



Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No. 1) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 8 June 2023

David Hurley
Governor-General

By His Excellency's Command

Tanya Plibersek
Minister for the Environment and Water

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1 Name

This instrument is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No. 1) Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Schedule 1 to the <i>Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Act 2022</i> .	13 June 2023 (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

1 Regulation 2 (definition of *scheduled kind*)

Repeal the definition.

2 Regulation 2A

Repeal the regulation.

3 Regulation 2B

Omit “subsection 9(6)”, substitute “subsection 9(5)”.

4 Regulations 3, 3A, 3AA and 3B

Repeal the regulations, substitute:

3 Unlicensed manufacture of scheduled substances or equipment

Manufacture of scheduled substances—exempt circumstances

- (1) For the purposes of subsection 13(2) of the Act, the following circumstances are prescribed:
 - (a) that the SGG is not an HFC and the whole amount of the SGG is used in:
 - (i) a medical device; or
 - (ii) medicine; or
 - (iii) a veterinary device; or
 - (iv) veterinary medicine;
 - (b) that the manufacture of the SGG consists of the formation of the SGG as a by-product of the manufacture of aluminium.

Manufacture of equipment that uses a scheduled substance in its operation—substances that require a licence

- (2) For the purposes of paragraph 13(5)(d) of the Act, a scheduled substance other than an SGG is prescribed.

3A Unlicensed import of scheduled substances or equipment

Import of scheduled substances—exempt circumstances

- (1) For the purposes of subsection 13AA(2) of the Act, it is a prescribed circumstance that:
 - (a) the SGG is not an HFC; and
 - (b) the whole amount of the SGG is used in:
 - (i) a medical device; or
 - (ii) medicine; or
 - (iii) a veterinary device; or
 - (iv) veterinary medicine.

Import of equipment containing a scheduled substance—low volume imports exemption

- (2) For the purposes of paragraph 13AA(4)(a) of the Act, the amount of 25 kilograms is prescribed.
- (3) For the purposes of paragraph 13AA(4)(b) of the Act, it is a condition, in relation to an importation of SGG equipment by a person at a time in a calendar year, that the total amount of SGGs contained in:
 - (a) SGG equipment in the importation; and
 - (b) any other SGG equipment the person imported during the calendar year at or before that time;is not greater than 25 kg.

Import of equipment that uses a scheduled substance in its operation—substances that require a licence

- (4) For the purposes of paragraph 13AA(5)(d) of the Act, a scheduled substance other than an SGG is prescribed.

Import of equipment—exempt equipment

- (5) For the purposes of paragraph 13AA(6)(a) of the Act, the following equipment is prescribed:
 - (a) imported foam equipment (other than expanding polyurethane foam aerosols);
 - (b) foam equipment (other than expanding polyurethane foam aerosols) included in other imported equipment;
 - (c) a medical device or medicine;
 - (d) a veterinary device or veterinary medicine.

Import of equipment—exemption for private or domestic use

- (6) For the purposes of paragraph 13AA(7)(b) of the Act, the following equipment is prescribed:
 - (a) air conditioning equipment, including air conditioning equipment contained in something else (for example, in a motor vehicle, watercraft or aircraft);
 - (b) a heat pump;
 - (c) medical equipment;
 - (d) a part or component that contains a scheduled substance, other than a motor vehicle part or component;
 - (e) personal, household or food equipment;
 - (f) refrigeration equipment;
 - (g) safety equipment.
- (7) For the purposes of paragraph 13AA(7)(c) of the Act, the following conditions are prescribed:
 - (a) that the person comply with any notice from the Secretary requesting any of the following evidence in relation to the equipment:

- (i) except if the equipment is medical equipment—evidence that the equipment has been owned for more than 12 months wholly or principally for private or domestic use before importation;
- (ii) in any case—evidence that the equipment is imported wholly or principally for private or domestic use;
- (b) that the person comply with the notice within 30 days after receiving the notice.

