Commonwealth Coat of Arms

Energy Efficiency Opportunities Regulations 2006

Select Legislative Instrument No. 160, 2006 as amended

made under the

Energy Efficiency Opportunities Act 2006

**Compilation start date:** 7 August 2013

**Includes amendments up to:** SLI No. 227, 2013

**About this compilation**

**This compilation**

This is a compilation of the *Energy Efficiency Opportunities Regulations 2006* as in force on 7 August 2013. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 27 August 2013.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of each amended provision.

**Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

**Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1.1 Name of Regulations

These Regulations are the *Energy Efficiency Opportunities Regulations 2006*.

1.2 Commencement

These Regulations commence on the day after they are registered.

1.3 Definitions

(1) In these Regulations:

***Act*** means the *Energy Efficiency Opportunities Act 2006*.

***approved form*** means a form approved by the Secretary under regulation 1.8.

***aspirational target*** means a target for energy efficiency that:

(a) is technically achievable; and

(b) encourages the achievement of substantial energy efficiency opportunities in the design of a new development or an expansion.

***assessment cycle*** means each of the following periods:

(a) the period of 5 years beginning on 1 July in the financial year after the trigger year;

(b) each subsequent five year period after the end of the period mentioned in paragraph (a).

***Assessment Framework*** means the Assessment Framework in the table in:

(a) for a new development or an expansion—item 301 of Schedule 2A; or

(b) otherwise—item 305 of Schedule 3.

***baseline energy*** means the amount of total energy use of a controlling corporation’s group, identified for the purpose of paragraph 201(1)(a) of Schedule 3.

***baseline year***, for an assessment cycle relating to a controlling corporation, means the period of 12 months identified as the ‘baseline year’ in the controlling corporation’s approved assessment plan for the assessment cycle.

Note: See items 101, 201 and 202 of Schedule 3.

***business unit*** means a group member, or associated group members within a group, that:

(a) is made responsible by the controlling corporation for a function that is significant to the overall business of the group; and

(b) has a significant degree of autonomy and responsibility.

Note: A business unit may be:

(a) a group member or members; or

(b) a part of a group member or members; or

(c) a combination of group members and parts of group members;

that operate a large site, or a group of sites, or a team of group members providing specialist services across a business.

***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.

***combustible fuel*** means an energy source that is combusted to create energy.

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

***design stage***, in relation to a project, means a stage (however described) in the process undertaken by an entity to design the project and develop it to the commencement of commercial operation.

Note: A stage would occur at some time from the initial concept to when commercial operation has commenced.

Examples: The following are possible descriptions of stages:

(a) concept;

(b) pre‑feasibility;

(c) feasibility;

(d) front end engineering design;

(e) procurement;

(f) detailed design and construction;

(g) commissioning;

(h) post‑construction optimisation.

***energy and material flows*** means:

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

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

***energy efficiency opportunity*** means a potential change to a process, system, activity, technology or piece of equipment that:

(a) may result in improvements in energy performance; and

(b) does not breach a legal obligation (such as building regulations or occupational health and safety requirements).

***energy performance*** means measurable results related to energy efficiency, use and consumption, in a form that enables comparisons against a corporation’s energy policy, objectives, targets and other energy performance requirements.

***energy productivity improvement*** means a design choice in relation to a new development or an expansion that:

(a) relates to energy sources and how energy is used; and

(b) is intended to produce a financial return.

***expansion*** has the meaning given by subregulation (3).

***facility*** has the meaning given by section 9 of the *National Greenhouse and Energy Reporting Act 2007*.

***financial control*** has the meaning given by section 22R of the *National Greenhouse and Energy Reporting Act 2007*.

***future energy*** means energy that a new development or an expansion will use after commercial operation has commenced.

***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.

***GJ*** means gigajoules.

***indicator*** means a measure of the energy use of a controlling corporation’s group, or a part of a controlling corporation’s group, that is expressed by reference to a unit of production or service that is reasonably relevant to an industry, its energy use, or both.

Example 1: GJ per tonne of product produced.

Example 2: GJ per square metre of floor space.

Example 3: Litre per kilometre travelled.

Note: It is intended that, if a particular indicator is used in providing data about baseline energy use in an assessment plan, corporations should also use the indicator when carrying out assessments and providing energy use data in reports to the Secretary. This will allow meaningful comparisons to be made between baseline indicators provided in the assessment plan and the indicators provided during later reporting milestones in the course of the assessment cycle.

***key activity***, in relation to a group member or members, means a function that is:

(a) related to a distinct product or service; and

(b) designated as significant by the controlling corporation.

Examples of distinct products or services that might comprise a “key activity”

1 Cement.

2 Alumina.

3 Supermarket/retail.

4 Open cut coal mining.

5 Aluminium smelting.

Key activities should be grouped at an appropriate level to allow meaningful comparison of key energy use and savings statistics. The activities will vary depending on the particular structure of the business.

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

***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.

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

***operational control*** has the meaning given by regulation 1.3A.

***payback period***, for an opportunity, unless the contrary intention appears, is the period expressed in years, worked out in accordance with the formula:



where:

***A*** is an amount equal to the initial capital cost of implementation; and

***B*** is an amount equal to the net annual savings over the first 4 years after implementation, and not including any amount that is included in ***A***.

***PJ*** means petajoules.

***project*** includes a set of activities.

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

***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%.

***significant opportunity***, for a corporation, means a potential change or modification to equipment, or to a system or activity, that:

(a) is identified through an energy efficiency opportunities assessment; and

(b) the corporation reasonably considers could:

(i) result in a material reduction in energy use of a site or process; or

(ii) result in a material improvement in energy efficiency of a site or process; or

(iii) generate materially significant financial savings for a site or business.

***site*** means a physical location (or a series of physical locations in close proximity to one another) on which is carried out a business activity or a number of business activities by 1 or more members of a controlling corporation’s group.

Examples of ***sites***:

A factory, mine or mill.

***whole‑of‑business evaluation*** of an energy productivity improvement means a financial evaluation to consider all relevant quantifiable business costs and benefits relating to the improvement, including:

(a) direct energy‑related costs and savings; and

(b) other quantifiable costs and benefits, including the following for example:

(i) a capital cost or an avoided capital investment;

(ii) the cost of maintenance, waste disposal, water usage or occupational health and safety;

(iii) a cost associated with a project delay;

(iv) a cost associated with a change in productivity, or the quality or quantity of an output;

(v) the cost of an effect on another system.

(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 ºC. The pump was designed and installed to pump 150 L/s of water, which is keeping the plant at 35 ºC. 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 ºC, which would still be below the critical temperature of 50 ºC.**

(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) the project is not part of standard business operations and is not covered by an approved assessment plan; and

(d) the project has been publicly announced by the controlling corporation;

but a project by a controlling corporation is not an expansion if the Secretary is satisfied that the corporation’s existing systems and processes meet the requirements in the table in item 301 of Schedule 2A.

(5) A project is a ***new development*** if:

(a) it is a project to construct a new facility or facilities; and

(b) the project is not part of standard business operations and is not covered by an approved assessment plan; and

(c) the project has been publicly announced by the controlling corporation;

but a project by a controlling corporation is not a new development if the Secretary is satisfied that the corporation’s existing systems and processes meet the requirements in the table in item 301 of Schedule 2A.

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.

1.4 User of energy—general principles

(1) The entity that has operational control over a facility in which energy is consumed is the ***user*** of energy at the facility unless another user is identified in accordance with regulations 1.4A to 1.4D.

(2) If an entity:

(a) is the 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.

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

(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.

(2) The Secretary must accept the request as soon as practicable.

(3) The entity becomes the user of the energy at the facility, in accordance with the request, when the request is accepted.

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

(a) the entity ceases to be the user of energy at that time; and

(b) the entity that has operational control over the facility becomes the user of energy.

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

(1) An entity (the ***second entity***):

(a) that is a registered corporation or a member of a registered corporation’s group; and

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

may ask the Secretary, in writing, to treat the second entity as the user of energy to which the request relates at the facility to which the request relates.

(2) The second entity must have financial control over the facility.

(3) The second entity must make the request as part of:

(a) the submission of an assessment plan; or

(b) the submission of a variation to an approved assessment plan.

(4) The second entity must make the request no later than 18 months before the end of the current five year assessment cycle that applies to the second entity.

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

(5) The request must be accompanied by a statement, in writing, that:

(a) the entity that has operational control over the facility; or

(b) if that entity is a member of a group—the controlling corporation of the group;

agrees to the request.

(6) If:

(a) the second entity complies with subregulations (1) and (2); and

(b) the request complies with subregulations (3) to (5); and

(c) the Secretary is satisfied that the second entity would be required to be registered under Part 4 of the Act if it became the user of the energy;

the Secretary must accept the request as soon as practicable.

(7) If the Secretary accepts a request in relation to a facility, the entity becomes the user of the energy to which the request relates when the request is accepted.

(8) If the entity that has operational control over the facility notifies the Secretary, in writing, that it no longer wants the second entity to be the user of energy:

(a) the second entity ceases to be the user of energy when the Secretary receives the notice; and

(b) the entity that has operational control over the facility becomes the user of energy.

(9) If the second entity notifies the Secretary, in writing, that it no longer wants to be the user of energy:

(a) the second entity ceases to be the user of energy when the Secretary receives the notice; and

(b) the entity that has operational control over the facility becomes the user of energy.

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

(1) An entity (the ***second entity***):

(a) that is not a registered corporation or a member of a registered corporation’s group; and

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

may ask the Secretary, in writing, to treat the second entity as the user of energy to which the request relates at the facility to which the request relates.

(2) The second entity must have financial control over the facility.

(3) The second entity must make the request as part of an application under section 9 of the Act to be registered in relation to the facility.

(4) The request must be accompanied by a statement, in writing, that:

(a) the entity that has operational control over the facility; or

(b) if that entity is a member of a group—the controlling corporation of the group;

agrees to the request.

(5) If:

(a) the second entity complies with subregulations (1) and (2); and

(b) the request complies with subregulations (3) and (4); and

(c) the Secretary is satisfied that the second entity would be required to be registered under Part 4 of the Act if it became the user of the energy;

the Secretary must accept the request as soon as practicable.

(6) If the Secretary accepts a request in relation to a facility, the entity becomes the user of the energy to which the request relates when the request is accepted.

(7) If the entity that has operational control over the facility notifies the Secretary, in writing, that it no longer wants the second entity to be the user of energy:

(a) the second entity ceases to be the user of energy when the Secretary receives the notice; and

(b) the entity that has operational control over the facility becomes the user of energy.

(8) If the second entity notifies the Secretary, in writing, that it no longer wants to be the user of energy:

(a) the second entity ceases to be the user of energy when the Secretary receives the notice; and

(b) the entity that has operational control over the facility becomes the user of energy.

1.4D User of energy—future energy (new developments and expansions)

(1) Despite regulation 1.4, if a project is a new development, or an expansion, at which energy is to be consumed, each entity that owns the new development or the expansion is a ***user*** of the future energy.

(2) An entity (the ***second entity***) that:

(a) has the greatest influence over design decisions which affect future energy; and

(b) is not the user of the future energy;

may ask the Secretary, in writing, to treat the second entity as the user of future energy to which the request relates at the facility to which the request relates.

(3) The request must be accompanied by a statement, in writing, that the entity that is currently the user of future energy agrees to the request.

(4) If:

(a) the request is made by an entity that complies with paragraphs (2)(a) and (b); and

(b) the request complies with subregulation (3); and

(c) the Secretary is satisfied that the second entity would be required to be registered under Part 4 of the Act if it became the user of the future energy;

the Secretary must accept the request as soon as practicable.

(5) If the Secretary accepts a request, the second entity becomes the user of the future energy to which the request relates when the request is accepted.

(6) If the entity that would be the user of the future energy in accordance with subregulation (1) notifies the Secretary, in writing, that it no longer wants the second entity to be the user of the future energy:

(a) the second entity ceases to be the user of the future energy when the Secretary receives the notice; and

(b) the entity that notified the Secretary becomes the user of the future energy.

(7) If the second entity notifies the Secretary, in writing, that it no longer wants to be the user of the future energy:

(a) the second entity ceases to be the user of the future energy when the Secretary receives the notice; and

(b) the entity that would be the user of the future energy in accordance with subregulation (1) becomes the user of the future energy.

1.5 Energy use threshold—meaning of energy used

(1) For subsection 10(3) of the Act, this regulation explains the meaning of the ***energy used*** by an entity.

General meaning

(2) The ***energy used*** by an entity is worked out by:

(a) identifying the amount of all energy used by the entity; and

(b) then adding the amount of estimated future energy use 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).

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*.

Reduction of total of all energy

(4) For subregulations (2) and (3), the total of all energy used by the entity, mentioned in subregulation (2), does not include:

(a) the use of energy or energy sources described in Part 2 of Schedule 1; and

(b) energy sources, to the extent that the sources were used to produce energy used by the entity.

