

Queensland



Explanatory Notes for SL 2000 No. 283

Agricultural Chemicals Distribution Control Act 1966

AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL AMENDMENT REGULATION (No. 1) 2000

GENERAL OUTLINE

Short title

The short title of the regulation is the *Agricultural Chemicals Distribution Control Regulation (No. 1) 2000*.

Authorising law

Agricultural Chemicals Distribution Control Act 1966.

Policy objectives of the regulation and the reasons for them

The policy objectives of the proposed amendment regulation are—

- (a) to prevent damage to susceptible crops caused by off-target drift of volatile ester formulations of 2,4-D herbicide in the vicinity of Emerald in the Central Highlands region of Queensland.
- (b) to prevent damage to susceptible crops in areas of the State where susceptible crops are grown, but where the general provisions of the *Agricultural Chemicals Distribution Control Act 1966* (the “Act”) do not apply as these areas are presently excluded from the general operation of the Act by the *Agricultural Chemicals*

Distribution Control Regulation 1998 (the “regulation”).

The agricultural chemical 2,4-D is used for weed control and is commonly distributed by spraying from aircraft and ground equipment. Due to the volatility of some formulations of 2,4-D, off-target drift sometimes follows effective distribution, particularly with ester formulations of 2,4-D.

A number of incidents of alleged 2,4-D herbicide damage to grapes, horticultural tree crops and cotton crops have occurred in the Emerald district over the past two years. This damage may have been caused by the volatility of ester formulations of 2,4-D.

Concern over this damage led to the formation in 1998 of the Emerald Chemical Liaison Group representing cotton, pulse, sunflower and horticultural growers, beef and grain producers, local government authorities and the community in the Emerald area. Regulation of the use of specific agricultural chemicals is achieved by declaring an area to be a Hazardous Area under the Act and providing conditions on the use of the specified chemical within that Hazardous Area. The Emerald Chemical Liaison Group requested that a new Hazardous Area be declared in the Emerald region with conditions on the use of ester formulations of 2,4-D to protect crops susceptible to damage caused by off-target drift.

Also, in recent years, there has been considerable expansion of susceptible crops such as cotton, fruit and vegetables into areas of the State that are currently excluded from the operation of the Act. Section 3 of the Act provides that a regulation may declare that the Act or a provision of the Act does not apply in a specified part of the State. The schedule to the regulation lists those areas of the State that are excluded from the operation of the Act.

The Balonne, Bauhinia, Belyando, Broadsound, Duaringa, Richmond, Warroo Shires and the south eastern part of Dalrymple Shire are presently excluded from the operation of the Act but are now major production areas for susceptible crops. Agricultural chemical use in these areas is likely to continue to cause crop damage in these areas unless the areas are brought within the operation of the Act.

Ways in which the objectives are to be achieved by the regulation and why this way is reasonable and appropriate

The proposed amendment regulation will achieve the policy objectives by—

- (a) Creating “Hazardous Area No. 3” in the Emerald region and applying a prohibition on the aerial and ground distribution of ester formulations of 2,4-D in Hazardous Area No. 3 unless under a distribution permit or by authorised technique.
- (b) Removing Balonne, Bauhinia, Belyando, Broadsound, Duinga, Richmond, Warroo Shires and the southern part of Dalrymple Shire from the schedule of areas excluded from the operation of the Act. This will have the consequence of preventing damage to crops and injury to stock by bringing these areas under the general protection of the Act.

Scientific evidence from Department of Primary Industries weed agronomists is that ester formulations of 2,4-D are no more effective than alternative (such as amine) formulations of 2,4-D and there is also considerable scientific evidence that the volatility of some ester formulations is significantly greater than other formulations.

Consequently these ester formulations pose a greater risk of damage from off-target drift. The volatility of some ester formations of 2,4-D is such that drift can occur as a result of the chemical activity, whereas with other formulations, it is the actual application that causes drift. Due to the volatility of some formulations of 2,4-D, off-target drift damage sometimes follows effective distribution, particularly with ester formulations of 2,4-D.

There is provision in the proposed amendment regulation for distribution of ester formulations of 2,4-D under the condition of a distribution permit, where an inspector can be satisfied that there is no appreciable risk to susceptible crops or by authorised technique. Section 32 of the regulation defines “authorised technique” to mean stem injection, cut stump treatment, frill ringing or basal bark treatment carried out no less than 100 metres from a crop that is not on a property owned by the person for whom the treatment is carried out, and is susceptible to damage from the treatment.

Currently, the regulation excludes a number of areas from the operation of the Act based on a low risk (at the time of the making of that regulation)

of damage to crops or injury to stock being caused by agricultural chemicals. In recent years there has been considerable expansion of susceptible crops such as cotton, fruit and vegetables into areas of the state that are excluded by the regulation from the operation of the Act. Removing these areas from the schedule will have the consequence of preventing damage to crops and injury to stock by bringing these areas under the general protection of the Act.

Consistency of the regulation with the policy objectives of the authorising law

The proposed amendments to the regulation are consistent with the authorising law in that they—

- (a) provide for conditions to be applied on the use of specific agricultural chemicals in an area of high risk; and
- (b) bring the areas that are removed from the schedule under the protection of the Act.

Consistency with other legislation

The proposed amendment regulation is not inconsistent with the policy objectives of any other legislation.

