

Energy Grants (Credits) Scheme Regulations 2003 2003 No. 179

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 179

Issued by authority of the Minister for Revenue and Assistant Treasurer

Energy Grants (Credits) Scheme Act 2003

Energy Grants (Credits) Scheme Regulations 2003

The *Energy Grants (Credits) Scheme Act 2003* (the Act) and the *Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003* replace the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme with a single scheme called the Energy Grants (Credits) Scheme.

Section 58 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 4 of the Act provides that off-road diesel fuel means diesel fuel or any other like fuel of a kind that is specified in the regulations.

Subsection 6(1) lists six metropolitan areas. Subsection 6(2) allows the regulations to specify the area to be included in each metropolitan area referred to in subsection 6(1).

Subsection 53(6) specifies certain kinds of fuel use that qualify for an off-road credit and provides that other uses may be specified in the regulations.

Subsection 53(7) allows the regulations to prescribe kinds of eligible off-road diesel fuel where the use is not in an internal combustion engine.

Subsection 57(2) allows the regulations to prescribe different amounts per litre (or cubic metre) depending on either or both of the following:

- (a) whether the fuel purchased is on-road diesel fuel, on-road alternative fuel or off-road diesel fuel, or a particular type of on-road diesel fuel, on-road alternative fuel or off-road diesel fuel;
- (b) the proposed use of the fuel.

The regulations may prescribe that the amount per litre is a nil amount.

Subsection 57(5) allows the regulations to prescribe one or more methods for working out (whether by measurement, estimate or any other means) the quantity of fuel proposed to be used or actually used, for the purpose of making a claim.

Subsection 57(6) provides that the prescribed methods may differ according to any one or more of the following:

- (a) whether the fuel purchased is on-road diesel fuel, on-road alternative fuel or off-road diesel fuel, or a particular type of on-road diesel fuel, on-road alternative fuel or off-road diesel fuel;

- (b) the proposed or actual use of the fuel;
- (c) the quantity of fuel purchased;
- (d) patterns of fuel usage;
- (e) any other matter relating to the user of the fuel.

Background

The Energy Grants (Credits) Scheme maintains entitlements equivalent to those currently available under the Diesel Fuel Rebate Scheme administered under the *Customs Act 1901* and the *Excise Act 1901*, and the Diesel and Alternative Fuels Grants Scheme administered under the *Diesel and Alternative Fuels Grants Scheme Act 1999* by replicating the existing entitlement provisions in those Acts to create an on-road credit and an off-road credit.

In addition, eligibility categories are included under the off-road credit that are equivalent to certain off-road uses of diesel fuel currently eligible for a remission, refund or rebate of duty under the *Customs Regulations 1926* and the *Excise Regulations 1925*.

The changes to be made to the existing regulatory regime as a consequence of the above legislative arrangements include regulations to be prescribed under the *Energy Grants (Credits) Scheme Act 2003*.

The Regulations

The Regulations repeal and replicate many of the matters that are currently prescribed under the *Customs Act 1901*, the *Excise Act 1901* and the *Diesel and Alternative Fuels Grants Scheme Act 1999*. In some cases regulations are remade with minor changes to accommodate the prospective nature of the Energy Grants (Credits) Scheme and differences resulting from replacing rebate provisions with grant provisions.

- The definitions of on-road diesel fuel and emergency vehicle contained in the *Diesel and Alternative Fuels Grants Scheme Regulations 2000* is reproduced in the regulations with minor amendments.
- On-road alternative fuel is prescribed in the regulations to include liquefied natural gas and biodiesel, together with appropriate rates.
- The definition of off-road diesel fuel contained in the *Customs Regulations 1926* and the *Excise Regulations 1925* is replicated in the regulations.
- Metropolitan boundaries are specified in the same way as they were in the *Diesel and Alternative Fuels Grants Scheme Regulations 2000*.
- The Regulations prescribe the grant rates for the on-road and off-road credit as the same amounts currently applying under the existing schemes, with the exception of the prescription of additional amounts for off-road diesel fuel used in agriculture, to compensate farmers for the impact of the ultra low sulphur diesel excise differential. Grant rates are also prescribed for uses of off-road diesel fuel currently covered by refund and remission arrangements under the *Customs Regulations 1926* and *Excise Regulations 1925*.
- The Regulations also prescribe methods for the working out the quantity of fuel eligible for a grant.

Details of the methods are set out in the Attachment.

The Regulations commenced on gazettal.

ATTACHMENT

Methods of working out quantity of fuel

Regulation 11 prescribes four methods of working out the quantity of fuel used or proposed to be used pursuant to subsection 57(5) of the *Energy Grants (Credits) Scheme Act 2003*. These methods are:

- the constructive method;
- the deductive method;
- the percentage use method; and
- the small claimants method.

The prescribed methods are set out in Schedule 8 of the regulations.

The methods allow claimants the choice of working out the quantity of fuel eligible for a grant in a manner best suited to their business, fuel use and accounting systems.

Under the Energy Grants (Credits) Scheme the point of entitlement for an energy grant is prospective. Claimants may make a claim for fuel that they have purchased or imported into Australia, that they propose to use in an eligible activity, but that may not have yet been used at the time the claim for payment is made.

Claimants are also able to calculate their claim based on actual use of the fuel. The methods therefore reflect claims for both prospective and actual entitlements.

The basic calculation methods

The basic calculation methods are the constructive and deductive methods. Under the constructive method claimants calculate the quantity of fuel eligible for a grant in a claim period by adding the fuel used or proposed to be used in each qualifying use. Under the deductive method claimants add the fuel used or proposed to be used in each disqualifying use and deduct the quantity of disqualified fuel from the quantity of fuel purchased or imported.

Variations of the basic calculations methods

The percentage use method

Under the percentage use method claimants calculate the quantity of fuel actually used in a sample period using either the deductive or constructive method and use this quantity to establish a sample percentage. The percentage is then applied to the total quantity of fuel purchased or imported in a claim period to calculate the amount of fuel eligible for an energy grant. The sample period must be a continuous period of at least 12 weeks that is representative of the claimant's fuel usage patterns in a claim period.

If there is a substantial change to the pattern of fuel usage during t