

3. Australia's report under paragraph 1 of decision IX/6 on licensing, permitting or authorising critical uses

Regulations have been implemented under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) to ensure that methyl bromide imported into Australia is only sold and used for approved purposes – approved critical non-quarantine and pre-shipment, quarantine and pre-shipment and feedstock uses.

The *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the regulations) which came into force on 1 January 2005, introduced record keeping and/or reporting obligations for anyone selling and using methyl bromide. The regulations make it an offence to illegally supply or use methyl bromide.

The regulations provide a comprehensive system for managing methyl bromide in Australia. They ensure that methyl bromide that is imported for non-quarantine and pre-shipment (non-QPS) use is used for that authorised purpose. The extensive reporting procedures put in place ensure that if methyl bromide that is imported for quarantine and pre-shipment (QPS) is used for another purpose, this can be detected and appropriate action taken.

In relation to *supplying* methyl bromide:

- Individual growers, who are part of a critical use exemption, nominate a supplier from whom they will purchase methyl bromide for that year. This list of growers, their addresses, nominated suppliers and maximum allocated quantities is specified in the *Exemption List for Non-QPS Applications of Methyl Bromide* in the regulations. This list cannot be changed without changing the regulations.
- A person may *only sell* non-QPS methyl bromide to growers who have nominated that person as a supplier as per the *Exemption List for Non-QPS Applications of Methyl Bromide*. It is an offence for a supplier to sell non-QPS methyl bromide to anyone who hasn't nominated him or her as a supplier, or to sell the grower more than his or her allocated quantity in an exemption year.
- Purchasers and suppliers must complete a record of the sale, which must be kept for five years. Amongst other things, the record includes:
 - How much methyl bromide has been sold and its intended use (eg a critical use exemption);
 - A signed declaration from the purchaser that they understand and will abide by the restrictions and obligations relating to the use of the methyl bromide; and
 - A signed declaration from the supplier that they understand and will abide by the restrictions and obligations relating to the supply of methyl bromide.
- Suppliers of methyl bromide must report to the Australian Government at the end of each quarter the details of every sale of methyl bromide.

In relation to *using* methyl bromide:

- Anyone who uses methyl bromide must keep a record of the details of every use. The records must be kept for 5 years.

- Individual growers who have a critical use exemption must report bi-annually summary details of use of methyl bromide for the six month period under their exemption.
- If a contracted fumigator performs the treatments, the contractor must sign the report verifying the details are correct.

Anyone who supplies or uses methyl bromide may be audited and must make their records and stockpiles available to inspectors appointed under the Act.

Any breach of these provisions may result in the imposition of penalties for each offence. All offences are strict liability, meaning that the prosecution is not required to prove that the accused committed the offence intentionally, recklessly or negligently, but that the accused may show that they made a reasonable mistake of fact in committing the action.

It is also an offence under the Act to discharge an ozone depleting substance unless the discharge is in accordance with the regulations. Unauthorised non-QPS use would not be in accordance with the regulations and would attract significant penalties.

Supply chain arrangements have been included in the regulations to ensure that approved critical use exemption amounts only reach growers covered by those exemptions. The supply chain – from importer to farmer – was established through a ‘bottom up’ nomination process:

- Industry groups granted a critical use exemption provide a list of individual growers covered by the exemption and their maximum allocation of methyl bromide for the exemption year.
- The individual growers nominate the supplier(s) from whom they will purchase their non-QPS quota during the exemption year. If more than one supplier is nominated, the grower allocates the percentage of their amount they will purchase from each nominated supplier.
- Nominated suppliers confirm they will supply those growers and nominate from whom they intend to purchase those quantities of non-QPS methyl bromide from. The next level of nominated suppliers, in turn, nominates their respective supplier(s) and the process continues up the supply chain until an importer is nominated.
 - The nominated importers confirm that they will supply non-QPS methyl bromide to those suppliers, or directly to growers where applicable.
- Once the full supply chain has been identified, the regulations are amended to provide for the publishing of two lists:
 - The *Exemption List of Non-QPS Applications of Methyl Bromide*, which lists the exemption categories, the individual growers covered by each category, their address, nominated supplier(s) and maximum non-QPS quota.
 - The *Intermediate Supplier List for Non-QPS Applications of Methyl Bromide*, which lists nominated suppliers and their ‘intermediate suppliers’, where a nominated supplier has nominated a supplier that is not an importer to sell them non-QPS methyl bromide.

The conditions of the nominated importer's licences, which are granted under the Act, are then amended to specify who they may sell non-QPS methyl bromide to and in what amounts during the exemption year. The regulations provide that importers must comply with their import licence as to whom they may sell non-QPS stocks of methyl bromide.

As noted above, under the regulations it is an offence for a supplier to sell non-QPS methyl bromide to anyone who has not nominated them as their supplier. Under the Act it is an offence for an importer to breach a condition of their licence.

The reporting aspects of the regulations by suppliers and critical use exemption holders allow the Australian Government to monitor compliance with the supply chain by suppliers.

Through monitoring sales and use of methyl bromide and the introduction of strict liability penalties as a deterrent for non-compliance, the Australian Government has put in place measures to restrict access to non-QPS methyl bromide to approved CUE holders. Further, mandatory reporting of available stockpiles enables the Australian Government to take these amounts into consideration when allocating methyl bromide quantities for critical uses in future years. This ensures that existing stockpiles of methyl bromide are used before further quantities are approved.

The Australian Government recognises that demand may decrease between the time exemptions are granted and when the methyl bromide is used. The government will reduce allocations where a lower demand is demonstrated, notwithstanding the greater quantity approved by the parties to the Montreal Protocol.