

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Waste Reduction and Environmental Management and Parliamentary Secretary to the Minister for the Environment

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Reserve HFC Quotas) Regulations 2021

Legislative Authority

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* (the 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.

Section 36G of the Act allows the regulations to provide for reserve HFC quota, including the process for applying for reserve HFC quota, the allocation, variation and cancellation of reserve HFC, and the reserve quota limit. Section 36C of the Act allows the regulations to provide for, relevantly, the allocation and size of HFC quota.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Reserve HFC Quotas) 2021* (the Amendment Regulations) are made under section 70 of the Act and are made for the purposes of sections 36G and 36C of the Act.

Purpose

The Amendment Regulations amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) to:

- enable the allocation of reserve hydrofluorocarbon (HFC) quota for the 2022 calendar year to importers who hold a licence and quota to import HFCs in 2021 and have ordered before 1 October 2021 for arrival in Australia during 2021, but where the import is delayed until 2022 due to delays outside the importer's control; and
- ensure that imports made under a reserve HFC quota in 2022 count towards the importer's 2021 HFC imports for the purposes of calculating the importer's future quota entitlement; and
- prescribe a reserve HFC quota limit. The total amount of reserve HFC quota allocated to importers must not exceed the reserve quota limit.

The Amendment Regulations are in response to delays to worldwide shipping and freight caused in part by COVID-19.

Background

Consistent with Australia's obligations under the Montreal Protocol, the import and manufacture of HFCs is subject to a phasedown under the Act and the Principal Regulations. The phase-down is implemented by capping the overall amount of HFCs allowed to be imported into, or manufactured in, Australia in a calendar year (known in the Act as the *HFC industry limit*) and by allocating shares of the HFC industry limit to individual importers via a quota and reserve quota system. No HFCs are currently manufactured in Australia.

Delays to worldwide freight and shipping caused in part by COVID-19 mean that some imports of HFCs may not arrive in 2021 as intended. To ensure sufficient supply of HFCs in Australia into the future, it is important that HFC that was intended to be imported into Australia in 2021, but is not imported until 2022 due to factors outside the importer's control, is:

- covered by a quota that is in force at the time of the import in 2022 so that the importer is not breaching their licence conditions; and
- does not count against the importer's 2022 quota because that would unfairly reduce the quota the importer has available for the rest of 2022; and
- counts as part of the regulated HFC activities the importer engaged in for 2021, for the purpose of calculating the importer's future quota entitlements, so importers do not have future quota entitlements reduced due to COVID-19-related factors outside their control.

Australia has implemented an accelerated HFC phase-down when compared to Australia's limit under the Montreal Protocol. The HFC industry limit is in the most part well below the annual limits set by the Montreal Protocol. As such, there is space for reserve HFC quota to be allocated each year, being the difference between the HFC industry limit and the Montreal Protocol limit.

The HFC industry limit for 2022 is 6.25 million CO₂e tonnes, while the Montreal Protocol limit is 9.73 million CO₂e tonnes, leaving 3.48 million CO₂e tonnes potentially available as reserve HFC quota. This 3.48 million CO₂e tonnes is the reserve HFC quota limit, ensuring that Australia's international obligations under the Montreal Protocol continue to be met.

Consultation

Consultation was undertaken with industry through Refrigerants Australia, the peak industry group representing the refrigerant supply chain, which is the user of the majority of HFCs, and directly with HFC import permit holders. Advice from industry indicated that due in large part to COVID-19, there are significant delays on shipping of imports into Australia. Consultation feedback was broadly supportive of the Amendment Regulations.

The Attorney-General's Department was consulted in the development of the Amendment Regulations. The Office of Best Practice Regulation advised that a Regulatory Impact Statement is not required.

Details and Operation

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

The Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

Details of the Amendment Regulations are set out in Attachment A.

The Amendment 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 in Attachment B.

Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Reserve HFC Quotas) Regulations 2021*

Section 1 - Name

1. This section provides that the name of the regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Reserve HFC Quotas) Regulations 2021* (the Amendment Regulations).

Section 2 - Commencement

2. This section provides that the Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 - Authority

3. This section provides that the Amendment Regulations 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 the Amendment Regulations 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.
5. This enables the amendment of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations).

