



# Energy Efficiency Opportunities Amendment Regulations 2008 (No. 1)<sup>1</sup>

## Select Legislative Instrument 2008 No. 129

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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 *Energy Efficiency Opportunities Act 2006*.

Dated 24 June 2008

P. M. JEFFERY  
Governor-General

By His Excellency's Command

MARTIN FERGUSON  
Minister for Resources and Energy

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**1 Name of Regulations**

These Regulations are the *Energy Efficiency Opportunities Amendment Regulations 2008 (No. 1)*.

**2 Commencement**

These Regulations commence on 1 July 2008.

**3 Amendment of *Energy Efficiency Opportunities Regulations 2006***

Schedule 1 amends the *Energy Efficiency Opportunities Regulations 2006*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 1.3, after definition of *Act***

*insert*

***baseline energy*** means the amount of total energy use identified for the purpose of paragraph 201 (a) of Schedule 3.

**[2] Regulation 1.3, definition of *combustible fuel***

*omit*

, and that is mentioned in Part 1 of Schedule 1

**[3] Regulation 1.3, after definition of *combustible fuel***

*insert*

***energy-mass balance*** means a method of accounting for:

- (a) the materials and energy entering and leaving a site or fleet and its processes, systems or equipment; and

- 
- (b) the energy and material flows, energy conversions and energy use within the site or fleet and its processes, systems or equipment.

*Note 1* To enable an appropriate coverage, an energy-mass balance should define, to an accuracy of  $\pm 5\%$ , at least 80% of a site's energy use and all processes not already included in the 80% that use at least 0.1 PJ of energy per year.

*Note 2* An energy-mass balance should provide a thorough understanding of:

- (a) the material flows and energy use through a site, its processes and systems, and items of equipment including items such as pipes and ducts; and
- (b) the specific services and products the energy use delivers; and
- (c) the energy conversion processes within a system, and identification of conversions that are essential and efficient; and
- (d) the identification of energy waste and energy efficiency opportunities.

#### [4] Regulation 1.4

*substitute*

#### 1.4 User of energy

- (1) In these Regulations, the ***user*** of energy is:
- (a) if the energy is derived from a source that is a combustible fuel, or is electricity, compressed air or steam — the entity that has operational control over the facility in which the energy is consumed or produced for consumption;
  - (b) if the energy is derived from a reductant — the entity that has operational control over the facility in which the reductant is used to produce energy or combustible fuel.

- (2) In this regulation:

***consumption***, of energy, has the same meaning as it has in section 10 of the *National Greenhouse and Energy Reporting Act 2007*.

***facility*** has the same meaning as it has in section 9 of the *National Greenhouse and Energy Reporting Act 2007*.

*operational control* has the same meaning as it has in section 11 of the *National Greenhouse and Energy Reporting Act 2007*.

*production*, of energy, has the same meaning as it has in section 10 of the *National Greenhouse and Energy Reporting Act 2007*.

(3) If an entity:

(a) is a user of energy; and

(b) is a trustee of a trust on behalf of which the trustee may, or may be considered to be, using the energy;

the user of energy is taken to be the trustee, and not the trust or the beneficiaries of the trust.

**[5] Subregulation 1.5 (3), including the subheading**

*substitute*

*Kinds of energy*

(3) The meaning of *energy used* by an entity is to be determined by reference to energy and energy sources mentioned in Schedule 1 of the *National Greenhouse and Energy Reporting Regulations 2008*.

*Note* Schedule 1 of the *National Greenhouse and Energy Reporting Regulations 2008* specifies fuels and other energy commodities for the purposes of the definition of energy in section 7 of the *National Greenhouse and Energy Reporting Act 2007*.

**[6] Subregulation 1.5 (5), including the subheading, except the note**

*substitute*

*Conversion factors*

(5) If an energy source is to be converted to an amount of energy, the conversion is to be done using the energy content factors mentioned in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*.

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**[7] Subregulation 1.6 (1)**

*omit*

The

*insert*

Subject to subregulation (1A), the

**[8] After subregulation 1.6 (1)**

*insert*

- (1A) If the data mentioned in items 1, 2 and 4 of the table at subregulation 1.6 (1) satisfies the methods and criteria for the measurement of the consumption of energy provided in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*, the entity responsible for the preparation of that data is taken to have satisfied the calculation requirements in the fourth column of the table.

**[9] Paragraph 3.2 (2) (b)**

*substitute*

- (b) given to the Secretary by sending it to the address nominated in writing by the Secretary.

*Note* The address will be listed on the Department's website.

**[10] Paragraph 3.4 (2) (c)**

*substitute*

- (c) given to the Secretary by sending it to the address nominated in writing by the Secretary.

*Note* The address will be listed on the Department's website.

**[11] Paragraph 4.3 (2) (b)**

*substitute*

- (b) given to the Secretary by sending it to the address nominated in writing by the Secretary.

*Note* The address will be listed on the Department's website.

**[12] Subregulation 5.1 (4)***substitute*

- (4) A plan in hard copy must be given to the Secretary by sending it to the address nominated in writing by the Secretary.