Alternatives to the legislation and why these alternatives were not adopted

In determining the appropriate response to the situation outlined above, the following options have been considered—

- (a) a “do nothing” option (maintain the status quo);
- (b) increased enforcement; and
- (c) co-regulation (joint industry/government approach to regulatory development and enforcement).

These alternatives are not considered to be effective in meeting the policy objectives for a number of reasons. These reasons are explained in detail in the regulatory impact statement.

Assessment of the benefits and costs of implementing the regulation

Extensive consideration is given to the benefits and costs of implementing the amendment regulation in the regulatory impact statement.

Consistency with fundamental legislative principles

The provisions of the amendment regulation are consistent with fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

Consultation

There has been extensive consultation in relation to the proposed amendment regulation. Local governments were consulted in May, June and July 1999 and State government agencies were consulted from June 1999 to February 2000. The community was consulted through a series of meetings in November 1998 and July 1999 held to develop options to address the issues of concern.

Consultation was also undertaken in accordance with the *Statutory Instruments Act 1992* and a regulatory impact statement (“RIS”) was prepared and the availability of the RIS and an invitation to comment was advertised in newspapers including the “Balonne Beacon” in St George, the “Central Queensland News” in Emerald, the “Daily Mercury” in Mackay, the “Morning Bulletin” in Rockhampton, the “Northern Miner” in Charters Towers, the “Queensland Country Life” and the “Queensland Fruit and Vegetable News”.

The availability of the RIS with an invitation to comment was advertised in the Government Gazette on 1 September 2000 and the closing date for submissions on the RIS was 29 September 2000.

Copies of the RIS were forwarded to all key stakeholder groups including the Department of Premier and Cabinet, the Department of Natural Resources, the Department of Employment, Training and Industrial Relations, Main Roads Department, Queensland Rail, the Environmental Protection Agency, Department of Communication and Information, Local Government and Sport. The Balonne, Bauhinia, Belyando, Broadsound, Dalrymple, Duaringa, Emerald, Peak Downs, Richmond and Warroo Local

Government Authorities, Agforce and Cotton Australia were also provided with copies of the RIS.

Results of consultation

While the majority of stakeholders support the proposal, concerns were raised by Duaringa Shire Council, Agforce representatives and a number of cattle and grain producers who are strongly opposed to the inclusion of Duaringa Shire in the proposed Hazardous Area and to any restrictions on the distribution of ester formulations of 2,4-D.

These stakeholders believe that low volatile ester formulations are no more volatile than amine formulations and that ester formulations of 2,4-D are more effective than alternative formulations.

Duaringa Shire Council are strongly opposed to the declaration of a Hazardous Area that includes any part of Duaringa Shire based on their belief that ester formulations of 2,4-D are more effective than other formulations and are safe to use. There is also some concern over the use of the term "Hazardous Area".

While the views of those stakeholders opposed to the proposed amendment regulation have been carefully considered, it has been decided to proceed with the inclusion of all of Duaringa Shire in the proposed Hazardous Area No. 3. The basis for this decision is because—

- (a) there are a number of horticultural or cotton growers who are growing susceptible crops along the Mackenzie and Dawson Rivers in the Duaringa Shire who would not be protected by the Act unless they were included in the Hazardous Area;
- (b) with respect to the efficacy of ester and amine formulations of 2,4-D, scientific evidence from Department of Primary Industries weed agronomists strongly refutes the allegation that ester formulations are more effective than alternative formulations. There is also considerable scientific evidence that the volatility of some ester formulations is significantly greater than other formulations. Consequently these ester formulations pose a greater risk of crop damage from off-target drift; and
- (c) the volatility of some ester formations is such that drift can occur

as a result of the chemical activity, whereas with other formulations, it is the actual application that causes drift and the application can be addressed in other ways. There is provision in the proposed amendment regulation for distribution of ester formulations of 2,4-D under the condition of a distribution permit, where an inspector can be satisfied that there is no appreciable risk to susceptible crops or by authorised technique.

The consequence of not enacting the proposed amendment regulation is a continuation of susceptible crop damage caused by off-target drift of volatile ester formulations of 2,4-D. The concerns raised by Duaringa Shire Council, Agforce representatives and cattle and grain producers can be addressed by—

- (a) distribution permits being issued where there is no appreciable risk of crop damage occurring;
- (b) using an authorised technique; or
- (c) using an alternative chemical or alternative formulation of 2,4-D (these products are equally effective and are priced competitively).

NOTES ON PROVISIONS

1. states the short title of the regulation.
2. provides that the regulation amends the *Agricultural Chemicals Distribution Control Regulation 1998*.
3. amends the regulation by omitting the definitions of “authorised technique”, “distribution permit”, “hazardous area No. 1”, “hazardous area No. 2” and “permit condition” and inserts new references to definitions of hazardous area Nos. 1, 2 and 3.
4. omits the references for division 2 of hazardous area Nos.1 and 2.
5. amends the regulation by inserting a new subsection that provides a description of the new hazardous area No. 3.
6. corrects a minor grammatical error in the regulation.
7. corrects a minor grammatical error in the regulation.
8. amends the regulation by inserting a new section that provides conditions for distribution of ester formulations of 2,4-D in hazardous area No. 3.
9. amends the regulation by omitting schedule 1 and inserting a new schedule 1 that includes only the areas that continue to be excluded from the operation of the Act.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Primary Industries.