

EXPLANATORY STATEMENT

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

Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2022-23) Determination 2021

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*, its *Montreal Protocol on Substances that Deplete the Ozone Layer* and the *United Nations Framework Convention on Climate Change*. 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.

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

Part IVA of the OPSGGM Act and Part 4A of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations) provide for the phase-down of HFCs through a reducing import quota system over 18 years. From 1 January 2018, a person must have been allocated a HFC quota to be able to import bulk HFC gas into Australia.

HFC quota for a 2 year quota allocation period is divided between a 'grandfathered' percentage (95% for 2022 and 2023) and a 'non-grandfathered' percentage (5% for 2022 and 2023). The grandfathered percentage can only be allocated to established market participants. The non-grandfathered percentage is not subject to the same limitation.

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

Subregulation 51(4) of the OPSGGM Regulations provides that the Minister may, by legislative instrument, determine requirements for a person to be entitled to an amount of non-grandfathered quota, 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.

The *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2022-23) Determination 2021* (the Determination) is made under subregulation 51(4) of the OPSGGM Regulations. It:

- (a) sets out requirements for a person to be entitled to an amount of non-grandfathered quota;
- and

(b) specifies the method for working out the amount of non-grandfathered quota to which a person is entitled for each of the years in the third HFC quota allocation period (2022 and 2023).

Industry stakeholders (including HFC importers and industry peak bodies) were consulted in February and March 2021 on the proposed method for allocating non-grandfathered quota in the third HFC quota allocation period. Stakeholders were contacted directly via email and invited to comment on the proposed allocation method. Four submissions were received.

The non-grandfathered HFC import quota will be divided equally among all applicants after deducting 130 CO₂e tonnes for the Commonwealth, as represented by the Department of Agriculture, Water and the Environment. 28 applications were received for the 2020-2021 quota allocation period and 29 applications were received for the 2018-2019 quota allocation period.

Details of the Determination are set out in the Attachment.

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

Paragraph 51(5)(b) of the OPSGGM Regulations provides that a Minister may have regard to any other matter he or she thinks relevant. The Minister has considered submissions from stakeholders following consultation with industry on the allocation for non-grandfathered HFC quota. In making this determination, the Minister has also considered the potential requirement for occasional imports of HFC for test and research purposes. The OPSGGM Regulations specify no further conditions that need to be satisfied before the power to make the Determination may be exercised.

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

The Determination commences the day after it is registered.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011
Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2022-23) Determination 2021

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

Overview of the Legislative Instrument

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

The *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2022-23) Determination 2021* (the Determination) prescribes requirements for a person to be entitled to an amount of non-grandfathered HFC quota, and methods for working out the amount of non-grandfathered quota to which a person is entitled for each of the years in the third HFC quota allocation period (2022 and 2023).

Human rights implications

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

Conclusion

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

Details of the Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota 2022-23) Determination 2021

Section 1 – Name

1. This section provides that the title of the instrument is the *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2022-23) Determination 2021* (the Determination).

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Simplified outline of this instrument

4. This section provides a simplified outline of the Determination.

Section 5 – Definitions

5. This section defines terms used in the Determination, including by reference to the definitions of those terms in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the OPSGGM Act) and the OPSGGM Regulations.
6. Key terms that are defined in this section are *eligible applicant* and *eligible applicant entitlement amount*.

Section 6 – Entitlement

7. Section 6 prescribes requirements for the purposes of paragraph 51(4)(a) of the OPSGGM Regulations. Paragraph 51(4)(a) of the OPSGGM Regulations provides that the Minister may determine the requirements for a person to be entitled to an amount of non-grandfathered quota for each of the calendar years in an HFC quota allocation period.
8. Under paragraph 6(a), a person is entitled to non-grandfathered quota for the 2022-2023 quota allocation period if that person is an eligible applicant and makes an application for non-grandfathered quota for that quota allocation period. Eligible applicant is defined as a person that satisfies the criteria set out in subsection 51(1) of the OPSGGM Regulations, other than the Commonwealth.
9. In addition, under paragraph 6(b), the Commonwealth, as represented by the Department of Agriculture, Water and the Environment, is entitled to an amount of quota for each of the calendar years in the 2022-2023 HFC quota allocation period. The intention is that the Department will be able to transfer its allocated non-grandfathered quota to users in certain limited circumstances. Eligible users will be occasional or one-off importers, who do not normally hold HFC quota and who require, for research or test purposes, a small

amount of a type and/or purity of HFC that is difficult or impossible to purchase from a supplier within Australia.

Section 7 – Amount

10. Paragraph 51(4)(b) of the OPSGGM Regulations provides that the Minister may determine the amount, or method for working out the amount, of non-grandfathered quota to which a person is entitled for each of the calendar years in an HFC quota allocation period.
11. Section 7(a) prescribes, for the purposes of paragraph 51(4)(b) of the OPSGGM Regulations, that the amount of non-grandfathered quota to which an eligible applicant is entitled is the eligible applicant entitlement amount. The eligible applicant entitlement amount is defined as the non-grandfathered HFC industry limit minus the allocation reserved for the Commonwealth, divided equally between all the eligible applicants that have made an application for non-grandfathered quota.
12. Section 7(b) prescribes, for the purposes of paragraph 51(4)(b) of the OPSGGM Regulations, the amount of non-grandfathered quota to which the Commonwealth, as represented by the Department of Agriculture, Water and the Environment is entitled. That amount is 130 CO_{2e} tonnes.