

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment and Energy

Subject – *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995
Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995

Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 1) Regulations 2017

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act) implements Australia's international obligations under the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer and the United Nations Framework Convention on Climate Change and its Kyoto Protocol. It does so through the control of 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.

The *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (Import Levy Act) provides for levies to be set in relation to the import of substances and equipment regulated by the OPSGGM Act.

The *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (Manufacture Levy Act) provide for levies to be set in relation to the manufacture of substances and equipment regulated by the OPSGGM Act.

Section 70 of the OPSGGM Act provides for the Governor-General to make regulations required or permitted by the OPSGGM Act or necessary or convenient for giving effect to that Act. Section 5 of the Import Levy Act and section 5 of the Manufacture Levy Act provide for the Governor-General to make regulations for the purposes of the substantive provisions of the Import Levy Act and the Manufacture Levy Act respectively.

A review of the Ozone Protection and Synthetic Greenhouse Gas Program (the Review), completed in 2016, identified a range of measures to improve the effectiveness and efficiency of the Program and further reduce emissions of ozone depleting substances (ODS) and synthetic greenhouse gases (SGGs). The Australian Government agreed to all recommended measures in June 2016, including phasing-down the import of hydrofluorocarbons (HFCs) from 1 January 2018. In October 2016, the parties to the Montreal Protocol reached agreement on reducing global HFC emissions by phasing-down their manufacture and import from 2019 (the Kigali Amendment).

The *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Act 2017* (the Amendment Act) amends the OPSGGM Act, the Import Levy Act, and the Manufacture Levy Act to:

- (a) Implement the Australian Government's commitment to phase-down the import of HFCs from 1 January 2018 and enable Australia to comply with the global HFC phase-down implemented under the Kigali Amendment.
- (b) Improve the operation of existing provisions relating to the hydrochlorofluorocarbon (HCFC) phase-out, and prohibit the use of new HCFCs from 1 January 2020.

- (c) Implement Australia's international obligations under the Kyoto Protocol to regulate two newly listed SGGs (nitrogen trifluoride and PFC-9-1-18 (C₁₀F₁₈)).
- (d) Streamline the provisions of the OPSGGM Act that relate to equipment bans and ensure that the provisions relating to equipment bans apply consistently to all regulated entities.
- (e) Reduce the regulatory burden on businesses by enabling licence renewals, reducing the frequency by which licence holders are required to report their regulated activities, and introducing a threshold below which the cost recovery levy is not payable.

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 1) Regulations 2017* (the Regulations) is to support the implementation of the measures contained in the Amendment Act by: prescribing the detail of the HFC phase-down scheme; prescribing allowable uses for HCFCs from 1 January 2020; allowing the Secretary to delegate functions and powers down to APS employees who hold or are acting in an Executive Level 2 or equivalent position in the Department; prescribing fee arrangements and other administrative measures necessary to support the renewal of licences; updating references, removing redundant references, and aligning definitions; and other administrative measures necessary to support the streamlining of licensing provisions, waiver of uneconomic levy debts, and reduced reporting frequency.

Relevant industry stakeholders (including HFC importers, equipment manufacturers, end users, state and territory governments, and non-government organisations) were consulted regularly throughout the Review between 2014 and 2016. This consultation included the measures included in the Regulations. Consultation was undertaken through public consultation meetings, invitations for public comment on an options paper, participation in a technical working group representative of stakeholders, and regular meetings with HFC importers, equipment manufacturers, and end users. HFC importers and equipment manufacturers were also consulted with in deciding Australia's revised phase-down schedule following agreement to the global HFC phase-down under the Montreal Protocol in October 2016.

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

The Acts specify no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Sections 1- 4 commence the day after the Regulations are registered on the Federal Register of Legislation. Schedule 1 commences on 1 August 2017. Schedule 2 commences on 1 January 2018 and Schedule 3 commences on 1 January 2020.

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 Legislation Amendment (2017 Measures No. 1) Regulations 2017

Overview of the Legislative Instrument

The *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Act 2017* (the Amendment Act) amends the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*, and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* to:

- (a) Implement the Australian Government's commitment to phase-down the import of HFCs from 1 January 2018.
- (b) Improve the operation of existing provisions relating to the hydrochlorofluorocarbon (HCFC) phase-out, and prohibit the use of new HCFCs from 1 January 2020.
- (c) Implement Australia's international obligations under the Kyoto Protocol to regulate two newly listed SGGs (nitrogen trifluoride and PFC-9-1-18 (C10F18)).
- (d) Streamline the provisions of the OPSGGM Act that relate to equipment bans and ensure that the provisions relating to equipment bans apply consistently to all regulated entities.
- (e) Reduce the regulatory burden on businesses by enabling licence renewals, reducing the frequency by which licence holders are required to report their regulated activities, and introducing a threshold below which the cost recovery levy is not payable.

The *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 1) Regulations 2017* (the Regulations) support the implementation of the measures contained in the Amendment Act by: prescribing the detail of the HFC phase-down scheme; prescribing allowable uses for HCFCs from 1 January 2020; allowing the Secretary to delegate functions and powers down to APS employees who hold or are acting in an Executive Level 2 or equivalent position in the Department; prescribing fee arrangements and other administrative measures necessary to support the renewal of licences; updating references, removing redundant references, and aligning definitions; and other administrative measures necessary to support the streamlining of licensing provisions, waiver of uneconomic levy debts, and reduced reporting frequency.

Human rights implications

As the Regulations support the implementation of the Amendment Act, any human rights implications associated with the Regulations were considered holistically as part of the Amendment Act, and outlined in the Statement of Compatibility with Human Rights that accompanied the Amendment Act. The Regulations do not raise any additional human rights implications.

Conclusion

The Regulations are compatible with Australia's human rights obligations.

The Hon Josh Frydenberg MP, Minister for the Environment and Energy

Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 1) Regulations 2017*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 1) Regulations 2017* (the Regulations).

Section 2 – Commencement

2. The table in this section provides for the commencement of the Regulations.
3. Sections 1 to 4 (and anything else in the Regulations not covered by the table) commences on the day after the instrument is registered.
4. Schedule 1 commences on 1 August 2017. Schedule 2 commences on 1 January 2018. Schedule 3 commences on 1 January 2020.

Section 3 – Authority

5. This section provides that the Regulations are made under the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (the Import Levy Act), *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the OPSGGM Act) and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (the Manufacture Levy Act).

Section 4 – Schedules

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

Schedule 1 – Amendments commencing 1 August 2017

7. Hydrofluorocarbons (HFCs) are a type of synthetic greenhouse gas (SGG), 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 (CO₂).
8. In June 2016 the Australian Government announced its commitment to reducing Australia's use of HFCs through a cap and phase-down of imports from 1 January 2018, resulting in an 85 per cent reduction by 2036. In October 2016, the parties to the Montreal Protocol reached a global agreement on reducing HFC emissions in Kigali, Rwanda. The Parties agreed to a phase-down of global HFC manufacture and imports from 2019, which will result in an 85 per cent phase-down in the use of HFCs by 2036 in developed countries (developing countries will also take on phase-down obligations, but these are delayed by a few years).
9. The Amendment Act amended the OPSGGM Act and related legislation to enable Australia to commence the domestic HFC phase-down and comply with the global phase-down implemented under the Montreal Protocol, as amended by the Kigali Amendment.

