Tonga

MINIMUM ENERGY PERFORMANCE STANDARDS AND LABELLING REGULATIONS 2025

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ENERGY ACT 2021

IN EXERCISE of the powers conferred by sections 110 to 117 of the Energy Act 2021, the Minister responsible for Energy, with the consent of Cabinet, makes the following Regulation -

PART I – PRELIMINARY

1 Short Title

This Regulation may be cited as the Minimum Energy Performance Standards and Labelling Regulations 2025.

2 Interpretation

In this Regulation, unless the context otherwise requires –

"Act" means the Energy Act 2021;

"appellant" means a person who files a complaint under the Act;

"approved jurisdiction" means a jurisdiction approved by the Minister as an alternative to Australia or New Zealand;

"CEO" means the Chief Executive Officer of the Ministry responsible for Energy;

"complaint" means a complaint filed in the form prescribed in Schedule 3 by a consumer, representative of a consumer, an enterprise or representative of an enterprise under the Act;

"consumer" means a person who acquires regulated goods or regulated services from a manufacturer or trader;

"days" means working days;

"Director" means the Director of the Energy Department;

"display front" means a representation of the front of an item presented for public viewing in a retail outlet;

"Energy Department" means the Department of that name or a similar reference, which is established under the Ministry responsible for Energy;

"item" means an individual product;

"joint line Ministries" means the Ministry responsible for trade and economic development or the Ministry responsible for revenue and customs;

"manufacturer" means any person who —

(a) makes any regulated goods;

(b) assembles or joins any regulated goods; or

(c) adapts for sale or repairs any regulated goods;

"Minister" shall have the same meaning as in the Act;

"Ministry" shall have the same meaning as in the Act;

"model" means a range of items of the same brand where each item has the same energy performance characteristics;

"prescribed form" means a prescribed form set out in these Regulations;

"product class" means an energy using product class that is listed in Schedule 1;

"registered" means registered in Australia or New Zealand for an applicable product class listed in Schedule 1;

"regulated goods" shall have the same meaning as in the Act;

"regulated services" shall have the same meaning as in the Act;

"respondent" means a person who a complaint is filed against under the Act;

"trader" means any person carrying on business as —

(a) an importer of regulated goods for the purposes of sale or supply;

(b) an exporter of regulated goods in pursuance of a contract of sale or supply and includes —

(i) a person who sells or supplies regulated goods wholesale to any other trader or consumer; and

(ii) a person who sells or supplies regulated goods at retail rates to consumers; or

(c) a person who supplies regulated services; and

"second-hand item" means an item that has been used by a consumer in Tonga or elsewhere.

PART II – MEPSL REGULATIONS

3 Establishment of the MEPSL Regulations

The MEPSL Requirements are hereby established.

4 Duties of trader or manufacturer regarding MEPSL

(1) A trader or manufacturer shall not make available for sale, lease, hire or purchase an item of a product class as described in Schedule 1 to any person in the Kingdom unless –

(a) the trader or manufacturer has registered the model in Australia or in New Zealand or other approved jurisdiction;

(b) a label that complies with the relevant Australia or New Zealand or other approved jurisdiction requirements for that item's product class is displayed in front of that item;

(c) the model and brand designations on the label corresponds to the model and brand designations of that item; and

(d) the energy performance characteristics on the label corresponds to those registered in Australia or New Zealand or other approved jurisdiction for that model.

(2) Labels from countries or regions other than Australia or New Zealand or other approved jurisdiction that are related to energy efficiency, energy consumption or the cost of energy to operate the item, may be attached to the item instead of the Australia or New Zealand or other approved jurisdiction energy performance label, if the model is sold in limited numbers in the Kingdom. The definition of what constitutes limited numbers for models within a particular product class will be define in the MEPSL Code of Practice.

5 Requirement to provide information for statistical purposes

If requested by the Energy Department in writing, a person who imports into the Kingdom an energy using item subject to MEPSL regulations shall provide the following information no later than 30 working days after receiving the request –

(a) the number of items in each product class specified by the Energy Department that the person sold to consumers in the Kingdom in each of the preceding 2 calendar years; and

(b) the energy performance characteristics of the item as specified in the request.

