

EXPLANATORY STATEMENT

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Ozone Protection and Synthetic Greenhouse Gas Management Amendment (HFC Quota Allocation—Grandfathered Quota) Regulations 2020

Issued by authority of the Assistant Minister for Waste Reduction and Environmental Management

Purpose and operation

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) implements Australia's obligations under the *Vienna Convention for the Protection of the Ozone Layer* and its associated *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), as well as the *United Nations Framework Convention on Climate Change* and its Kyoto Protocol and Paris Agreement.

Section 70 of the Act provides that the Governor-General may make regulations required or permitted by the Act or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (HFC Quota Allocation—Grandfathered Quota) Regulations 2020* (the Amendment Regulations) amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) to adjust the hydrofluorocarbon (HFC) grandfathered quota calculation method for the 2022 and 2023 allocation period in response to COVID-19 disruptions and adjust the grandfathered quota calculation method for all future allocation periods to simplify compliance with quota rules.

The Principal Regulations set out the method to calculate quota allocations for the import and manufacture of HFCs for each two-year allocation period. To be entitled to receive their maximum quota allocation, an HFC quota holder must have imported or manufactured 100% of their quota amount in each of two specified earlier calendar years.

Response to the COVID-19 pandemic

To avoid possible unwanted effects from the COVID-19 pandemic, the Principal Regulations are amended to adjust the HFC quota calculation method for the 2022 and 2023 allocation period to not disadvantage quota holders who are not able to import or manufacture their full quota in 2020. The amendments allow import or manufacture at 75% or more of quota in 2020 to be considered equivalent to 100% for the purposes of quota allocation for the 2022 and 2023 allocation period.

Amendments to give importers more flexibility in all future years

Logistical matters, such as delays in shipping and standard size containers, can make it difficult for quota holders to import or manufacture exactly 100% of their quota. This particularly affects quota holders who hold a small quota amount. The amendments allow import or manufacture at 90% or more of quota in a calendar year to be considered equivalent to 100% for the purposes of being

allocated their maximum potential quota allocation for an allocation period, starting with the 2024 and 2025 period.

Consultation

Consultation on the changes was undertaken directly with the twenty-one (at the time of consultation) HFC quota holders and six refrigeration and air conditioning industry associations representing importers, wholesalers and consumers of HFCs. These stakeholders were asked for their opinions on the effect of the pandemic on the Australian HFC market during 2020 and anticipated effects in 2021, and on proposed changes to the quota allocation method. The respondents were all supportive of the changes and suggested a range of quota percentages representing different business models and amount of quota held.

The existing quota allocation approach is designed to maintain market stability and certainty, while ensuring industry participants use their import quota. The amendments will achieve these aims while adding flexibility for importers and not unfairly disadvantaging them where circumstances prevent them from importing 100% of their quota

Regulatory impact analysis

The Office of Best Practice Regulation advised that these regulatory amendments are likely to have a minor regulatory impact and that a Regulatory Impact Statement is not required.

Other Matters

The Amendment Regulations make no incorporations by reference.

Details of the Amendment Regulations are set out in [Attachment A](#). A Statement of Compatibility with Human Rights has been completed and is at [Attachment B](#).

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

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

The Amendment Regulations commence on the day after registration.

Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (HFC Quota Allocation—Grandfathered Quota) Regulations 2020*

Section 1 – Name

1. This section provide that the title of the Regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (HFC Quota Allocation—Grandfathered Quota) Regulations 2020*.

Section 2 – Commencement

2. The table in this section provides that the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (HFC Quota Allocation—Grandfathered Quota) Regulations 2020*, including all Schedules, commence the day after the instrument is registered.

Section 3 – Authority

3. This section provides that the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (HFC Quota Allocation—Grandfathered Quota) Regulations 2020* are made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Correct spelling of 'licensed'

Items 1 and 2

Items 1 and 2 correct the spelling of 'licenced' to 'licensed' in paragraph 48(3)(a) and subregulation 50(2).

Part 4A HFC quotas

Consistent with Australia's obligations under the Kigali Amendment to the Montreal Protocol, the import and manufacture of HFCs is subject to a phase-down under the Act and the Principal Regulations. The phase-down is implemented by capping the amount of HFCs allowed to be imported or manufactured in a calendar year (the ***HFC industry limit***, regulation 42 of the Principal Regulations) and allocation of shares of the HFC industry limit via a quota system (Part IVA of the Act and Part 4A of the Principal Regulations).

Only persons with an SGG (synthetic greenhouse gas) licence and who have been allocated quota for the relevant period can engage in a *regulated HFC activity*. A regulated HFC activity is the manufacture of HFCs or import of HFCs into Australia, with certain exceptions (s 36B of the Act). There are currently no HFCs manufactured in Australia.

Section 36C of the Act allows the regulations to prescribe, among other things, the size of HFC quotas or the method for calculating the size of HFC quota.