Note: Paragraph (b) is intended to prevent “double counting”: where an entity uses an energy source to create energy that the entity then uses, it is only the latter use of energy that counts.

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*.

Note: These conversion factors are included in order to set out a method for measuring the energy use of an entity where the only available measure of the entity’s energy consumption is by reference to the energy source they have acquired.

(6) If, in a particular case, an entity responsible for making a report under Part 7 of the Act is aware that another conversion method would provide more accurate information, the entity may use that conversion method in that case only if the entity states:

(a) in a public report mentioned in section 22, 22A or 22B of the Act—whether the conversion factors used were factors:

(i) mentioned in subregulation (5); or

(ii) accepted by industry; or

(iii) a combination of factors mentioned in subparagraphs (i) and (ii); and

(b) in a report to the Secretary mentioned in Division 2 of Part 7:

(i) a statement that complies with paragraph (a); and

(ii) the factors actually used.

(7) If, in a particular case, an entity responsible for making a report under Part 7 of the Act is aware that the use of energy by the entity would be more accurately described by an alternative method, the entity may use that method to describe its use of energy only if:

(a) the entity states the detail of the alternative method in:

(i) a public report mentioned in section 22, 22A or 22B of the Act; and

(ii) in a report to the Secretary mentioned in section 23 of the Act; and

(b) the Secretary approves the method in writing.

(8) An approval by the Secretary mentioned in paragraph (7)(b) may be included in the Secretary’s approval of:

(a) an assessment plan; or

(b) a variation to an assessment plan.

1.5A Energy use threshold—energy used for supporting services or supporting infrastructure for new developments and expansions

(1) This regulation applies if:

(a) a project is a new development or an expansion at which energy is to be consumed; and

(b) the design of the project involves the provision of a service, site, or supporting infrastructure that is not under the control of the registered corporation.

(2) The registered corporation is not required to:

(a) treat the energy to be used in relation to the service, site, or supporting infrastructure as energy used; and

(b) include that energy as part of its baseline energy.

1.6 Energy use—accuracy, calculation requirements and changed group members

Accuracy of calculations

(1) Subject to subregulation (1A), the entity responsible for making the relevant report or meeting the relevant requirement must apply the principles in the table, relating to the accuracy of its calculations, when working out the calculation.

| Item | For the purpose of … | that shows data about ... | the calculations … |
| --- | --- | --- | --- |
| 1 | preparing an assessment plan to be given to the Secretary under Part 5 of the Act | estimations of energy use | (a) should achieve the best available level of accuracy, ideally to within ±10%; and  (b) must show the margin of error used in the calculations |
| 2 | meeting a requirement of the Assessment Framework | energy use | must achieve a level of accuracy to within ±5%, unless another level of accuracy has been approved in the group’s assessment plan |
| 3 | meeting a requirement of the Assessment Framework | (a) financial costs and financial benefits of opportunities; and  (b) energy savings of opportunities | must achieve a level of accuracy to within ±30% |
| 4 | preparing a public report, or a report to the Secretary under Part 7 of the Act | energy use of assessed parts of the group | must achieve a level of accuracy to within ±5%, unless another level of accuracy has been approved in the group’s assessment plan |
|  |  |  | Note: If another level has been approved, the actual level achieved must be stated. |
| 5 | preparing a public report, or a report to the Secretary under Part 7 of the Act | (a) financial costs and financial benefits of opportunities; and  (b) energy savings of opportunities | (a) must show the level of accuracy to which the data, or each range of data, has been calculated; and  (b) must show the level at the level of aggregation required for the report |

When entity is taken to have satisfied calculation requirements

(1A) If the data mentioned in items 1, 2 and 4 of the table in subregulation (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.

Energy use for a changed group—reporting period

(2) If the members of a group change during a reporting period, the energy used by the group is taken to be the total of all energy used by the members of the group that are members on the last day of the reporting period.

Note: A group may voluntarily report on energy used by members who have left the group, as long as the report complies with this subregulation by identifying the energy used by those who are group members on the last day of the reporting period.

1.7 Controlling corporation to ensure regulations are fulfilled

If, under these Regulations, an obligation is imposed on a controlling corporation by reference to a person, entity, group or part of a group:

(a) the person, entity, group or part of the group must fulfil the obligation; and

(b) if the obligation is not fulfilled—the controlling corporation is responsible.

1.8 Forms

(1) The Secretary may approve forms for these Regulations.

(2) If the Secretary approves a form for a particular purpose, then subject to these Regulations, the approved form must be used for the purpose.

(3) The Secretary must ensure that approved forms are publicly available.

Part 2—Definitions relating to groups

2.1 Controlling corporation—general

(1) For paragraph 7(2)(b) of the Act, the class of corporations mentioned in this regulation is specified.

Note: Subsection 7(2) of the Act identifies corporations that are not to be treated as ***controlling corporations*** for the purposes of the Act. The corporation must be in a class of corporations specified in the regulations.

(2) The class is each corporation:

(a) whose main business is:

(i) the transmission of either or both of natural gas and electricity; or

(ii) the distribution of either or both of natural gas and electricity; or

(iii) the transmission and distribution of either or both of natural gas and electricity; and

(b) for which the total energy used in its activities (other than the transmission and distribution of natural gas and electricity) does not exceed 0.5 PJ in a year; and

(c) for which each of its subsidiaries, and joint ventures and partnerships for which it is the responsible entity, satisfies the requirements mentioned in paragraphs (a) and (b).

2.2 Group and members of a group—general

(1) For paragraph 8(4)(b) of the Act, the class of corporations mentioned in this regulation is specified.

Note: Subsection 8(4) of the Act identifies subsidiaries of controlling corporations that are not to be treated as part of a ***group*** for the purposes of the Act. The subsidiary must be in a class of entities specified in the regulations.

(2) The class is each corporation:

(a) that is a subsidiary of a controlling corporation; and

(b) whose main business is:

(i) the transmission of either or both of natural gas and electricity; or

(ii) the distribution of either or both of natural gas and electricity; or

(iii) the transmission and distribution of either or both of natural gas and electricity; and

(c) for which the total energy used in its activities (other than the transmission and distribution of natural gas and electricity) does not exceed 0.5 PJ in a year; and

(d) for which each of its subsidiaries, and joint ventures and partnerships for which it is the responsible entity, satisfies the requirements mentioned in paragraphs (b) and (c).

(3) This regulation ceases to have effect at the end of 30 June 2013.

2.3 Responsible entity—rules for making a nomination

(1) For subsection 8(7) of the Act, this regulation sets out rules under which:

(a) participants in a joint venture may make a nomination of a member of a group as the responsible entity for the joint venture for subsection 8(5) of the Act; and

(b) partners in a partnership may make a nomination of a member of a group as the responsible entity for the partnership for subsection 8(6) of the Act.

(2) The nomination must:

(a) be in writing; and

(b) be signed for the member of the group (the ***nominee***) that is being nominated as the responsible entity for the joint venture or partnership; and

(c) include a statement to the effect that the nominee is being nominated as the responsible entity for the joint venture or partnership for the purposes of the Act; and

(d) include a statement to the effect that all of the other participants or partners have been informed of the nomination; and

(e) state:

(i) the nominee’s full name, address and Australian Business Number; and

(ii) the name and either the address or Australian Business Number of each participant or partner; and

(iii) the full name, address and Australian Business Number of the joint venture or partnership; and

(f) include a declaration by an employee signing for the nominee that the information included in the nomination is, to the best of the officer’s knowledge, correct and in accordance with the requirements of the Act and these Regulations.

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.

2.4 Group and members of a group—revocation of nomination by responsible entity

(1) The nomination of a member of a group as:

(a) the responsible entity for a joint venture for subsection 8(5) of the Act; or

(b) the responsible entity for a partnership for subsection 8(6) of the Act;

may be revoked only in accordance with this regulation.

(2) The responsible entity must give a notice (a ***notice of intention***) to each participant in the joint venture, or to each partner, stating that the responsible entity:

(a) intends to revoke its nomination as a responsible entity for the joint venture or partnership; and

(b) will give the Secretary a notice, revoking its nomination as responsible entity, at least 28 days after the notice of intention has been given to each of the participants or partners.

(3) If the responsible entity wishes to seek the revocation of its nomination as the responsible entity after giving the notice of intention to each of the participants or partners, the responsible entity must give a notice to the Secretary, at least 28 days after the notice of intention has been given to each of the participants or partners, stating that the responsible entity:

(a) has complied with subregulation (2); and

(b) does not propose to withdraw the notice of intention; and

(c) revokes its nomination as a responsible entity for the joint venture or partnership.

(4) If the responsible entity:

(a) does not comply with subregulation (2) when giving a notice to each of the participants or partners; or

(b) does not comply with subregulation (3) when giving a notice to the Secretary;

the notice is taken to have no effect.

Note: The requirement to give a notice of intention, followed by a 28 day period, before a notice of revocation may be given to the Secretary is intended to allow participants or partners time to resolve any issues between them and the responsible entity (including a resolution through proceedings for injunctions to prevent the filing of a notice of revocation) and time to organise a replacement responsible entity.

2.5 Group and members of a group—revocation of nomination otherwise than by responsible entity

(1) For subsection 8(7) of the Act, this regulation sets out rules under which:

(a) participants in a joint venture may revoke the nomination of a member of a group as the responsible entity for the joint venture for subsection 8(5) of the Act; and

(b) partners in a partnership may revoke the nomination of a member of a group as the responsible entity for the partnership for subsection 8(6) of the Act; and

(c) participants and partners may nominate a replacement responsible entity; and

(d) nominations are automatically revoked.

Revocation (automatic)

(2) The nomination is taken to be revoked on the day on which any of the following happens:

(a) the responsible entity ceases to be a participant in the joint venture or a partner of the partnership;

(b) a liquidator is appointed to the responsible entity;

(c) if the responsible entity is incorporated under the *Corporations Act 2001—*the responsible entity is deregistered in accordance with that Act;

(d) if the responsible entity is a body corporate established otherwise than under the *Corporations Act 2001—*the responsible entity ceases to be a body corporate entitled to conduct its affairs.

Revocation with replacement entity—participants

(3) If a participant (the ***new entity***):

(a) is not the responsible entity; and

(b) gives the Secretary:

(i) a nomination of the participant that complies with regulation 2.3; and

(ii) evidence of the consent of the current responsible entity to its replacement by the new entity;

the nomination of the current responsible entity is taken to be revoked on the later of the day on which the Secretary receives the nomination and the evidence and the day (if any) on which the nomination of the new entity is expressed to take effect.

Revocation with replacement entity—partners

(4) If a partner (the ***new entity***):

(a) is not the responsible entity; and

(b) gives the Secretary:

(i) a nomination of the partner that complies with regulation 2.3; and

(ii) evidence of the consent of the current responsible entity to its replacement by the new entity;

the nomination of the current responsible entity is taken to be revoked on the later of the day on which the Secretary receives the nomination and the evidence and the day (if any) on which the nomination of the new entity is expressed to take effect.

Revocation (no replacement entity)

(5) If:

(a) all of the participants or partners (other than the participant or partner that is the responsible entity) decide in writing to revoke the nomination of a participant or partner as the responsible entity; and

(b) the joint venture or partnership gives the Secretary:

(i) notice of the decision that complies with subregulation (6); and

(ii) evidence of the decision;

the nomination of the responsible entity is taken to be revoked on the later of the day on which the Secretary receives the notice and the evidence and the day (if any) on which the revocation is expressed to take effect.

(6) For subparagraph (5)(b)(i):

(a) a notice must:

(i) be signed by or for all of the participants or partners; and

(ii) state that it has been signed by or for each of the persons that were participants or partners at the date on which the notice is signed; and

(b) the date on which the notice was signed must be not more than 28 days before the day on which the notice is given to the Secretary.

Note: If the nomination of a participant or partner is revoked, and there is no nomination of a replacement responsible entity, the revocation will impose obligations under the Act on each of the participants or partners.

Part 3—Corporations required to register

3.1 Obligation to apply to register—content of application

(1) For paragraph 9(5)(b) of the Act, an application for registration must include the information set out in Schedule 2.

(2) If the applicant for registration proposes to define its energy use in accordance with a liability transfer certificate or reporting transfer certificate that has been issued to the applicant, the application must also include the following information and documents:

(a) a certified copy of the certificate;

(b) evidence that the controlling corporation that is to transfer the obligation to assess and report the energy use of the group or part of the group to which the certificate relates has agreed to the transfer;

(c) evidence that the controlling corporation that is assuming the obligation to assess and report the energy use of the group or part of the group to which the certificate relates has agreed to the transfer.

3.2 Obligation to apply to register—form of application

(1) An application for registration must be:

(a) in writing as hard copy; or

(b) in electronic form.