6 Confidentiality of information

(1) This regulation applies to any information that a trader or manufacturer provides to the CEO under regulation 5.

(2) Subject to sub-regulation (3), the Director shall ensure that there is no unauthorized access to information provided by staff or members of the public and that information is released only for the purposes of a prosecution under these Regulations.

(3) Notwithstanding sub-regulation (2), information may be released or published if it is non-specific and the identity of the trader or manufacturer to which the information relates cannot be readily determined or identified.

PART III – INSPECTIONS

7 Power to inspect

(1) For the purposes of giving effect to the provisions in the Act, an enforcement officer shall have the power to inspect the premises of a trader or manufacturer during the normal business hours of that importer, trader or manufacturer.

(2) An inspection may be carried out as part of an enforcement taskforce, or may be carried out by two or more officers at a time.

(3) Subject to sub-regulation (1), the designation of enforcement officers shall be made in accordance to section 136 of the Act with its prescribed form.

8 Inspection protocol

(1) Subject to the Act, an inspection shall be carried out according to the following inspection protocol –

(a) the lead enforcement officer will request to speak to the owner or person in charge of the premises and will inform such person of the purpose for the visit;

(b) the lead enforcement officer will introduce himself and the accompanying officers and show their identification cards; and

(c) the lead enforcement officer will direct and oversee the inspection of premises.

(2) If the trader or manufacturer refuses approval for entry, an enforcement officer may call on the assistance of a police officer.

(3) Following an inspection of the premises, where the lead enforcement officer determines that there has been a breach of these Regulations, the following process shall apply –

(a) the enforcement officer shall clearly identify the provision under the Act or these Regulations which has been breached in a Notification Form in Schedule 4 Form 3;

(b) the enforcement officer shall list the names of goods to be removed from shelves or other action required on the Notification Form and then sign the form;

(c) the trader or manufacturer shall check and sign a copy of the Notification Form; and

(d) the original copy of the Notification Form shall be kept by the enforcement officer, and a duplicate form given to the owner.

(4) The Notification Form shall clearly state the time within which the owner is required to remedy the breach, following which there will be a re-inspection of the premises.

(5) Where the lead enforcement officer determines that –

(a) it would be in the public interest that certain goods should be removed from the shelves immediately; or

(b) there has been a directive that specific goods should be recalled or not be made available for sale to the public;

the enforcement officer may, in accordance with regulation 9 order the immediate removal of the goods from the premises.

9 Removal of goods

(1) Before ordering the removal of goods from a particular premise, a lead enforcement officer shall ensure that –

(a) photographs of the product are taken for evidential purposes;

(b) specifications of the product are recorded in accordance with sub-regulation (2); and

(c) the Director is immediately notified, or where the Director cannot provide immediate approval, an approval form is signed by the Director and a copy delivered to the owner or person in charge of the premises within 24 hours of the goods being removed.

(2) For the purposes of sub-regulation (1)(b), specifications of goods should include details of the product name, number of items removed and reason for the items being removed.

(3) For the purpose of this regulation, an order for removal of goods shall be made in accordance with Schedule 4, Form 4.

(4) Goods which are removed shall be taken into secure storage immediately at the cost of the importer or retailer.

(5) All items which have been removed and put into storage shall be –

(a) checked and listed by an authorised person on a Seized Goods Schedule;

(b) put into, and kept in secure storage until a decision has been made in respect of such goods by the CEO; and

(c) in the case of perishable goods, to the extent possible, put into appropriate, yet secure storage in order to try to preserve the nature of the good until a decision is made.

(6) A person who is the owner of goods which have been removed under this regulation may lodge a written complaint within 10 working days with the Energy Department.

(7) Where an application has been properly lodged under regulation 13, the CEO in consultation with the Director shall issue his decision within the prescribed timeframe.

PART IV – INVESTIGATIONS

10 Power to investigate

(1) If an enforcement officer, based on reasonable grounds, suspects that a trader or manufacturer has committed an offence under these Regulations, an enforcement officer shall request a police officer to accompany him to the premises for the purposes of carrying out an investigation into the alleged offence.

