in all cases if the relevant item in Schedule 1 so indicates. Subregulation 3.100(2) provides that this absolute prohibition is prescribed for the purposes of subsection 69C(1) of the Act.

### **Subdivision 3.3.2 Prohibition subject to conditions**

#### **Regulation 3.105 Chemicals to which this Subdivision applies**

The regulation provides that Subdivision 3.3.2 applies to a controlled chemical if the relevant item in Schedule 1 states that its manufacture is prohibited without written permission. To allow for ease of reference in the Subdivision, the regulation identifies such a controlled chemical as a manufacture-prohibited chemical.

#### **Regulation 3.110 Prohibition**

The regulation provides that the manufacture of a manufacture-prohibited chemical is prohibited without written permission from an authorised officer or the Minister. The regulation prescribes the conditions and restrictions for a manufacture-prohibited chemical that must be fulfilled.



The regulation indicates that such a permission must be produced to an authorised officer or to an officer of another Commonwealth agency, or a State or Territory employee authorised in writing by the Secretary.

A note indicates that a penalty of 300 penalty units applies for contravening a prescribed condition or restriction (see subsection 69C(5) of the Act). (One penalty unit is \$110 - see section 4AA of the *Crimes Act 1914 (Cth)*.)

Subregulation 3.110(3) makes it clear that a permission granted under this regulation is required despite approval granted under any other legislation (such as from the APVMA).

### **Regulation 3.115 Applications for permission to manufacture manufacture-prohibited chemicals**

The regulation sets out the information to be provided by an applicant in making an application for permission to manufacture a manufacture-prohibited chemical.

Subregulation 3.115(2) requires an applicant to lodge an application on the approved form providing generic information on the applicant, the name of the active constituent or product and the quantity to be manufactured. An applicant may be required to submit additional information under regulation 3.15 as noted in the regulation.

A second note indicates that an authorised officer must give his/her decision in writing to the applicant under regulation 3.505.

### **Regulation 3.120 When permission may be granted**

Subregulation 3.120(1) provides that in circumstances where the relevant item in Schedule 1 indicates that manufacture is prohibited except with permission under subregulation 3.120(1), an authorised officer may grant an application for permission to manufacture if satisfied that Australia has in effect a production-specific exemption under the Stockholm Convention.

Under paragraph 9 of Article 10 of the Rotterdam Convention, if Australia prohibits the import of a chemical or imposes conditions on the import of a chemical, Australia is required to prohibit the manufacture of that chemical for domestic use or make its manufacture subject to the same conditions. Subregulation 3.120(2) provides that in circumstances where the relevant item in Schedule 1 indicates that manufacture is prohibited except with permission under this subregulation, an authorised officer may grant an application for permission to manufacture if satisfied the chemical is to be manufactured for the purposes of export only and not for use in Australia.

In circumstances where neither subregulation 3.120(1) or (2) applies, subregulation 3.120(3) provides that an authorised officer may grant an application for permission to manufacture if satisfied that the chemical is to be manufactured for a use or purpose permitted under the relevant Convention.

If these conditions are not met, an authorised officer must not grant the application.

## **Division 3.4 USE**

### **Regulation 3.145 Absolute prohibition**

The regulation provides that the use of a controlled chemical is prohibited in all cases if the relevant item in Schedule 1 so indicates. Subregulation 3.145(2) provides that this absolute prohibition is prescribed for the purposes of subsection 69C(1) of the Act.

### **Regulation 3.150 Prohibition**

Subregulation 3.150(1) provides that use of a controlled chemical is prohibited where the relevant item in Schedule 1 identifies that the applicable international agreement is the Stockholm Convention unless paragraphs 3.150 (2) (a) to (d) are complied with.

Subregulation (2) sets out the limited circumstances when such a controlled chemical may be used:

- (a) the chemical must be an approved active constituent or registered chemical product for the purposes of the National Registration Scheme for Agricultural and Veterinary Chemicals; and
- (b) the use must be in line with instructions of use approved by the APVMA; in line with a use-specific exemption registered by Australia under Article 4 of the Stockholm Convention; and permitted under State/Territory laws.

## **Division 3.5 DEALING WITH CHEMICALS**

### **Subdivision 3.5.1 Absolute prohibition**

#### **Regulation 3.175 Prohibited dealing**

The regulation provides that any dealing with a controlled chemical is prohibited in all cases if the relevant item in Schedule 1 so indicates, (other than importation; manufacture, use or exportation). Subregulation 3.172(2) provides that this absolute prohibition is prescribed for the purposes of subsection 69C(1) of the Act.

