



Energy Efficiency Opportunities Amendment Regulation 2012 (No. 1)¹

Select Legislative Instrument 2012 No. 108

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Energy Efficiency Opportunities Act 2006*.

Dated 14 June 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

MARTIN FERGUSON
Minister for Resources and Energy

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1 Name of regulation

This regulation is the *Energy Efficiency Opportunities Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences as follows:

- (a) on the day after they are registered—regulations 1 to 3 and Schedule 1;
- (b) on 1 July 2013—Schedule 2.

3 Amendment of *Energy Efficiency Opportunities Regulations 2006*

Schedules 1 and 2 amend the *Energy Efficiency Opportunities Regulations 2006*.

Schedule 1 Amendments commencing on day after registration

(section 3)

[1] Regulation 1.3

insert

capacity factor means the energy generated by a generating unit over a period of time, expressed as a percentage of the maximum energy that the unit could generate, if it operated continuously, at maximum capacity, over the same period.

[2] Regulation 1.3

insert

liability transfer certificate has the meaning given by section 5 of the *Clean Energy Act 2011*.

[3] Regulation 1.3

insert

operational control has the meaning given by regulation 1.3A.

[4] Regulation 1.3

insert

reporting transfer certificate has the meaning given by section 7 of the *National Greenhouse and Energy Reporting Act 2007*.

[5] Regulation 1.3

insert

service factor means the total operating hours of an electricity generating unit, expressed as a percentage of the total hours the electricity generating unit was available for operation.

Example of service factor

If an electricity generating unit was available for operation for 8 760 hours in a year and operated for 672 hours, its service factor would be 7.7%.

[6] After regulation 1.3

insert

1.3A Operational control

- (1) A person has *operational control* of a facility if the person has the authority to introduce and implement one or more of the following policies for the facility:
 - (a) operating policies;
 - (b) health and safety policies;
 - (c) environmental policies.
- (2) If more than one person could have operational control of a facility at the same time, the person who has the greatest authority to introduce and implement operating and environmental policies is taken to have operational control of the facility.
- (3) However, if the Clean Energy Regulator has made a declaration under section 55 of the *National Greenhouse Energy Act 2007* that a controlling corporation has operational control of a facility, that corporation is taken to have operational control of the facility.

[7] Regulation 1.4A, heading

substitute

1.4A User of energy—liability transfer or reporting transfer certificate issued

[8] Subregulation 1.4A (1)

substitute

- (1) An entity to which a liability transfer certificate or reporting transfer certificate has been issued may ask the Secretary, in writing, to treat the entity as the user of energy to which the liability transfer certificate or reporting transfer certificate relates at a facility.

[9] Subregulation 1.4A (4)

omit everything before paragraph (a), insert

- (4) If the certificate ceases to be in effect:

[10] Regulation 1.4B, heading

substitute

1.4B User of energy—liability transfer or reporting transfer certificate not issued (registered corporation or member of registered corporation's group)

[11] Paragraph 1.4B (1) (b)

substitute

- (b) for which a liability transfer certificate or reporting transfer certificate has not been issued;

[12] Regulation 1.4C, heading

substitute

1.4C User of energy—liability transfer or reporting transfer certificate issued (not registered corporation or member of registered corporation’s group)

[13] Paragraph 1.4C (1) (b)

substitute

(b) for which a liability transfer certificate or reporting transfer certificate has not been issued;

[14] After subregulation 2.3 (2)

insert

Note For a joint venture to which the *National Greenhouse and Energy Reporting Regulations 2008* applies, it is recommended that a person nominated as a responsible entity under this regulation be the same person nominated under regulation 2.08 of the *National Greenhouse and Energy Reporting Regulations 2008* for the joint venture.