(2) An application in hard copy must be:

(a) signed by:

(i) the chair of the board of directors; or

(ii) the chief executive officer; or

(iii) the managing director or an equivalent officer of the controlling corporation; or

(iv) an authorised representative of a person mentioned in subparagraph (i), (ii) or (iii); and

(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.

(3) An application in electronic form must be given to the Secretary in a format approved by the Secretary and notified in the *Gazette*.

3.3 Exemption from registration on application by corporation—content of application

For paragraph 11(4)(a) of the Act, an application for an exemption from the requirement to be registered under Part 4 of the Act must:

(a) be signed by the chair of the board of directors, the chief executive officer, the managing director or an equivalent officer of the controlling corporation, or his or her authorised representative; and

(b) include a statement that the total of all energy used by the controlling corporation’s group in the financial year after the trigger year is unlikely to exceed 0.5 PJ; and

(c) include information to support the statement; and

(d) include a declaration by an employee signing for the controlling corporation that the information included in the application is, to the best of the officer’s knowledge, correct and in accordance with the requirements of the Act and these Regulations.

Examples of information for paragraph (c):

1 Evidence of the group’s energy use for the trigger year and the preceding 2 years.

2 Information that defines the group for the relevant period.

3 Other information that explains why the controlling corporation believes that its energy use in the year following the trigger year will not reach the 0.5 PJ threshold.

The evidence may include detailed explanations of circumstances such as a changed corporate group structure, commercial changes such as the cessation of a contract, or a change in production capacity due to plant closures.

3.4 Exemption from registration on application by corporation—form of application

(1) For paragraph 11(4)(b) of the Act, an application for an exemption from the requirement to be registered under Part 4 of the Act must be:

(a) in writing as hard copy; or

(b) in electronic form.

(2) An application in hard copy must be:

(a) in a format that the Secretary notifies in the *Gazette*; and

(b) signed by:

(i) the chair of the board of directors; or

(ii) the chief executive officer; or

(iii) the managing director or an equivalent officer of the controlling corporation; or

(iv) an authorised representative of a person mentioned in subparagraph (i), (ii) or (iii); and

(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.

(3) An application in electronic form must be given to the Secretary in a format approved by the Secretary and notified in the *Gazette*.

Part 4—Registration

4.1 The Register—matters to be entered on Register

(1) For paragraph 12(4)(b) of the Act, the following matters are specified:

(a) details of the controlling corporation, including:

(i) its name; and

(ii) its trading name (if any); and

(iii) its Australian Business Number (ABN); and

(iv) the address of its head office;

(b) for each affected group member:

(i) its name; and

(ii) its trading name (if any); and

(iii) if the member has an Australian Business Number (ABN)—its ABN; and

(iv) if the member does not have an ABN—the address of its head office;

described either for each group member or grouped by kinds of activity;

(c) the same description of the group’s corporate structure as described in item 4 of Schedule 2;

(d) information about the controlling corporation’s compliance with the Act, including information about:

(i) whether it has lodged an assessment plan; and

(ii) whether it has completed assessments of all or part of the group; and

(iii) whether it has published a report to the public about its compliance; and

(iv) whether it has provided a report to the Secretary about its compliance;

Note: Energy use information may be published only:

(a) if:

(i) individual groups or entities are not identified or identifiable; and

(ii) it is not information that is provided in the course of registration; or

(b) if the controlling corporation or the person providing the information has given consent to the publication.

(2) If any of the matters mentioned in subregulation (1) changes in a financial year:

(a) the controlling corporation must tell the Secretary of the change as soon as practicable, but not later than 3 months after the end of the financial year; and

(b) the changed matter is specified for paragraph 12(4)(b) of the Act.

(3) In this regulation:

***affected group member*** means a member of the group that the controlling corporation reasonably considers likely to be assessed under these Regulations.

4.2 Corporation may apply for deregistration—content of application

(1) For paragraph 14(2)(a) of the Act, an application to be deregistered must:

(a) be signed by the chair of the board of directors, the chief executive officer, the managing director or an equivalent officer of the controlling corporation, or his or her authorised representative; and

(b) include a statement that the total of all energy used by the registered corporation’s group in:

(i) the first financial year to which the application relates; and

(ii) the 2 subsequent financial years;

is unlikely to exceed 0.5 PJ; and

(c) include information to support the statement; and

(d) include a declaration by the officer mentioned in paragraph (a) that the information included in the application is, to the best of the officer’s knowledge, correct and in accordance with the requirements of the Act and these Regulations.

Examples of information for paragraph (c):

1 Information relating to the group’s energy use for the preceding 3 years.

2 Information that identifies the group for the period to which the application relates.

3 Other information that explains why the registered corporation believes that its energy use in the 2 years following the current financial year will not reach the 0.5 PJ threshold.

The information may contain detailed explanations of circumstances such as a changed corporate group structure, commercial changes such as the cessation of a contract, or a change in production capacity due to plant closures.

(2) If the applicant for deregistration proposes to define its energy use in accordance with a liability transfer certificate or reporting transfer certificate that has been issued to the applicant, the application must also include the following information and documents:

(a) a certified copy of the certificate;

(b) evidence that the controlling corporation that is to transfer the obligation to assess and report the energy use of the group or part of the group to which the certificate relates has agreed to the transfer;

(c) evidence that the controlling corporation that is assuming the obligation to assess and report the energy use of the group or part of the group to which the certificate relates has agreed to the transfer;

(d) a statement from each of those controlling corporations that the agreement to transfer the obligation to assess and report the energy use will remain in effect until either of the controlling corporations applies to the Secretary to terminate the agreement.

4.3 Corporation may apply for deregistration—form of application

(1) For paragraph 14(2)(b) of the Act, an application to be deregistered must be:

(a) in writing as hard copy; or

(b) in electronic form.

(2) An application in hard copy must be:

(a) in a format that the Secretary notifies in the *Gazette*; and

(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.

(3) An application in electronic form must be given to the Secretary in a format approved by the Secretary and notified in the *Gazette*.

Part 5—Assessment plan

5.1 Requirements for an assessment plan—form of plan

(1) For subsection 18(3) of the Act, an assessment plan must be set out as:

(a) a single plan addressing the whole of the controlling corporation’s group; or

(b) separate plans addressing specified parts of the controlling corporation’s group.

(2) A controlling corporation may authorise a member or members of its group to prepare and submit a plan that relates to part of the group, as agent of the controlling corporation.

(3) For subsection 18(3) of the Act, a plan must be:

(a) in writing as hard copy; or

(b) in electronic form.

(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.

(5) An assessment plan in electronic form must be given to the Secretary in a format approved by the Secretary and notified in the *Gazette*.

(6) If a separate assessment plan mentioned in paragraph (1)(b) is to be prepared by a member of the controlling corporation’s group on behalf of the controlling corporation:

(a) the separate assessment plan is taken to have been prepared by the member of the group, as the agent of the controlling corporation; and

(b) the controlling corporation remains responsible for preparing the assessment plan; and

(c) the controlling corporation is taken not to have given the Secretary an assessment plan in compliance with subsection 15(1) of the Act until the Secretary has been given all of the separate plans that address the whole of the controlling corporation’s group.

5.2 Requirements for an assessment plan—information in plan

(1) For paragraph 18(8)(b) of the Act, this regulation contains the information that is required to be set out in an assessment plan of a controlling corporation.

(2) The information is:

(a) to the extent that the assessment plan relates to a new development or an expansion—the information in Schedule 2A; or

(b) to the extent that the assessment plan relates to an existing facility—the information in Schedule 3.

(3) However, if a new development or expansion is likely to affect energy use in relation to an existing facility (an ***affected facility***):

(a) the controlling corporation may choose to prepare the assessment plan as if the affected facility were part of the new development or expansion; and

(b) if the controlling corporation does so:

(i) the assessment plan must state that the controlling corporation has chosen to prepare the plan as if the affected facility were part of the new development or expansion; and

(ii) the information required to be set out in the assessment plan for the new development or expansion, and the affected facility, is the information in Schedule 2A.

(4) The information must relate to:

(a) the controlling corporation’s group as a whole; or

(b) if the controlling corporation has authorised members of the group to submit parts of the plan—all of the group, when the parts are combined.

5.3 Identifying parts of a group that must be planned to be assessed

(1) This regulation sets out principles relating to:

(a) how an assessment plan is to provide for the assessment of the baseline energy of the parts of the controlling corporation’s group to which the plan applies; or

(b) if there are parts of an assessment plan—how each part is to provide for the assessment of the baseline energy of the parts of the controlling corporation’s group to which the part applies.

(2) For the first assessment cycle:

(a) the assessment plan must include a plan to assess at least 80% of the baseline energy of the controlling corporation’s group; or

(b) each part of the assessment plan must include a plan to assess at least 80% of the baseline energy of the parts of the controlling corporation’s group to which the part applies.

(3) For each assessment cycle after the first assessment cycle:

(a) the assessment plan must include a plan to assess at least 90% of the baseline energy of the controlling corporation’s group; or

(b) each part of the assessment plan must include a plan to assess at least 90% of the baseline energy of the parts of the controlling corporation’s group to which the part applies.

(4) If energy use exceeded 0.5 PJ at a site during the baseline year:

(a) the controlling corporation’s group must assess the site; and

(b) subregulation (5) or (7) applies.

(4A) In addition to subregulation (4), if:

(a) a member of the controlling corporation’s group acquires a site within 18 months before the end of the relevant assessment cycle; and

(b) the site uses more than 0.5 PJ during a financial year after the acquisition;

the controlling corporation’s group must assess the site and subregulation (5) or (7) applies.

(5) If the controlling corporation does not act under subregulation (7), it may omit from the assessment of the site a maximum of 0.01 PJ of energy (***non‑integral energy***) used at the site for the purposes of a process, system or activity that is not part of, or integral to, the main energy‑using activity or activities conducted at the site.

Examples of processes, systems and activities that are not part of, or integral to, the main business activity or activities that are conducted at a site:

1 The operation of lights, information and communication technology or heating, ventilation and air conditioning systems in an on‑site office of a mining or manufacturing site.

2 The operation of an on‑site kitchen or bathroom.

3 The operation of an appliance in an on‑site kitchen or bathroom.

(6) Subregulation (7) applies if the controlling corporation reasonably believes that the estimated cost of assessing the amount of non‑integral energy for its processes, systems and activities is likely to be greater than the savings that would be derived from opportunities for improving energy efficiency that would be identified in the assessment in relation to the use of that energy.

(7) For subregulation (6), the controlling corporation:

(a) does not have to consider that use of energy in the assessment of the site; and

(b) may omit from the assessment of the site the lowest of:

(i) the amount of non‑integral energy used at the site during the period mentioned in item 202 of Schedule 3; and

(ii) 2% of the amount of energy used at the site during the period mentioned in item 202 of Schedule 3; and

(iii) 0.1 PJ of energy; and

(c) must include in the assessment plan that relates to the relevant part of the controlling corporation’s group:

(i) a statement the controlling corporation reasonably believes that the estimated cost of assessing the amount of non‑integral energy is likely to be greater than the savings that would be derived from opportunities for improving energy efficiency that would be identified in the assessment in relation to the use of that energy; and

(ii) information explaining how it formed the belief.

Note: Comparing amounts of energy in accordance with paragraph (b) to work out the lowest amount ensures that all of the energy that may be omitted from an assessment will be non‑integral energy.

(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.

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.

5.4 Aggregation of information

(1) The Secretary must aggregate the information contained in all the plans that relate to parts of a controlling corporation’s group, to form an overall total assessment plan for the controlling corporation’s group.

(2) For subregulation (1):

(a) the controlling corporation remains responsible for ensuring that:

(i) all information is provided to the Secretary; and

(ii) assessment plans are submitted for all parts of the controlling corporation’s group; and

(b) the Secretary is responsible for the information that is produced as a result of the aggregation.

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

(1) This regulation applies if:

(a) a registered corporation gives the Secretary:

(i) an assessment plan under section 15 of the Act; or

(ii) a proposed variation to an approved assessment plan under subsection 19(1) of the Act; and

(b) the plan or proposed variation includes a proposal to define the energy use of the registered corporation in accordance with a liability transfer certificate or reporting transfer certificate issued to the registered corporation.

(2) The registered corporation must give the Secretary the information and documents included in the table.

| Item | Information and documents |
| --- | --- |
| 1 | A certified copy of the certificate |
| 2 | Evidence that the controlling corporation that is to transfer the obligation to assess and report the energy use of the group or part of the group to which the certificate relates has agreed to the transfer |
| 3 | Evidence that the controlling corporation that is assuming the obligation to assess and report the energy use of the group or part of the group to which the certificate relates has agreed to the transfer |

5.6 Variation of percentage of baseline energy to be assessed

(1) This regulation applies if a controlling corporation wants:

(a) to assess a different percentage of the baseline energy for the first assessment cycle than the percentage mentioned in subregulation 5.3(2); or

(b) to assess a different percentage of the baseline energy for a subsequent assessment cycle than the percentage mentioned in subregulation 5.3(3).

