

1995—No. 666

CLEAN AIR ACT 1961—REGULATION

(Relating to domestic solid fuel burning appliances)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Clean Air Act 1961, has been pleased to make the Regulation set forth hereunder.

PAM ALLAN, M.P.,
Minister for the Environment.

Commencement

1. This Regulation commences on 1 March 1996.

Amendment

2. The Clean Air Regulations 1964 are amended by inserting after Part 6 the following Part:

PART 7—DOMESTIC SOLID FUEL BURNING APPLIANCES

Definitions

40. In this Part:

“**accredited testing laboratory**” means a laboratory accredited by the National Association of Testing Authorities (or by an equivalent organisation in a country other than Australia) as being capable of conducting the test for determining flue gas emissions specified in AS 4013:1992;

“**appliance**” means any solid fuel burning appliance for domestic use;

“**approved**” means approved by the Authority;

“AS 4012:1992” means the document entitled “AS 4012 / NZS 7402: 1992 Domestic solid fuel burning appliances—method for determination of power output and efficiency”, published by Standards Australia and as in force at the commencement of this Part;

“AS 4013:1992” means the document entitled “AS 4013 / NZS 7403: 1992 Domestic solid fuel burning appliances—method for determination of flue gas emission”, published by Standards Australia and as in force at the commencement of this Part;

“AS 4014:1992” means the document entitled “AS 4014 / NZS 7404: 1992 Domestic solid fuel burning appliances—test fuels”, published by Standards Australia and as in force at the commencement of this Part;

“AS 9000:1994” means the document entitled “AS/NZS ISO 9000:1994 Quality Management and Quality Assurance Standards”, published by Standards Australia and as in force at the commencement of this Part;

“Authority” means the Environment Protection Authority;

“catalytic combustor” means a device installed in the gas stream of an appliance to permit the secondary combustion gas to ignite at a lower temperature than it would in the absence of such a device;

“central heating appliance” has the meaning given to it in AS 4013:1992;

“certificate of compliance” means a certificate of compliance in force under this Part;

“certificate of exemption” means a certificate, in force under this Part, exempting all appliances from a model line from compliance with this Part;

“model line” means a line of appliances of a particular type made by the same manufacturer and that are similar in design;

“sell” means sell by wholesale or retail, and includes:

- (a) offer or exhibit for sale; or
- (b) keep or have in possession for sale; or
- (c) barter or exchange; or
- (d) agree to sell; or
- (e) send, forward or deliver for sale.

This Part does not apply to certain appliances

41. The following appliances are excluded from the operation of this Part:

- (a) any masonry appliance built on site;
- (b) any central heating appliance;
- (c) any cooking stove appliance as defined in AS 4013:1992;
- (d) any appliance intended for use solely for heating water;
- (e) any appliance intended for use solely for distributing heat through ducts.

Emission rate

42. (1) A person must not sell an appliance unless:

- (a) in the case where the appliance does not have a catalytic combustor—the appliance has an average particulate emission factor that is not more than 5.5 grams for each kilogram of oven dry fuel mass; or
- (b) in the case where the appliance has a catalytic combustor—the appliance has an average particulate emission factor that is not more than 3.0 grams for each kilogram of oven dry fuel mass.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

(2) For the purposes of this Regulation:

- (a) a particulate emission factor is calculated by dividing the weight in grams of the total emission from the flue of an appliance during a specific burn cycle by the mass in kilograms of dry fuel used in the burn cycle; and
- (b) oven dry fuel mass is calculated by subtracting the mass of free moisture from the total mass of the test fuel in accordance with AS 4014:1992.

Appliance not to be sold without certificate of compliance

43. (1) A person must not sell an appliance unless:

- (a) a certificate of compliance is in force in relation to the model line of which the appliance is a part; and
- (b) the appliance is marked in accordance with AS 4013:1992.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

(2) The holder of a certificate of compliance must provide a copy of the certificate to any person who acquires one or more appliances from the holder for the purpose of sale. The copy must be provided at the time the appliance is acquired.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

(3) This Regulation does not apply to an appliance from a model line in respect of which a certificate of exemption is in force.

Catalytic combustor

44. A person must not sell an appliance with a catalytic combustor unless:

- (a) the person provides the buyer with a warranty for the combustor against inherent defects for 2 years from the date of sale, and against disintegration for 3 years from the date of sale; and
- (b) the person provides the buyer with a manual that includes instructions on how to inspect and replace the combustor; and
- (c) the appliance has built-in provision to accommodate a commercially available temperature sensor within the combustor or within 25 millimetres of the combustor surface; and
- (d) access is available to the combustor for inspection or replacement.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

Application for certificate of compliance

45. (1) A person may apply to the Authority for a certificate of compliance in relation to a model line. However, an application may be made only if an appliance from the model line has been tested by an accredited testing laboratory in accordance with AS 4013:1992.

- (2) An application must:
 - (a) be in the approved form; and
 - (b) be accompanied by a statement that all appliances in the model line are marked in accordance with AS 4013:1992 and AS 4012:1992; and
 - (c) be accompanied by the appropriate application fee specified in clause (4).