Import of equipment—exemption for temporary imports

- (8) For the purposes of subparagraph 13AA(8)(a)(i) of the Act, the following purposes are prescribed:
- (a) a research purpose;
 - (b) if the equipment is a shipping container—the purpose of refrigerating goods during shipping;
 - (c) the purpose of repairing or exchanging the equipment;
 - (d) the purpose of carrying out dredging activities, or activities relating to operating offshore platforms;
 - (e) the purpose of displaying or demonstrating the equipment to promote or advertise the equipment;
 - (f) the purpose of competing in a race or other event using the equipment.

Note: For paragraph (c), equipment imported for the purpose of repairing or exchanging the equipment must be imported for that purpose only: see subregulation (11).

- (9) For the purposes of subparagraph 13AA(8)(a)(i) of the Act, the following circumstances are prescribed:
- (a) both:
 - (i) that the equipment is not intended to remain in Australia; and
 - (ii) that the equipment does not change ownership in Australia;
 - (b) that the equipment is imported in accordance with an international agreement, to which Australia is a party, relating to temporary imports of scheduled substances;
 - (c) that the equipment is on either of the following:
 - (i) a vessel, other than an Australian vessel (within the meaning of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*), that is temporarily operating in Australia;
 - (ii) an aircraft, other than an Australian aircraft (within the meaning of that Act), that is temporarily operating in Australia.
- (10) For the purposes of subparagraph 13AA(8)(a)(ii) of the Act, the period of 2 years is prescribed.
- (11) For the purposes of paragraph 13AA(8)(b) of the Act, if the equipment is imported for the purpose of repairing or exchanging the equipment (see paragraph (8)(c) of this regulation), then it is a condition that the equipment is imported for that purpose only.

Import of equipment—exemption for returning Australian equipment

- (12) For the purposes of paragraph 13AA(9)(a) of the Act, the following equipment is prescribed:
- (a) ODS equipment;

(b) SGG equipment.

5 Subregulation 3C(5)

Repeal the subregulation, substitute:

- (5) The Minister may waive the application fee for an equipment licence if the purpose of the licence is to allow the import of equipment containing 25 kilograms or less of HCFCs.
- (6) The Minister may waive the application fee for any type of licence if the Minister is satisfied that there are exceptional circumstances that justify waiving the fee.

6 Paragraph 3D(b)

Omit “or (5)”, substitute “, (5) or (6)”.

7 Regulation 3E

Repeal the regulation, substitute:

3E Circumstances in which Minister may grant equipment licences—ODS equipment

For the purposes of paragraph 16(6)(b) of the Act, it is a requirement in relation to equipment that uses a scheduled substance its operation that the Minister is satisfied that:

- (a) both:
 - (i) the equipment is essential for medical, veterinary, defence, industrial safety, public safety, scientific, testing or monitoring purposes or laboratory and analytical uses; and
 - (ii) no practical alternative exists to the use of the scheduled substance in the operation of the equipment if it is to continue to be effective for such a purpose; or
- (b) because of the requirements of a law concerning the manufacture or use of the equipment, there is no practical alternative to the use of the scheduled substance in the operation of the equipment; or
- (c) in the case of the import or export of equipment—it would be impracticable to remove or retrofit the equipment because it is incidental to other equipment that is being imported or exported; or
- (d) in any case—the equipment is for use in conjunction with the calibration of scientific, measuring or safety equipment; or
- (e) in any case—both:
 - (i) exceptional circumstances justify granting the licence; and
 - (ii) granting the licence would not be inconsistent with Australia’s international obligations under the Montreal Protocol.

Note: For equipment that contains a scheduled substance, see paragraph 16(6)(a) and subsection 16(6A) of the Act.