(2) The controlling corporation must include the proposed percentage in a proposed variation to the approved assessment plan or the relevant part of the assessment plan.

(3) The controlling corporation must also give the Secretary the following information:

(a) an explanation of why it is not reasonable or appropriate in the circumstances of the group, or the part of the group, to use the percentage mentioned in subregulation (2) or (3);

(b) an explanation of the proposed percentage that the controlling corporation proposes to use, and why it is reasonable and appropriate in the circumstances of the group;

(c) other information or documents relating to the proposed percentage.

Examples for paragraph (c):

1 Information about, or documents relating to, the divestiture of a group member, site, business unit or key activity, and any assessments that have already been undertaken in relation to the divested member, site, unit or activity.

2 Information about, or documents relating to, the acquisition of a new group member, site, business unit or key activity.

3 Information about, or documents relating to, operational requirements (including health and safety requirements) that prevent the assessment of a particular part of a group.

4 Information about, or documents relating to, an assessment that has already been undertaken by the controlling corporation during the assessment cycle that is consistent with the Assessment Framework requirements.

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).

(3A) The different percentage in a proposed variation may be calculated by excluding the percentage of baseline energy for an existing facility if:

(a) the controlling corporation was required to be registered under section 13 of the Act only because of the existence of a new development or an expansion; and

(b) the controlling corporation’s group does not meet the energy use threshold for the year if the new development or expansion is not taken into account.

(4) The Secretary is not required to accept the proposed percentage as part of making a decision on the proposed variation.

5.7 Proposal for assessing opportunities for improving energy efficiency of controlling corporation’s group

(1) For paragraph 18(8)(a) of the Act, this regulation sets out requirements relating to a proposal under section 18 of the Act for assessing the opportunities for improving the energy efficiency of a controlling corporation’s group.

Note: The proposal must be set out in the controlling corporation’s assessment plan.

(2) The proposal must include a timeframe that requires at least one assessment to be completed before the end of the first 2 years of the assessment cycle.

(3) The controlling corporation may apply to the Secretary for an extension of time for the completion of the assessment or assessments mentioned in the proposal.

(4) An application under subregulation (3) must be made in the form of a variation to the controlling corporation’s assessment plan.

(5) The Secretary may grant an extension of time if the Secretary is satisfied that it is appropriate, having regard to:

(a) the length of the extension; and

(b) the details of the plans to complete the assessment or assessments within the extended time; and

(c) the objectives of the Act.

(6) If the proposal states that an assessment is intended to be completed within the first 2 years of the first assessment cycle:

(a) the assessment may commence before the commencement of the first assessment cycle; but

(b) the proposal is not satisfactory for the purposes of the approval of the assessment plan if the assessment commenced more than 2 years before the commencement of the first assessment cycle.

Note: The central component of the Energy Efficiency Opportunities program is the undertaking of a comprehensive and rigorous assessment of energy use across a controlling corporation and its group members, to identify cost‑effective energy saving and efficiency opportunities with a payback period of up to 4 years.

Companies will need to meet the intent and requirements of the key elements that form the basis of a comprehensive and rigorous assessment. The key elements are set out in Schedule 7.

Companies will also be required to keep evidence that they have done so for verification purposes.

5.8 Variation to approved assessment plan—new developments and expansions

(1) This regulation applies if:

(a) a registered corporation wishes to give the Secretary a proposed variation to an approved assessment plan under subsection 19(1) of the Act; and

(b) the variation is for the purpose of including in the approved assessment plan an assessment of the opportunities for improving the energy efficiency in a new development or an expansion.

(2) If the new development or the expansion was publicly announced before 31 December 2013, the registered corporation must give the Secretary the variation no later than 30 June 2014.

(3) If the new development or the expansion was not publicly announced before 31 December 2013, the registered corporation must give the Secretary the variation within 6 months after the first public announcement of the new development or the expansion.

Part 7—Reporting about energy efficiency opportunities assessments

Division 1A—Application of Part

7.1A Application of Part

If a controlling corporation prepares an assessment plan as if an existing facility (the ***affected facility***) were part of a new development or expansion in accordance with subregulation 5.3(3), this Part applies to the affected facility as if it were part of the new development or expansion.

Division 1—Reporting to the public

7.1 Period to which report relates

(1) For subsection 22(2) of the Act, this regulation sets out reporting periods for a registered corporation.

Note: A registered corporation must make reports available to the public after the end of its reporting periods. There are a number of reporting periods within an assessment cycle

Period for new developments and expansions

(1A) If the report relates to a new development or an expansion:

(a) subregulations (2) to (6) do not apply; and

(b) the reporting period commences at the commencement of the first design stage of the new development or the expansion; and

(c) the reporting period ends when commercial operation commences.

First reporting period

(2) Unless subregulation (3) or (5) applies, the first reporting period in the first assessment cycle for the registered corporation:

(a) commences when the first assessment cycle commences; and

(b) ends 2 years after the first assessment cycle commences.

(3) The registered corporation may elect to have a first reporting period in the first assessment cycle that:

(a) commences 2 years before the first assessment cycle commences; and

(b) ends 2 years after the first assessment cycle commences.

(4) If the registered corporation makes an election under subregulation (3), the first reporting period in the first assessment cycle commences and ends in accordance with the election.

Subsequent reporting periods

(5) The period of 12 months that commences at the end of the registered corporation’s first reporting period is a reporting period.

(6) Each period of 12 months that commences on an anniversary of the end of the registered corporation’s first reporting period is a reporting period.

7.2 Information in report

(1) For paragraph 22(3)(d) of the Act, the other information required to be contained in a report under section 22 of the Act that does not relate to a new development or an expansion is set out in the following table:

| Information for report under section 22 of Act | |
| --- | --- |
| Item | Information |
| 1 | The period to which the report relates. |
| 2 | Cumulative information about changes in each year, from the start of the assessment cycle, such as:  (a) the addition of opportunities because of the completion of further assessments; or  (b) progress in the business response to assessments (for example the progress of an opportunity from “identified” to “implemented”); or  (c) a change in estimates because of improved accuracy from further investigation or implementation; or  (d) a change to original estimates due to changes in productivity, production and product mix; or  (e) the disposal or acquisition of:  (i) members of the group; or  (ii) a business unit; or  (iii) a site; or  (f) a merger or demerger; or  (g) significant variations in energy use and energy savings resulting from a change mentioned in this item. |
| 3 | A summary of each assessment of opportunities for improving the energy efficiency of the registered corporation’s group that have been undertaken, including as many of the following details that are relevant:  (a) the names of:  (i) corporations; and  (ii) joint ventures and partnerships; and  (iii) business units; and  (iv) key activities; and  (v) sites for which the energy use in the baseline year was over 0.5 PJ;  (b) the energy use of the relevant part of the group that has been assessed, expressed as a percentage of the energy use of the total energy use of the group or the part of the group covered by the report. |
| 4 | A statement to the effect that potential opportunities have been evaluated to an accuracy that is appropriate for the corporation’s business response. |
| 5 | The total energy use covered by all assessments to which the report relates.  The statement must include the energy use of each group member, or each business unit, or each key activity, that has been assessed, reported as an actual total.  However, with the approval of the Secretary, given in relation to an assessment plan, the energy use may be reported as a bandwidth that is no more than:  (a) if the total energy use is 0.1 PJ or more but not more than 25 PJ—20% of the total energy use; or  (b) if the total energy use is more than 25 PJ—5 PJ.  If the total energy use is 0.1 PJ or more but not more than 25 PJ, the bandwidth must be expressed as the following fraction:    where:  ***A*** is:  (a) no less than the total energy use; and  (b) no more than the total energy use plus 20%. |
|  | ***B*** is:  (a) no more than the total energy use; and  (b) no less than the total energy use minus 20%.  If the total energy use is more than 25 PJ, the bandwidth must be expressed as the following fraction:    where:  ***C*** is:  (a) no less than the total energy use; and  (b) no more than the total energy use plus 5 PJ.  ***D*** is:  (a) no more than the total energy use; and  (b) no less than the total energy use minus 5 PJ. |
| 6 | The amounts of energy savings, according to whether an opportunity for the group member, or business unit, or key activity has been identified through an assessment and either:  (a) is under current investigation; or  (b) has been implemented; or  (c) is being implemented; or  (d) is proposed to be implemented; or  (e) will not be implemented. |
| 7 | The number of opportunities mentioned in item 6. |
| 8 | At least one example of a significant opportunity, including a brief description of the opportunity using commonly understood terminology, for improving:  (a) for the part of the controlling corporation’s group to which the report relates—the energy efficiency of the group that has been mentioned in the assessment of energy efficiency opportunities; or  (b) for each group member, or business unit, or key activity to which the report relates—energy efficiency that has been identified in the report. |
| 9 | A declaration by the person mentioned in paragraph 22(4)(b) of the Act in relation to the corporation that the information included in the report is, to the best of the person’s knowledge, correct and in accordance with the Act and these Regulations. |

(1A) If a proposal to report in a bandwidth of energy use has been approved in an assessment plan, the method in the table must be used to work out what reporting bandwidth are be used for a level of actual energy use.

(1B) If an entity departs from standard conversion methods in working out the amount of energy from an energy source, the entity must mention in its report the conversion factors that were used.

(2) If under regulation 7.4, the time at which a report is to be made available to the public is after the end of the assessment cycle to which it relates (the ***completed cycle***):

(a) the report must include updated information that relates to activities that have been undertaken in accordance with the assessment plan for the completed cycle; and

(b) it is not necessary for the report to include information relating to activities undertaken for the purposes of an assessment plan (if any) relating to an assessment cycle after the completed cycle.

Note: The first reporting period in the first assessment cycle is identified using subregulations 7.1(2) to (5). The period is at least 2 years. All subsequent reporting periods in the first assessment cycle are one year.

Reports for periods towards the end of an assessment cycle may be made available to the public after the end of that assessment cycle. They will be part of a cumulative reporting process covering that assessment cycle, with each new public report replacing the previous one, and are not intended to deal with matters for any other reporting period.

(3) If the report relates to a new development or an expansion, other information required to be contained in the report is set out in the following table:

| Information for report under section 22 of Act—new development or expansion | |
| --- | --- |
| Item | Information |
| 1 | A description of how the assessment was undertaken. |
| 2 | A description, in the form of a graph, of how anticipated and actual energy use has trended, as identified by the indicator measuring energy use, from the first design stage to when commercial operation commences.  However, if the registered corporation does not wish to identify the indicator measuring energy use, because the data identified by the indicator is commercially sensitive, the information is a description, in the form of a graph, of percentage change in the indicator.  If the energy use or the indicator changed at any time during 2 or more design stages:  (a) a statement to that effect; and  (b) a description of the change and an explanation of why the change occurred, but not including any information that is commercially sensitive. |
| 3 | A description of:  (a) the leading indicators used; and  (b) the results achieved, using the indicator, for the new development or the expansion.  A leading indicator is an indicator of:  (a) a system; or  (b) people; or  (c) a process;  that measures the potential success of a project in relation to energy productivity. The indicator can be used to measure success throughout the design. |
| 4 | If either or both of items 2 and 3 do not adequately demonstrate the results of the assessment, the clause or clauses may be replaced by any alternative reporting method included in the approved assessment plan. |
| 5 | One or more significant design features that have resulted in a material improvement in the energy efficiency of the new development or the expansion, but not including any information that is commercially sensitive. |

7.3 Form of report

For paragraph 22(4)(a) of the Act, a report under section 22 of the Act must be:

(a) in writing and in English; and

(b) in an easily‑readable font and point size.

7.4 Time for reporting to the public

(1) This regulation:

(a) sets out the time when a registered corporation must make a report prepared under section 22 of the Act available to the public; and

(b) is made for paragraph 22(5)(a) of the Act.

Report for new development or expansion

(2) The time for a report for a new development or expansion is:

(a) no later than 12 months after the end of the financial year in which commercial operation commences; or

(b) if the Secretary approves—no later than 18 months after the end of the financial year in which commercial operation commences.

Reports for existing facilities

(3) The time for a report for an existing facility is:

(a) for a first report:

(i) no later than 30 months after the start of the first assessment cycle; or

(ii) if the Secretary approves—no later than 36 months after the start of the first assessment cycle; or

(b) for each subsequent report—no later than 12 months after the last report was made available to the public.

Approval for extension of time to report

(4) If a registered corporation wants an approval under paragraph (2)(b) or subparagraph (3)(a)(ii), the corporation must apply to the Secretary:

(a) in the approved form; and

(b) no later than 27 months after the start of the first assessment cycle.

(5) The application must state why the extension of time is wanted.