(2) The power of an enforcement officer to inspect and search a premise, property or possession of a person under sub-regulation (1) shall be in accordance with sections 137 and 138 of the Act.

11 Investigation protocol

An investigation shall be carried out according to the following inspection protocol –

(a) the lead enforcement officer shall ask for the owner or person in charge of the premises and, if applicable, show a copy of the search warrant;

(b) the lead enforcement officer shall oversee the search of the premises and obtaining the statements of those people present;

(c) if applicable, the enforcement officers shall seize goods, take photographs, obtain copies or take samples in relation to the search; and

(d) items seized shall be categorised, recorded, prepared and stored as exhibits by the police officers in the search team according to internal protocol of Tonga Police.

PART V – COMPLAINTS

12 Right to lodge a complaint

(1) Any person may lodge a complaint to the Energy Department or to the joint line Ministries under these Regulations –

(a) against an importer or trader; or

(b) against an enforcement officer,

in relation to an alleged violation under the Act or these Regulations.

(2) Subject to sub-regulation (3), the complaint shall be submitted in the form in Schedule 3, Form 1 and supported by evidence of the alleged matter in order to proceed.

13 Complaints procedures

(1) A complaint made under this Regulation shall be submitted to the Energy Department or to the joint line Ministries in the form prescribed in Schedule 3, Form 1.

(2) Where a complaint is made against the performance of an importer, trader or manufacturer, the complaint shall be received by the Energy Department or the joint line Ministries within 6 months of the date of sale.

(3) Subject to sub-regulation (2), where the Energy Department or the joint line Ministries receives a proper complaint within the specified time, the Energy Department or the joint line Ministries shall advise the respondent of the nature of the complaint as soon as is reasonably practical, but within 3 working days.

(4) The notice to the respondent in sub-regulation (3) shall be in the prescribed form in Schedule 3, Form 2.

(5) The respondent shall within 10 working days of receiving the Complaint Notice, make a written submission to the CEO or the respective Chief Executive Officer of the joint line Ministries in respect of the complaint made against them, or if requested, appear in person before the respective Chief Executive Officers.

(6) The respective CEO shall consider objectively any submission made by a complainant or respondent.

(7) The respective CEO shall within 14 working days, from the date on which submissions were received from the complainant and respondent, complete the investigation and advise the parties in writing of the respective CEO's final decision.

(8) A decision of the respective CEO shall be made in the Outcome Notice of Schedule 3 Form 3 and shall set out the following –

(a) the issue which was considered;

(b) the decision made; and

(c) the basis for that decision.

14 Right of review

(1) An application to review a decision made by the CEO under regulation 13(8) shall be made in writing and be submitted to the Energy Department or the joint line Ministries within 14 days from the date of the Outcome Notice.

(2) The application to review the Outcome Notice shall clearly set out the grounds to reviewing the decision.

(3) The CEO or the respective Chief Executive Officers may request additional information from the person that lodged the application for review.

(4) The CEO or the respective Chief Executive Officers shall within 7 days of receiving the additional information under sub-regulation (3) consider the evidence provided and either –

(a) confirm;

(b) modify; or

(c) reverse his original order.

(5) The CEO or the respective Chief Executive Officers shall, as soon as reasonably practical, but within 3 working days of making his decision in sub-regulation (4), advise the respondent in writing of the outcome of the review.

15 Orders

An order issued by the CEO to pay fines, compensation or refund shall be in the form prescribed in Schedule 4, Form 1.

16 Appeals

(1) A person who is dissatisfied with an order of the CEO in regulation 15 may appeal in writing to the Minister within 21 working days of being notified of the order.

(2) The Minister, when deciding on an appeal, shall give the appellant and the CEO an opportunity to –

(a) be heard, in writing or in person;

(b) produce evidence; and

(c) call witnesses.

(3) If an appeal involves a technical issue, the Minister may obtain appropriate technical advice from a person or body, other than the CEO or the Director.