HFC quota is divided into grandfathered and non-grandfathered quota. Grandfathered quota is reserved for past importers and is allocated based on their market share. Grandfathered quota for the first quota allocation period (2018 and 2019) was available to licensees who had imported or manufactured HFCs during the period 2009-2014. Grandfathered quota for the second and later allocation periods is only available to those who already held grandfathered quota for an earlier quota allocation period. Grandfathered quota makes up most of the quota allocation (90% for the first quota allocation period and 95% for all other quota allocation periods (regulation 46 of the Principal Regulations)).

Non-grandfathered quota is available to any applicant and is not related to amounts imported in earlier years. The Amendment Regulations do not amend the method for allocation of non-grandfathered quota.

The amount of grandfathered quota an HFC quota holder is entitled to for a particular quota allocation period is calculated by the method prescribed in the Principal Regulations. Regulation 50 governs the amount of grandfathered quota a person will be entitled to during the third and future quota allocation periods.

Under regulation 50, a person's grandfathered quota entitlement for each year in the 2022 and 2023 allocation period is based on the amount of regulated HFC activities the person performed during the 2019 and 2020 calendar years (see definition of 'base period' in regulation 46).

For example, if a person is allocated 100 tonnes of quota for each year of the 2019 and 2020 quota allocation period, and imports or manufactures only 50 tonnes each year during that period, then quota allocation for the 2022 to 2023 period will be based on 50 tonnes for that person, rather than 100 tonnes. This is intended to encourage quota holders to use all of their quota and is consistent with the phase-down approach of having the available amount of HFC approximately match the demand in the market throughout the phase-down period, without sharper, unexpected drops in availability.

The changes at items 3, 4 and 5 adjust the HFC grandfathered quota calculation method for the 2022 and 2023 allocation period in response to potential COVID-19 supply and transport disruptions and adjust the grandfathered quota calculation method for all future allocation periods to simplify compliance with quota rules.

Items 3, 4 and 5

Item 3 repeals the current definition of *annual amount of licensed activities* in subregulation 50(2).

Item 4 provides a new definition of *annual amount of licensed activities in* subregulation 50(2).

The new definition has the effect that:

- the annual amount of licensed activities of a person (an HFC quota holder) for the calendar year 2019 will be calculated under new subregulation 50(3) (see item 5);
- the annual amount of licensed activities of a person for the calendar year 2020 and for later calendar years will be calculated under new subregulation 50(4) (see item 5).

Item 5 inserts two new subregulations.

Subregulation 50(3) provides the method for calculating the annual amount of licensed activities for a person for the 2019 calendar year. The new subregulation retains the current method for calculating the annual amount of licensed activities for a person for the calendar year 2019.

This method means that if an HFC quota holder imports or manufactures less than the full quota amount allocated to that person for 2019, the method specified in subregulation 50(2) will apply the amount actually imported or manufactured as the ‘annual amount of licensed activities’ for the purpose of calculating the amount of grandfathered quota that person will be entitled to in 2022 and 2023.

Subregulation 50(4) provides the method for calculating the annual amount of licensed activities for a person for the 2020 calendar year and for later calendar years.

For 2020:

- if an HFC quota holder imports or manufactures less than 75% of the amount of grandfathered quota allocated to them for that year, the annual amount of licensed activities for that person will be the actual amount imported or manufactured. This has the effect of maintaining the existing quota calculation method for persons who import less than 75% of their allocated quota. This is considered appropriate as it is not expected that the COVID-19 pandemic will result in importers being unable to import at least 75% of their allocated quota in 2020.
- if an HFC quota holder imports or manufactures 75% or more of the amount of grandfathered quota allocated to them, the annual amount of licensed activities for that person will be the amount of grandfathered quota allocated to that person for the year. This means that, as long as the person imports or manufactures at least 75% of their allocated quota in 2020, they will not be penalised by having their quota entitlement for the 2022-2023 allocation period reduced by more than the ordinary phase-down related reduction.

For later calendar years:

- if an HFC quota holder imports less than 90% of the amount of grandfathered quota allocated to them for that year, the annual amount of licensed activities for that person will be the actual amount imported or manufactured. This has the effect of maintaining the existing quota calculation method for persons who import less than 90% of their allocated quota. This is considered appropriate as it is not expected that ordinary logistical issues will result in importers being unable to import at least 90% of their allocated quota in a calendar year.
- if an HFC quota holder imports 90% or more of the amount of grandfathered quota allocated to them for that year, the annual amount of licensed activities for that person will be the amount of grandfathered quota allocated to that person for the year. This means that, as long as the person imports or manufactures at least 90% of their allocated quota in 2021, they will not be penalised by having their quota entitlement for the 2024-2025 allocation period reduced by more than the ordinary phase-down related reduction.

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 Amendment (HFC Quota Allocation—Grandfathered Quota) Regulations 2020

This Disallowable 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

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Human rights implications

The Amendment Regulations have no human rights implications.

The Hon Trevor Evans MP

**Assistant Minister for Waste Reduction and Environmental Management
Parliamentary Secretary to the Minister for the Environment**