(6) The Secretary may give the approval if the Secretary is satisfied that it is appropriate, having regard to:

(a) the registered corporation’s reporting period; and

(b) the object of the Act.

(7) The Secretary must, within 28 days after receiving the application for the approval, give the registered corporation written notice that:

(a) states the Secretary is:

(i) giving the approval; or

(ii) refusing to give the approval; and

(b) if the Secretary is refusing to give the approval—states the registered corporation may apply to the Secretary for a review of that decision.

Review of decision to refuse approval

(8) If a registered corporation wants a review of a decision to refuse to give an approval under paragraph (7)(b), the corporation must apply to the Secretary:

(a) in the approved form; and

(b) within 28 days after receiving written notice under subregulation (7).

(9) The Secretary must, within 28 days after receiving the application for a review, give the registered corporation written notice that states the Secretary has reviewed the decision and decided:

(a) to confirm the decision; or

(b) to change the decision to the decision stated in the notice.

Combined reports

(10) A report for a new development or expansion and a report for an existing facility may be combined into one report.

7.5 Manner of making report available

(1) For paragraph 22(5)(b) of the Act, a registered corporation must make a report under section 22 of the Act available to the public in a manner that ensures that the report is:

(a) readily available to the public; and

(b) accessible by the public.

(2) The registered corporation may also make a summary of the report available in a form that is directed particularly to investors, shareholders and other key stakeholders.

Note: Reports should be readily available to investors, shareholders, other key stakeholders, and interested members of the public. Registered corporations are encouraged to publish these reports in existing public reports published in Australia, such as an annual report, a sustainability report or an environment report.

If the registered corporation does not publish reports of those kinds in Australia, it should publish the report on its website or in other suitable media.

In some cases, space requirements may not allow a registered corporation to meet the minimum reporting requirements of the Energy Efficiency Opportunities Program in an annual report, a sustainability report or an environment report. In those cases, the corporation is encouraged to make a short statement in that report that summarises its involvement in the Program and refers readers to another publication or its own website for a complete public report.

Division 2—Reporting to the Secretary

7.6 Period to which report relates

(1) For subsection 23(2) of the Act, this regulation sets out reporting periods for a registered corporation in an assessment cycle.

Note: A registered corporation must give reports to the Secretary after the end of its reporting periods. The reports must be given to the Secretary in accordance with regulation 7.9.

Reporting period for new developments and expansions

(1A) If the report relates to a new development or an expansion:

(a) subregulations (2) to (4) do not apply; and

(b) the reporting period commences at the commencement of the first financial year in which the controlling corporation is required to assess the future energy use of the new development or the expansion for the purposes of the Act; and

(c) the reporting period ends when commercial operation commences.

First reporting period

(2) Unless subregulation (3) applies, the first reporting period in the assessment cycle for the registered corporation:

(a) commences when the assessment cycle commences; and

(b) ends 2 years after the assessment cycle commences.

(3) If the registered corporation proposes to include an assessment or assessments that commenced before the commencement of the assessment cycle, the first reporting period in the assessment cycle:

(a) commences 2 years before the first assessment cycle commences; and

(b) ends 2 years after the assessment cycle commences.

Subsequent reporting period

(4) The full period of the assessment cycle is a reporting period.

7.6A Information in report (new development or expansion)

For paragraph 23(3)(b) of the Act, the other information required to be contained in a report under section 23 of the Act that relates to a new development or an expansion is:

(a) a prediction of the future energy use for each design stage of the new development or the expansion, measured by an indicator; and

(b) if the prediction in paragraph (a) does not adequately show the result of the assessment of the future energy use of the new development or the expansion:

(i) a summary of the energy savings found in the design of the new development or the expansion; or

(ii) a statement of the result, measured by another reporting method has been specified in the approved assessment plan and approved by the Secretary for that purpose;

(c) the information mentioned in paragraph (a) and, if required, paragraph (b), identified by the main types of energy used;

(d) for the information mentioned in paragraph (a):

(i) a statement whether the predicted energy use or the indicator changed at any time during 2 or more design stages, but not including any information that is commercially sensitive; and

(ii) a description of the change and an explanation of why the change occurred, but not including any information that is commercially sensitive;

(e) a general explanation of each design feature or choice of technology that contributed to the majority of the energy savings, but not including any information that is commercially sensitive.

7.7 Information in report (no new development or expansion)

(1) For paragraph 23(3)(b) of the Act, the other information required to be contained in a report under section 23 of the Act that does not relate to a new development or an expansion is:

(a) a list of all assessments of opportunities for improving the energy efficiency of the registered corporation’s group, including the amount of energy assessed in each assessment, detailed by the kinds of energy or energy sources referred to in subregulation 1.5(3); and

(b) an explanation, for each group member or each business unit or each key activity relating to the group (as appropriate), of the outcomes of, and responses to, assessments by the kind of energy and the amount and value, expressed in both net monetary terms and in terms of the net savings of energy, of the kind of energy, identified by the number of opportunities that have been identified in total and, of these, the number of opportunities that:

(i) are proposed to be implemented; or

(ii) are being implemented; or

(iii) have been implemented; or

(iv) are under investigation; or

(v) will not be implemented; and

(ba) a statement of the amounts of energy savings (expressed in GJ) for each group member, or each business unit, or each key activity, that:

(i) have been identified by the corporation; and

(ii) are identified per annum by a payback period of less than 2 years; and

(iii) are identified per annum by a payback period of at least 2 years and less than 4 years; and

(c) the information that the registered corporation was required to provide in the first public report for the period; and

(d) if the registered corporation publishes a subsequent public report in the reporting period:

(i) a copy of the report; or

(ii) an explanation of where the report can be obtained or accessed; and

(e) the total energy use and production, in each year, of as many of the following as are relevant:

(i) corporations;

(ii) joint ventures and partnerships;

(iii) business units;

(iv) key activities;

(v) sites for which the energy use in the baseline year was over 0.5 PJ; and

(f) the energy use of the relevant group or part of the group, presented as follows:

(i) the use may be expressed using the indicator used in the summary of energy use mentioned in paragraph 201(1)(c) of Schedule 3;

(ii) if the energy use of the relevant group or part of the group is expressed using another indicator, the information must be accompanied by the energy use for the baseline year, expressed using the other indicator; and

(g) a declaration by the responsible officer signing for the registered corporation that the information included in the report is, to the best of the officer’s knowledge, correct and in accordance with the Act and these Regulations.

Note 1: If an entity departs from standard conversion methods in calculating the amount of energy derived from an energy source, the entity must mention in its report the conversion factors that were used.

Note 2: Energy use information may be published only:

(a) if:

(i) individual groups or entities are not identified or identifiable; and

(ii) it is not information that is provided in the course of registration; or

(b) if the controlling corporation or the person providing the information has given consent to the publication.

(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.

(3) The report may contain the following information instead of the information mentioned in paragraphs (1)(a) to (c):

(a) a list of the top energy saving opportunities that, for each opportunity:

(i) describes the nature of the opportunity in detail; and

(ii) states the amount of energy to be saved by the opportunity, by reference to energy and energy sources mentioned in Schedule 1 of the *National Greenhouse and Energy Reporting Regulations 2008*; and

(iii) states whether the opportunity has been implemented, is being implemented, or is still to be implemented; and

(iv) states the payback period for the opportunity;

(b) a list of the opportunities to save energy that the corporation has identified as not to be implemented or as still under investigation for suitability for implementation that, for each opportunity:

(i) describes the nature of the opportunity in detail; and

(ii) states the amount of energy to be saved by the opportunity, by reference to energy and energy sources mentioned in Schedule 1 of the *National Greenhouse and Energy Reporting Regulations 2008*; and

(iii) states whether the opportunity is under investigation or is not to be implemented; and

(iv) states the payback period for the opportunity.

(4) The report need not contain the information mentioned in paragraph (1)(f) if the corporation:

(a) advises the Secretary that the corporation has already given the information to the Clean Energy Regulator as required under section 19 of the *National Greenhouse and Energy Reporting Act 2007*; and

(a) gives the Secretary written permission to obtain the information from the Clean Energy Regulator.

(5) In this regulation:

***top energy saving opportunities*** means:

(a) the 10 energy efficiency opportunities with the greatest potential for energy savings that the corporation has identified as suitable for implementation; or

(b) if those opportunities would represent more than 80% of the energy savings that the corporation has identified as suitable for implementation—the number of opportunities that represents at least 80% of those energy savings.

7.8 Form of report

For subsection 23(4) of the Act, the form of a report under section 23 of the Act must be:

(a) in writing and in English; and

(b) in any of the following formats:

(i) Microsoft Word;

(ii) Microsoft Excel;

(iii) another electronic system approved by the Secretary.

7.9 Time of giving report

(1) For paragraph 23(5)(a) of the Act, the times at which a registered corporation must give reports to the Secretary are set out in this regulation.

(1A) If the report relates to a new development or an expansion, the time is 12 months after the end of the financial year in which commercial operation commences.

Note: No subsequent reports are required for a new development or an expansion.

(2) If subregulation (1A) does not apply, for the first report, the time is no later than 30 months after the commencement of the first assessment cycle.

Note: This is the same as the time specified in subregulation 7.4(2) for providing the first report to the public.

(3) For each subsequent report, the time is the day that is 6 months after the end of the period to which the report relates.

7.10 Manner of giving report

(1) For paragraph 23(5)(b) of the Act, a report under section 23 of the Act must be given to the Secretary by a registered corporation:

(a) in writing as hard copy; or

(b) in electronic form.

(2) A report in hard copy must be:

(a) in a format that the Secretary notifies in the *Gazette*; and

(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.

(3) A report in electronic form must be given to the Secretary in a format approved by the Secretary and notified in the *Gazette*.

Note: Arrangements for giving a report online may be publicised to the industry in other appropriate ways.

Part 8—Powers of inspection

8.1 Identity cards

For subsection 26(1) of the Act, the form of an identity card is set out in Schedule 5.

Part 9—Miscellaneous

Division 1—Verification of compliance with the Energy Efficiency Opportunities Program

9.1 Verification of compliance

A controlling corporation must:

(a) make and keep records of its compliance with these Regulations and the Act for at least 7 years; and

(b) make its records available for inspection in accordance with Part 8 of the Act.

Note: Verification incorporates a range of approaches designed to encourage willing compliance by providing assistance to controlling corporations to meet program requirements, while balancing the need for the Minister to review businesses actions regarding Energy Efficiency Opportunities.

The Department will provide information and assistance about the verification process, including advice about best practices and the operation of Part 8 of the Act.

Division 2—Transfer of obligation to assess and report energy use under reporting transfer certificate

9.2 Agreement to transfer obligation

(1) For subregulations 3.1(2) and 4.2(2) and regulation 5.5, if:

(a) 1 or more parties to an agreement to transfer the obligation to assess and report the energy use of a group or part of a group, to which a liability transfer certificate or reporting transfer certificate relates, applies to the Secretary for the termination of the agreement; and

(b) the application includes evidence that each party to the agreement has agreed to the termination of the agreement;

the Secretary must approve the termination of the agreement as soon as practicable.

(2) The agreement is terminated on the day on which the Secretary approves the termination.

(3) The Secretary must notify each party, in writing, of his or her approval of the termination as soon as practicable.

Division 3—General

9.3 Delegation

The Secretary may, by signed instrument, delegate to an SES employee, or an acting SES employee, in the Department all or any of the Secretary’s powers under these Regulations.

Part 10—Transitional

Division 1—Transitional provisions for Energy Efficiency Opportunities Amendment Regulations 2008 (No. 1)

10.1 Application

(1) This Division 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 Division 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 Division.

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

10.2 Definitions

In this Division:

***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 Division.

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.

(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.

(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.

Division 2—Transitional provisions for Energy Efficiency Opportunities Amendment (Assessments and Reporting) Regulation 2013

10.6 Assessment plans or variations

(1) If, before the commencement of this regulation, the Secretary has been given, but has not yet decided whether or not to approve:

(a) a proposed assessment plan; or

(b) a proposed variation of an assessment plan;

the old Regulations apply to the assessment plan or varied assessment plan.

(2) If a registered corporation’s assessment plan was approved according to the old Regulations:

(a) the corporation may, after the commencement of this regulation, choose to prepare any variation to the assessment plan, to the extent that the variation relates to an existing facility, in accordance with the old Regulations; and

(b) if the corporation does so:

(i) the assessment plan must state that the corporation has chosen to prepare the plan in accordance with the old Regulations; and

(ii) the old Regulations apply to the varied assessment plan, to the extent that the variation relates to the existing facility.

(3) In this regulation:

***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.

Schedule 1—Energy use

(subregulations 1.5(3) and (4))

Part 2—Energy that is not treated as energy used by an entity

Note: Subregulation 1.5(2) explains the ***energy used*** by an entity. The total of all energy used by the entity does not include any use of energy or energy sources specified in subregulation 1.5(4) or this Part.