### **Subdivision 3.5.2 Prohibition subject to conditions**

Regulation 3.180 Chemicals to which this Subdivision applies

The regulation provides that Subdivision 3.5.2 applies to a controlled chemical if the relevant item in Schedule 1 states that its dealing with is prohibited without written permission. To allow for ease of reference in the Subdivision of the Regulations, the regulation identifies such a controlled chemical as a **dealing-prohibited chemical**.

#### **Regulation 3.185 Prohibition**

Subregulation 3.185(1) provides that any dealing of a dealing-prohibited chemical is prohibited unless an authorised officer or the Minister has given written permission for a person to deal with that chemical in the relevant manner. This subregulation does not apply to the importation, manufacture, use or exportation of dealing-prohibited chemicals.

Subregulation 3.185(2) prescribes, for the purposes of subsection 69C(1) of the Act, the conditions and restrictions that apply to a dealing-prohibited chemical. Those conditions and restrictions are:

- (a) a person must only deal with a dealing-prohibited chemical if they have the written permission of an authorised officer to do so and must comply with any conditions of the permission;

(b) the permission must be produced to an authorised officer or to an officer of another Commonwealth agency, or a State or Territory employee authorised in writing by the Secretary; and

(c) any conditions or restrictions that are specified in the relevant item in Schedule 1 for that chemical.

A note indicates that a penalty of 300 penalty units applies for contravening a prescribed condition or restriction (see subsection 69C(1)(5) of the Act). (One penalty unit is \$110 - see section 4AA of the *Crimes Act 1914 (Cth)*.)

Subregulation 3.185(3) provides that the requirements in regulation 3.185 must be met even though a person may have obtained other relevant approvals under other legislation (such as from the APVMA).

### **Regulation 3.190 Application for permission to deal with dealing-prohibited chemicals**

Under subregulation 3.190(1) a person may apply to the Department of Agriculture, Fisheries and Forestry for a permission to deal with a dealing-prohibited chemical.

Subregulation 3.190(2) sets out the information that a person must include in an application for permission to deal with a dealing-prohibited chemical including generic information about the applicant, the technical name of the chemical and any other information that the applicant considers supports the applicant's application.

An applicant may be required to submit additional information under regulation 3.15 as noted in the regulation. A second note indicates that an authorised officer must give his/her decision in writing to the applicant under regulation 3.505.

### **Regulation 3.195 When permission may be granted**

The regulation provides that an authorised officer may grant permission to a person to deal with a dealing-prohibited chemical if the officer is satisfied that the proposed dealing is in accordance with Australia's obligations under the relevant international agreement or arrangement. There are currently no prohibitions on dealings for the purposes of the Stockholm Convention or the Rotterdam Convention.

The regulation provides that if an authorised officer is not satisfied as to the matters in subregulation 3.195(1), then an authorised officer must refuse to grant the application.

## **Division 3.6 EXPORT**

### **Subdivision 3.6.1 Absolute prohibition**

#### **Regulation 3.200 Prohibited export**

The regulation provides that export of a controlled chemical is prohibited in all cases if the relevant item in Schedule 1 so indicates. Subregulation 3.200(2) provides that this absolute prohibition is prescribed for the purposes of subsection 69C(1) of the Act.

### **Subdivision 3.6.2 Prohibition subject to conditions**

#### **Regulation 3.205 Chemicals to which this Subdivision applies**

The regulation provides that Subdivision 3.6 applies to a controlled chemical if the relevant item in Schedule 1 states that its export is prohibited without written permission. To allow for ease of reference in the Subdivision of the Regulations, the regulation identifies such a controlled chemical as an export-prohibited chemical.

### **Regulation 3.210 Prohibition**

The regulation provides that the export of an export-prohibited chemical is prohibited without written permission from an authorised officer or the Minister. The permission must be provided to a Collector (at the Australian border). The regulation allows for the permission to specify conditions or restrictions that must be satisfied.

A note indicates that such a permission must be provided to a Collector to comply with regulation 4A of the *Customs (Prohibited Exports) Regulations 1958*. A second note indicates that a multiple exit export permit granted under Division 3.7 of these Regulations is a permission for the purposes of this regulation.