(3) The applicant must also, when making the application, provide the Authority:

- (a) with a copy of the test report under clause (1); or
- (b) with a national certificate of compliance for solid fuel heaters issued in respect of the model line by an approved organisation.

(4) The application fee is \$200 if a copy of the test report is provided, or \$100 if the national certificate of compliance is provided.

(5) If a copy of the test report is provided, it must include the following:

- (a) the date of the test and the type of test;
- (b) the name and address of the accredited testing laboratory that tested the appliance from the model line;
- (c) the name and qualifications of the person in charge of the test;
- (d) the emission rate of the appliance;
- (e) a statement from the person in charge of the test that:
 - (i) the appliance does not have an emission rate higher than the applicable rate specified in Regulation 42; and
 - (ii) the applicant has provided the documentation set out in AS 4013:1992.

(6) The applicant is required to retain the documentation set out in AS 4013:1992 for a period of 5 years from the date of the application.

Certificate of compliance

46. (1) The Authority may, after receiving an application in accordance with Regulation 45, issue a certificate of compliance in relation to the model line if the Authority is satisfied that:

- (a) an appliance from the model line has been tested by an accredited testing laboratory in accordance with AS 4013:1992; and
- (b) no appliance from the model line has an emission rate higher than the applicable rate specified in Regulation 42; and
- (c) the structural components of each appliance from the model line are not likely to cause the appliance to exceed the applicable emission rate; and
- (d) the following information is marked on the outside of each appliance from the model line in a permanent and legible manner:

- (i) the name or trade mark of the manufacturer or distributor of the appliance;
- (ii) the serial number of the appliance and the description of the model line;
- (iii) the words “complies with AS 4013:1992”;
- (iv) specification of the correct fuel types in accordance with AS 4014:1992.

(2) If the Authority refuses to issue a certificate of compliance, the Authority is, by notice in writing, to inform the applicant of the reasons for refusing the application.

(3) A certificate may be renewed from time to time.

Duration of certificate of compliance

47. Subject to this Part, a certificate of compliance remains in force for a period of 5 years from the date on which it is issued or renewed.

Application for renewal of certificate of compliance—no design changes to appliances

48. (1) The holder of a certificate of compliance may, if no changes have been made in the design of appliances from the model line since the certificate was issued or last renewed, apply to the Authority for a renewal of the certificate before it expires.

(2) An application for the renewal of a certificate must:

- (a) be in the approved form; and
- (b) be accompanied by a fee of \$100; and
- (c) be accompanied by a statement by the certificate holder confirming that there has not been any change in the design of the appliances from the model line since the certificate was issued or last renewed.

(3) The Authority may, after receiving an application in accordance with this Regulation, issue a renewed certificate of compliance if it is satisfied that there has not been any such change in the design of the appliances.

(4) If the Authority refuses to renew the Certificate, the Authority is, by notice in writing, to inform the certificate holder of the reasons for refusing to renew the certificate.

Application for new certificate required if changes are made to appliances

49. (1) The holder of a certificate of compliance must, if the holder makes any change affecting the combustion process of an appliance from the model line, apply to the Authority for a new certificate of compliance in respect of the appliance before selling the appliance.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

(2) An application for a new certificate must be made in accordance with Regulation 45, and the Authority is to deal with the application in accordance with Regulation 46.

(3) Alternatively, if the applicant provides the Authority with:

- (a) details of the changes that have been made to the appliance; and
- (b) written advice by an accredited testing laboratory, or by an approved testing organisation, that the changes will not result in a rate of emission higher than the applicable rate specified in Regulation 42,

the Authority may (on payment of a fee of \$200) issue a new certificate of compliance in respect of the appliance if it is satisfied that the changes that have been made will not result in a rate of emission higher than the applicable rate specified in Regulation 42.

Quality assurance

50. (1) The Authority may, at any time, require the holder of a certificate of compliance:

- (a) to arrange (within such time as may be specified by the Authority) for the testing by an accredited testing laboratory of any appliance chosen at random by the Authority from the model line; and
- (b) if the certificate holder uses the quality assurance program specified in AS 9000:1994, to supply the Authority with details of that program and a written statement that the model line satisfies the requirements of that program.

(2) The certificate holder must:

- (a) comply with any such requirement; and
- (b) provide the Authority with the results of a test conducted under clause (1) (a) within 14 days of receipt of the test report from the testing laboratory.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

(3) The cost of a test conducted under clause (1) (a) is to be met by the certificate holder.

Revocation of certificate of compliance

51. (1) The Authority may revoke a certificate of compliance in relation to a model line if the Authority is satisfied that:

- (a) the test result of an appliance chosen at random by the Authority under Regulation 50 from the model line indicates that the appliance has an emission rate higher than the applicable rate specified in Regulation 42; or
- (b) the markings referred to in Regulation 46 (1) (d) on any appliance in the model line have been altered or removed, or caused to be altered or removed, by the certificate holder; or
- (c) any change affecting the combustion process of an appliance from the model line has been made by the certificate holder and the certificate holder has failed to apply to the Authority for a new certificate of compliance.