*Note* The address will be listed on the Department's website.

**[13] Subregulation 5.3 (2)***omit each mention of*

energy

*insert*

baseline energy

**[14] Subregulation 5.3 (3)***omit each mention of*

energy

*insert*

baseline energy

**[15] After subregulation 5.3 (5)***insert*

- (6) The controlling corporation must assess a site if:
- (a) a member of the group has built or acquired the site up to 18 months before the end of the 5 year assessment cycle; and
  - (b) the site uses more than 0.5 PJ during a financial year.
- (7) An assessment of a site mentioned in subregulation (6) may be an assessment undertaken during the design phase of the construction of the site.

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**[16] Subregulation 7.1 (2), including the note**

*substitute*

- (2) For subsection 22 (2) of the Act, and subject to subregulation (3), each period of 12 months after the end of the first period is a period for the registered corporation.

*Note* The effect of paragraph 22 (1) (a) and subsection 22 (2) of the Act is that a registered corporation must prepare a report in accordance with section 22 for each period specified in the regulations.

- (3) A registered corporation may elect to have its reporting period end at the end of the financial year.
- (4) If the corporation elects to have a reporting period end at the end of the financial year, the subsequent periods also end at the end of each financial year.

**[17] Subregulation 7.4 (2)**

*substitute*

- (2) For paragraph 22 (5) (a) of the Act, and subject to subregulation (3), a report other than the first report is due on the anniversary of the end of the period mentioned in subregulation (1).
- (3) If a registered corporation makes its first report available to the public on a date before 31 October 2008:
- (a) the due date for the second report may be extended, at the discretion of the corporation, to the end of 31 October 2009; and
  - (b) if the corporation decides to extend the due date for the second report under paragraph (a), subsequent reports are due on the anniversary of the end of the period mentioned in paragraph (a).

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**[18] Regulation 7.7**

*omit*

For

*insert*

(1) For

**[19] Paragraph 7.7 (a)**

*omit*

mentioned in Schedule 1

*insert*

referred to in subregulation 1.5 (3)

**[20] Paragraph 7.7 (e)**

*omit*

energy use

*insert*

energy use and production

**[21] Regulation 7.7, at the foot**

*insert*

- (2) For subregulation (1), the reporting of energy use in the report to the Secretary is to include energy sources that were used to produce energy used by the entity.

*Note* It is intended that the report to the Secretary will include details of gross energy use.

**[22] Paragraph 7.10 (2) (b)**

*substitute*

- (b) given to the Secretary by sending it to the address nominated in writing by the Secretary.

*Note* The address will be listed on the Department's website.



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**[23] After Part 9**

*insert*

## **Part 10 Transitional**

### **10.1 Application**

- (1) This Part applies to an entity that:
  - (a) is a controlling corporation; and
  - (b) applied for registration in accordance with section 9 of the Act before 1 July 2008.
- (2) A provision of this Part applies until:
  - (a) the end of the last day of the first five year assessment cycle that applies to the entity; or
  - (b) another date specified in this Part.

*Note* The five year assessment period is mentioned in paragraph 15 (2) (b) of the Act.

### **10.2 Definitions**

In this Part:

***amended Regulations*** means these Regulations as in force after the commencement of this regulation.

***old Regulations*** means these Regulations as in force immediately before the commencement of this regulation.

*Note* These Regulations were amended by the *Energy Efficiency Opportunities Amendment Regulations 2008 (No. 1)* to include new arrangements relating to measuring energy use, and to insert the transitional provisions in this Part.

### **10.3 User of energy**

- (1) An entity is taken to satisfy the requirements of the amended Regulations relating to an assessment plan if the entity satisfies the requirements of the old Regulations.

*Note* Section 15 of the Act relates to the requirement to submit an assessment plan every 5 years.

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- (2) An entity is taken to satisfy the requirements of the amended Regulations relating to undertaking an assessment if the entity satisfies the requirements of the old Regulations.

*Note* Section 20 of the Act relates to the requirement to carry out an assessment.

- (3) An entity is taken to satisfy the requirements of the amended Regulations relating to the preparation of a report if the entity satisfies the requirements of the old Regulations.

*Note* Sections 22 and 23 of the Act relate to the preparation of reports.

- (4) An entity is taken to satisfy the requirements of the amended Regulations relating to making a report available if the entity satisfies the requirements of the old Regulations.

*Note* Section 22 of the Act relates to making a report available to the public. Section 23 of the Act relates to making a report available to the Secretary.

#### **10.4 Energy use threshold — meaning of *energy used***

- (1) This regulation applies if an entity would experience a significant increase or decrease in the energy use attributed to its group as a result of the amendment of subregulation 1.5 (3) by the *Energy Efficiency Opportunities Amendment Regulations 2008 (No. 1)*.
- (2) The entity may work out the amount of energy it has used by applying the meaning of ***energy used*** given by:
- (a) subregulation 1.5 (3) of the old Regulations; or
  - (b) subregulation 1.5 (3) of the amended Regulations.
- (3) If the entity has applied the meaning of energy used given by subregulation 1.5 (3) of the amended Regulations, it may no longer apply the meaning of energy used given by subregulation 1.5 (3) of the old Regulations.
- (4) If the entity decides to work out the amount of energy it has used by applying the meaning of ***energy used*** given by subregulation 1.5 (3) of the old Regulations, subregulation 1.5 (3) of the amended Regulations is taken not to apply in relation to the entity.