Subregulation 3.210(2) prescribes the conditions or restrictions relating to export. A note indicates that a penalty of 300 penalty units applies for contravening a prescribed condition or restriction (see subsection 69C(5) of the Act). (One penalty unit is \$110 - see section 4AA of the *Crimes Act 1914 (Cth)*.)

Subregulation 3.210 (3) provides that despite any permit issued by the APVMA under section 69D of the Act or an export approval under any other legislation, a permission under this regulation is required to export an export-prohibited chemical.

### **Regulation 3.215 Applications for permission to export export-prohibited chemicals**

The regulation requires an applicant to lodge an application on the approved form setting out the generic information about the applicant, the name of the active constituent or product, the quantity to be exported, the name of the importing country, the name of any transit country (if known) and the intended use in the importing country.

An applicant could be required to submit additional information under regulation 3.15 as noted in the regulation. A second note indicates that an authorised officer must give his/her decision in writing to the applicant under regulation 3.505.

### **Regulation 3.220 Additional information required for certain exports**

Under Article 5 of the Rotterdam Convention, as a party to the Convention Australia must notify the Secretariat to the Convention of any final regulatory action taken in relation to banned or severely restricted chemicals made because of concerns relating to human health or the environment. Under Article 12 of the Rotterdam Convention, an export notification must be provided to the importing Party for any notified chemical (unless already listed on Annex III in the same category as the final regulatory action). The export notification must contain certain information as required under Annex V of the Convention and be provided to the importing country prior to the export taking place.

The regulation provides that where Australia has made such a notification, the relevant item in Schedule 1 indicates this. In these circumstances, the regulation requires that information additional to that provided under regulation 3.215 must be provided by the applicant. This additional information includes the expected date of export, the applicable category (pesticide or industrial use), the name and address of the importer, precautionary measures to reduce exposure to and emission of the chemical and concentrations of the active constituent where the

export is a formulation. The regulation notes that the information will form the basis of the export notification to the importing country.

The information on pesticide or industrial use allows an authorised officer to determine the category of the export - pesticide or industrial chemical - to ascertain whether the chemical is to be exported for use as a pesticide and therefore subject to the Regulations. If the proposed use of a chemical is for a use other than a pesticide, the chemical is subject to the *Customs (Prohibited Exports) Regulations 1958*.

### **Regulation 3.225 When permission must be granted**

The regulation provides that permission for export of export-prohibited chemical identified as being controlled under the Rotterdam Convention in the relevant item in Schedule 1 must be granted in circumstances where the export is to a country that is not a party to the Convention.

### **Regulation 3.230 When permission may be granted**

In accordance with Article 3 of the Stockholm Convention, exports of chemicals listed in Annex A and B to the Convention are to be prohibited to any country, regardless of whether the country is a party to the Convention, except for a number of limited exceptions set out in paragraph 2(b) of Article 3 of the Convention.

Subregulation 3.230(1) provides, for active constituents identified as being controlled under the Stockholm Convention, that permission for export will only be granted where:

- (a) the export is to be made for the purpose of environmentally sound disposal; or
- (b) to a party that is permitted to use that chemical under the Convention; or
- (c) to a non-party that has provided certification to Australia regarding protecting human health or the environment.

Article 11 of the Rotterdam Convention requires that a person exporting chemicals listed in Annex III of the Convention must comply with the import responses provided by parties. Subregulation 3.230(2) applies to a relevant item identified in Schedule 1 as being subject to the Rotterdam Convention. It provides that an authorised officer may grant permission for an export in circumstances where an authorised officer determines that the export is to a party and meets the requirements of the Convention, i.e. that the export is in accordance with the import response notified by the party.

The regulation provides that an authorised officer may grant a permission to export if neither of the above circumstances apply, where the export is for a use or purpose permitted in the importing country under the relevant convention.

The regulation provides that such a permission may not be granted even if the APVMA has issued a certificate of export under section 69D of the Act.

### **Regulation 3.235 Required conditions**

Article 13 of the Rotterdam Convention requires, in the case of exports of chemicals listed in Annex III of the Convention, that:

- (a) information on the Harmonized System customs codes be provided on shipping documentation;

- (b) labelling provide information on risks and/or hazards to human health or the environment;
- (c) a safety data sheet be sent to each importer when the chemical is to be used for occupational purposes; and
- (d) where practicable, such information is given in the language of the importing party.

The regulation requires that, any export to a party to the Convention of a relevant item identified in Schedule 1 as being controlled under the Rotterdam Convention must meet these Convention obligations. The regulation also requires that an annual statement on the total quantity of exports be provided to the Department of Agriculture, Fisheries and Forestry by the end of February each year.