Subregulation 1.5(2) and this Part are intended to prevent “double counting”. If an entity uses an energy source to create energy that the entity then uses, it is only the latter use of energy that counts.

This Part identifies energy and energy sources that are not to be counted.

201 Energy or energy sources sold by the entity.

Example: Electricity or steam produced at a site but exported from the site to a purchaser.

202 Energy and energy sources:

(a) produced and stored without being used; or

(b) purchased and stored without being used.

Example: Fuel stored in tanks. If the stored energy is then used, it would be counted as energy use.

203 Material that is a potential energy source, but is disposed of as a waste product.

Example 1: Bagasse that is burned for a purpose other than as an energy source.

Example 2: Waste gas that is vented or flared.

204 Material that is a potential energy source, but is used for another purpose.

Example 1: Gas or liquid hydrocarbons used as chemical feedstock in plastics manufacture.

Example 2: LPG used as a propellant in aerosols.

Example 3: Hydrocarbons used as a solvent.

Example 4: Ethanol used in consumer goods or lubricants.

Example 5: Base oils used in lubricants.

Example 6: Energy used as a reductant in an endothermic reaction.

However, if:

(a) the material is used to provide or produce energy and for another purpose; and

(b) the amount that is used to provide or produce energy cannot be differentiated from the amount that is used for the other purpose;

the entire amount is to be treated as having been used to provide or produce energy, and counts as part of the energy use of the group.

Schedule 2—Application to register—content of application

(regulation 3.1)

1 For the controlling corporation:

(a) its name; and

(b) its trading name (if any); and

(c) its Australian Business Number (ABN); and

(d) the address of its head office; and

(e) the name of a contact person for the controlling corporation; and

(f) the contact person’s full name, position, telephone number, email address and postal address; and

(g) if a Global Industry Classification Standard is applicable to the controlling corporation—the classification of the controlling corporation under the Standard; and

(h) if an Australian and New Zealand Standard Industrial Classification is applicable to the controlling corporation—the classification.

2 A statement that:

(a) identifies the trigger year; and

(b) says that the controlling corporation’s group used more than 0.5 PJ of energy in the trigger year.

3 For each member of the group that the chair of the board of directors, the chief executive officer, the managing director or an equivalent officer of the controlling corporation reasonably considers may be likely to be assessed:

(a) its name; and

(b) its trading name (if any); and

(c) if the member has an Australian Business Number (ABN)—the ABN; and

(d) if the member does not have an ABN—the address of its head office;

described either for each group member or grouped by kinds of activity.

4 A declaration by the Chief Executive Officer (or equivalent officer) or authorised representative, signing for the controlling corporation, that the information included in the application is, to the best of the officer’s knowledge, correct and in accordance with the Act and these Regulations.

5 For a controlling corporation in respect of which the contact or corporate structure information has changed—a statement at any time providing the amended information.

Schedule 2A—Content of assessment plan (new development or expansion)

Note: See paragraph 5.2(2)(a).

Part 1—Corporate operations

101 All new developments or expansions that have been publicly announced by the controlling corporation.

Part 2—Estimated future energy use

201 For each design stage, and for each new development and expansion mentioned in item 101, the estimated future energy use.

202 For each design stage, and for each new development and expansion mentioned in item 101, the indicator used for energy use.

203 The information mentioned in item 201, identified by the main types of energy used.

204 If the predicted energy use or the indicator changed at any time during 2 or more design stages:

(a) a statement to that effect; and

(b) a description of the change and an explanation of why the change occurred, but not including any information that is commercially sensitive.

205 A general explanation of each design feature or choice of technology that contributed to the majority of the energy savings during the period before an assessment plan was required to be given to the Secretary, but not including any information that is commercially sensitive.

206 Any alternative reporting method or methods that is allowed under subregulation 7.2(3) or regulation 7.6A and that has been used.

Note: A registered corporation may not be able to give some of this information to the Secretary when it gives the Secretary the assessment plan for its first new development or expansion, as it may not have previously estimated the energy use indicators.

Part 3—Assessments

301 A general explanation of how the controlling corporation intends to undertake assessments in order to meet the requirements of the Assessment Framework in the table in this item, including an explanation of how the corporation will incorporate the requirements into applicable design stages.

Note: The intention of the requirements must be applied to the new development or the expansion, from the initial concept to post‑construction optimisation. Some existing systems and processes may already meet the intent of the requirements and should be used where appropriate. Some requirements will be more applicable to early design stages and others will be more applicable to later design stages. The requirements may not be applicable to some design stages such as construction and commissioning.

A registered corporation should consider how to best align the intent of these requirements, to existing design processes and stage gates, to best identify design decisions which will result in increased energy productivity.

| Assessment Framework for new development or expansion |
| --- |
| **Requirement 1—Leadership**  Senior management, through visible leadership and commitment, provides clear direction and purpose to the assessment throughout the design stage through to commercial operation, which may include:  (a) setting and communicating both feasible and aspirational target energy performance objectives for the new development or the expansion once operational; and  (b) communicating and ensuring that assessment objectives are contributing towards business priorities; and  (c) setting Key Performance Indicators within the design process and giving recognition for achievement of energy performance objectives and internal processes relating to energy productivity improvements.  Senior management supports, motivates and values the efforts of staff and other stakeholders (for example, project managers, design teams, equipment suppliers, engineering procurement construction management (EPCM) and operation staff) involved in the identification and implementation of energy efficiency opportunities. |
| **Requirement 2—People**  Skilled and knowledgeable people, and people with direct and indirect influence on the operational energy use of the new development or the expansion through design and development decisions are involved in the assessment, these people may include:  (a) people from the design and commissioning teams—examples may include mechanical engineers, electrical engineers, geotech scientists, planners, commissioning engineers, project managers and the like; and  (b) the operations teams—examples may include process engineers, people from operations teams, maintenance personnel and the like; and  (c) equipment suppliers and contractors involved in design and construction—examples may include multiple suppliers for major pieces of plant, EPC contractors, EPCM contractors; and  (d) technical experts—examples may include internal and external technical experts, people from other similar industries who could identify a different perspective; and  (e) finance and management personnel—examples may include accountants, business improvement staff, project and business management.  The relevant people listed above or similar relevant people are included in a process to improve the energy productivity of the new development or the expansion. Activities undertaken to improve energy productivity may include:  (a) utilising knowledge of existing or similar operations; and  (b) effectively collecting and analysing energy and process data, and factors impacting on energy use, both design and operational as required; and  (c) identifying and evaluating opportunities to reduce energy use or increase productivity relative to energy consumption; and  (d) considering the design and optimisation from all perspectives including energy productivity; and  (e) provide fresh perspectives; and  (f) make the business case for identified energy productivity improvements at the design stage through to commercial operation.  Responsibilities and accountabilities are allocated and documented, and team diversity is encouraged. |
| **Requirement 3—Information, data and analysis**  Predominately relating to early design stages, an analysis is conducted on the whole site which includes energy productivity, to identify a cost effective facility design from an operational and capital cost perspective. This process may include but is not limited to considering:  (a) the requirements of the product which the facility will produce, along with the minimum inputs required to produce the product, and considering the optimum method or methods to produce that product; and  (b) the location and arrangement of equipment to allow opportunities such as heat transfer between processes and reduced distances in bulk handling; and  (c) one or more of:  (i) alternative technology choices; and  (ii) multiple suppliers; and  (iii) energy impacts of “off the shelf” equipment;  (d) best practice equipment and operation; and  (e) how to integrate “off the shelf” equipment.  Relating to design stages prior to construction, predicted energy data, and relating to optimisation, measured energy data, is analysed from different perspectives to understand the relationship between activity and consumption, and to identify energy efficient design features or areas to be optimised. A site wide analysis, connecting and communicating data between different operations, systems and sections of the site, and between other sites, if appropriate, is investigated.  Sufficient design data, operational data, or both, in suitable forms, is used to estimate, model and understand future and current energy use, identify and quantify energy savings and improve energy productivity. Models of the design are likely to incorporate energy mass flows or other relevant modelling tools.  Provisions are made to track performance and outcomes during operation. This may include appropriate provisions for metering to enable ongoing performance tracking and improvement of energy productivity.  Data accuracy is appropriate to the stage of the design and available data sources. The accuracy is considered when deciding the suitability of the model, assumptions and analysis to make the appropriate project choices.  Processes are put in place to ensure adequate transfer of relevant information, data and potential energy savings initiatives between different design gates through to commercial operation. |
| If the design involves the provision of a service, site, or supporting infrastructure that is not within the control of the registered corporation, then an investigation of the possibility of a mutual agreement with the entity providing the services, site or supporting infrastructure is conducted, so that a financial benefit can be realised, based on energy savings achieved through design or operational changes. |
| **Requirement 4—Identification and evaluation of energy savings**  An effective process is undertaken to identify potential cost effective energy productivity improvements. This process covers all stages of the design through to commercial operation and is broad, open minded and encourages innovation.  Sufficient time is taken for the design team to understand and review the information and data from requirement 3 and the range of perspectives provided by relevant people indicated in requirement 2 to cooperatively identify and evaluate a range of ideas. Adequate time is scheduled to allow energy productivity improvements to be identified and incorporated into the design.  Relevant ideas are analysed to a sufficient level appropriate to the stage of design. The process allows design aspects that require more detailed investigation to transfer across design stages.  A whole of business evaluation is undertaken to enable decision makers to make informed business decisions about energy efficiency design.  If relevant, the design process will results in the optimum solution being identified, evaluated and included in the design without alternatives considered. This is particularly relevant for minor design aspects.  If relevant, energy impacts are included in the evaluation of “off the shelf” equipment. |
| **Requirement 5—Decision making**  Management responsible for resource allocation for the development or the expansion should make informed energy efficiency decisions based on investment quality information, which may include but is not limited to data accuracy, capital costs, maintenance costs, and calculated risks. These decisions and their rationale should be recorded.  Mechanisms for reviewing, monitoring, tracking through design gates and reporting on outcomes are established to learn from experience and enable public reporting. |
| **Requirement 6—Communicating outcomes**  Senior management responsible for the new development or the expansion is aware of the outcomes of the assessment in a strategic business context (including the corporation’s risk management, corporate social responsibility, major investment decisions and energy productivity). Senior management is made aware of capital and operational cost savings as a result of the assessment.  The board reviews and notes the content for the registered corporation’s public report in the context of relevant business information.  Relevant outcomes of each stage of design or development are communicated to the design team indicating what decisions were made and why.  If relevant, achievements in relation to any objectives identified in requirement 1 that were set by the design teams, relevant stakeholders, government and senior management responsible for the development or the expansion are communicated. |

Part 4—Reporting

401 A statement indicating when a new development or an expansion will be considered to have reached commercial operation, which will initiate the provision of a report to the Secretary and a public report.

402 (1) Either:

(a) the leading indicators to be used as part of the new development or the expansion; or

(b) an explanation of how leading indicators will be chosen for the new development or the expansion.

(2) A ***leading indicator*** is an indicator of:

(a) a system; or

(b) people; or

(c) a process;

that measures the potential success of a project in relation to energy productivity. The indicator can be used to measure success throughout the design.

403 If a lagging indicator has been used, details of the lagging indicator.

Example: Each of the following is a lagging indicator:

(a) New Present Value (***NPV***);

(b) Future Worth (***FW***);

(c) Internal Rate of Return (***IRR***).

404 Any alternative reporting method or methods that is allowed under subregulation 7.2(3) or regulation 7.6A and that has been used.

Schedule 3—Content of assessment plan (no new development or expansion)

Note: See paragraph 5.2(3)(a).

Part 1—Corporate structure

101 The baseline year.

102 For the controlling corporation:

(a) its name; and

(b) its trading name (if any); and

(c) its Australian Business Number (ABN); and

(d) the address of its head office; and

(e) the name of a contact person for the controlling corporation; and

(f) the contact person’s full name, position, telephone number, email address and postal address; and

(g) if a Global Industry Classification Standard is applicable to the controlling corporation—the classification of the controlling corporation under the Standard; and

(h) if an Australian and New Zealand Standard Industrial Classification is applicable to the controlling corporation—the classification.

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.

104 A declaration by the employee signing for the controlling corporation or group member that the information included in the plan is, to the best of the officer’s knowledge, correct and in accordance with the Act and these Regulations.

105If a plan is submitted as a separate assessment plan mentioned in paragraph 5.1(1)(b):

(a) the part of the controlling corporation’s group authorised to submit the plan does not need to provide the information in item 102, but must provide the information in item 103 and also provide contact details for the part of the group; and

(b) the controlling corporation must include the information in item 102 for the assessment plan (if any) that it submits.

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

(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.

108 If a nomination of a responsible entity was made under regulation 2.3  for a joint venture or partnership in which the controlling corporation or a group member had an interest—a statement of the outcome of the nomination process.