The Amendment Act established a framework for the HFC phase-down, with appropriate technical detail to be prescribed in the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations).

10. The Amendment Act provides that the HFC phase-down would only apply to “bulk” imports of gas, such as in cylinders (bulk is a term commonly used within the industry to refer to scheduled substances that are in containers for transport or storage, not in pre-charged equipment). It would not apply to HFCs imported in equipment (such as air-conditioners or refrigerators) or to used or recycled HFCs, as these are outside the scope of the HFC phase-down obligations set out in the Montreal Protocol (as amended by the Kigali Amendment). Under the Montreal Protocol, HFCs imported in equipment or as used substances are accounted for in the country of manufacture.
11. The HFC phase-down would be managed through a reducing import quota system over 18 years, finishing with a 15% residual after 2036 to allow for servicing of existing equipment (there are currently no HFCs manufactured in Australia). Import limits for the amount of HFCs covered by the phase-down (i.e. bulk HFCs that are not reused or recycled) would be set via the total HFC industry limit, expressed in carbon dioxide equivalent (CO₂e) megatonnes. The total HFC industry limit would effectively be the maximum quantity of bulk HFCs that could be imported into Australia in the relevant quota period (excluding any reserve quota that may be allocated under section 36G of the OPSGGM Act). The total HFC industry limit would reduce with each HFC quota allocation period (a two-calendar-year period, aligning with the licensing periods under the OPSGGM Act). Reduced imports would decrease the total amount of HFCs in the economy that can be emitted to the atmosphere, therefore resulting in lower HFC emissions.
12. HFC quota would be divided between a ‘grandfathered’ percentage and a ‘non-grandfathered’ percentage of the total HFC industry limit. The grandfathered percentage would be the total share of the HFC industry limit for the HFC quota allocation period in question that is available to be allocated to persons who are entitled to grandfathered quota allocations during that period (established market participants). The non-grandfathered percentage would be the total share of the HFC industry limit for the HFC quota allocation period in question that is available to be allocated to persons who are entitled to non-grandfathered quota allocations during that period (a quota allocation is the net allowance of HFCs after exports). Any person could apply for a non-grandfathered quota allocation. The intent is to recognise both established participants and provide opportunities for new participants.
13. Established market participants would be eligible for grandfathered quota based on their past imports (specifically between 1 January 2009 and 31 December 2014). The grandfathered quota allocations in the second HFC quota allocation period and subsequent HFC quota allocation periods would be calculated based on actual imports during earlier HFC quota allocation periods.
14. For each HFC quota allocation period, new and established market participants would be able to apply for non-grandfathered quota. Entitlement for non-grandfathered quota in a period and the amount, or method for calculating the amount, of non-grandfathered quota to which a person is entitled in an HFC quota allocation period, would be determined in a declaration made by the Minister. The method for allocating non-grandfathered quota would be published prior to each quota allocation period to provide certainty.

15. Applicants would need to satisfy all the requirements to hold an SGG licence, and be granted an SGG licence, in order to be eligible for non-grandfathered quota.
16. There would also be provisions allowing a person who had engaged in licensed regulated HFC activity or licensed regulated HCFC activity during the base period for a HFC quota allocation period (licensed regulated HCFC activity would only be relevant to the first HFC quota allocation period) to request that the activity be taken to have been engaged in by another specified person. This would effectively allow a person to transfer their future grandfathered quota allocations to another person.
17. A person who would have an entitlement to grandfathered quota allocations in future HFC quota allocation periods could also apply to have a percentage of (or all of) their grandfathered quota allocation entitlement retired. A person who retires a percentage of a grandfathered quota allocation would have their grandfathered quota allocation reduced by that percentage in every future HFC quota allocation period. If a person retires the whole of their grandfathered HFC quota allocation, they would not receive any grandfathered quota allocations in future HFC quota allocation periods. This would not impact other HFC quota holders' quota allocations.
18. Part 1 of Schedule 1 also includes provisions relating to low-volume import thresholds.

Part 1 – HFCs

Items 2 and 8

19. Item 8 inserts Part 4A (HFC quotas) into the Principal Regulations. Item 2 inserts definitions of key terms used in Part 4A into regulation 2 of the Principal Regulations.
20. Regulation 41 defines a HFC quota allocation period, as two years. The first HFC quota allocation period starts on 1 January 2018. The second HFC quota allocation period and every subsequent HFC quota allocation period starts immediately after the end of the preceding HFC quota allocation period.

HFC industry limit

21. Regulation 42 prescribes HFC industry limits for the purposes of subsection 36A(1) of the OPSGGM Act. The HFC industry limit for a year in a HFC quota allocation period is the amount, expressed in CO₂e megatonnes, specified in Column 2 of the table in regulation 42 in respect of the relevant year specified in Column 1 of that table.
22. The HFC industry limit for each quota period set out in regulation 42 have been set within the limits of the Montreal Protocol's HFC phase-down. The industry limit in 2018 reflects the current demand for HFCs in Australia, as determined through consultation with industry stakeholders. Industry stakeholders have indicated a preference for smaller, more frequent reduction steps every two years (as opposed to less frequent, larger reductions) and this is reflected in the reduction schedule. The final reduction step from 2036 reflects Australia's on-going 85 per cent reduction commitment under the Montreal Protocol.

Applications, allocation and size of HFC quotas

23. Division 4A.3 (regulations 43 to 58) provides, for the purposes of section 36C of the OPSGGM Act, processes for applying for HFC quotas (including who may apply), allocating HFC quotas for calendar years to SGG licence holders, varying the size of

HFC quota allocations or cancelling HFC quota allocations, and a method for working out the size of HFC quotas.