### **Regulation 3.240 Deciding application for permission to export when import decision available**

Article 11 of the Rotterdam Convention requires parties to the Convention to provide an import decision on all chemicals listed in Annex III; this forms the basis of the prior informed consent to import.

The regulation applies to an export of a relevant item identified in Schedule 1 as being subject to the Rotterdam Convention. The regulation provides that in deciding whether to grant an application for an export to a party to the Convention, an authorised officer must take into account:

- (a) in the case of a chemical listed in Annex III to the Convention, the import response of the party, including the formulation (where the chemical is listed as a severely hazardous pesticide formulation); and
- (b) the information provided by the applicant to meet the information requirements of regulation 3.220.

### **Regulation 3.245 Deciding application for permission to export when import decision not known**

Article 11 of the Rotterdam Convention provides that an export must not be made to a party that has failed to provide an import response, unless certain conditions are met. The regulation applies to exports of a relevant item identified in Schedule 1 as being controlled under the Rotterdam Convention to a party to the Convention in circumstances where that party has not provided an import decision. It requires that an authorised officer not grant a permission for the export unless he or she is satisfied that the export is not in breach of Australia's obligations under Article 11 of the Convention.

A note indicates why an import decision may not be known.

### **Regulation 3.250 When permission must be refused**

The regulation specifies when an authorised officer must refuse to grant an applicant permission to export an export-prohibited chemical. Subregulation 3.250(1) provides that an authorised officer must not grant consent to an application to export an export-prohibited chemical, if the chemical is subject to the Stockholm Convention unless the officer is satisfied of the matters specified in subregulation 3.230(1), i.e. the export complies with the requirements of the Convention.

Subregulation 3.250(2) provides that an application to export an export-prohibited chemical that is subject to the Rotterdam Convention must be refused if the export is to a party to that Convention and:

- (a) that party has provided an import decision not to consent to import; or
- (b) in circumstances where a party has provided an import decision to consent to import, but import is subject to conditions and the conditions specified in the importing party's response would not be met by the export/exporter; or
- (c) the officer is not satisfied as to the matters in subregulation 3.230(2), i.e. the export complies with the requirements of the Convention.

A note provides the internet address where a list of which countries were parties to the Rotterdam Convention is found.

The regulation provides that an authorised officer must refuse to grant a permission to export if neither of the above circumstances apply and where the export is not for a use or purpose permitted in the importing country under the relevant convention.

### **Division 3.7 MULTIPLE ENTRY IMPORT AND MULTIPLE EXIT EXPORT PERMITS**

#### **Regulation 3.305 Definitions**

The regulation defines terms used in Division 3.7. Import-prohibited chemical is defined to mean a chemical to which Division 3.2 applies and export-prohibited chemical is defined to mean a chemical to which Division 3.6 applies. This means that Division 3.7 applies to controlled chemicals, the import and export of which is prohibited under the Regulations.

#### **Regulation 3.310 Purpose**

The regulation provides that the purpose of this Division is to enable an applicant to apply for permission to import import-prohibited chemicals or export export-prohibited chemicals, as the case may be, over a period of up to twelve months. This means that a person who holds such a permit does not need to apply for a separate permission for each import or export provided that the application meets the requirements of this Division.

The regulation provides that a permission granted under this Division is a permission for the purposes of Regulations on import and export respectively. This means that the holder of a multiple entry import permit is not in contravention of the prohibition in regulation 3.55 and the holder of multiple exit export permit is not in contravention of the prohibition in regulation 3.210.

#### **Regulation 3.315 Fit and proper person**

The regulation provides a test for a fit and proper person in relation to the granting, under regulation 3.340 of a multiple exit export permit to parties to the Rotterdam Convention.

Subregulation 3.315(1) sets out the matters that an authorised officer must take into account in determining whether a person is a fit and proper person for the purposes of issuing a multiple permit under regulation 3.340. Those matters include any conviction against the Act or the Regulations; certain convictions of the applicant; whether the applicant has previously held a multiple permit or permission under the Regulations and whether the applicant has complied with any conditions or requirements specified in a permit or permission. Subregulation 3.315(2) provides that the matters in subregulation 3.315(1) are in addition to any other matters that an

authorised officer must take into account for the purposes of this Division and any other relevant matters.