Schedule 1 - Amendments

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

Item [1] - Regulation 40 (before the paragraph beginning “HFC quotas”)

6. Regulation 40 of the Principal Regulations sets out a simplified outline of Part 4A of the Principal Regulations. Part 4A deals with hydrofluorocarbon (HFC) quotas.
7. The purpose of the simplified outline is to assist readers to understand the substantive provisions of this Part of the Principal Regulations. It is not intended to be comprehensive, nor replace those provisions. It is intended that readers will rely on the substantive provisions in Part 4A of the Principal Regulations.
8. Item 1 of Schedule 1 to the Amendment Regulations amends the simplified outline in regulation 40 of the Principal Regulations to clarify that Part 4A relates to reserve hydrofluorocarbon (HFC) quotas, as well as HFC quotas. This item is consequential to the amendments made by items 3 and 4 of this Schedule.

Item [2] - At the end of regulation 40

9. Item 2 of Schedule 1 to the Amendment Regulations amends the simplified outline of Part 4A in regulation 40 of the Principal Regulations to insert text that provides an overview of reserve HFC quotas that may be allocated for the 2022 calendar year.
10. The purpose of this item is to assist readers to understand the substantive provisions relating to reserve HFC quotas (that would be inserted by items 3 and 4 of this Schedule) and is not intended to be comprehensive, nor replace those provisions.

Item [3] - At the end of subregulation 50(4)

11. Consistent with Australia's international obligations under the Kigali Amendment to the Montreal Protocol, Part IVA of the Act and Part 4A of the Principal Regulations provide for the phase-down of HFCs through a reducing quota system over 18 years. A person must have been allocated an HFC quota to be able to import bulk HFC gas into Australia or to manufacture bulk HFCs.
12. Only persons with a synthetic greenhouse gas (SGG) licence and who have been allocated quota for the relevant period can engage in a regulated HFC activity. Under section 36B of the Act, a *regulated HFC activity* is the manufacture of HFCs or import of HFCs into Australia. There are currently no HFCs manufactured in Australia.
13. 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 for a 2-year quota allocation period. Quota is issued for each year of the 2-year quota allocation.
14. 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 (and HCFCs) 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)).
15. The amount of grandfathered quota a person is entitled to for a particular quota allocation period is worked out by the method in regulation 50 of the Principal Regulations and is based on the person's previous regulated HFC activities.
16. While a quota allocation period is 2 years, the quota is allocated on a per calendar year basis. Under the method in subregulation 50(4), if a person's regulated HFC activities in a calendar year do not equal at least 90% of their quota for that calendar year, their quota for future years will be lower than the maximum possible for that person. This was intended to encourage quota holders to use as much of their quota as possible, 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.

17. Item 3 of Schedule 1 to the Amendment Regulations amends regulation 50 of the Principal Regulations to add a new subregulation 50(5).
18. New subregulation 50(5) would have the effect that, for the purposes of calculating the *annual amount of licensed activities* (i.e. the amount of regulated HFC activities) the person engaged in for 2021, consignments of HFCs that are imported into Australia in 2022 under reserve HFC quota (allocated under the new provisions inserted by item 4 of this Schedule) are taken to have been imported into Australia in 2021.
19. This would mean that, when calculating the person's grandfathered quota entitlement for the quota allocation period 2024-2025 (which is based on the person's imports versus quota for each calendar year of 2021 and 2022), the HFC that was intended to be imported into Australia in 2021 but was not imported until 2022 due to factors outside the importer's control, is counted as part of the regulated HFC activities the person engaged in for 2021.
20. This would put the person back in the same position as they would have been if their shipments had not been delayed due to the COVID-19 pandemic and would ensure the person's future quota entitlements would not be unfairly affected due to factors outside their control.
21. The note following new subsection 50(5) explains that this provision would only be relevant for the quota allocation period starting on 1 January 2024. This is because the amount of HFC quota a person is eligible for in that quota allocation period is based on the person's regulated HFC activities in the calendar years 2021 and 2022.

Item [4] - At the end of Part 4A

22. Item 4 of Schedule 1 to the Amendment Regulations inserts a new Division 4A.4 into the Principal Regulations to prescribe matters relating to reserve HFC quota.