(2) The Authority is to give the certificate holder notice in writing of the reasons for its decision to revoke the certificate of compliance.

(3) A revocation is not effective until 60 days after the day on which the certificate holder receives such notice.

(4) Before the revocation takes effect, the certificate holder must notify in writing each person who has acquired one or more appliances from the holder for the purpose of sale that the certificate of compliance is to be revoked. The notice must also specify the date of revocation.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

Certificate of exemption

52. (1) A person may apply to the Authority for a certificate exempting all appliances from a model line from compliance with this Part.

(2) An application for a certificate of exemption must:

- (a) be in the approved form; and
- (b) be accompanied by a fee of \$200.

(3) The Authority may issue a certificate of exemption in respect of all appliances from a model line if it is satisfied that:

(a) all the appliances:

- (i) have a maximum carbon dioxide output from the combustion chamber of less than 5% by volume, or have a volumetric flow rate through the combustion chamber which is too high for total smoke capture; and
- (ii) have an emission rate not exceeding the applicable rate specified in Regulation 42; or

(b) none of the appliances can be submitted for testing in accordance with AS 4013:1992 but that they would have an emission rate not exceeding the applicable rate specified in Regulation 42.

(4) If the Authority refuses to issue a certificate of exemption, the Authority is, by notice in writing, to inform the applicant of the reasons for refusing the application.

(5) A certificate of exemption remains in force for a period of 5 years from the date on which it is issued or renewed.

(6) A certificate of exemption may be renewed from time to time.

(7) The Authority may revoke a certificate of exemption at any time.

Application for renewal of certificate of exemption—no design changes to appliances

53. (1) The holder of a certificate of exemption may, if no changes have been made in the design of appliances from the model line since the certificate of exemption was issued or last renewed, apply to the Authority for a renewal of the certificate before it expires.

(2) An application for the renewal of a certificate of exemption must:

- (a) be in the approved form; and
- (b) be accompanied by a fee of \$100; and
- (c) be accompanied by a statement by the certificate holder confirming that there has not been any change in the design of the appliances from the model line since the certificate of exemption was issued or last renewed.

(3) The Authority may, after receiving an application in accordance with this Regulation, issue a renewed certificate of exemption if it is satisfied that there has not been any such change in the design of the appliances.

(4) If the Authority refuses to renew the certificate, the Authority is, by notice in writing, to inform the certificate holder of the reasons for refusing to renew the certificate.

Application for new certificate of exemption required if changes are made to appliances

54. (1) The holder of a certificate of exemption must, if the holder makes any change affecting the combustion process of an appliance from the model line the subject of the certificate of exemption, apply to the Authority for a new certificate of exemption in respect of the appliance before selling the appliance.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

(2) Any such application is to be made in accordance with Regulation 52.

False or misleading statements

55. A person must not, in making an application or giving any information under this Part:

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

Interference with appliance or attached plate

56. (1) A person must not alter the markings on, or remove, a plate attached to an appliance that contains the information referred to in Regulation 46 (1) (d).

(2) A person must not:

- (a) alter the structure, exhaust system or inlet air system of any appliance from a model line in respect of which a certificate of compliance, or a certificate of exemption, is in force; or
- (b) make any change affecting the combustion process of appliances from a model line unless the person is the holder of a certificate of compliance in relation to the model line; or
- (c) mark on an appliance that it complies with AS 4013: 1992 if the appliance is not from a model line the subject of a certificate of compliance.

Maximum penalty (clauses (1) and (2)): 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

(3) Clauses (1) and (2) extend to any person who causes or permits the doing of a thing that is prohibited under those clauses.

(4) Nothing in this Regulation makes it an offence for a person to carry out any repair work on any appliance (including repairs or alterations in accordance with a notice under section 20 of the Act).

EXPLANATORY NOTE

The object of this Regulation is to provide for the regulation and control of emissions from domestic solid fuel burning appliances (e.g. wood burning home heaters) in accordance with the Australian Standards dealing with such appliances. By regulating the sale of such home heaters, this Regulation aims to protect consumers from inferior products which emit excessive quantities of smoke.

The Regulation inserts Part 7 in the Clean Air Regulations 1964. Under the new Part, it will be an offence to sell any domestic solid fuel burning appliance unless a certificate of compliance in respect of the model line of appliance has been issued by the Environment Protection Authority. Because the new Part will only apply to the wholesale or retail sale of appliances, the requirement for a certificate of compliance will not apply to consumers who sell an appliance to another person. Also, certain appliances, such as those built on site, are excluded from the operation of the new Part.

A certificate of compliance will only be issued by the Authority if the appliance has been tested in accordance with the relevant Australian Standard and the appliance satisfies certain requirements relating to the rate of emission.

This Regulation is made under the Clean Air Act 1961, including section 34 (1) (f5) and (4), and under section 8A (3) of the Environmental Offences and Penalties Act 1989.