The regulation is not applicable to applicants applying for a multiple exit export permit for exports to non-parties, nor for severely hazardous pesticide formulation with concentrations lower than those given in the relevant item in Schedule 1.

### **Regulation 3.320 Multiple entry import permits**

This regulation is reserved for future use to enable chemicals in respect of which a multiple entry import permit may be available to be prescribed.

### **Regulation 3.325 When multiple entry import permits may be granted**

This regulation is reserved for future use to enable the circumstances to be prescribed in which a multiple entry import permit may be granted.

### **Regulation 3.330 Multiple exit export permits**

Subregulation 3.330(1) provides that the regulation applies to exports of export-prohibited chemicals that are subject to the Rotterdam Convention provided that the export of the chemical is:

- (a) to a non-party to that Convention; or
- (b) the export is of a chemical that is a severely hazardous pesticide formulation, in circumstances where the export is of a formulation that is a different form or in a lower concentration than indicated by the relevant item in Schedule 1, but not where the item is also identified as subject to a notification of final regulatory action.

Subregulation 3.330(2) provides that if the circumstances in subregulation 3.330(1) apply, a person may apply to the Department of Agriculture, Fisheries or Forestry for a multiple exit export permit.

Subregulation 3.330(3) sets out the information to be provided by an applicant in making an application for a multiple exit export permit. The subregulation requires an applicant to lodge an application on the approved form, providing the generic information about the applicant and the following information on each chemical to be included on the permit:

- (a) the technical name of the chemical;
- (b) in the case of non-parties, countries to whom the exports are to be made;
- (c) in the case of severely hazardous pesticide formulations, the formulation to be exported; and
- (d) the quantity, or an estimate of the quantity, to be exported.

### **Regulation 3.335 When multiple exit export permits may be granted - general**

The regulation provides that an authorised officer may grant a multiple permit when satisfied that the export meets the requirements of the Rotterdam Convention.



Where an applicant has previously failed to comply with any condition or restriction specified in a permission or when an authorised officer is not satisfied, the permit must be refused.

### **Regulation 3.340 Grant of multiple exit export permits in special circumstances**

The regulation provides that an authorised officer may grant a multiple permit for controlled chemicals that are being exported to parties to the Convention, where the relevant item in Schedule; 1 indicates that the chemical is subject to the Rotterdam Convention and where the person has an aggregate history of exporting export-prohibited chemicals under these Regulations. In granting a permit under the regulation, an authorised officer must be satisfied that the person is a fit and proper person.

### **Regulation 3.345 Annual reports**

In addition to any other reporting requirements set out in the Regulations, the holder of a multiple permit is also required to comply with the additional annual reporting requirements set out in this regulation. The regulation sets out the information that the holder of the permit is required to submit to the Department of Agriculture, Fisheries and Forestry about the imports and exports made under the relevant permit and also requires that the report be submitted by the end of February each year.

### **Regulation 3.350 Period of validity and renewal of permit**

The regulation provides that a multiple permit is valid until the next occurring 31 March. This means that a permit granted under this Division is valid for up to a year. The regulation provides that a multiple permit holder may apply to renew a permit. The application for renewal must be lodged not more than 60 days before the permit expires. Before granting an application for renewal, an authorised officer must be satisfied that the holder:

- (a) had not contravened the permit;
- (b) had complied with any conditions specified in the permit;
- (c) continued to be a fit and proper person for the purposes of a multiple exit export permit to parties to the Rotterdam Convention;
- (d) had complied with the annual reporting requirements in regulation 3.345.

## **Division 3.8 CONDITIONS OR RESTRICTIONS OF PERMISSIONS OR MULTIPLE PERMITS**

### **Regulation 3.405 Conditions**

The regulation provides that a permission or multiple permit may specify certain conditions or requirements that must be met by the holder of the permission or multiple permit and the timeframe in which the holder must comply with those conditions or requirements. The timeframe specified may require the holder to comply with a condition before or after the act permitted.

### **Regulation 3.410 Revocation etc of permission or multiple permit**

The regulation provides that an authorised officer may revoke, vary or suspend a permission or multiple permit. If a decision is made to revoke, vary or suspend a permission or multiple permit, the authorised officer must notify the holder of the permission or multiple permit of that decision

in writing within 10 days of the making of the decision. A notice issued under the regulation must provide a statement advising the person that they are entitled to apply to the Minister for a review of such a decision. Subregulation 3.410(4) provides that a failure of an authorised officer to give written notice within the timeframe given or to provide a statement on review rights does not affect the validity of the revocation, variation or suspension.