[15] Subregulation 3.1 (2)

omit

reporting transfer certificate that has been issued to the applicant under subsection 22L (2) of the *National Greenhouse and Energy Reporting Act 2007*

insert

liability transfer certificate or reporting transfer certificate that has been issued to the applicant

[16] Paragraphs 3.1 (2) (a), (b) and (c)

omit

reporting transfer

[17] Subregulation 4.2 (2)

omit

reporting transfer certificate that has been issued to the applicant under subsection 22L (2) of the *National Greenhouse and Energy Reporting Act 2007*

insert

liability transfer certificate or reporting transfer certificate that has been issued to the applicant

[18] Paragraphs 4.2 (2) (a), (b) and (c)

omit

reporting transfer

[19] Subregulation 5.3 (8)

substitute

- (8) Subject to subregulation (8A), the controlling corporation may omit from an assessment plan any electricity generating unit that:
- (a) consumed less than 0.5 PJ during the baseline year; and
 - (b) has a capacity factor that is less than 10% for a year; and
 - (c) has a service factor that is less than 20% for a year.
- (8A) Subregulation (8) does not apply if the total energy that would be omitted under that subregulation in relation to electricity generating units is more than 50% of the total energy use for the controlling corporation for the baseline year.

[20] Regulation 5.5, heading

substitute

5.5 Documents that registered corporation must give Secretary—liability transfer or reporting transfer certificate

[21] Paragraph 5.5 (1) (b)

omit

reporting transfer certificate issued to the registered corporation in accordance with section 22L of the *National Greenhouse and Energy Reporting Act 2007*.

insert

liability transfer certificate or reporting transfer certificate issued to the registered corporation.

[22] Subregulation 5.5 (2), table

omit each mention of

reporting transfer

[23] Paragraph 5.6 (3) (c), after example 4

insert

5 Information about, or documents relating to, circumstances of hardship that inhibit the corporation from undertaking rigorous and comprehensive assessment.

6 Information about, or documents relating to, any electricity generating units omitted under subregulation 5.3 (8).

[24] Subparagraphs 5.7 (2) (a) (i) and (ii)

omit

; and

insert

; or

[25] Paragraph 9.2 (1) (a)

omit

reporting transfer certificate issued under subsection 22L (2) of the *National Greenhouse and Energy Reporting Act 2007*

insert

liability transfer certificate or reporting transfer certificate

Schedule 2 Amendments commencing on 1 July 2013

(section 3)

[1] Regulation 1.3

omit

In these Regulations:

insert

- (1) In these Regulations:

[2] Regulation 1.3

insert

commercial operation has the meaning given by subregulation (2).

[3] Regulation 1.3

insert

expansion has the meaning given by subregulation (3).

[4] Regulation 1.3

insert

future energy use means the energy that a new development or expansion will use, on average and calculated on an annual basis, after commercial operation has commenced.

[5] Regulation 1.3

insert

multiple new developments or expansions means any of the following:

- (a) 2 or more new developments;

- (b) 2 or more expansions;
- (c) any combination of new developments and expansions.

[6] Regulation 1.3

insert

network losses has the meaning given by subregulation (4)

[7] Regulation 1.3

insert

new development has the meaning given by subregulation (5).

[8] Regulation 1.3

insert

project includes a set of activities.

[9] Regulation 1.3

insert

- (2) In these Regulations, a new development or expansion is taken to have commenced ***commercial operation*** if:
 - (a) minor operational issues have been finalised; and
 - (b) the operation of the new development or expansion has been optimised.

Examples that may indicate that commercial operation has commenced

1 Any plant or piece of equipment installed as part of the new development or expansion is producing a constant amount of product.

2 Any plant or piece of equipment installed as part of the new development or expansion has reached the level of production that the plant or equipment was designed to produce.

3 The board of the controlling corporation has formally agreed that the capital investment in the new development or expansion is operating as intended.

4 The board of the controlling corporation has indicated that the new development or expansion is operating as intended.

Example of optimised operation of equipment

After a piece of equipment has first been turned on, there will be small adjustments to the equipment that need to be made to make sure that the operation of the equipment is optimised. An example of this might be if a pump is pumping water to a piece of plant to keep it cool. The plant needs to be kept below 50 °C. The pump was designed and installed to pump 150 L/s of water, which is keeping the plant at 35 °C. The pump could be adjusted, to pump a lesser amount than 150 L/s, which would use less energy and increase the plant temperature to 45 °C, which would still be below the critical temperature of 50 °C.