Applying for HFC quotas

24. Regulation 44 (Applying for HFC quotas) sets out how a person may apply for HFC quotas. Subregulation 44(1) provides that a person may apply for HFC quotas for an HFC quota allocation period if the person either: holds a SGG licence that covers the period; or the person has applied for a SGG licence and the application has not been refused.
25. Subregulation 44(2) provides that an application under subregulation 44(1) must be in the approved form, specify the calendar years (that comprise the HFC quota allocation period) to which it relates, and state whether the applicant wishes to be allocated grandfathered or non-grandfathered quota. If the application is being made in respect of the first quota allocation period (which commences on 1 January 2018), applications must be provided on or before a date to be determined by the Minister in a legislative instrument (the date would also be published on the Department of the Environment and Energy's website). Applications must be provided on or before 31 August in the year immediately before the start of future HFC quota allocation periods. For example, applications for quota in the second HFC allocation period, which would commence on 1 January 2020 must be given to the Minister on or before 31 August 2019.
26. In circumstances where a person has applied for an SGG licence, and the application has not been refused (see paragraph 44(1)(b)), subregulation 44(3) requires the Minister to first decide whether or not to grant the SGG before the Minister allocates any HFC quotas for the relevant years.
27. Subregulation 44(4) provides that subregulation 44(3) has effect as if a reference in section 17 to section 66 of the OPSGGM Act included a reference to subregulation 44(3). Subsections 17(1) and (2) of the OPSGGM Act refer to circumstances in which the Minister is deemed to have refused an application. Subsection 66(a) of the OPSGGM Act provides that a decision to refuse to grant a licence under section 16 (including a decision that is taken to have been made by virtue of section 17) is reviewable by the Administrative Appeals Tribunal (AAT). The effect of subregulation 44(4) would be that decisions made (or deemed to have been made) to refuse an application in relation to subregulation 44(3) would be similarly reviewable by the AAT.

Allocating HFC quotas for HFC quota periods

28. Regulation 45 (Allocating HFC quotas for HFC quota periods) requires the Minister to allocate HFC quota and determine the size of each quota. Subregulation 45(1) provides that the Minister must, subject to subregulation 44(3) allocate an HFC quota to a person if the person is entitled to amounts of grandfathered quota or non-grandfathered quota for the calendar years in a HFC quota allocation period. Subregulation 45(2) requires the Minister to determine the size of each HFC quota in accordance with regulation 47.
29. Subregulations 45(3) and (4) provide that an HFC quota is allocated by written notice given to the person to whom it is allocated, and specify the matters that must be included in the notice.

Entitlement to, and size of, HFC quotas

Size of HFC quotas

30. Regulation 47 (Size of HFC quotas) provides that the size of an HFC quota allocated to a SGG licensee for a calendar year is the total of any amounts of grandfathered quota and non-grandfathered quota to which the person is entitled for the year. Item 2 inserts definitions of *grandfathered quota* and *non-grandfathered quota* into regulation 2 as meaning ‘an amount to which a person is entitled under regulation 48, 49 or 50 (as affected by Subdivision 4A.3.5)’ and ‘an amount to which a person is entitled under regulation 51’ respectively.
31. Subregulation 46 sets out a table that defines the base period, grandfathered percentage, and non-grandfathered percentage for the first HFC quota allocation period (beginning 1 January 2018), the second HFC quota allocation period (beginning 1 January 2020), and any other subsequent quota allocation period (i.e. any period commencing after 1 January 2022).
32. The division of total allowable imports of HFC under the HFC phase-down into a grandfathered percentage and a non-grandfathered percentage recognises established market participants, as well as providing opportunities for new market entrants and market variations, whilst still facilitating emissions reductions.
33. The grandfathered percentage is the total share of the HFC industry limit for the HFC quota allocation period in question that is available to be allocated to persons who are entitled to grandfathered quota allocations during that period. The non-grandfathered percentage is the total share of the HFC industry limit for the HFC quota allocation period in question that is available to be allocated to persons who are entitled to non-grandfathered quota allocations during that period.
34. The split between the grandfathered percentage and the non-grandfathered percentage changes over the first two HFC quota allocation periods. In the first HFC quota allocation period, there is a 90% / 10% split between the grandfathered percentage and the non-grandfathered percentage. This will move to a 95% / 5% split from the second HFC quota allocation period, and it will remain at this ratio in every subsequent HFC quota allocation period. The intent behind the division of HFC quota into the grandfathered percentage and non-grandfathered percentage is to achieve recognition for established market participants and whilst also allowing competitive fairness for all established and potential market participants in accordance with the Australian Government’s competition policies.
35. The table in regulation 46 also sets out the base periods for the first, second, and subsequent HFC quota allocation periods respectively. The base period is the relevant period for calculating amounts of licensed activities for the purposes of calculating a person’s grandfathered quota allocation in respect of the corresponding HFC quota allocation period in the table. A person must use their total grandfathered HFC quota allocation in the relevant base period to retain their full share of grandfathered HFC quota in the next HFC quota allocation. Unused grandfathered quota would be forfeited and distributed equally to remaining grandfathered quota holders so that the total HFC industry limit would not be reduced.

Grandfathered quota – first HFC quota allocation period

36. The base period for the first HFC quota allocation period (2018-19) is the period between 1 January 2009 and 31 December 2014. The period 2009 to 2014 was chosen as it accounts for distortions to the market that resulted from the carbon tax that was in place from 2012 to 2014, as well as for technological advancements and international market developments during this period. A later period was not selected, as the market was open to manipulation after the Review commenced in 2014. Stakeholders were consulted on the potential introduction of an HFC phase-down as part of the Review. Consequently, importers could have attempted to artificially inflate their potential future quota share by over-importing in anticipation of an HFC phase-down being introduced.
37. Grandfathered quota for the first HFC quota allocation period (beginning 1 January 2018) will be calculated under regulation 48. Subregulation 48(1) provides that a person is entitled to an allocation of grandfathered quota for the first HFC quota allocation period if they apply in accordance with regulation 44, they hold a SGG licence that covers the whole first HFC quota allocation period, and the person engaged in a licensed regulated HCFC activity or licensed regulated HFC activity at any time during the base period (2009 to 2014).
38. *Licensed regulated HCFC activity* is defined in regulation 2 as a regulated HCFC activity engaged in under a controlled substances licence. A *regulated HCFC activity* is defined in subsection 25A(1) of the OPSGGM Act as the manufacture or import of HCFCs. Subsection 25A(2) of the OPSGGM Act provides that, for the purposes of the OPSGGM Act, the quantity of HCFCs that is taken to be involved in regulated HCFC activities engaged in by a licensee in a period is the quantity of HCFCs that is actually involved in regulated HCFC activities engaged in by the licensee in the period reduced by the heel allowance percentage for HCFCs.
39. *Licensed regulated HFC activity* is defined in regulation 2 as a regulated HFC activity engaged in under a SGG licence. *Regulated HFC activity* is defined in subsection 36B(1) of the OPSGGM Act as the manufacture or import of HFCs other than: (a) the import of HFCs that are recycled or used SGGs; (b) the import of HFCs in SGG equipment; or (c) the manufacture or import of HFCs in circumstances prescribed for the purposes of subsection 13(3).
40. Subsection 36B(2) of the OPSGGM Act further provides that the quantity of HFCs that is taken to be involved in regulated HFC activities engaged in by a SGG licensee in a period is the greater of the amount worked out using the formula set out in that provision and nil.
41. If a person meets all of these criteria and so is entitled to a grandfathered quota allocation, the amount of quota to which the person was entitled would be calculated using the formula set out in subregulation 48(2).
42. In this calculation, the *amount of licensed activities* for a person is worked out by undertaking two steps.
43. The first step is to calculate the total quantities of HFCs expressed in CO₂e megatonnes (including nil, meaning that if no licensed regulated HFC activities were undertaken in the base period of 2009 to 2014, this should be reflected as zero), involved in licensed regulated activities engaged in by the person during 2009 to 2014. Subregulation 48(4) provides that any HFCs exported by the person during 2009 to 2014 should be disregarded for these purposes.

