



New South Wales

Protection of the Environment Operations (Clean Air) Amendment (Heaters and Fireplaces) Regulation 2015

under the

Protection of the Environment Operations Act 1997

[If this Regulation is made, the following enacting formula will be included:]

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

Explanatory note

The objects of this Regulation are as follows:

- (a) to require domestic solid fuel heaters to be marked in accordance with AS/NZS 4012:2014, *Domestic solid fuel burning appliances—Method for determination of power output and efficiency* published by Standards Australia (in addition to the current requirement that they be marked in accordance with AS/NZS 4013:2014, *Domestic solid fuel burning appliances—Method for determination of flue gas emission*, also published by Standards Australia),
- (b) to require certificates of compliance in relation to domestic solid fuel heaters to specify the overall average efficiency and appliance particulate emission factor, being:
 - (i) in relation to heaters sold before 1 September 2019—an overall average efficiency of at least 55% and a particulate emission factor of no more than 2.5 g/kg (for heaters without catalytic combustors) or 1.4 g/kg (for heaters with catalytic combustors), or
 - (ii) in relation to heaters sold on or after 1 September 2019—an overall average efficiency of at least 60% and a particulate emission factor of no more than 1.5 g/kg (for heaters without catalytic combustors) or 0.8 g/kg (for heaters with catalytic combustors),
- (c) to prohibit falsely marking on a heater that it complies with AS/NZS 4012:2014 (in the same way as falsely marking that it complies with AS/NZS 4013:2014 is currently prohibited),
- (d) to prohibit the installation of heaters in premises in certain local government areas, except in accordance with an approval of the local council,
- (e) to prohibit the installation of heater in premises in certain local government areas if the heaters do not have an overall average efficiency of at least 60% and have a particulate emission factor of more than 1.5 g/kg (for heaters without catalytic combustors) or 0.8 g/kg (for heaters with catalytic combustors), except in accordance with an approval of the local council,
- (f) to prohibit the installation of open fireplaces in premises in certain local government areas, except in accordance with an approval of the local council,
- (g) to exclude pellet heaters from the operation of the restrictions on domestic solid fuel heaters.

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Explanatory note

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 323 (the general regulation-making power) and clauses 6A (Fuel and fuel burning equipment) and 15 (General) of Schedule 2 (Regulation-making powers).

Protection of the Environment Operations (Clean Air) Amendment (Heaters and Fireplaces) Regulation 2015

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Clean Air) Amendment (Heaters and Fireplaces) Regulation 2015*.

2 Commencement

This Regulation commences on [*date to be inserted*] and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Protection of the Environment Operations (Clean Air) Regulation 2010

[1] Part 2

Omit the Part. Insert instead:

Part 2 Domestic solid fuel heaters and open fireplaces

4 Definitions

In this Part:

approval means an approval granted and in force under clause 7C.

certificate of exemption means a certificate issued by a body approved by the EPA, being a certificate exempting all heaters of a particular model from compliance with Standard 4012 and Standard 4013.

heater means any solid fuel burning appliance that is designed, manufactured or adapted for domestic use.

model of heater means a particular design of heater made by a particular manufacturer.

Standard 4012 means the document entitled AS/NZS 4012:2014, *Domestic solid fuel burning appliances—Method for determination of power output and efficiency*, published by Standards Australia and as in force from time to time.

Standard 4013 means the document entitled AS/NZS 4013:2014, *Domestic solid fuel burning appliances—Method for determination of flue gas emission*, published by Standards Australia and as in force from time to time.

5 Application of Part

- (1) This Part applies to heaters (including the wholesale and retail sale of heaters) and open fireplaces.
- (2) However, this Part does not apply to the sale or installation of heaters of the following kind:
 - (a) a masonry appliance built on site (except as provided by clause 7B),
 - (b) a central heating appliance,
 - (c) a cooking stove appliance,
 - (d) an appliance intended for use solely for heating water,
 - (e) an appliance intended for use solely for distributing heat through ducts,
 - (f) a pellet heater.
- (3) In this clause:

central heating appliance means a heating appliance that is intended for space heating of premises by means of transferring heat to the living areas of the premises by ducted hot air, hot water or another fluid.

cooking stove appliance means a solid fuel burning appliance:

 - (a) that has at least one cooking hot plate, and
 - (b) that has an oven with a volume of not less than 28 litres, and
 - (c) around which gaseous combustion products are capable of being routed.

pellet heater means a domestic, automatic, continuous feed, pellet fuel burning appliance that is designed and manufactured to burn compressed wood or biomass pellets.

