

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

Agricultural and Veterinary Chemicals (Administration) Act 1992

*Agricultural and Veterinary Chemicals (Administration) Amendment (Phorate)
Regulations 2020*

Legislative Authority

This instrument implements an obligation under an international Convention.

The *Agricultural and Veterinary Chemicals (Administration) Act 1992* (the Act) establishes the Australian Pesticides and Veterinary Medicines Authority (APVMA) as the national registration authority to administer such laws of the Commonwealth or of the states and territories that relate to agricultural and veterinary (agvet) chemical products and active constituents. The APVMA is responsible for regulating these chemicals up to and including the point of supply. This regulatory responsibility includes import, export and manufacture of agvet chemicals. The control of use of agvet chemicals after supply is the responsibility of individual states and territories.

Section 73 of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 69C(1) of the Act provides that if a chemical product, or an active constituent for a proposed or existing chemical product, is the subject of a prescribed international agreement or arrangement, the regulations may prohibit its import, manufacture, use or other dealings, or export. The prohibition may be absolute or subject to prescribed conditions or restrictions.

Subsection 69C(2) of the Act provides that a regulation prescribing such conditions or restrictions must not be made unless a relevant agency—the Department of Agriculture, Water and the Environment (the department) or the APVMA (as per section 69EAA of the Act)—has published a notice in the Gazette and any other manner it thinks appropriate at least 30 days before the regulation is made. The notice must identify the agreement or arrangement and list the name of the constituent or product as known to the public. This notice was published in respect to phorate in the APVMA Gazette No. 9, 5 May 2020. The notice is available at www.apvma.gov.au/node/67076.

Regulation 1.3A of the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* (the Administration Regulations) prescribes a controlled chemical as, *inter alia*, an active constituent, chemical product or chemical product containing an active constituent listed in Part 2 of Schedule 1 to the Administration Regulations.

Paragraph 3.05(a) of the Administration Regulations prescribes the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Rotterdam Convention) as an international agreement for the purposes of section 69C of the Act.

Regulation 3.205 of the Administration Regulations prescribes that subdivision 3.6.2 of the Administration Regulations ('prohibition subject to conditions') applies to a controlled chemical if the relevant item in Schedule 1 to the Administration Regulations states that its export is prohibited except with written permission. It defines a controlled chemical to which the subdivision applies as an 'export-prohibited chemical'.

Under regulation 3.210 of the Administration Regulations (which is in subdivision 3.6.2 of the Administration Regulations), the export from Australia of an export-prohibited chemical is prohibited unless, relevantly, an authorised officer or the Minister has given written permission to export the chemical and any condition or restriction specified in the relevant item in Schedule 1 to the Administration Regulations is satisfied. Subregulation 3.210(2) prescribes several conditions or restrictions for each chemical for the purposes of subsection 69C(1) of the Act, including that a person must not export the chemical without the written permission of an authorised officer or the Minister, or contrary to a condition or restriction specified in the permission.

Purpose

The purpose of the *Agricultural and Veterinary Chemicals (Administration) Amendment (Phorate) Regulations 2020* (the Regulations) is to amend the Administration Regulations to list the active constituent phorate as a 'controlled chemical' for the purpose of regulation 1.3A and prescribe a condition of its export. Phorate is an active ingredient in agricultural chemical products used to manage insects such as aphids, thrips and worms in cotton and vegetables in Australia. This amendment lists the active constituent phorate as a 'controlled chemical' for the purpose of regulation 1.3A of the Administration Regulations and prescribes a condition of its export or chemical products containing phorate. Specifically, as a result of the Regulations, the export of phorate as an active constituent for a proposed or existing chemical product, or agvet chemical products containing phorate, is prohibited except with written permission from the Minister or an authorised officer. This enables Australia to meet its obligations under the Rotterdam Convention to ensure that phorate is not exported to countries that have not provided consent to receive it.