44. The second step is to calculate 75 per cent of the total quantity (including nil) of HCFCs expressed in CO₂e megatonnes, involved in licensed regulated HCFC activities engaged in by the person during 2009 to 2014 (the base period). It is necessary to convert HCFCs imports (which are expressed in ODP tonnes) to CO₂e megatonnes to be consistent with the HFC calculation, as Australia's obligations under the Montreal Protocol are expressed in CO₂e megatonnes.
45. To convert ODP tonnes to CO₂e megatonnes, the ODP tonne amount should be divided by the ODP factor for the substance (listed in Column 2 of Schedule 1 Part V of the OPSGGM Act). This will give the metric tonnage of the substance, which should then be multiplied by the global warming potential (GWP) in Column 3 of Schedule 1 Part V of the OPSGGM Act. This amount will then need to be converted from tonnes to megatonnes, by dividing it by a million.
46. Subregulation 48(3) provides a formula that must be used for calculating the second step if, during a calendar year between 2009 and 2014, the total quantity of HCFCs (expressed in ODP tonnes) involved in licensed regulated HCFC activities engaged in by a person exceeded a threshold amount. The threshold amount would be half of the HCFC quota allocated to the person in the HCFC quota period that the year was part of. The amount calculated using this formula would then need to be converted from ODP tonnes to CO₂e megatonnes.
47. The sum of the amounts reached by following the first step and the second step is the amount of licensed activities of the person.
48. The total HFC and 75 per cent of HCFC imports in megatonnes of CO₂e during the base period (2009 to 2014) is being used as a basis for quota allocation in the first HFC quota allocation period, as 75 per cent of HCFC imports are included to represent the whole fluorocarbon market in Australia (recognising that HFCs generally replace HCFCs).
49. For the purposes of the formula set out in subregulation 48(2), the *total amount of licensed activities* means the sum of the amounts of licensed activities of each person who is entitled to grandfathered quota for the allocation year. That is, the sum of the amount of licensed activities as calculated under this subregulation for all persons who are entitled to grandfathered quota under subregulation 48(1).
50. The *HFC industry limit for the allocation year* referred to in the formula specified in subregulation 48(2) refers to the HFC industry limits for HFC allocation periods specified in regulation 42. The HFC industry limit for a calendar year in an HFC quota allocation period included in the table in regulation 42 is the quantity of HFCs, expressed in CO₂e megatonnes, specified in Column 2 of that table in respect of the relevant HFC quota allocation period (specified in Column 1).

Grandfathered quota – second HFC quota allocation period

51. Regulation 49 provides for the calculation of grandfathered quota in the second HFC quota allocation period, beginning 1 January 2020.
52. Subregulation 49(1) provides that in order for a person to be entitled to grandfathered quota in the second HFC quota allocation period, a person must have applied in accordance with regulation 44, hold a SGG licence that covers the whole second HFC quota allocation period, and HFC quotas would have to have been allocated to the person for the calendar years in the first HFC quota allocation period.

53. Regulation 46 provides that the base period for the second HFC quota allocation period is 2018 (the first year of the first quota allocation period). A single year is used, as applications for the second HFC quota allocation period will be received in August of that year. This would mean that reporting on imports and verification of imports would not be possible for the purposes of allocating quota for the second HFC quota allocation period.
54. Subregulation 49(2) provides the formula for calculating the amount of grandfathered quota to which a person is entitled in the second HFC quota allocation period. The *amount of licensed activities (grandfathered)* and the *amount of licensed activities (non-grandfathered)* for the purposes of the formula in subregulation 49(2) are based on total quantities of HFCs involved in licensed regulated HFC activities engaged in by the person during 2018, or the amount of quota allocated to the person for 2018, whichever is the lesser. The lesser amount is specified to ensure that persons cannot artificially increase their quota share by over-importing.

Grandfathered quota – later HFC quota allocation periods

55. Regulation 46 provides that the base periods for the third HFC quota allocation period and all subsequent HFC quota allocation periods are based on the second year of the HFC quota allocation period before the HFC quota allocation period in which the application for is made (the current period), and the first year of the current period. For example, the third HFC quota allocation period would start on 1 January 2022. Therefore, the base period for the third HFC quota allocation period would be 1 January 2019 to 31 December 2020.
56. Subregulation 50(1) provides for entitlement to and the calculation of grandfathered quota allocations in the third and subsequent quota allocation periods. A person is entitled to a quota allocation in a HFC quota allocation period if the person applied in accordance with regulation 44, they held a SGG licence that covered the whole of the HFC quota allocation period, and grandfathered HFC quota was allocated to the person in the previous HFC quota allocation period.
57. Subregulation 50(2) provides the formula for calculating the amount of grandfathered quota to which a person is entitled in the third HFC quota allocation period or any subsequent HFC quota allocation period.
58. The base period is used for calculating the *amount of licensed activities* for the purposes of the formula in subregulation 50(2). Similarly to regulation 49, the amount of licensed activities is based on total quantities of HFCs involved in licensed regulated HFC activities engaged in by the person during the base period, or the amount of grandfathered quota allocated to the person for the base period, whichever is the lesser.

Non-grandfathered quota

59. Regulation 51 provides for entitlement to, and allocation of, non-grandfathered quota.
60. Subregulation 51(1) provides that a person is entitled to an amount of non-grandfathered quota if the person applies in accordance with regulation 44, the application states that the person wishes to be allocated non-grandfathered quota (in accordance with paragraph 44(2)(d)), the person holds a SGG licence that covers the whole of the HFC quota allocation period, a determination under subregulation 51(4) is in force in relation to the period, and the person meets the requirements prescribed by the determination in relation to the year.

61. Subregulation 51(2) provides that the amount of non-grandfathered quota to which a person is entitled for a calendar year in an HFC quota allocation period is the amount worked out under a determination under subregulation 51(4).
62. Subregulation 51(3) provides that the sum of all the amounts of non-grandfathered quota to which persons are entitled for a calendar year in an HFC quota allocation period must not exceed the amount resulting from applying the formula included in that subregulation. This would effectively ensure that total non-grandfathered quota allocations for a calendar year could not exceed the non-grandfathered percentage (specified in the table to regulation 46) of the HFC industry limit (specified in the table to regulation 42) for the relevant calendar year of an HFC allocation period.
63. Subregulation 51(4) provides that the Minister may, by legislative instrument, determine requirements for a person to be entitled to an amount of non-grandfathered quota, and the amount, or method for working out the amount, of non-grandfathered quota to which a person is entitled for each of the years in an HFC quota allocation period. In making a determination, 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 (paragraph 51(5)(a)) and any other matters the Minister thinks relevant (paragraph 51(5)(b)).
64. The use of a legislative instrument to set the rules for non-grandfathered quota for every quota allocation period individually is necessary as those interested in non-grandfathered quota and the quota packages and amounts may change as the HFC phase-down progresses. The legislative instrument allows the rules for non-grandfathered quota to be set quickly and appropriately for the market at that point in time.