3F Licence condition—importing substances in non-refillable containers

For the purposes of item 7 of the table in subsection 18(1) of the Act, it is a condition that either or both of the following is satisfied in relation to the import of a scheduled substance in a non-refillable container:

- (a) the substance is imported for either of the following purposes:
 - (i) calibration or testing purposes;
 - (ii) laboratory or analytical purposes;
- (b) there is no practical alternative to importing the substance in a non-refillable container.

8 Subregulation 4(1)

After “granted,”, insert “suspended,”.

9 Paragraph 4(2)(d)

Repeal the paragraph, substitute:

- (d) the date on which the licence comes into force; and
- (da) the date on which the suspension, cancellation or surrender of the licence takes effect; and
- (db) for the suspension of a licence:
 - (i) if the licence is suspended for a fixed period—the end of the period; and
 - (ii) if the licensee must take actions for the suspension to end—the actions the licensee must take; and

10 Subregulation 5(1)

Omit “A person who is”, substitute “For the purposes of subsection 48(1) of the Act, a person who is”.

11 Subregulation 5(3) (note 1)

Omit “Note 1”, substitute “Note”.

12 Subregulation 5(3) (note 2)

Repeal the note.

13 After paragraph 6A(ca)

Insert:

- (cb) a decision under subregulation 3C(6) to refuse to waive the fee for a licence;

14 Subregulation 102(1)

Omit “This regulation sets out matters a decision-maker must consider in deciding”, substitute “This regulation applies for the purposes of a decision-maker deciding”.

15 Subregulations 102(2) and (3)

Repeal the subregulations, substitute:

Decision relating to grant of the permit

- (2) If the decision relates to the grant of the permit, the decision-maker must have regard to the following considerations:
- (a) the considerations described in column 2 of item 1 of the table in subsection 13B(1) of the Act in relation to the person;
 - (b) any suspension or cancellation of another permit of the same kind held by the person;
 - (c) any contravention of a condition of another permit of the same kind held by the person.

Decision relating to cancellation or suspension of the permit

- (3) If the decision relates to the cancellation or suspension of the permit, the decision-maker must have regard to the following considerations:
- (a) the considerations described in column 2 of item 1 of the table in subsection 13B(1) of the Act in relation to the person;
 - (b) any earlier suspension of the permit;
 - (c) any contravention of a condition of the permit;
 - (d) any suspension or cancellation of another permit of the same kind held by the person;
 - (e) any contravention of a condition of another permit of the same kind held by the person.

Considerations for bodies corporate

- (3A) If the person is a body corporate, the Minister:
- (a) must also have regard to each consideration in subregulation (2) and paragraphs (3)(a), (d) and (e) in relation to each person who is an executive officer of the body (whether or not the person was an executive officer of the body corporate at the time a matter occurs that relates to the consideration); and
 - (b) may also have regard to whether the body is a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*.

16 At the end of regulation 102

Add:

Spent conviction scheme not affected

- (5) This regulation does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

17 Subregulation 113B(1)

Omit “subsection 45C(2)”, substitute “paragraph 45C(1)(c)”.

18 Regulation 200

Insert:

emergency permit means a non-QPS permit granted in accordance with paragraph 235(2)(b).

19 Regulation 202

Repeal the regulation.

20 Regulation 216

Omit “paragraphs 45B(1)(e) and (2A)(c)”, substitute “paragraph 45B(1)(d)”.

21 Subparagraph 221(2)(d)(iv)

Repeal the subparagraph, substitute:

- (iv) information relating to the size of the area fumigated, the volume of the space fumigated or the amount of produce for which, or to which, the methyl bromide is applied; and

22 At the end of subregulation 221(2)

Add:

Note: A non-QPS permit holder must also comply with any record keeping requirements that are a condition of the non-QPS permit: see paragraph 212(2)(b).

23 Regulation 231 (heading)

Repeal the heading, substitute:

231 Reports of use under non-QPS permits (other than emergency permits)

24 Subregulation 231(1)

Omit “A non-QPS permit holder for a year”, substitute “A person who is granted a non-QPS permit for a year (other than an emergency permit)”.