Background

In 2019, phorate was added to Annex III of the Rotterdam Convention (accessible free of charge at www.pic.int/). The Rotterdam Convention is an international treaty promoting shared responsibilities and cooperative efforts in the international trade of certain hazardous chemicals. It creates legally-binding obligations for implementing the Prior Informed Consent (PIC) procedure. Annex III of the Rotterdam Convention contains a list of chemicals that are subject to the PIC procedure.

The PIC procedure aims to ensure that countries do not export listed chemicals to other countries that have not provided consent to receive them. It does not require chemicals to be banned or phased out and does not alter domestic regulatory decisions on the chemicals. Australia fulfils the Rotterdam Convention's pesticide export obligations via permission arrangements administered by the department.

The amendment of the Rotterdam Convention required a minor treaty action under Australia's domestic treaty-making process, which was managed by the then Department of the Environment and Energy (as the Official Contact Point for the Rotterdam Convention, now

the department). The Joint Standing Committee on Treaties endorsed the treaty action on 2 December 2019.

The proposed Regulations would update the conditions for export of phorate, as an active constituent for a proposed or existing chemical product, or agvet chemical products containing phorate, to enable Australia to meet its obligations as a party to the Rotterdam Convention.

Impact and Effect

It is not anticipated that there will be any adverse impact or effect from adding phorate to Part 2 of Schedule 1 to the Administration Regulations.

Consultation

Prior to the listing of phorate under Annex III to the Rotterdam Convention, the then Department of the Environment and Energy and the then Department of Agriculture and Water Resources undertook targeted written consultation from November 2018 to February 2019 with the stakeholders listed in [Attachment A](#).

The consultation advised that phorate was being considered for listing under the Rotterdam Convention and of the associated condition of export. Stakeholders highlighted phorate as an important agricultural chemical to manage insects such as aphids, thrips and worms particularly in cotton and vegetables crops. Stakeholders did not object to the listing (noting that access to the chemical was not being restricted).

Details/ Operation

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

Other

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out at [Attachment C](#).

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

Stakeholder consultation prior to the listing of phorate under Annex III to the Rotterdam Convention

Australian Government Entities

Australian Grape and Wine Authority
Australian Pesticides and Veterinary Medicines Authority
Department of Agriculture and Water Resources
Department of Defence
Department of Education, Skills and Employment
Department of the Environment and Energy
Department of Foreign Affairs and Trade
Department of Health
Department of Home Affairs
Department of Industry, Innovation and Science
Department of the Prime Minister and Cabinet (PMC)
National Industrial Chemicals Notification and Assessment Scheme
PMC Office of Best Practice Regulation

State and Territory Government Agencies

The Australian Capital Territory Environment, Planning and Sustainable Development Directorate – Environment
The New South Wales Environment Protection Authority
The Northern Territory Department of Environment and Natural Resources
The Queensland Department of Environment and Science
The South Australian Department for Environment and Water
The Tasmanian Department of Primary Industries, Parks, Water and Environment
The Victorian Department of Environment, Land, Water and Planning
The Western Australian Department of Water and Environmental Regulation

Industry Bodies

Accensi Pty Ltd
Accord Australasia
Apple and Pear Australia
Australian Groundsprayers Association
Australian Environment Business Network Pty Ltd
Australian Environmental Pest Managers Association Ltd
Australian Lot Feeders' Association
Australian Nut Industry Council Ltd
AusVeg Ltd
Citrus Australia Ltd
CropLife Australia Ltd
Dried Fruits Australia Inc.
Freshmark Australia Pty Ltd
Fruit Growers Victoria Ltd
Growcom Australia
GrainCorp Ltd

Grains Industry Association of Victoria Inc.
Grain Producers Australia Ltd
Grains Research and Development Corporation
Hazelnut Growers of Australia Inc.
Hort Innovation
National Farmers' Federation Ltd
NSW Farmers Pty Ltd
NT Farmers Association Inc.
Nufarm Australia Ltd
Queensland Farmers' Federation Ltd
Primary Producers South Australia Inc.
Raspberries and Blackberries Australia Inc.
Sports Turf Association Victoria Inc.
Strawberries Australia Inc.
The Australian Tables Grape Association
Voice of Horticulture Ltd
Victorian Farmers Federation
WAFarmers

Non-government organisations

Australian Conservation Foundation Inc.
National Toxics Network Inc.
Public Health Association of Australia Inc.
Total Environment Centre Inc.