Business Succession

65. Regulation 52 (Business succession) determines how the licenced regulated HFC activities or licenced regulated HCFC activities of one person can be attributed to another person for the purposes of allocating grandfathered quota.
66. Subregulation 52(1) applies where a person (the first person) engaged in licensed regulated HCFC activity during 2009 to 2014 (the base period for the first HFC quota allocation period) and so was entitled to grandfathered quota in the first HFC quota allocation period as a result. Under subregulation 52(1), the first person could request that the activity be taken to have been engaged in by another specified person (the second person) and that all or part of an HCFC quota allocated to the first person be taken to have been allocated to the second person. This provision would effectively allow a person who is entitled to grandfathered quota in the first HFC quota allocation period to transfer some or all of that quota allocation to another person. This provision is only relevant to the first HFC quota allocation period, as licensed regulated HCFC activity is not used in determining grandfathered quota allocations in the second HFC quota allocation period or any subsequent HFC quota allocation period.
67. Subregulation 52(2) applies where a person (the first person) engaged in licensed regulated HFC activity during the base period for an HFC quota allocation period and so is entitled to grandfathered quota as a result. Under subregulation 52(2), the first person could request that the regulated HFC activity be taken to have been engaged in by another specified person (the second person) and that all or part of an HFC quota allocated to the first person be taken to have been allocated to the second person. This provision would effectively allow a person who is entitled to HFC quota allocations to request that they be

transferred to another person. This could be done in any year of any HFC quota allocation period.

68. Subregulation 52(3) provides that a request under subregulations 52(1) or (2) must be in the form approved and provided to the Minister before the day on which applications for HFC quotas for the calendar years in the HFC quota application period must be made under paragraph 44(2)(b). For the first HFC quota allocation period, applications must be received by a date to be determined by the Minister. A determination of the Minister will be a legislative instrument. For every subsequent HFC quota allocation period, this is 31 August in the last year before the start of the HFC quota allocation period.
69. Subregulation 52(4) provides that where a request is made under subregulation 52(1) or (2) in accordance with subregulation 52(3), then the activity specified in the request is taken to have been engaged in by the person specified in the request (rather than by the person who originally engaged in the activity and made the request) and all or part of the HFC quota or the HCFC quota (as the case may be) specified in the request is taken to have been allocated to the person specified in the request. This would apply to the HFC quota allocation period mentioned in subregulation 52(1) or (2) (whichever is applicable) and to any future HFC quota allocation periods. This provision would mean that if a person attributed their activities to another person under this provision, then all future (grandfathered) HFC quota allocations would also be transferred to that person; future grandfathered allocations would not “revert” back to the person who made a request under subregulation 52(1) or (2), but would continue to be allocated to the person specified in the request.
70. Subregulation 52(7) clarifies that for the purposes of Subdivision 4A.3.3, the person specified in a request made under subregulation 52(1) or (2) will be taken to have engaged in a licensed regulated HFC activity or licensed HCFC activity under subregulation 52(4) even if the person specified in the request did not actually hold a SGG licence or controlled substances licence that allowed the activity at the time. This would mean that any licensed regulated HFC activity or licensed HCFC activity undertaken in any base periods preceding the request would be taken to have been undertaken by the person specified in the request for the purposes of future HFC quota allocations.
71. Subregulations 52(5) and (6) provide for variations or withdrawals of requests made under subregulation 52(1) or (2). An application for a variation or withdrawal must be made in the approved form, and be provided to the Minister no later than 30 days after the day mentioned in paragraph 52(3)(b). In respect of the first HFC quota period, an application for a variation or a withdrawal must be provided 30 days after the date determined by the Minister for receipt of applications for HFC quota pursuant to paragraph 44(2)(b). In respect of every subsequent quota application period, applications must be made 30 days after 31 August in the last year before the start of the HFC quota allocation period in respect of every subsequent quota allocation period.

Transfer of HFC quotas

72. Regulation 53 provides that a transfer of HFC quota under section 36F of the OPSGGM Act would not affect the relative proportions of any amounts of grandfathered quota and non-grandfathered quota included in the HFC quota. These ratios would remain the same.

Correcting HFC quotas

73. Regulation 54 provides for the correction of HFC quotas. Subregulation 54(1) provides that if after an HFC quota is allocated to a person for a calendar year, the Minister becomes satisfied that the size of an HFC quota is incorrect, the Minister must amend the size of the HFC quota to the correct amount. Subregulation 54(2) would provide that such an amendment would have effect from the start of the calendar year for which the quota was allocated. This would be the case even if that calendar year had already commenced, as the correction would be necessary to ensure the continuing integrity of the scheme.
74. Subregulation 54(3) provides that if after an HFC quota was allocated to a person for a calendar year, the Minister becomes satisfied that the person was not entitled to such a quota, the Minister must cancel the quota. Subregulation 54(4) provides that an HFC quota that was so cancelled would be taken never to have been in force and never to have been allocated. As with the preceding subregulations, this measure would be necessary to ensure the continuing integrity of the HFC phase-down.

Retiring HFC quota entitlements

75. Regulations 55 to 58 relate to the retirement of HFC quota entitlements. Industry stakeholders requested a mechanism to retire excess import quota where an industry sector has transitioned to alternative gases faster than projected and import quota holders consider their quota is in excess of future requirements. Quota retirement would impact only the importer who had retired a percentage, or all of, their quota entitlements. The entitlements of other HFC quota holders would not be affected. The overall industry limit would reduce by the retired amount on an ongoing basis.

Applying to retire quota entitlements

76. Regulation 55 enables applications to be made to retire entitlement to HFC quota allocations. Applications to retire entitlements to HFC quota could not be made in respect of the first or second HFC quota allocation period. Applications can only be made in respect of the third or subsequent HFC quota allocation periods, and can only be made in respect of entitlements that the person would have to grandfathered quota.
77. A SGG licensee may apply for the retirement of all or a percentage of their entitlement to HFC quotas for calendar years in or after a specified HFC quota allocation period (the retirement period), provided the licensee has been allocated HFC quotas in the calendar years in the HFC quota allocation period immediately preceding the retirement period, and the retirement period occurs after the second HFC quota allocation period.
78. The application must be in writing and be given to the Minister no later than 30 June of the last calendar year before the start of the retirement period.