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- (5) For this regulation, a *significant increase or decrease* in the energy use attributed to the entities group will occur if, and only if:
- (a) energy use at a site is increased from below 0.5 PJ to more than 0.5 PJ, or decreased from more than 0.5 PJ to below 0.5PJ; or
  - (b) energy use for the group or part of the group is increased or decreased to the extent that the entity would no longer meet the requirement that it would have met under the old Regulations, to assess at least 80% of the energy use of the group in the first five year assessment cycle.

### 10.5 Conversion factors

- (1) If an entity was using the conversion factors specified in subregulation 1.5 (5) of the old Regulations immediately before the commencement of this regulation, the entity may:
- (a) use the conversion factors specified in subregulation 1.5 (5) of the amended Regulations; or
  - (b) continue to use the conversion factors specified in subregulation 1.5 (5) of the old Regulations.

*Note* Under subregulation 1.5 (5) of the old Regulations, the factors were mentioned in the publication *Energy in Australia 2005*, ISSN 1833-038X, published by the Department of Industry, Tourism and Resources on 9 December 2005.

- (2) If the entity decides to use the conversion factors specified in subregulation 1.5 (5) of the old Regulations, subregulation 1.5 (5) of the new Regulations is taken not to apply in relation to the entity.

### [24] Schedule 1, Part 1

*omit*

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**[25] Schedule 3, item 103***substitute*

- 103 (1) For each group member, key activity, business unit or site to be assessed under the assessment plan:
- (a) its name; and
  - (b) its relationship to the controlling corporation; and
  - (c) its Australian Business Number (ABN), except if information is to be identified for the key activities subset mentioned in paragraph (2) (b); and
  - (d) if the group member does not have an ABN, and information is not to be identified for the key activities subset mentioned in paragraph (2) (b) — the address of its head office; and
  - (e) if a Global Industry Classification Standard is applicable — the classification under the Standard; and
  - (f) if an Australian and New Zealand Standard Industrial Classification is applicable — the classification.
- (2) The information in subitem (1) must be identified for one of the following:
- (a) all members of the group;
  - (b) all key activities;
  - (c) all business units;
  - (d) all sites.

**[26] Schedule 3, item 106***omit***[27] Schedule 3, item 107***substitute*

- 107 (1) A diagrammatic representation of the structure of the controlling corporation's group:
- (a) showing the links between the controlling corporation and members of the group, key activities, business units or sites that are intended to be assessed; and

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- (b) identifying any group member that is to submit separate assessment plans; and
  - (c) providing for a brief summary of each group member, key activity, business unit or site that is not intended to be assessed.
- (2) The information in subitem (1) must be identified for the group, and for one of the following:
- (a) all members of the group;
  - (b) all key activities;
  - (c) all business units;
  - (d) all sites.

**[28] Schedule 3, item 201, except the note**

*substitute*

- 201 (1) A summary of:
- (a) total energy use; and
  - (b) total energy use, having regard to the kinds of energy and energy sources mentioned in subregulation 1.5 (3); and
  - (c) energy use relative to a unit of production or service reasonably relevant to the particular industry.
- (2) The information in subitem (1) must be identified:
- (a) for the group; and
  - (b) for one of the following:
    - (i) all members of the group;
    - (ii) all key activities;
    - (iii) all business units;
    - (iv) all sites.

**[29] Schedule 3, item 203**

*substitute*

- 203 (1) The total of all energy efficiency opportunities that:
- (a) were identified before the preparation of the assessment plan; and

- (b) have not been implemented; and
  - (c) may be implemented before the final year of the first five year assessment cycle.
- (2) The information in subitem (1) must be identified:
  - (a) for the group; and
  - (b) for one of the following:
    - (i) all members of the group;
    - (ii) all key activities;
    - (iii) all business units;
    - (iv) all sites.

**[30] Schedule 3, item 204, including the note**

*substitute*

- 204 (1) For the energy efficiency opportunities mentioned in subitem 203 (1):
- (a) an estimate of the per annum net energy savings and per annum net financial savings based on trigger year energy use and production levels; and
  - (b) an estimate of the per annum net energy savings and per annum net financial savings based on forecast production levels in the final year of the first five-year assessment cycle.
- (2) The information in subitem (1) must be identified:
- (a) for the group; and
  - (b) for one of the following:
    - (i) all members of the group;
    - (ii) all key activities;
    - (iii) all business units;
    - (iv) all sites.

**[31] Schedule 3, items 301 and 302**

*omit*

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**[32]      Schedule 3, item 401, note**

*omit*

controlling group

*insert*

controlling corporation's group

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.