25 Paragraph 231(1)(c)

Omit “the permit holder”, substitute “the non-QPS permit holder”.

26 Paragraph 231(2)(b)

Omit “on which methyl bromide is used (each *fumigation*) by, or on behalf of, the non-QPS permit holder for a non-QPS use in the reporting period”, substitute “during the reporting period on which methyl bromide is used (each *fumigation*) by, or on behalf of, the permit holder for a non-QPS use in accordance with the permit”.

27 Subparagraph 231(2)(b)(vi)

Repeal the subparagraph, substitute:

- (vi) information relating to the size of the area fumigated, the volume of the space fumigated or the amount of produce for which, or to which, the methyl bromide is applied; and

28 Paragraph 231(2)(c)

Repeal the paragraph, substitute:

- (c) if no methyl bromide was used under the permit for non-QPS uses in the reporting period—a statement to that effect.

29 At the end of subregulation 231(2)

Add:

Note: A non-QPS permit holder must also comply with any reporting requirements that are a condition of the non-QPS permit (see paragraph 212(2)(b)).

30 Subregulation 232(1)

Repeal the subregulation, substitute:

- (1) A person who is granted an emergency permit must, within 14 days after the time applicable under subregulation (1A), give the Minister a report relating to the use of methyl bromide under the emergency permit that:
- (a) is in an approved form; and
 - (b) sets out the information mentioned in subregulation (2); and
 - (c) is signed by the permit holder and by any contractor who carried out a fumigation under the emergency permit.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

Penalty: 10 penalty units.

(1A) The time is the earlier of the following:

- (a) the end of period specified in the permit during which methyl bromide may be used under the permit;
- (b) the time of the use of methyl bromide that exhausts the amount of methyl bromide that may be used under the permit.

31 Subparagraph 232(2)(b)(v)

Repeal the subparagraph, substitute:

- (v) information relating to the size of the area fumigated, the volume of the space fumigated or the amount of produce for which, or to which, the methyl bromide is applied; and

32 At the end of subregulation 232(2)

Add:

Note: An emergency permit holder must also comply with any reporting requirements that are a condition of the emergency permit: see paragraph 212(2)(b).

33 Subregulation 305(1)

Omit “paragraphs 45B(1)(e) and (2A)(c)”, substitute “paragraph 45B(1)(d)”.

34 Subregulation 305A(1)

Omit “subsection 45C(2)”, substitute “paragraph 45C(1)(c)”.

35 Subregulation 346(2)

After “the fee is taken to increase”, insert “(subject to subregulation (2A))”.

36 After subregulation 346(2)

Insert:

(2A) The Minister may, by legislative instrument, determine that subregulation (2) does not apply in relation to one or more calendar years.

37 Subregulations 400(1) and (2)

Omit “paragraphs 45B(1)(e) and (2A)(c)”, substitute “paragraph 45B(1)(d)”.

38 Regulation 500

Omit “paragraphs 45B(1)(e) and (2A)(c)”, substitute “paragraph 45B(1)(d)”.

39 Regulation 600

Omit “subsection 45C(2)”, substitute “paragraph 45C(1)(c)”.

40 Regulation 900 (heading)

Omit “, exporters and destroyers”, substitute “and exporters”.

41 Subregulation 900(1)

Omit “For subsection 46(1) of the Act”, substitute “For the purposes of subsection 46(1) of the Act”.