Details of the *Agricultural and Veterinary Chemicals (Administration) Amendment (Phorate) Regulations 2020*

Section 1 – Name

This section provides that the name of the Regulations is the *Agricultural and Veterinary Chemicals (Administration) Amendment (Phorate) Regulations 2020*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Section 4 – Schedules

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

Schedule 1 – Amendments

Agricultural and Veterinary Chemicals (Administration) Regulations 1995

Item 1 – After item 67 of Part 2 of Schedule 1

This item inserts new item 67A after item 67 in Part 2 of Schedule 1 to the Administration Regulations. New item 67A lists the chemical phorate, its Chemical Abstract Service (CAS) number (298-09-2) and International Union of Pure and Applied Chemistry (IUPAC) name diethoxy-(ethylsulfanyl-methylsulfanyl)-sulfanylidene- λ^5 -phosphane. The CAS number and IUPAC name are internationally-recognised identifiers for chemicals.

Subsection 69C(1) of the Act provides that if a chemical product, or an active constituent for a proposed or existing chemical product, is the subject of an international agreement or arrangement prescribed for the purposes of section 69C, the regulations may prohibit its import, export, manufacture, use or other dealings. The prohibition may be absolute or subject to prescribed conditions or restrictions.

Subregulation 3.210(2) of the Administration Regulations includes, as a condition for the export of controlled chemicals for the purposes of subsection 69C(1) of the Act, that persons must not export such chemicals without the written permission of the Minister or an authorised officer (nor contrary to a condition or restriction specified in the permission). Subregulation 3.210(2) applies to a chemical if the relevant item in Schedule 1 to the Administration Regulations states that its export is prohibited except with written permission.

Regulation 1.4 of the Administration Regulations defines an authorised officer as an officer of the department authorised in writing by the Secretary in relation to the provision of the Administration Regulations in which the expression occurs.

The insertion of new item 67A in Part 2 of Schedule 1 to the Administration Regulations lists the active constituent phorate as a 'controlled chemical' for the purpose of regulation 1.3A and prescribes a condition of export on phorate or chemical products containing phorate. This ensures that the chemical cannot be exported except with written permission and that Australia meets its obligations under the Rotterdam Convention to ensure that phorate is not exported to countries that have not provided consent to receive it.

The new item 67A also identifies that phorate is not a prescribed active constituent or chemical product for the purposes of subsection 69CA(2) of the Act (prescribed information about import, manufacture, other dealings or export of certain chemicals). New item 67A additionally identifies the Rotterdam Convention as the relevant international agreement or arrangement.

Statement of Compatibility with Human Rights

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

Agricultural and Veterinary Chemicals (Administration) Amendment (Phorate) Regulations 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument adds phorate to Part 2 of Schedule 1 to the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* (the Administration Regulations) to prohibit the export of that chemical without the written permission of the Minister or an authorised officer. Pesticides listed in Part 2 of Schedule 1 to the Administration Regulations are considered to have the potential for adverse effects on human health and the environment. These effects warrant notification of the export of material containing these pesticides to allow the importing country to provide informed consent to the transport of the material.

This Legislative Instrument ensures that the Administration Regulations are consistent with Australia's obligations with respect to the export of phorate under the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*. These obligations require that phorate is not exported to countries that have not provided consent to receive it.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. David Littleproud MP
Minister for Agriculture, Drought and Emergency Management**