## **Division 3.9 REVIEW OF DECISIONS**

### **Regulation 3.505 Notice of authorised officer's decision**

The regulation requires an authorised officer to provide notice in writing to an applicant for a permission or multiple permit within 10 days of making a decision. This means that all decisions about applications must be notified to an applicant. Subregulation 3.505(2) provides that in circumstances where a decision is made to refuse the application, the notice must include a brief statement of the reasons to refuse the application and a statement that the applicant may request the Minister to review the decision. Subregulation 3.505(3) provides that if the notice does not include the required statements, that does not affect the validity of the decision.

### **Regulation 3.510 Reconsideration of decisions by Minister**

The regulation allows an applicant to request the Minister to review a decision to refuse an application notified to the applicant under subregulation 3.505(1). An applicant is required to lodge an application for review with the Minister within 15 days of the applicant receiving the notice of refusal. Subregulation 3.510(3) allows the Minister to grant or refuse a permission or multiple permit; vary or affirm a decision on revocation, variation or suspension; or to set aside and substitute a decision to revoke, vary or suspend a permission or permit.

### **Regulation 3.515 Notice of Minister's decision**

The regulation provides that the Minister must provide the applicant with written notice of the Minister's decision within 10 days of making the decision. If the Minister decides to refuse the application, then the notice given by the Minister must include a statement advising the applicant that the applicant may apply to the Administrative Appeals Tribunal for review of the decision. The regulation also provides that if the notice does not include the required statement that does not affect the validity of the decision.

### **Regulation 3.520 Review of decisions by AAT**

The regulation provides that an application may be made to the Administrative Appeals Tribunal in respect of a decision to refuse to grant a permission after reconsideration by the Minister.

### **Item [5] Regulation 3A. heading**

Item 5 provides that the heading for Regulation 3A in the Principal Regulations is substituted with "3.550 Export of chemical products - fees for certificates".

### **Item [6] Before regulation 4**

A new Part 4 heading "Miscellaneous" is inserted into the Principal Regulations before regulation 4 in line with other amendments in the Regulations that separate the Principal Regulations into different Parts.

### **Item [7] Regulations 4 and 5**

Item 7 renumbers regulations 4 and 5 in the Principal Regulations to regulations 4.10 and 4.15 respectively as a consequential change to Item 6.

### **Item [8] Before the Schedule**

A new schedule, "Schedule 1 Chemicals", is inserted before the existing Schedule to the Principal Regulations.

#### **Part 1 Reading this Schedule**

Clause 1 to Part 1 of Schedule 1 describes how to read the Schedule 1. For each chemical, Schedule 1 contains a small table that:

- (a) gives the common name of the chemical;
- (b) gives the chemical's IUPAC name (as defined);
- (c) gives the chemical's CAS number (as defined);
- (d) states whether the chemical is a prescribed active constituent or prescribed chemical for the purposes of subsection 69CA(2) of the Act;
- (e) for the purposes of subsection 69CA(3) of the Act, identifies the relevant international agreement to which the chemical is subject. A note indicates that a relevant international agreement under which prohibitions are made may be identified; and
- (f) states any conditions or restrictions that apply to that chemical.

Clause 2 to Part 1 of Schedule 1 confirms that a reference in these Regulations to a relevant item in this Schedule includes a chemical product that contains the active constituent dealt with in the item.

#### **Part 2 Chemicals**

Part 2 of Schedule 1 lists the chemicals that are subject to the two international agreements that are prescribed for the purposes of the Regulations, i.e. the Stockholm Convention and the Rotterdam Convention. The listing of the chemicals is alphabetical.

A number of chemicals are subject to both the Stockholm Convention and the Rotterdam Convention. For those chemicals, the relevant item in Schedule 1 identifies the Stockholm Convention as the relevant Convention for the purposes of subsection 69C(1) of the Act because the controls imposed under that Convention are more stringent than those imposed under the Rotterdam Convention.

#### **Schedule 2-5**

A new heading "Schedule 2-5" is inserted into the Principal Regulations. These Schedules are resented for future use.

#### **Item [9] schedule, heading**

Item 9 substitutes the heading "Schedule" in the Principal Regulations with "Schedule 6 Form of search warrant". The reference to regulation 5 is replaced with a reference to regulation 4.15 as a consequence of the numbering changes in the Regulations.