Note: If a group member within the group, other than the controlling corporation, completes an individual assessment plan in relation to energy use within its control, that assessment plan will be taken to form part of the group’s assessment plan.

Part 2—Current energy use and savings data

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, expressed using an indicator.

202 (1) The assessment plan must state the accuracy of the energy use data.

(2) The data about energy use that is to be provided for item 201 must relate to a period of 12 months chosen by the controlling corporation, and identified in its assessment plan, as the baseline year for the assessment cycle.

(3) The period chosen by the controlling corporation must occur within the period:

(a) commencing 24 months before the commencement of the assessment cycle; and

(b) ending 12 months after the commencement of the assessment cycle.

(4) The period chosen by the controlling corporation must also be a period:

(a) that is reasonably representative of the normal annual energy use of the controlling corporation’s group; and

(b) that has ended before the time when the controlling corporation submits its assessment plan; and

(c) for which energy use data is able to be identified and supplied by the controlling corporation at an appropriate level of disaggregation to allow meaningful comparison of key energy use and energy efficiency statistics.

(5) However, if the controlling corporation believes that there is no period of 12 months available in accordance with subitems (2) to (4) that would be reasonably representative of the normal annual energy use of the controlling corporation’s group:

(a) the energy use data provided for the first assessment cycle must relate to a period:

(i) commencing 36 months before the commencement of the assessment cycle; and

(ii) ending 12 months after the commencement of the assessment cycle; and

(b) the controlling corporation must include in its assessment plan:

(i) an explanation of why it is appropriate for that period to be the corporation’s baseline year; and

(ii) any other information that would explain why that period is reasonably representative of the normal annual energy use of the controlling corporation’s group.

203 (1) For each assessment cycle, 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 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.

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 energy use and production levels in the year before the commencement of the assessment cycle; 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.

Part 3—Assessment schedule

303 A statement of when each corporation, joint venture or partnership intends to undertake the assessment or assessments for which it is responsible.

Note: Regulation 5.6 provides that a controlling corporation must include in its assessment plan a proposal for assessing the opportunities for improving the energy efficiency of a controlling corporation’s group. The proposal must include a timeframe for the assessment of opportunities that requires the completion of at least one of the activities mentioned in the regulation before the end of the first 2 years of the assessment cycle.

304 A statement:

(a) stating whether the controlling corporation proposes, for sites, technologies or processes for which the annual use of energy is less than 0.5 PJ, to undertake assessments that can be shown to be reasonably representative of other sites, technologies and processes; and

(b) if the controlling corporation intends to undertake a representative assessment:

(i) the entities or sites for which the representative assessment will be conducted; and

(ii) information showing that the manner of undertaking a representative assessment will not diminish the accuracy and comprehensiveness of the assessment.

Example 1: Assessing a sample of retail outlets that is representative of a larger population of outlets.

Example 2: Assessing a sample of vehicles that is representative of a larger fleet of vehicles.

Example 3: Assessing a machine or technology that is used in an identical fashion at other sites or within a site.

Example 4: Assessing a commercial building that is representative of a population of commercial buildings.

305 A summary:

(a) stating how the controlling corporation intends to undertake assessments in order to meet the requirements of the Assessment Framework in the table in this item, including an explanation of what actions the corporation intends to take to meet those requirements; and

(ab) if the actions that the corporation intends to take to meet a particular requirement of the Assessment Framework do not include the actions (the ***specified actions***) specified for that requirement:

(i) a statement to that effect; and

(ii) an explanation of why it is not appropriate or reasonable for the group, or a part of the group, to take the specified actions to meet the requirement; and

(iii) an explanation of how the actions that the corporation intends to take will meet the requirement; and

(b) stating:

(i) that the controlling corporation believes that it is likely to be able to measure its energy use, for the purpose of meeting the requirements of the Assessment Framework, at a level of accuracy to within ±5%; or

(ii) that the controlling corporation believes that it would be unreasonable for it to measure its energy use, for the purpose of meeting the requirements of the Assessment Framework, at a level of accuracy to within ±5%; and

(c) if subparagraph (b)(ii) applies—setting out:

(i) evidence explaining why it would be unreasonable to require a greater level of accuracy; and

(ii) a proposed level of accuracy; and

(d) stating how the controlling corporation intends to use existing energy assessment practices; and

(e) stating what additional activities the controlling corporation intends to undertake, in addition to its existing practices.

| Assessment Framework | |
| --- | --- |
| **Requirement 1—Leadership**  Senior management, through visible leadership and commitment, provides clear direction and purpose to the assessment by:  (a) setting and communicating energy performance objectives; and  (b) ensuring that assessment objectives are aligned with business priorities.  Senior management supports, motivates and values the efforts of staff and other stakeholders involved in the identification and implementation of energy efficiency opportunities. | |
| **Actions** | |
| 1.1 | Senior management establishes and communicates energy assessment and energy performance objectives to all personnel who are responsible for, or have an influence on, energy use and the energy assessment. |
| 1.2 | Resources (people, time and money) are made available to meet energy assessment and energy performance objectives. |
| **Requirement 2—People**  Skilled and knowledgeable people, and people with direct and indirect influence on energy use, are involved in the assessment to effectively collect and analyse energy and process data, identify and evaluate energy efficiency opportunities, give fresh perspectives and make the business case for identified energy efficiency opportunities.  Responsibilities and accountabilities are allocated and documented, and team diversity is encouraged. | |
| **Actions** | |
| 2.1 | Involve a broad cross‑section of people in the collection and analysis of energy and process data, and the energy efficiency opportunity identification, evaluation and business case development process, including:  (a) people from various levels of the site or business unit who have a direct or indirect influence on energy use (such as site or fleet managers, operators, sub‑contractors, tenants or people responsible for equipment procurement, maintenance, finance, marketing or production); and  (b) people from within the corporation who can integrate energy productivity into business objectives and assist with making a business case for identified opportunities (such as the chief financial officer, business case analysts, business or process improvement managers or people responsible for procurement, corporate and operations management, public relations, strategic planning or operational excellence); and  (c) people with energy, technology and process expertise (such as suppliers of current and alternative equipment and technologies, systems modelling experts or engineers); and  (d) people external to the site who can give alternative perspectives, question assumptions and practices, and encourage innovation (such as operators from other sites, corporate expert groups, internal or external engineering experts, academics or PhD students). |
| 2.2 | Allocate clear roles, responsibilities and accountabilities to people who are involved in the assessment and the business response, and document this information. |
| **Requirement 3—Information, data and analysis**  Sufficient data, in suitable forms, is used to quantify and understand energy use, identify and quantify energy saving opportunities, and track performance and outcomes (where actions are implemented).  Energy data is analysed from different perspectives to understand relationships between activity and consumption, and identify energy efficiency opportunities. | |
| **Actions** | |
| 3.1 | Identify and document business contextual information that influences energy use and returns on energy efficiency investments, for use during the assessment, including information about:  (a) key business priorities and plans affecting investment timing and returns (such as relocation, expansion, site and equipment replacement, maintenance and shutdown schedules, or key contractual constraints); and  (b) other external factors affecting investment returns (such as market factors, rising energy prices or interest rates) if applicable. |
| 3.2 | Identify, document and implement in‑depth data collection and analysis processes, including:  (a) the collection of energy consumption and associated cost data for key processes, systems or activities over a period of at least 24 months, to an accuracy level of ±5% (or another accuracy level approved in the assessment plan), and analysis of that data to determine variations in energy use over time; and |
|  | (b) the collection and analysis of production or activity data (such as outputs, distance hauled, material excavated or square metres of floor space), to allow for the development of energy use performance indicators, at the appropriate level, with consideration of variations over time; and |
|  | (c) the collection and analysis of data for other process factors that impact on energy use (such as ambient temperature, geology (mining) or production inputs) to determine the impact of these factors on energy use; and  (d) the collection and analysis of data for the energy and material flows associated with key processes, systems and activities, to systematically and rigorously quantify where energy is being used, transformed, wasted or lost; and  (e) the comparison of performance to actual or theoretical energy use benchmarks, at the relevant level (process, technology, activity or site) to identify potential inefficiencies and opportunities; and  (f) the development and documentation of measures to ensure the accuracy and completeness of energy data and resolve any material data gaps. |
| **Requirement 4—Opportunity identification and evaluation**  An effective process is undertaken to identify all potential cost‑effective energy efficiency opportunities. The process is to be informed by the accurate data collection and rigorous analysis undertaken in requirement 3 and involve the relevant people identified in requirement 2. This process is broad, open‑minded and encourages innovation.  Ideas are filtered to identify a documented list of potential opportunities that can then be analysed to a level sufficient for informed evaluation with a payback period of 4 years or less.  A whole‑of‑business evaluation is undertaken to enable decision‑makers to make informed business decisions about energy efficiency opportunities. | |
| **Actions** | |
| 4.1 | Undertake a process to identify ideas to improve energy efficiency. The process should note the business contextual information and review the data that is collected and analysed as part of requirement 3, and include the appropriate people as stipulated in requirement 2. The process should result in a comprehensive list of ideas, which are then documented. |
| 4.2 | Examine ideas to determine if they are feasible.  Categorise ideas deemed to be feasible as either for implementation or for further investigation. Feasible ideas categorised as being for implementation need not be evaluated to a high level of accuracy, if they have immediate business benefits or do not warrant detailed investigation. Feasible ideas categorised as for further investigation are potential opportunities that need to be examined in accordance with action 4.3. |
|  | Categorise ideas not deemed feasible as being not for implementation.  Document reasons for the categorisation of all identified ideas (both feasible and not feasible). |
| 4.3 | Undertake a detailed whole‑of‑business evaluation that considers benefits beyond just energy savings (such as benefits relating to maintenance, production, or occupational health and safety) to:  (a) determine the costs and benefits for the potential opportunities from action 4.2; and  (b) calculate a payback period; and  (c) identify a list of opportunities with a payback of 4 years or less.  The evaluation of potential opportunities should be to an accuracy that is commensurate with the size of the financial investment associated with implementation. The evaluation process should be clearly documented and give decision makers credible information on which to base investment decisions. Detailed evaluation to reach an appropriate accuracy is not required for those ideas for which it can be shown that a payback period of less than 4 years is not possible, or those that prove to be infeasible for technical, safety or other genuine reasons. |
| 4.4 | After the evaluation of feasible ideas and potential opportunities, prepare recommendations for the decision‑makers who are responsible for resource allocation and financial investment. The recommendations should be based on appropriate business criteria and include whether identified opportunities should undergo further investigation, be implemented, or not be implemented.  Document reasons for not pursuing opportunities. |
| **Requirement 5—Decision making**  Management that is responsible for decisions about financial investment and the allocation of resources for the opportunities that are identified by the assessments makes informed decisions on the assessment based on quality information.  The corporation develops clear lines of accountability, appropriate resources and timeframes for all energy efficiency opportunities that the corporation decides to implement or investigate further.  Mechanisms for reviewing, monitoring and reporting on outcomes are established, to learn from experience and enable public reporting. | |
| **Actions** | |
| 5.1 | Give management the recommendations resulting from the assessment, as prepared in action 4.4, and the necessary contextual information, such as:  (a) total energy use and energy cost relative to variable operating costs and profit for the manager’s area of responsibility; or  (b) energy savings identified for each opportunity; or  (c) the impact that identified opportunities are expected to have on productivity and overall energy costs; or  (d) the total quantifiable costs and benefits, including a payback period, for each opportunity; or  (e) the business recommendation for each opportunity; or  (f) recommendations to improve data and evaluation accuracy (if necessary).  This information will allow management to decide the business response to the assessment, including the opportunities that are to be implemented, investigated further (including improvements in data and evaluation accuracy), or not implemented. |
| 5.2 | Establish arrangements to implement the business response, including:  (a) allocation of timelines, resources and accountabilities covering all energy efficiency opportunities that the corporation decides to implement or investigate further; and  (b) a process for reviewing and monitoring to learn from experience. |
| **Requirement 6—Communicating outcomes**  Senior management and members of the board are made aware of the outcomes of the assessment in a strategic business context (including the corporation’s risk management, corporate social responsibility and major investment decisions).  The board reviews and notes the information on assessment outcomes that will be made public in the context of relevant business information.  Recognition and awareness is raised within the corporation of the benefits of improved energy efficiency and the outcomes achieved by the assessment, including recognition and awareness of people who contributed to its success. | |
| **Actions** | |
| 6.1 | Present the board with information relating to the corporation’s energy performance, for each relevant business unit or key activity. This information is to be informed by the outcomes of the assessment and include:  (a) total energy use; and  (b) total cost of energy, relative to operating costs and profit; and  (c) total energy and cost savings identified from the assessment and the business’s response, in the context of the energy performance objectives set in requirement 1. |
| 6.2 | The board reviews and notes the information presented in action 6.1 and the information on assessment outcomes that will be made public. |
| 6.3 | Senior management communicates a clear message about the outcomes of the assessments, in the context of the objectives set by the organisation’s leadership, to relevant staff and those involved with the assessment. |

Part 4—Reporting schedule

401 An explanation of how the group proposes to meet its public reporting obligations, including:

(b) details of the proposed means of publication; and

(c) if the controlling corporation intends to rely on section 22A of the Act in order to comply with its obligations under subsection 22(1) of the Act:

(i) a statement of that intention; and

(ii) details of the other members of the group that are intended to prepare a report in accordance with section 22A of the Act; and

(iii) a statement whether each member of the group that is intended to prepare a report prepares annual financial reports or otherwise produces reports; and

(iv) if a group member is a public company, a statement that its report will be published widely; and

(d) if the controlling corporation intends to rely on section 22B of the Act in order to comply with its obligations under subsection 22(1) of the Act:

(i) a statement of that intention; and

(ii) details of the corporation that is intended to prepare a report in accordance with section 22B of the Act.