Division 4A.4 - Reserve HFC Quotas

23. The Montreal Protocol limits the amount of HFCs that can be consumed by Australia each calendar year. Consumed for this purpose means the amount of HFCs produced and imported minus the amount of HFCs exported. The Montreal Protocol HFC phase-down schedule requires Australia to achieve an 85% phase-down of HFC imports by 31 December 2036. In order to achieve this, Australia has implemented a system of quota and reserve quota. HFC quota and reserve HFC quota (if used) combined in any calendar year must not exceed Australia's HFC limit under the Montreal Protocol.
24. Australia has implemented an accelerated HFC phase-down when compared to Australia's annual limits under the Montreal Protocol. The HFC industry limit set out

in Regulation 42 of the Principal Regulations is in the most part well below the annual limits set by the Montreal Protocol. As such, there is space for reserve quota to be allocated each year, being the difference between the industry limit in Regulation 42 and the Montreal Protocol limit. This provides flexibility in the administration of the HFC phase-down where required, such as international shipping and freight delays caused in large part by COVID-19.

25. Delays to worldwide freight and shipping caused in large part by COVID-19 mean that some imports of HFCs may not arrive in 2021 as intended.
26. It is important that HFC that was intended to be imported into Australia in 2021, but is not imported until 2022 due to factors outside the importer's control:
 - be covered by a quota that is in force at the time of the import in 2022 so that the importer is not breaching their licence conditions; and
 - does not count against the importer's 2022 quota because that would unfairly reduce the quota the importer has available for the rest of 2022 and unnecessarily reduce the amount of HFCs available in the Australian market; and
 - counts as part of the regulated HFC activities the importer engaged in for 2021, for the purpose of calculating the importer's future quota entitlements, so importers do not have future quota entitlements reduced due to COVID-19-related factors outside their control.
27. New Division 4A.4 has the effect of allowing the Minister to allocate the relevant importers reserve HFC quota for the 2022 calendar year. Reserve HFC quota could be allocated that would cover an amount of HFC equivalent to the amount of a consignment that the importer can show was ordered at least 3 months before the end of 2021 where delivery to Australia was delayed until 2022 due to manufacture, transport or shipping delays outside the importer's control. This would put the person back in the same position as they would have been if their shipments had not been delayed due to the COVID-19 pandemic.
28. The amount of reserve HFC quota allocated to a person must be within unused HFC quota (both grandfathered and non-grandfathered) allocated to that importer in 2021. The total amount of reserve quota allocated to importers would not be able to exceed the reserve quota limit prescribed by new section 64.
29. Reserve HFC quotas would only be available for the 2022 calendar year.

Subdivision 4A.4.1 - Purpose of this Division

Regulation 60 - Purpose of this Division

30. New regulation 60 outlines the purpose of new Division 4A.4.

31. Subsection 36G(1) of the Act provides that the Minister must not allocate a reserve HFC quota unless satisfied that circumstances prescribed by the regulations exist.
32. Subsection 36G(2) of the Act allows the regulations to make provision in relation to, among other things, processes for applying for reserve HFC quota, processes for the Minister to allocate reserve HFC quota, the size of reserve HFC quotas or the method for calculating reserve HFC quotas, and the period (no longer than 12 months) during which each reserve HFC quota is in force.
33. New subregulation 60(1) provides that for the purposes of subsection 36G(2) of the Act, this Division provides in relation to:
 - a process for applying for reserve HFC quotas for the 2022 calendar year, including who may apply; and
 - a process for the Minister to allocate reserve HFC quotas for that year to SGG licensees; and
 - a process for the Minister to vary the size of reserve HFC quotas, or cancel reserve HFC quotas, allocated for that year; and
 - the method for working out the size of reserve HFC quotas for that year.
34. Subsection 36G(3) of the Act allows the regulations to prescribe the reserve HFC quota limit or the method for working out the reserve HFC quota limit.
35. New subregulation 60(2) provides that, for the purposes of subsection 36G(3) of the Act, this Division also prescribes the reserve HFC quota limit.

Subdivision 4A.4.2 - Applications and allocation

Regulation 61 - Applying for reserve HFC quota

36. New regulation 61 provides the process for a person to apply for reserve HFC quota.
37. New subregulation 61(1) allows a person to apply for a reserve HFC quota for the 2022 calendar year if the person holds SGG licences allowing for the import of HFCs that cover both the 2021 and 2022 calendar years, and the person has been allocated an HFC quota for the 2021 calendar year. An SGG licence is a controlled substances licence that relates to SGGs and is granted under section 16 of the Act.
38. This provision is intended to ensure that only persons who hold the appropriate licences would be able to apply for reserve HFC quota for the 2022 calendar year.
39. New subregulation 61(2) requires that the application be in the approved form and be given to the Minister on or before:

- if, at the time the application is made, the person has not been allocated an HFC quota for the 2022 calendar year – 1 December 2021; or
 - otherwise – 31 January 2022.
40. This provision is intended to ensure that a person's imports do not arrive in Australia before they have been allocated quota for the 2022 calendar year, whether that be HFC quota or reserve HFC quota. Importing bulk HFC into Australia without quota is a breach of the person's licence conditions and both an offence and contravention of a civil penalty provision under section 18 of the Act.
41. A person who has HFC quota allocated for the 2022 calendar year will be able to use that quota to cover any delayed 2021 imports that arrive in January 2022, and then apply for reserve HFC quota by 31 January 2022 to effectively reimburse their 2022 HFC quota.

Regulation 62 - Allocating reserve HFC quotas

42. New regulation 62 provides the process for the Minister to allocate reserve HFC quotas.
43. New subregulation 62(1) allows the Minister to allocate a reserve HFC quota to a person for the 2022 calendar year if the person applies in accordance with new regulation 61, and the Minister is satisfied that there are one or more consignments of HFCs in relation to which the following conditions are satisfied:
- the person ordered the consignment before 1 October 2021;
 - it was reasonable to expect that the consignment would be imported before the end of the 2021 calendar year;
 - the importation of the consignment was, or is likely to be, delayed until the 2022 calendar year, for reasons outside of the person's control;
 - the sum of the total quantity of the HFCs (expressed in CO₂e megatonnes) involved in regulated HFC activities engaged in by the person during the 2021 calendar year, and the total quantity of HFCs (expressed in CO₂e megatonnes) in the relevant consignments will not be more than the person's HFC quota for the 2021 calendar year.
44. It is intended that the total amount of bulk HFC in the consignments covered by a reserve HFC quota allocation cannot be so large as to exceed the person's total 2021 HFC quota when added to the person's regulated HFC activities for 2021. This ensures that the importer may not be able to import more HFCs in reliance on reserve HFC quota than they would have otherwise been entitled to import into Australia in 2021.

45. New subregulation 62(2) provides that the size of a reserve HFC quota allocated to a person for the 2022 calendar year is the amount determined by the Minister, not exceeding the quantity of HFCs (expressed in CO₂e megatonnes) in the consignments that are expected to be delayed until the 2022 calendar year.
46. A note to new subregulation 62(2) refers readers to the requirement at subsection 36G(4) of the Act which requires that the sum of the amounts of all reserve HFC quotas allocated for a calendar year (including any part of that year) must not be more than the reserve HFC quota limit for that year. The reserve HFC quota limit is prescribed in new regulation 64.
47. It is anticipated that the Minister would generally allocate an amount of reserve HFC quota to a person that matches the amount of HFC in the person's delayed consignments (as long as this amount added to the imports that arrived in 2021 would not exceed the person's 2021 HFC quota). However, if the sum of the applications for reserve HFC quota exceeds the reserve HFC quota limit, importers may be allocated reduced amounts to ensure compliance with this limit. Compliance with the reserve HFC quota limit in new regulation 64 is necessary to meet Australia's international obligations under the Montreal Protocol.
48. New subregulation 62(3) provides that a reserve HFC quota is allocated by written notice given to the person. The notice must specify the size of the reserve HFC quota and that the quota is allocated for the 2022 calendar year (see new subregulation 62(4)).

Subdivision 4A.4.3 - Correcting reserve HFC quotas

Regulation 63 - Correcting reserve HFC quotas

49. New regulation 63 provides for varying the size of reserve HFC quotas or cancelling reserve HFC quotas.
50. New subregulation 63(1) deals with varying the size of a reserve HFC quota. The Minister is required to vary a reserve HFC quota that has been allocated to a person for the 2022 calendar year if the Minister becomes satisfied that the size of the quota is inappropriate. In such circumstances, the Minister must, by written notice given to the person, vary the size of the reserve HFC quota to the correct amount.
51. An example of where the Minister may become satisfied that the size of reserve HFC quota that has been allocated to a person is inappropriate is where the reserve HFC quota is intended to cover multiple consignments expected to be delayed until 2022 and one or more of the consignments arrives in Australia before the end of 2021. In those circumstances, the Minister may be satisfied that the size of the reserve HFC quota allocated to the person is inappropriate, and reduce it by an amount equal to the HFC contained in the consignments that were not, in fact, delayed until 2022. This is appropriate as the person's ordinary 2021 HFC quota would be able to cover those consignments, and the importer would not need their reserve HFC quota to do so.