Consultation before retiring quota entitlements

79. Subregulation 56(1) provides that before the Minister makes a decision on an application under regulation 55 to retire a percentage of a SGG licensee's entitlement to HFC quotas for calendar years occurring in or after the retirement period, the Minister must consult the industry and the public about the application.
80. Without limiting the ways in which the Minister may comply with the obligation in subregulation 56(1), subregulation 56(2) specifies the circumstances in which the Minister would be taken to have complied with that obligation.

81. Subregulation 56(3) clarifies that a failure to consult as required by subregulation 56(1) would not invalidate a decision made under Division 4A.3.

Retiring quota entitlements

82. Subregulation 57(1) provides that if an SGG licensee made an application under regulation 55, the Minister must either refuse the application by written notice to the applicant, or retire a specified percentage of the licensee's entitlement to HFC quotas by notifiable instrument. The specified percentage must either be the same percentage specified in the application, or a lesser percentage.
83. Subregulation 57(3) provides that in deciding an application, the Minister must have regard to the likely demand for HFC in Australia in those years, and 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.
84. A decision made by the Minister not to retire HFC quota under subsection 57(1) would not be subject to merits review because it would not be an administrative decision that would affect the interests of the applicant or any other person.
85. There would be no obligation imposed on the applicant if their application for the retirement of HFC quota were refused, or any obligation that was imposed would be so minor that it could not be considered to be an extra obligation. This is because the applicant could simply refrain from action in order to achieve results that would in effect be the same for the applicant as the retirement of all or a percentage of their HFC quota allocation.
86. If the applicant wished to retire their whole HFC quota allocation, it would be open to the applicant not to apply for a quota allocation in the next HFC quota allocation period. The result would be the same for the applicant in the next HFC quota allocation period as if they had retired their whole HFC quota allocation, as they would receive no HFC quota.
87. If the applicant wished to retire a percentage of their HFC quota allocation, it would be open to the applicant to not import an amount of HFCs equivalent to the amount of HFCs that the applicant wished to retire in the base period for the next HFC allocation period. The applicant's HFC quota allocation would then be reduced by the same percentage that they had sought to retire in the next HFC quota allocation period.
88. A decision by the Minister to refuse the application to retire HFC quota would not affect the interests of other HFC quota holders. The other quota holders would not have incurred any benefit if the application had been granted, and would not suffer any detriment if the application to retire HFC quota were refused. Subregulation 58(2) would operate to ensure that a retirement of some or all of one HFC quota holder's quota allocation would not affect the size of the quota allocation of any other HFC quota holders in the current HFC quota allocation period or any future HFC quota allocation period. If the application to retire had been granted, there would have been no beneficial impact for other HFC quota holders, as the size of their quota allocations would have remained the same.

Retiring quota entitlements - effects

89. Subregulation 58(2) relates to the effect of the retirement on the applicant's HFC quotas. Paragraph 58(2)(a) provides that the amount of grandfathered quota (if any) to which the

applicant is entitled in the years in the retirement period would be reduced by the percentage that the Minister has retired (the *retirement percentage*).

90. Paragraph 58(2)(b) provides that the amount of grandfathered quota (if any) to which the applicant is entitled in a year after the retirement period cannot be greater than the amount worked out by reducing the *maximum grandfathered quota* for the year by the retirement percentage (subregulation 58(4) provides the method for calculating the *maximum grandfathered quota* for a calendar year).
91. Subregulation 58(3) has the effect of ensuring that there would be no effect on the quota entitlements on other SGG licensees resulting from the retirement of some or all of another SGG licensee's HFC quota entitlements.
92. In applying the definitions of the total amount of licensed activities (grandfathered) and total amount of licensed activities (non-grandfathered) in subregulation 49(2) and the definition of total amount of licensed activities in subregulation 50(2) for the purposes of allocating HFC quotas for calendar years in an HFC quota allocation period occurring after the retirement period, these definitions should be applied as though the retirement had never happened and as though the applicant had used all of the HFC quota that they would have been allocated, but for the retirement.
93. This ensures that the amount of the quota allocations of all other quota holders would be unaffected by the retirement. However, for the person who has retired some or all of their quota entitlement, subregulation 58(3) is subject to subregulation 58(2), which provides that they cannot receive an HFC quota allocation for an HFC quota allocation period that is greater than the amount that they would have received but for the retirement (the maximum grandfathered percentage for the year, calculated under subregulation 58(4)) reduced by the percentage of their quota entitlement that has been retired.

Item 1 – Regulations 3 and 5

94. Item 1 repeals regulations 3 and 5 of the Import Levy Regulations, as they are no longer required.

Items 3, 4, 5, 6 and 10 – Low-volume import thresholds

95. Items 3, 4, 5 and 10 are consequential amendments required to update section references to reflect changes to the OPSGGM Act as a result of the Amendment Act.
96. Item 6 repeals and replaces subregulations 3(5) and (6) and inserts a new subregulation 3(7).
97. Paragraph 13(6)(a) of the OPSGGM Act provides that the prohibition set out in paragraph 13(1)(b) on importing ODS equipment or SGG equipment does not apply to a person importing ODS or SGG equipment if: (a) in the case of ODS equipment – the total amount of HCFC contained in ODS equipment in the importation is not greater than the amount (if any) prescribed by the regulations; (b) in the case of SGG equipment the total amount of a SGG in SGG equipment in the importation is not greater than the amount (if any) prescribed by the regulations in relation to the SGG; and (c) in any case any other conditions prescribed by the regulations in relation to the person, the equipment, and the importation are satisfied.
98. Subregulation 3(5) prescribes 10 kilograms for the purposes of paragraph 13(6)(a) of the OPSGGM Act. Subregulation 3(6) prescribes, for the purposes of paragraph 13(6)(c), a

condition in relation to the importation of SGG equipment by a person at a time in a calendar year, that the total amount of all SGGs contained in SGG equipment in the importation and in any other SGG equipment the person imported during the calendar year up until that time is not greater than 25 kilograms. That is, in order to meet the low-volume import threshold, the person must not have imported more than 25 kilograms of SGGs contained in SGG equipment in that calendar year. If they have exceeded the 25 kilogram threshold, then the exemption set out in subsection 13(6) of the OPSGGM Act would no longer apply and they would need to apply for an ODS/SGG equipment licence to undertake the imports.

99. Subregulation 3(7) prescribes conditions for the purposes of paragraph 13(6)(c) of the OPSGGM Act in relation to the import of ODS equipment. These conditions would be that there are no more than 5 units of ODS equipment in the importation, and that the importation is the first importation of ODS equipment by the person in the 2 years ending on the day that the importation occurs.

Items 9, 11, 12, 13 and 14 – Minor consequential amendments

100. Items 9, 11, 12, 13 and 14 are minor consequential amendments required to reflect changes to the OPSGGM Act resulting from the Amendment Act.

