



Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2004 (No. 3)¹

Statutory Rules 2004 No. 381²

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

Dated 16 December 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

IAN CAMPBELL
Minister for the Environment and Heritage

1 Name of Regulations

These Regulations are the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2004 (No. 3)*.

2 Commencement

These Regulations commence on 1 January 2005.

3 Amendment of *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995*

Schedule 1 amends the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995*, as amended by the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2004 (No. 2)*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 100

substitute

100 Purpose of Part 6A

For section 45A of the Act, Part 6A imposes controls on:

- (a) the sale, purchase, and other acquisition or disposal of:
 - (i) scheduled substances for refrigeration and air conditioning; and
 - (ii) methyl bromide; and
- (b) the storage, use and handling of:
 - (i) scheduled substances for refrigeration and air conditioning; and
 - (ii) methyl bromide.

[2] Regulation 150, note

substitute

Note Regulation numbers 151 to 199 (inclusive) are reserved for future use.

[3] After Division 6A.2

insert

Division 6A.3 Methyl bromide

Subdivision 6A.3.1 Preliminary

200 Definitions for Division 6A.3

In this Division:

allocated amount has the meaning given by regulation 211.

approved form means a form approved by the Secretary for the purposes of the provision in which the expression is used.

exempt person means a person who is shown as an exempt person on the Non-QPS Exemption List.

nominated supplier, for an exempt person, means a person who is shown as a nominated supplier for the exempt person on the Non-QPS Exemption List.

Non-QPS Exemption List means the document called Exemption List for Non-QPS Applications of Methyl Bromide, published by the Department, as in force on 1 January 2005.

Note The Non-QPS Exemption List can be viewed on the Internet at www.deh.gov.au/atmosphere/ozone.

201 Meaning of QPS application and non-QPS application

- (1) For this Division, methyl bromide is used for a *QPS application* (or *quarantine and pre-shipment application*) if:
- (a) it is applied by, or with the authorisation of, a Commonwealth, State or Territory authority to prevent the introduction, establishment or spread of a pest or disease in Australia, a State or a Territory; or

- (b) it is applied to a commodity, before it is exported, to meet the requirements of the importing country or a law of the Commonwealth.
- (2) For this Division, methyl bromide is used for a *non-QPS application* (or *non-quarantine and pre-shipment application*) if it is used for an application that is not a QPS application.

202 Powers of inspectors

An inspector appointed under section 49 of the Act may exercise the powers given to him or her under Part VIII of the Act at premises used for:

- (a) storage of records relating to the sale or use of methyl bromide; or
- (b) storage of methyl bromide.

Subdivision 6A.3.2 Restrictions on the use and sale of methyl bromide

Note Regulation numbers 203 to 209 (inclusive) are intentionally not used.

210 Application of Subdivision

This Subdivision applies in relation to methyl bromide that is imported on or after 1 January 2005.

211 Meaning of *allocated amount*

The amount of methyl bromide set out in the Non-QPS Exemption List for an exempt person and the person's nominated supplier (or 1 of the person's nominated suppliers) is the person's *allocated amount* for that supplier for 2005.

212 Offence — using methyl bromide for non-QPS applications

- (1) A person who uses methyl bromide for a non-QPS application is guilty of an offence if the person is not:
 - (a) an exempt person; or

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- (b) acting on behalf of an exempt person.

Penalty: 10 penalty units.

- (2) An exempt person is guilty of an offence if, during a year, the amount of methyl bromide that the person uses, or that is used on the person's behalf, for non-QPS applications is more than the total of the person's allocated amounts for the year.

Penalty: 10 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

213 Offence — supplying methyl bromide for non-QPS applications

- (1) A person (the *supplier*), other than an importer, is guilty of an offence if:
- (a) he or she sells methyl bromide to a buyer; and
 - (b) the buyer states, in a declaration for paragraph 220 (1) (e), that the methyl bromide is for a non-QPS application; and
 - (c) subregulations (2), (3) and (4) are not satisfied in relation to the sale.

Penalty: 10 penalty units.