42 Subregulation 900(3) (table)

Repeal the table, substitute:

Information to be included in report		
Item	Column 1 If the person carries out the following activity during the reporting period ...	Column 2 the report must include the following information ...
1	manufacturing, importing or exporting a scheduled substance	(a) each kind of scheduled substance (see subsection (4)) that the person manufactured, imported or exported during the reporting period; (b) for each of those kinds of scheduled substances that the person manufactured, imported or exported during the reporting period: (i) the total amount, in metric tonnes, of the kind of scheduled substance so manufactured, imported or exported for any purpose; and (ii) the total amount, in metric tonnes, of the kind of scheduled substance so manufactured, imported or exported for use as feedstock
2	importing SGG equipment	(a) the categories of SGG equipment mentioned in subregulation (5) that the person imported during the reporting period; (b) for each of those categories of equipment—the total number of units of the equipment that the person imported

Information to be included in report		
Item	Column 1 If the person carries out the following activity during the reporting period ...	Column 2 the report must include the following information ...
		during the reporting period;
		(c) for each of those categories of equipment—the total amount, in metric tonnes, of each kind of scheduled substance (see subsection (4)) that is: <ul style="list-style-type: none"> (i) an HFC, nitrogen trifluoride, a PFC or sulfur hexafluoride; and (ii) contained in the equipment in that category that the person imported during the reporting period
3	manufacturing or importing ODS equipment	(a) the categories of ODS equipment mentioned in subregulation (6) that the person manufactured or imported during the reporting period;
		(b) the kinds of scheduled substances (see subsection (4)) contained in that equipment;
		(c) for each of those kinds of scheduled substances—the total amount, in metric tonnes, of the kind of scheduled substance contained in that equipment

43 Subregulation 900(4)

Repeal the subregulation, substitute:

- (4) For the purposes of column 2 of the table in subregulation (3), a substance mentioned in an item of a table in Schedule 1 to the Act is taken to be a different kind of scheduled substance to a substance mentioned in another item of a table in that Schedule.

44 Subregulation 900(5)

Omit “items 2 and 3”, substitute “item 2”.

45 Subregulation 900(6)

Omit “equipment” (first occurring), substitute “ODS equipment”.

46 Subregulation 900(7)

Repeal the subregulation.

47 Part 8

Repeal the Part.

48 Before Division 9.1 of Part 9

Insert:

Note: Part 8 and regulation numbers 906 to 917 (inclusive) are intentionally not used.

49 Division 9.1 of Part 9

Repeal the Division.

50 Division 9.2 of Part 9 (heading)

Repeal the heading.

51 Regulation 916

Repeal the regulation.

52 At the end of Part 10

Add:

Division 9—Amendments made by the Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No. 1) Regulations 2023

979 Definitions for this Division

In this Division:

amending regulations means the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No. 1) Regulations 2023*.

commencement time means the commencement of this Division.

980 Application fees for licences and renewals of licences

- (1) The amendment of regulation 3C made by Schedule 1 to the amending regulations applies in relation to an application for a licence made on or after the commencement time.
- (2) The amendment of regulation 3D made by Schedule 1 to the amending regulations applies in relation to an application for a renewal of a licence made on or after the commencement time.

981 Decisions relating to grants of permits—fit and proper person test

The amendments of regulation 102 made by Schedule 1 to the amending regulations apply in relation to the making of a decision on or after the commencement time relating to the grant of a permit, whether the application for the permit is made before, on or after that time.

982 Records of non-QPS uses of methyl bromide

The amendment of subparagraph 221(2)(d)(iv) made by Schedule 1 to the amending regulations applies in relation to a use of methyl bromide under a non-QPS permit on or after the commencement time, whether the permit is granted before, on or after that time.

983 Reports of use under non-QPS permits

- (1) The amendments of regulation 231 made by Schedule 1 to the amending regulations apply in relation to a reporting period that ends on or after the commencement time.
- (2) The amendments of regulation 232 made by Schedule 1 to the amending regulations apply in relation to a person who is granted an emergency permit if the 14 day period mentioned in subregulation 232(1) (as amended by Schedule 1 to the amending regulations) starts on or after the commencement time.
- (3) This regulation applies whether the relevant permit is granted before, on or after the commencement time.

984 Periodic reports

The amendments of regulation 900 made by Schedule 1 to the amending regulations apply in relation to a reporting period that ends on or after the commencement time.