Item 15 – Regulations 3 and 5

101. Item 15 repeals regulations 3 and 5 of the Manufacture Levy Regulations, as they are no longer required.

Part 2 – References to equipment and products

102. Items 16, 17, 20, 21, 23, 24, 25, 26, and 27 are consequential amendments required as a result of the Amendment Act to change references to “product” to equipment.
103. Subsection 9(6) of the OPSGGM Act states that the regulations may provide that, in prescribed circumstances, a scheduled substance: (a) is a bulk scheduled substance, or is not a bulk scheduled substance; or (b) is taken to be contained in equipment, or is taken not to be contained in equipment; or (c) is taken to be used in the operation of equipment, or is taken not to be used in the operation of equipment.
104. Item 18 provides that, for the purposes of subsection 9(6) of the OPSGGM Act, an HFC or HCFC that is in a polyol blend is taken to be a bulk scheduled substance, is taken not to be contained in equipment, and is taken not to be used in equipment.
105. Item 19 inserts two explanatory notes at the end of subregulation 3(1) clarifying that subsection 13(3) of the OPSGGM Act applies to bulk SGGs, and that medical devices, medicine, veterinary devices and veterinary medicines are not SGG equipment and so are not subject to the Act’s restrictions on importing SGG equipment.

Part 3 – References to the Navigation Act 1912

106. Items 28 and 29 update references to the *Navigation Act 1912*, following its repeal by the *Navigation Act (Consequential Amendments) 2012*. The items amend the definitions of AMSA Certificate and AMSA vessel in regulation 110 of the Principal Regulations to refer to the *Navigation Act 2012*.

Part 4 – Delegations

107. Items 30, 31, 32, 33, and 34 amend provisions of the Principal Regulations relating to delegations, and ensure the Principal Regulations are consistent with the OPSGGM Act.
108. Under the OPSGGM Act, the Minister may delegate any or all of his or her functions and powers under the OPSGGM Act or the Principal Regulations to an APS employee who holds or is acting in, an Executive Level 2, or equivalent, position, as well as Senior Executive Service (SES), or acting SES employees.
109. Item 34 allows the Secretary to delegate any or all of his or her functions and powers under the Principal Regulations to an APS employee who holds or is acting in, an Executive Level 2, or equivalent, position, as well as SES, or acting SES employees. However, in performing a delegated function or exercising a delegated power, the delegate would have to comply with any written directions from the Secretary.
110. While Item 34 is drafted to refer to an APS employee who holds or performs the duties of an Executive Level 2, or equivalent, position, it is intended that these functions and powers would only be delegated to Executive Level 2 employees in the Department who have day-to-day responsibility for the administration of the OPSGGM Act and the Principal Regulations.
111. The capacity to delegate to Executive Level 2 officers who have day-to-day responsibilities in relation to the OPSGGM Act and the Principal Regulations is essential to streamline the administration of the OPSSGM legislation.
112. The giving of delegations and the exercise of delegated powers are the subject of fraud control procedures, risk management processes and other protocols. These are designed to ensure delegated decision-making is made at the appropriate level and in a transparent and accountable manner.

Part 5 – Other amendments

113. Items 35, 36, 37 and 40 are required to repeal redundant references to temporary licences in the Principal Regulations. Temporary licences are no longer issued (the provisions providing for their issue were repealed in 2009).
114. Item 38 repeals paragraph 326(1)(c)(ii) of the Principal Regulations. This paragraph sets out a licence condition that it is not possible for licencees to comply with, as the National Association of Testing Authorities (NATA) is not able to provide accreditations of the kind referred to in this paragraph. As such, it is not possible for licencees to have equipment used for the transfer of extinguishing agent from one vessel to another approved as being fit for the transfer of extinguishing agents by a person accredited by NATA.
115. Item 39 is a consequential amendment required as a result of Item 38.

Part 6 – Transitional provisions

116. Item 41 inserts transitional provisions into Part 10 of the Principal Regulations. These transitional provisions would relate to Item 6 (provisions relating to low-volume import thresholds and associated conditions), approved forms, and delegations.

Schedule 2 – Amendments commencing 1 January 2018

Part 1 – Licences

117. On 1 January 2018, amendments to the OPSGGM Act will commence which will facilitate the renewal of licences (see Item 10 of Part 1 of Schedule 2 to the Amendment Act). Paragraph 19AA(3)(b) of the OPSGGM Act will provide that an application for the renewal of a licence must be accompanied by the fee prescribed by the regulations, unless the fee has been waived in accordance with the regulations.
118. Item 1 inserts paragraph 3D(a) into the Principal Regulations which prescribes the application fee for a licence renewal for the purposes of paragraph 19AA(3)(b) of the OPSGGM Act. The application fee for a renewal of a licence of a particular type is the same as the application fee for a licence of that type under subregulation 3C(1). The same fee is proposed, because while a renewal application would save time and reduce administrative burden for applicants, it would not reduce administration and processing time for the Department of the Environment and Energy, as identical processes and checks would be required for a renewal as are currently required for new applications.
119. Paragraph 3D(b) prescribes the circumstances in which fees for the renewal of licences may be waived for the purposes of 19AA(3)(b). These circumstances will be the same as those under which the Minister may currently waive an application fee for a licence of that type under subregulation 3C(2), (3), or (4).
120. Subregulation 44(1) (to be inserted by Item 8 of Schedule 1) enables a person to apply for quota if they satisfy the requirements of paragraph 44(1)(a) or 44(1)(b). Item 3 inserts a new paragraph into subregulation 44(1) to allow for applications for HFC quota to be by a person who has applied for the renewal of an existing SGG licence (rather than applying for a new SGG licence). Items 4, 5, 6, 7 and 8 are required as a consequence of Item 3.
121. Subsection 16(6A) of the OPSGGM Act provides that the Minister must not grant an equipment licence that allows a Schedule 4 activity or section 69G activity in relation to equipment. Exceptions to this prohibition are set out in subparagraph 16(6A)(a)(ii) and paragraph 16(6A)(b).
122. Subparagraph 16(6A)(a)(ii) applies if a Schedule 4 activity or section 69G activity is prescribed by the regulations for the purposes of that subparagraph. Paragraph 16(6A)(b) applies if the requirements (if any) prescribed by the regulations for the purposes of that paragraph in relation to the activity and the licence are satisfied.
123. Item 10 prescribes two Schedule 4 activities for the purposes of paragraph 16(6A)(a)(ii); being the import of HCFC pre-charged air conditioning equipment, if the importation satisfies the conditions mentioned in subsection 13(6) of the OPSGGM Act and the import of HCFC pre-charged refrigeration equipment, if the importation of the equipment satisfies the conditions mentioned in subsection 13(6) of the OPSGGM Act.
124. The relevant conditions mentioned in subsection 13(6) of the OPSGGM Act are set out in paragraphs 13(6)(a) and (c). Paragraph 13(6)(a) provides that, in the case of ODS equipment, the total amount of HCFC contained in ODS equipment in the importation is not greater than the amount (if any) prescribed by the regulations. Paragraph 13(6)(c) provides that any other conditions prescribed by the regulations in relation to the person, the equipment, and the importation, are satisfied.