Note: Section 22A of the Act authorises decentralised public reporting by members of a controlling corporation’s group. Section 22B of the Act authorises public reporting by the manager of a joint venture.

402 If the controlling corporation proposes to publicly report in the energy bandwidths mentioned in the table in item 4 of the table in subregulation 7.2(1):

(a) a statement of the proposal; and

(b) an explanation of why reporting actual total energy use is unreasonable in terms of the company’s reasonable commercial interests.

Note: Factors that will be considered in such a request would include:

(a) the total percentage of energy to operating costs and variable costs; and

(b) how generic the use of energy is within the industry sector (including the range of types of energy used); and

(c) whether or not the total energy used by other companies in the sector will be disclosed in item 4 of the table in subregulation 7.2(1), or is otherwise publicly disclosed.

403 If a plan is a separate assessment plan mentioned in paragraph 5.1(1)(b), prepared by a group member or members, on behalf of the controlling corporation:

(a) a statement that the plan is a separate assessment plan; and

(b) a description of the group member or members.

General notes to Schedule 3

1. For a corporation to determine which entities in its corporate group need to be assessed, and what type of assessment to undertake, the controlling corporation needs to apply the “coverage rule” explained in Part 5 of these Regulations to its corporate structure.

While the controlling corporation is obliged to ensure that assessments are undertaken, it does not have to undertake all or any assessments itself. The assessments may be completed by subsidiary entities, and may use resources and expertise that are internal or external to the group.

2. The controlling corporation should also prepare an analysis of how its existing practices align with the requirements of the Assessment Framework. The analysis should focus on the accuracy of energy data available to the controlling corporation, as this will impact upon the corporation’s capacity to undertake assessments.

The controlling corporation is not required to provide the analysis to the Secretary with the Assessment Schedule, but it should be retained by the corporation. The Secretary may request the analysis when reviewing the corporation’s Assessment Schedule.

Schedule 5—Identity cards

(regulation 8.1)

An identity card must:

(a) display the Australian coat of arms; and

(b) incorporate a recent photograph of the authorised officer of sufficient quality to identify the officer accurately; and

(c) include a statement that the officer is an authorised officer; and

(d) state the name of the authorised officer; and

(e) show the date on which the card was signed by the Secretary or a delegate of the Secretary; and

(f) show an expiry date that is not more than 60 months after the date on which the card is signed.

The following is a sample form of the identity card, and is provided for information only



**COMMONWEALTH OF AUSTRALIA**

*Energy Efficiency Opportunities Act 2006*

**IDENTITY CARD—AUTHORISED OFFICER**

|  |  |
| --- | --- |
| I, \* the Secretary of the Department of *[name]* / \*delegate of the Secretary of the Department of *[name]*, acting under subsection 26(1) of the *Energy Efficiency Opportunities Act 2006*, certify that the person whose name, photograph and signature appear on this card is an authorised officer for the purposes of the Act.  Dated: *[date]*  The officer’s authorisation ceases on: *[date]*  \* Secretary   \* Delegate of the Secretary  \* *Omit if inapplicable* | (Photograph) |
| (Name of authorised officer)  (Signature of authorised officer) |

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnote 5—Uncommenced amendments

Endnote 6—Modifications

Endnote 7—Misdescribed amendments

Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

**Abbreviation key—Endnote 2**

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

**Uncommenced amendments—Endnote 5**

The effect of uncommenced amendments is not reflected in the text of the compiled law, but the text of the amendments is included in endnote 5.

**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | pres = present |
| am = amended | prev = previous |
| c = clause(s) | (prev) = previously |
| Ch = Chapter(s) | Pt = Part(s) |
| def = definition(s) | r = regulation(s)/rule(s) |
| Dict = Dictionary | Reg = Regulation/Regulations |
| disallowed = disallowed by Parliament | reloc = relocated |
| Div = Division(s) | renum = renumbered |
| exp = expired or ceased to have effect | rep = repealed |
| hdg = heading(s) | rs = repealed and substituted |
| LI = Legislative Instrument | s = section(s) |
| LIA = *Legislative Instruments Act 2003* | Sch = Schedule(s) |
| mod = modified/modification | Sdiv = Subdivision(s) |
| No = Number(s) | SLI = Select Legislative Instrument |
| o = order(s) | SR = Statutory Rules |
| Ord = Ordinance | Sub-Ch = Sub-Chapter(s) |
| orig = original | SubPt = Subpart(s) |
| par = paragraph(s)/subparagraph(s) |  |
| /sub-subparagraph(s) |  |

Endnote 3—Legislation history

| Number and year | Gazettal or FRLI registration date | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| 2006 No. 160 | 26 June 2006 (*see* F2006L01895) | 27 June 2006 |  |
| 2006 No. 201 | 28 July 2006 (*see* F2006L02382) | 29 July 2006 | — |
| 2008 No. 129 | 26 June 2008 (*see* F2008L02208) | 1 July 2008 | — |
| 2009 No. 119 | 22 June 2009 (*see* F2009L02397) | 23 June 2009 | — |
| 2009 No. 312 | 16 Nov 2009 (*see* F2009L04166) | 17 Nov 2009 | — |
| 2011 No. 78 | 7 June 2011 (*see* F2011L00964) | 1 July 2011 | — |
| 2011 No. 156 | 19 Aug 2011 (*see* F2011L01695) | 20 Aug 2011 | — |
| 2012 No. 108 | 19 June 2012 (*see* F2012L01249) | rr. 1–3 and Sch 1: 20 June 2012 Sch 2: 1 July 2013 | — |
| 121, 2013 | 17 June 2013 (*see* F2013L01024) | Sch 1: 18 June 2013 Sch 2: 1 July 2013 | — |
| 176, 2013 | 12 July 2013 (*see* F2013L01371) | 13 July 2013 | — |
| 227, 2013 | 6 Aug 2013 (*see* F2013L01526) | 7 Aug 2013 | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Pt 1** |  |
| r 1.3 | am 2008 No 129; 2011 No 156; 2012 No 108; Nos 121, 176 and 227, 2013 |
| r 1.3A | ad 2012 No 108 |
| r 1.4 | rs 2008 No 129; 2009 No 312; 2011 No 156 |
|  | am No 176, 2013 |
| hdg to r 1.4A | rs 2012 No 108 |
| r 1.4A | ad 2011 No 156 |
|  | am 2012 No 108 |
| hdg to r 1.4B | rs 2012 No 108 |
| r 1.4B | ad 2011 No 156 |
|  | am 2012 No 108 |
| hdg to r 1.4C | rs 2012 No 108 |
| r 1.4C | ad 2011 No 156 |
|  | am 2012 No 108 |
| r 1.4D | ad No 176, 2013 |
| r 1.5 | am 2008 No 129; 2012 No 108; Nos 121 and 176, 2013 |
| r 1.5A | ad No 176, 2013 |
| hdg to r 1.6 | rs 2011 No 156 |
| Subhead to r 1.6(1A) | ad 2011 No 156 |
| r 1.6 | am 2008 No 129; 2011 No 156; No 227, 2013 |
| r 1.8 | ad No 227, 2013 |
| **Pt 2** |  |
| r 2.1 | am 2009 No 119; 2011 No 78; No 121, 2013 |
| r 2.2 | am 2009 No 119; 2011 No 78 |
| Note to r 2.3(2) | ad 2012 No 108 |
| **Pt 3** |  |
| r 3.1 | am 2009 No 312; 2011 No 156; 2012 No 108 |
| r 3.2 | am 2008 No 129 |
| r 3.4 | am 2008 No 129 |
| **Pt 4** |  |
| r 4.1 | am 2011 No 156 |
| r 4.2 | am 2009 No 312; 2012 No 108 |
| r 4.3 | am 2008 No 129 |
| **Pt 5** |  |
| r 5.1 | am 2008 No 129 |
| r 5.2 | rs Nos 176 and 227, 2013 |
| r 5.3 | am 2008 No 129 |
|  | rs 2011 No 156 |
|  | am 2012 No 108; No 176, 2013 |
| r 5.3A | ad No 108, 2012 |
| hdg to r 5.5 | rs 2012 No 108 |
| r 5.5 | ad 2009 No 312 |
|  | rs 2011 No 156 |
|  | am 2012 No 108 |
| r 5.6 | ad 2011 No 156 |
|  | am 2012 No 108; No 176, 2013 |
| r 5.7 | ad 2011 No 156 |
|  | am 2012 No 108; No 227, 2013 |
| r 5.8 | ad No 176, 2013 |
| Pt 6 | rep No 227, 2013 |
| r 6.1A | ad No 176, 2013 |
|  | rep No 227, 2013 |
| hdg to r. 6.1 | rs No 176, 2013 |
|  | rep No 227, 2013 |
| r 6.1 | am 2006 No 201; 2011 No 156; No 176, 2013 |
|  | rep No 227, 2013 |
| **Pt 7** |  |
| **Div 1A** |  |
| Div 1A of Pt 7 | ad No 227, 2013 |
| r 7.1A | ad No 227, 2013 |
| **Div 1** |  |
| r 7.1 | am 2008 No 129 |
|  | rs 2011 No 156 |
|  | am No 176, 2013 |
| r 7.2 | am 2011 No 156; Nos 176 and 227, 2013 |
| r 7.4 | am 2008 No 129 |
|  | rs 2011 No 156; Nos 176 and 227, 2013 |
| r 7.5 | am 2009 No 312 |
|  | rs 2011 No 156 |
| r 7.6 | rs 2011 No 156 |
|  | am No 176, 2013 |
| r 7.6A | ad No 176, 2013 |
| hdg to r 7.7 | rs No 176, 2013 |
| r 7.7 | am 2008 No 129; 2011 No 156; Nos 176 and 227, 2013 |
| r 7.9 | am 2011 No 156; No 176, 2013 |
| Note to r 7.9(2) | am No 176, 2013 |
| r 7.10 | am 2008 No 129 |
| **Pt 9** |  |
| **Div 2** |  |
| Div 2 of Pt 9 | ad 2009 No 312 |
| r 9.2 | ad 2009 No. 312 |
|  | am 2012 No 108 |
| **Div 3** |  |
| r 9.3 | ad No 227, 2013 |
| **Pt 10** |  |
| hdg to Div 1 of Pt 10 | ad No 227, 2013 |
| Pt 10 | ad 2008 No. 129 |
| r 10.1 | ad 2008 No. 129 |
|  | am No 227, 2013 |
| r 10.2 | ad 2008 No. 129 |
|  | am No 227, 2013 |
| r 10.3 | ad 2008 No. 129 |
| r 10.4 | ad 2008 No. 129 |
| r 10.5 | ad 2008 No. 129 |
| **Div 2** |  |
| Div 2 of Pt 10 | ad No 227, 2013 |
| r 10.6 | ad No 227, 2013 |
| **Sch 1** |  |
| Sch 1 | am 2008 No 129; No 176, 2013 |
| **Sch 2** |  |
| Sch 2 | am 2011 No 156 |
| **Sch 2A** |  |
| Sch 2A | ad No 176, 2013 |
|  | am No 227, 2013 |
| **Sch 3** |  |
| hdg to Sch 3 | rs No 176, 2013 |
| Sch 3 | am 2008 No 129; 2011 No 156; No 227, 2013 |
| hdg to Sch 4 | rs No 176, 2013 |
|  | rep No 272, 2013 |
| Sch 4 | am 2011 No 156 |
|  | rep No 227, 2013 |
| Sch 4A | ad No 176, 2013 |
|  | rep No 227, 2013 |
| Sch 6 | ad No 176, 2013 |
|  | rep No 227, 2013 |
| hdg to Sch 7 | rs No 176, 2013 |
|  | rep No 227, 2013 |
| Sch 7 | rs 2011 No 156 |
|  | rep No 227, 2013 |

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]