- (3) A project is an **expansion** if:
 - (a) it relates to an existing facility; and
 - (b) it is expected that additional energy use will be required by the facility when the project has commenced commercial operation; and
 - (c) there is an opportunity, in the design, commissioning or equivalent process for the project, to improve energy efficiency.
- (4) The **network losses** of an entity are the difference between the amount of electricity or gas measured as entering the network of the entity and the electricity or gas measured as leaving the network of the entity:
 - (a) for consumption; or
 - (b) to enter another network.
- (5) A project is a **new development** if:
 - (a) it is a project to construct a new facility or facilities; and
 - (b) there is an opportunity, in the design, commissioning or equivalent process for the project, to improve energy efficiency.

[10] Subregulation 1.5 (2)

substitute

General meaning

- (2) The **energy used** by an entity is worked out by:
- (a) identifying the amount of all energy used by the entity, treating any network losses that result from the transmission and distribution of electricity and gas as energy used by the entity; and
 - (b) then adding the amount of estimated future use of energy by new developments or expansions mentioned in subregulations 5.3A (2) and (4); and
 - (c) then reducing the result by any amount calculated under subregulation (4).

[11] After regulation 5.3

insert

5.3A Assessments for new developments and expansions

- (1) This regulation sets out principles relating to assessment plans for new developments and expansions.

Sites that use 0.5 PJ or more

- (2) If the future energy use of a new development or expansion will be 0.5 PJ or more, the controlling corporation must prepare an assessment plan that includes a plan to assess the future energy use of the new development or expansion.
- (3) Subregulation (2) ceases to apply to a new development or expansion if:
- (a) the new development or expansion is discontinued; or
 - (b) the controlling corporation determines that the future energy use of the new development or expansion will not be 0.5 PJ or more.

Note For this regulation, *discontinued* includes any new development or expansion that is no longer being actively progressed. This includes projects that are on hold.

Multiple new developments and expansions with future energy use of 0.25 PJ or more, but less than 0.5 PJ etc.

- (4) A controlling corporation must prepare an assessment plan that includes a plan to assess the future energy use of multiple new developments or expansions:

(a) if:

- (i) the plan refers to a new development or expansion (the *first new development or expansion*) whose design is not substantially the same as the design for previous new developments or expansions undertaken by the controlling corporation; and
- (ii) the controlling corporation expects the design for one or more other new developments or expansions to be substantially the same as the design for the first new development or expansion; and
- (iii) the future energy use of each new development or expansion will be 0.1 PJ or more, but less than 0.5 PJ; and
- (iv) the total future energy use of the multiple new developments or expansions will be 0.5 PJ or more; or

Note The design of the first new development or expansion would be one that the controlling corporation:

- (a) has not previously used; and
- (b) proposes to use as a model or template for future new developments or expansions.

A design for a future new development or expansion is likely to be treated as ‘substantially the same as’ the design for the first new development or expansion if the difference in the design of the first new development or expansion and the future new development or expansion is less than 5%, measured by the cost of the changes to the design of the first new development or expansion.

(b) if:

- (i) paragraph (a) does not apply; and

- (ii) the future energy use of each new development or expansion will be 0.25 PJ or more but less than 0.5 PJ; and
 - (iii) the total future energy use of the multiple new developments or expansions will be 0.5 PJ or more.
- (5) Subregulation (4) ceases to apply to multiple new developments or expansions if:
- (a) one or more of the new developments or expansions is discontinued; and
 - (b) the controlling corporation determines that the total future energy use of the remaining multiple new developments or expansions will be less than 0.5 PJ.

Note For this regulation, *discontinued* includes any new development or expansion that is no longer being actively progressed. This includes projects that are on hold. *Discontinued* does not mean completed. It is intended that if a new development or expansion is completed, a controlling corporation would continue to assess any remaining new developments or expansions that constitute the multiple new developments or expansions, even if the sum of the remaining new developments or expansions would be less than 0.5 PJ.

- (6) Subregulation (4) ceases to apply to multiple new developments or expansions if the controlling corporation determines that:
- (a) the future energy use of one or more of the new developments or expansions will be less than the future energy use that was estimated; and
 - (b) the total future energy use of the multiple new developments or expansions will be less than 0.5 PJ.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.