125. Items 9, 11, 12 and 13 are consequential amendments required as a result of amendments to the licence and exemption provisions of the OPSGGM Act contained in the Amendment Act.

Part 2 – Levy periods, thresholds and penalty interest

Items 14, 15, 16 and 17 – Reporting requirements

126. The Amendment Act streamlined and simplified the reporting and record keeping requirements set out in Part VII of the OPSGGM Act. The amendments set out in Part 2 of this Schedule reflect and are consequential to those amendments to the OPSGGM Act.
127. Item 16 repeals and replaces subregulation 900(3) and inserts new subregulations 900(4), (5), (6) and (7). These subregulations reflect the updated reporting requirements set out in section 46 of the OPSGGM Act. The reporting requirements of regulation 901 are also incorporated into regulation 900.
128. Paragraph 900(3)(c) requires reports to specify the reporting period to which a report relates. This reflects the requirement in subsection 46(1A) that reports be provided to the Minister before the 15th day after the end of the reporting period. *Reporting period* is defined in section 7 of the OPSGGM Act as a period of 6 months starting on 1 January or 1 July. However, subsection 46(1B) states that a person may also comply with the requirement to submit a report in respect of each reporting period by giving separate reports in relation to each half of the reporting period.
129. A table is inserted after paragraph 900(3)(d) setting out the information that must be included in each report.
130. Subregulation 900(4) inserts a definition of a scheduled kind of a scheduled substance, as this term is used in the table to subregulation 900(3).
131. Subregulation 900(5) specifies categories of ODS equipment or SGG equipment for the purposes of Column 2 of Items 2 and 3 in the table to subregulation 900(3).
132. Subregulation 900(6) specifies categories of equipment for the purposes of Column 2 of Item 3 in the table in subregulation 900(3).
133. Subregulation 900(7) provides that if a permit or written notice granted to the person under regulation 3A or 3AA was in force at any time during the reporting period, the report may also include the kinds of SGGs that the person manufactured under the permit or written notice during the reporting period, and for each of those kinds of SGGs, the total amount in metric tonnes of SGGs that the person manufactured or imported under the permit during the reporting period.
134. Item 17 repeals regulations 900A to 902. Regulations 900A and 902 include reporting requirements for nil amounts. Their repeal is required as a consequence of the Amendment Act which repeals the nil reporting requirements currently contained in the OPSGGM Act. Regulation 901 is repealed as its requirements are incorporated into regulation 900.

Item 18 – Licence levy threshold

135. Subsection 69(3) of the OPSGGM Act states that a licence levy in relation to a reporting period is not payable by a licensee if the total of the licence levies that would be payable

by the licensee in relation to the reporting period, but for subsection 69(3), is less than or equal to the amount (if any) prescribed by the regulations for the purposes of subsection 69(3).

136. Item 18 inserts a new regulation 918 into the Principal Regulations that prescribes an amount of \$330 for the purposes of subsection 69(3) of the OPSGGM Act. This means that if the total of the licence levies due and payable by a person under section 69 is equal to or less than \$330, the person's liability to pay the levy is waived.

Part 3 – Synthetic Greenhouse Gases

137. Item 19 includes nitrogen trifluoride in the SGGs listed in subsection 3(6). Subsection 3(6) would prescribe, for the purposes of paragraph 13(6)(c), that the total amount of all SGGs contained in SGG equipment in the importation and in any other SGG equipment the person imported during the calendar year up until that time is not greater than 25 kilograms.
138. In order to meet the low-volume import threshold, a person must not have imported more than 25 kilograms of SGGs contained in SGG equipment in that calendar year. The effect of this Item would be that, from 1 January 2018 (when this Item commences), any nitrogen trifluoride contained in SGG equipment that a person imported would count towards the low-volume import threshold of 25 kilograms in total of SGGs imported in SGG equipment in a calendar year. Before the commencement of this item, any nitrogen trifluoride contained in SGG equipment would not count towards this threshold.

Schedule 3 – Amendments commencing 1 January 2020

139. From 1 January 2020, the Montreal Protocol will restrict the use of HCFCs imported after 1 January 2020 (other than HCFCs contained in pre-charged equipment). Article 2F paragraph 6(a) of the Montreal Protocol states that use of HCFCs imported or manufactured from 1 January 2020 must be restricted to the servicing of existing refrigeration and air conditioning equipment. However, the allowable uses for HCFCs under the Montreal Protocol may be changed or updated before the obligation comes into effect in 2020.
140. As a part of Australia's phase-out of HCFCs under the Montreal Protocol, equipment bans for the manufacture and import of refrigeration and air conditioning equipment using HCFCs have already been instituted to assist in reducing the demand for HCFCs. The use of HCFCs in most other equipment has already reduced to minimal levels.
141. Schedule 3 to the Amendment Act will amend the OPSGGM Act to implement Australia's obligations under the Montreal Protocol regarding the use of HCFCs. Commencing on 1 January 2020, it will introduce a ban on the use of HCFCs imported or manufactured on or after 1 January 2020. However, the prohibition will not apply if the use is for a purpose prescribed by the regulations.
142. The import and manufacture of most refrigeration and air conditioning equipment containing a HCFC has been banned in Australia since 2010 to assist Australia to meet its Montreal Protocol obligations to phase-out the import of HCFCs. The Regulations would insert some time-limited exemptions in the Principal Regulations to allow import in specified circumstances, including where it would be impractical to comply with a ban, and to allow the import of parts to maintain existing equipment.

143. Regulation 3E (to be inserted by Item 10 of Schedule 2 of the Regulations), prescribes two Schedule 4 activities for the purposes of paragraph 16(6A)(a)(ii), commencing on 1 January 2018. Item 3 of Schedule 3 prescribes additional activities for the purposes of paragraph 16(6A)(a)(ii) in regulation 3E.
144. Subparagraph 16(6A)(a)(ii) has the effect that the Minister must not grant an equipment licence that allows a Schedule 4 activity or section 69G activity in relation to equipment unless the activity is prescribed by the Principal Regulations. The prescription of the activities in regulation 3E in the Principal Regulations would allow the Minister to grant equipment licences that allow these activities in relation to equipment.
145. Item 1 inserts a definition of the term replacement part into regulation 2. It is defined as excluding a complete, or substantially complete, indoor or outdoor unit of a split system air conditioning unit. Without this definition, the prescription of importing replacement parts for existing refrigeration or HCFC refrigeration or air conditioning equipment in regulation 3E could be used to import equipment in its component parts that could easily be reassembled into a complete piece of equipment after it had been imported. For example, separately importing the indoor and outdoor units of a split system air conditioner as replacement parts, then connecting them after import to form a complete air conditioning unit.
146. Items 2, 4, 5, 6, and 7 are consequential amendments necessitated by the ban on the use of HCFCs imported or manufactured after 1 January 2020.