52. Another example of where the Minister may become satisfied that the size of reserve HFC quota that has been allocated to a person is inappropriate is if, having regard to the person's regulated HFC activities in 2021, the total amount of reserve HFC quota allocated to the person would, when added to their 2021 regulated HFC activities, put them over their 2021 HFC quota (for instance, if they imported additional HFC in 2021 after they were allocated reserve HFC quota for a different consignment). In such circumstances, the Minister may be satisfied that the size of the reserve HFC quota allocated to the person is inappropriate and reduce it by a sufficient amount so as to not exceed the person's ordinary 2021 HFC quota.
53. The note to new subsection 63(1) would refer readers to subregulation 62(2) for the size of a reserve HFC quota. The note would also refer readers to the reserve HFC quota limit at new regulation 64. The sum of the amounts of all reserve HFC quotas allocated for the 2022 calendar year must not be more than this amount (see subsection 36G(4) of the Act).
54. New subregulation 63(2) clarifies that a variation of a reserve HFC quota has effect from the start of the 2022 calendar year.
55. New regulation 63(3) allows for the Minister, by written notice given to the person, to cancel a reserve HFC quota allocated to the person for the 2022 calendar year if:
- a) all of the consignments of HFCs in respect of which reserve HFC quota was allocated to the person were imported in the 2021 calendar year; or
 - b) the total quantity of HFCs, expressed in CO₂e megatonnes, involved in regulated HFC activities engaged in by the person during the 2021 calendar year equals or exceeds the person's HFC quota for the calendar year.
56. The purpose of paragraph 63(3)(a) is to allow the Minister to cancel a person's reserve HFC quota if all their consignments that are covered by the reserve HFC quota arrive in Australia before the end of 2021. In such circumstances, the person would not need reserve HFC quota as the imports would be covered by their ordinary 2021 HFC quota.
57. The purpose of paragraph 63(3)(b) would be to allow the Minister to cancel a person's reserve HFC quota if they import additional bulk HFC into Australia in 2021 (after being allocated reserve HFC quota in respect of a different consignment) and that would mean that they have already used up all of their ordinary 2021 HFC quota before the reserve HFC quota is added to it.
58. An example might be a person who is allocated reserve HFC quota to cover a consignment from Supplier 1 that is expected to be delayed until 2022 but, before the end of 2021, imports a different consignment of HFCs from Supplier 2 that uses up all the person's remaining HFC quota for 2021. In that circumstance, adding the Supplier 1 consignment to the person's regulated HFC activities for 2021 would exceed their

2021 HFC quota, so the Minister would have the power to cancel the person's reserve HFC quota.

59. New subregulation 63(4) clarifies that a reserve HFC quota that is cancelled is taken never to have been in force and never to have been allocated.

Subdivision 4A.4.3 - Reserve HFC quota limit

Regulation 64 - Reserve HFC quota limit

60. Subsection 36G(4) of the Act provides that the sum of the amounts of all reserve HFC quotas allocated for a calendar year (including any part of that year) must not be more than the reserve HFC quota limit for that year.
61. Subsection 36G(3) defines the reserve HFC quota limit for a calendar year is the quantity of HFCs, express in CO₂e megatonnes, prescribed in the regulations or worked out by a method prescribed in the regulations.
62. Regulations made for the purposes of subsection 36G(3) must be consistent with Australia's obligations under the Montreal Protocol (see subsection 36G(5) of the Act).
63. New regulation 64 provides that, for the purposes of paragraph 36G(3)(a) of the Act, the reserve HFC quota limit for the 2022 calendar year is 3.482119 CO₂e megatonnes.
64. This amount is the difference between the HFC industry limit for 2022 (6.25 million CO₂e tonnes – see regulation 42) and Australia's Montreal Protocol limit for 2022 (9.73 million CO₂e tonnes). Confining the reserve HFC quota limit to this amount ensures that Australia's international obligations under the Montreal Protocol continue to be met.
65. In accordance with subsection 36G(4), the sum of the amounts of all reserve HFC quota allocated for the 2022 calendar year must not be more than this amount.