- (2) The buyer must be:
- (a) an exempt person, or acting on behalf of an exempt person; or
 - (b) a nominated supplier.
- (3) If the buyer is, or is acting on behalf of, an exempt person:
- (a) the supplier must be a nominated supplier for the exempt person; and
 - (b) the supplier must ensure that, if the sale is made in a particular year, the total amount of methyl bromide sold during the year by the supplier to the exempt person for non-QPS applications is equal to, or less than, the exempt person's allocated amount for the supplier for the year.

- (4) If the buyer is a nominated supplier for an exempt person:
- (a) the supplier must be an intermediate supplier for the buyer; and
 - (b) the supplier must ensure that, if the sale is made in a particular year, the total amount of methyl bromide sold during the year by the supplier to the buyer for non-QPS applications is equal to, or less than, the allocated amounts that the buyer is entitled to supply to exempt persons for non-QPS applications for the year.
- (5) To avoid doubt, if a buyer is an exempt person and also a nominated supplier for an exempt person, the amount of methyl bromide that the supplier may sell to the buyer during a year for non-QPS applications is the sum of the total amounts mentioned in subregulations (3) and (4).
- (6) In this regulation:
- importer** means a licensee who holds a controlled substances licence that:
- (a) allows the licensee to import methyl bromide; and
 - (b) is subject to a condition to the effect that methyl bromide imported for non-QPS applications may only be supplied to a person, or persons, specified in the licence.
- Note* A licensee must not contravene a condition of his or her licence — see subsection 18 (7) of the Act.
- intermediate supplier**, for a buyer, means a person who is shown as an intermediate supplier for the buyer on the document called Intermediate Supplier List for Non-QPS Applications of Methyl Bromide, published by the Department, as in force on 1 January 2005.
- Note* The Non-QPS Intermediate Supplier List can be viewed on the Internet at www.deh.gov.au/atmosphere/ozone.
- (7) An offence against subregulation (1) is an offence of strict liability.

Subdivision 6A.3.3 Record keeping requirements

Note Regulation numbers 214 to 219 (inclusive) are intentionally not used.

220 Records of sale

- (1) A person (the *supplier*) who sells methyl bromide to another person (the *buyer*) must keep a record of the sale, in an approved form and signed by the supplier, that contains the following:
 - (a) the name and ABN (if any) of the supplier;
 - (b) the name, address, telephone number and ABN (if any) of the buyer;
 - (c) the date of sale;
 - (d) the amount of methyl bromide sold;
 - (e) a declaration, signed by the buyer, stating the following in relation to the amount of methyl bromide sold:
 - (i) how much is to be used for non-QPS applications;
 - (ii) how much is to be used for QPS applications.

Penalty: 10 penalty units.

- (2) The supplier must retain the record of sale for 5 years from the date of the sale.

Penalty: 10 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

221 Records of use

- (1) A person who uses methyl bromide must keep a record, in an approved form and signed by the person, of the information mentioned in subregulation (2), unless the person is required to make a record of the information under another law of the Commonwealth or under a law of a State or Territory.

Penalty: 10 penalty units.

- (2) For subregulation (1), the following information must be recorded in relation to each occasion on which methyl bromide is used (each *fumigation*) by the person:
- (a) the name and address of the person;
 - (b) the date of the fumigation;
 - (c) the amount of methyl bromide used;
 - (d) if the fumigation is a non-QPS application:
 - (i) the kind of produce for which, or to which, the methyl bromide is applied; and
 - (ii) the dosage rate at which the methyl bromide is applied; and
 - (iii) the methyl bromide/chloropicrin ratio used; and
 - (iv) the number of hectares fumigated or the number of containers, and the volume of each container, fumigated; and
 - (v) if the person is a contractor — the name and address of the exempt person for whom the fumigation was carried out;
 - (e) if the fumigation is a QPS application:
 - (i) the kind of QPS application; and
 - (ii) the commodity or pest fumigated; and
 - (iii) any reference number issued to the person by a Commonwealth, State or Territory authority in relation to the fumigation.
- (3) A record of the information mentioned in subregulation (2) must be retained for 5 years from the date of the fumigation to which the record relates.
- Penalty: 10 penalty units.
- (4) An offence against subregulation (1) or (3) is an offence of strict liability.