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6 Requirement for certificates of compliance when heaters are sold

- (1) A person must not sell a heater to any other person unless:
 - (a) the heater is marked in accordance with Standard 4012 and Standard 4013, and
 - (b) an appropriate certificate of compliance is in force in relation to heaters of the same model as that heater, and
 - (c) in the case of a sale to a person whose business includes the wholesale or retail sale of heaters—a copy of the appropriate certificate of compliance has been given to the purchaser.

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

- (2) This clause does not apply to a heater of a model for which a certificate of exemption is in force.

- (3) In this clause:

appropriate certificate of compliance, in relation to a heater, means:

- (a) in the case of a heater sold before 1 September 2019—a certificate issued by a body approved by the EPA and certifying that all heaters of that model:
 - (i) comply with Standard 4012 and Standard 4013, and
 - (ii) have an overall average efficiency of not less than 55% as tested and calculated in accordance with Standard 4012, and
 - (iii) have an appliance particulate emission factor, as tested and calculated in accordance with Standard 4013, not greater than:
 - (A) 2.5 g/kg (for heaters without catalytic combustors), or
 - (B) 1.4 g/kg (for heaters with catalytic combustors), or
- (b) in the case of a heater sold on or after 1 September 2019—a certificate issued by a body approved by the EPA and certifying that all heaters of that model:
 - (i) comply with Standard 4012 and Standard 4013, and
 - (ii) have an overall average efficiency of not less than 60% as tested and calculated in accordance with Standard 4012, and
 - (iii) have an appliance particulate emission factor, as tested and calculated in accordance with Standard 4013, not greater than:
 - (A) 1.5 g/kg (for heaters without catalytic combustors), or
 - (B) 0.8 g/kg (for heaters with catalytic combustors).

7 Interference with heaters

- (1) A person must not:
 - (a) alter the structure, exhaust system or inlet air system of any heater of a model that is the subject of a certificate of compliance or certificate of exemption, or
 - (b) mark on a heater that it complies with Standard 4012 or Standard 4013, or both, if the heater is not of a model that is the subject of a certificate of compliance.

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

- (2) This clause extends to any person who causes or permits the doing of a thing that is prohibited under this clause.

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(3) Nothing in this clause makes it an offence for a person to carry out any repair work on any heater (including repairs or alterations in accordance with a notice under section 96 of the Act).

(4) In this clause:

certificate of compliance means a certificate issued by a body approved by the EPA, being a certificate certifying that all heaters of a particular model comply with both Standard 4012 and Standard 4013.

7A Installation of heaters in certain areas

(1) This clause commences on 1 September 2016.

(2) A person must not install, or cause or permit the installation of, a heater in premises in a local government area (or a part of a local government area) specified in Part 1 of Schedule 9, except in accordance with an approval.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

(3) A person must not install, or cause or permit the installation of, a heater in premises in a local government area (or a part of a local government area) specified in Part 2 of Schedule 9, except in accordance with an approval, if the heater does not have:

(a) an overall average efficiency of not less than 60% as tested and calculated in accordance with Standard 4012, and

(b) an appliance particulate emission factor, as tested and calculated in accordance with Standard 4013, not greater than:

(i) 1.5 g/kg (for heaters without catalytic combustors), or

(ii) 0.8 g/kg (for heaters with catalytic combustors).

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

7B Installation of open fireplaces in certain areas

(1) This clause commences on 1 September 2016.

(2) A person must not install, or cause or permit the installation of, an open fireplace in premises in a local government area (or a part of a local government area) specified in Part 3 of Schedule 9, except in accordance with an approval.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

7C Approval for certain heaters and open fireplaces

(1) The council of a local government area may grant an approval for the purposes of this Part in respect of the installation of a heater or open fireplace in premises in the local government area (or a part of the local government area):

(a) to any class of persons—by means of a notice published in a local newspaper circulating in the local government area, or

(b) to any particular person—by means of a written notice given to the person.

(2) Before granting an approval for the purposes of this Part, the local council must consider the impact that the use of the heater or open fireplace is likely to have on local and regional air quality and amenity.

(3) An approval:

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- (a) is subject to the conditions (if any) specified in the notice by which the approval is granted, and
- (b) may be amended or revoked by means of a notice given or published in the same way as the original notice granting the approval was given or published, and
- (c) remains in force until it is revoked by the local council that granted it.

Note. Heaters and open fireplaces may be installed in accordance with an approval in certain areas where the installation would otherwise be prohibited under clause 7A or 7B.

[2] **Schedule 9**

Omit the Schedule. Insert instead:

**Schedule 9 Local government areas in which the
installation of certain heaters or open
fireplaces requires approval**

(Clauses 7A and 7B)

**Part 1 Areas in which the installation of heaters requires
approval**

**Part 2 Areas in which the installation of heaters below
certain efficiency levels requires approval**

**Part 3 Areas in which the installation of open fireplaces
requires approval**