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 (Reserve HFC Quotas) Regulations 2021

This Legislative Instrument is compatible with the human rights and freedoms recognized 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* (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*, as well as the *United Nations Framework Convention on Climate Change* and its *Kyoto Protocol* and *Paris Agreement*.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Reserve HFC Quotas) 2021* (the Amendment Regulations) amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* to:

- enable the allocation of reserve hydrofluorocarbon (HFC) quota in 2022 to importers who hold a licence and quota to import HFCs in 2021 and have ordered before 1 October 2021 for arrival in Australia during 2021, but the import is delayed until 2022 due to delays outside the importer's control; and
- ensure that imports made under a reserve HFC quota in 2022 count towards the importer's 2021 HFC imports for the purposes of calculating the importer's future quota entitlement; and
- prescribe a reserve HFC quota limit. The total amount of reserve quota allocated to importers must not exceed the reserve quota limit.

The Amendment Regulations are in response to delays to worldwide shipping and freight caused by COVID-19.

Human Rights Implications

The Amendment Regulations engages the following human rights:

- the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR);
- the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (the ICCPR).

Right to health

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health.

Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14 (August 2000)*, the United Nations Committee on Economic, Social and Cultural Rights stated that this encompasses the prevention and reduction of human exposure to harmful substances (at [15]).

Item 4 of the Amendments Regulations allows the Minister to allocate reserve HFC quota for the 2022 calendar year to importers who hold a licence and HFC quota to import HFCs in 2021 and have ordered before 1 October 2021 for arrival in Australia during 2021, but the import is delayed until 2022 due to delays outside the importer's control (see new regulation 62). The total amount of reserve HFC quota allocated by the Minister in the 2022 calendar year must not exceed the limit prescribed by new regulation 64. The combined effect of new regulations 62 and 64 means that:

- a reserve HFC quota holder will not be able to import more HFCs in reliance on reserve HFC quota than they would have otherwise been entitled to import into Australia in 2021; and
- if the sum of reserve HFC quota applied for exceeds the reserve HFC quota limit, importers may be allocated reduced amounts to ensure compliance with this limit.

By limiting the amount of reserve HFC quota that may be allocated to within Australia's Montreal Protocol allowance, the Amendment Regulations ensure that the potential adverse impact of HFCs on human and environment health is minimised.

Therefore, the Amendment Regulations promote the right to health under Article 12 of the ICESCR. It positively engages this right by limiting the amount of reserve HFC quota that may be allocated, which subsequently limits the amount of HFC that may be imported to ensure this amount stays within Australia's annual limits set by the HFC phase-down. The HFC phase-down limits Australia's imports of HFCs each year which subsequently reduces HFC emissions and damaging effect of HFCs on the climate system.

Right to privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with an individual's privacy, family, home or correspondence. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances.

Item 4 of the Amendment Regulations sets out an application process which will require a person to provide information in an application for the purposes of being allocated reserve HFC quota for the 2022 calendar year (see new regulation 61).

Requiring a person to provide information may, in some cases, require the provision of personal information. The collection of information under this circumstance (and any

subsequent storage, use or disclosure of this information) may therefore operate to limit the right to privacy. However, it is likely that only a limited amount of personal information will be collected, and most information will relate to a person's business.

Any personal information collected through the application process will be managed in an open and transparent way, consistent with the Department's Privacy Policy and the Australian Privacy Principles contained in Schedule 1 of the *Privacy Act 1988*. Under the Department's Privacy Policy, appropriate controls exist in relation to the use and storage of personal information. For example, only personal information necessary to effectively carry out the scheme will be collected.

Requiring information in relation to persons who wish to be allocated reserve HFC quota to import HFC is necessary for the legitimate objective of assessing the suitability of a person to be allocated reserve HFC quota. A person who provides information in an application will do so as someone who has 'opted in' to the regulatory system, and should expect that some personal information may need to be provided in order to gain the benefits of that system.

Therefore, while the collection of information in this instance may limit the right to privacy, it is reasonable, necessary and proportionate to achieve legitimate objectives. Accordingly, the Amendment Regulations are consistent with the right to privacy in Article 17 of the ICCPR.

Conclusion

The Amendment Regulations is compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR. To the extent that it engages and limits the right to privacy under Article 17 of the ICCPR, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the instrument.

The Hon. Trevor Evans MP
Assistant Minister for Waste Reduction and Environmental Management
Parliamentary Secretary to the Minister of the Environment