222 Summary records of use

- (1) A person who uses methyl bromide must keep a record, in an approved form and signed by the person, of the following information in relation to each day on which the person uses methyl bromide:
 - (a) the date;
 - (b) the total amount of methyl bromide used by the person on the day.

Penalty: 10 penalty units.

Note A record mentioned in subregulation (1) must be kept by a person in addition to any record that the person must keep under regulation 221.

- (2) The person must retain the record for 5 years from the day to which the record relates.

Penalty: 10 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

Subdivision 6A.3.4 Reporting requirements

Note Regulation numbers 223 to 229 (inclusive) are intentionally not used.

230 Reports to be given by suppliers

- (1) A person (the *supplier*) who sells methyl bromide must, within 14 days after the end of a quarter, give the Minister a report that sets out:
 - (a) the name and ABN (if any) of the supplier; and
 - (b) in relation to each sale of methyl bromide made by the supplier in the quarter:
 - (i) the date of sale; and
 - (ii) the name and ABN (if any) of the buyer; and
 - (iii) the amount of methyl bromide sold; and
 - (iv) from the declaration made by the buyer for paragraph 220 (1) (e) — how much of the methyl bromide is to be used for QPS and non-QPS applications respectively; and

- (c) if the supplier sold no methyl bromide in the quarter, a statement to that effect.

Penalty: 10 penalty units.

Note It is an offence to give false or misleading information to a Commonwealth entity — see section 137.1 of the *Criminal Code*.

- (2) An offence against subregulation (1) is an offence of strict liability.

231 Reports to be given by exempt persons

- (1) An exempt person must, within 14 days after the end of a report period, give the Minister a report for the period that:
 - (a) is in an approved form; and
 - (b) sets out the information mentioned in subregulation (2); and
 - (c) is signed by the exempt person and by any contractor who carried out a fumigation to which the report relates.

Penalty: 10 penalty units.

Note It is an offence to give false or misleading information to a Commonwealth entity — see section 137.1 of the *Criminal Code*.

- (2) For paragraph (1) (b), the information is:
 - (a) the name, address and ABN (if any) of the exempt person; and
 - (b) in relation to each occasion on which methyl bromide is used (each *fumigation*) by, or on behalf of, the exempt person for a non-QPS application in the report period:
 - (i) the date of the fumigation; and
 - (ii) the amount of methyl bromide used; and
 - (iii) the kind of produce for which, or to which, the methyl bromide was applied; and
 - (iv) the methyl bromide/chloropicrin ratio used; and
 - (v) the dosage rate at which the methyl bromide was applied; and
 - (vi) the number of hectares fumigated or the number of containers, and the volume of each container, fumigated; and

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- (vii) if the fumigation was carried out by a contractor — the name, address, telephone number and ABN (if any) of the contractor; and
 - (c) if no methyl bromide was used by, or on behalf of, the exempt person for non-QPS applications in the report period, a statement to that effect.
- (3) In this regulation:
report period means a period of 6 months commencing on 1 January or 1 July.
- (4) An offence against subregulation (1) is an offence of strict liability.

232 Report about stockpiles of methyl bromide

- (1) If a person buys methyl bromide on or after 1 January 2005, he or she must, within 14 days after the end of the first quarter in which the person buys the methyl bromide, give the Minister a report that sets out how much methyl bromide the person possessed immediately before the purchase.

Penalty: 10 penalty units.

Note It is an offence to give false or misleading information to a Commonwealth entity — see section 137.1 of the *Criminal Code*.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note Regulation numbers 233 to 899 (inclusive) are reserved for future use.

Notes

1. These Regulations amend Statutory Rules 1995 No. 389, as amended by 1999 No. 73; 2002 No. 8; 2003 No. 279; 2004 Nos. 16, 296 and 380.
2. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.