(4) Pursuant to sub-regulation (2), the Minister shall be required to give reasons for any decision made within 21 working days.

(5) Any decision of the Minister with regards to an appeal shall be final.

PART VI – MONITORING AND COMPLIANCE

17 Complaint against an enforcement officer

(1) Pursuant to section 143 of the Act, a person who is aggrieved by the actions of an enforcement officer under these Regulations may submit a complaint in the form at Schedule 3, Form 1 to the CEO or the respective Chief Executive Officers of the joint line Ministries.

(2) A complaint shall be lodged within 14 working days of the date on which the alleged incident took place.

18 Information may be shared

(1) The Ministry may from time to time establish or request the joint line ministries to ensure joint surveillance, monitoring and enforcement of this Part.

(2) Information obtained by enforcement officers while carrying out functions under this Part may be shared by the Ministry with –

(a) members of the joint line ministries; or

(b) other Government Ministries for the enforcement of each Ministry's statutory responsibilities.

(3) Notwithstanding sub-regulation (2), as required, information obtained by the joint line ministries shall be kept strictly confidential in order to avoid compromising the joint line ministries' surveillance.

PART VII – REGISTERS

19 Registers of the Ministry

(1) The CEO shall ensure that information is recorded, collated and inputted into the database and register of the Ministry in accordance with Part XXII of the Act.

(2) The CEO shall be responsible for overseeing the classification of information and documents and ensuring the confidentiality of information acquired, provided to or requested by the Energy Department under the Act.

(3) For the purpose of these Regulations, the CEO shall keep a register of the following items –

(a) memorandums of agreement entered into by the Ministry with other Government line Ministries;

(b) complaints received and related outcomes; and

(c) names of enforcement officers who are designated by the Minister under these Regulations, including their date and duration of appointment.

PART VIII – OFFENCES AND PENALTIES

20 Impersonating an enforcement officer

A person who impersonates or falsely represents himself to be an enforcement officer under the Act is guilty of an offence and is liable to a fine not exceeding $50,000, or a term of imprisonment of up to 6 months, or both.

21 Forgery

A person who forges, falsifies, duplicates or produces a false document is guilty of an offence and is liable to a fine not exceeding $50,000, or a term of imprisonment of up to 6 months, or both.

22 Destruction of evidence

A person who discards, destroys, hides, removes or alters any document, docket, register, tag, record or thing with the intent to avoid the detection of an offence under these Regulations, is guilty of an offence and is liable –

(a) in the case of an individual, to a fine up to $50,000, or a term of imprisonment of up to 6 months, or both; or

(b) in the case of a business, to a fine of up to $100,000, or a term of imprisonment of up to 12 months, or both.

23 Unauthorised removal of goods in secure storage

A person who, without authorisation discards, destroys, hides, removes, alters or tampers with any good that was taken into secure storage under regulation 10, is guilty of an offence and is liable to a fine not exceeding $50,000, or a term of imprisonment of up to 6 months, or both.

24 Failure to maintain or provide records

A person who does not keep, maintain or provide a record as required under these Regulations is guilty of an offence and is liable –

(a) in the case of an individual, to a fine up to $50,000, or a term of imprisonment of up to 6 months, or both; or

(b) in the case of a business, to a fine of up to $100,000, or a term of imprisonment of up to 12 months, or both.

PART IX – MISCELLANEOUS

25 Annual Report

The CEO shall submit a report to the Minister covering matters under these Regulations for the preceding year, to be included in the Ministry's Annual Report.

26 Transitional provisions

(1) Subject to sub-regulation (2), an item in a product class that falls within the scope of the MEPSL Regulations in Schedule 1 that was –

(a) lawfully imported into Tonga; and

(b) made available for sale in Tonga before the commencement of these Regulations,

may continue to be made available for sale in Tonga for a period of up to 1 year from the commencement of these Regulations.

(2) If an officer of the Ministry has reason to believe that the date of importation into Tonga of an item was after the commencement of these Regulations, the Ministry may request a trader to produce proof of the date of importation of such item or items.

Made in Nuku'alofa on this **27th** day of **March** 2025.

Hon. Dr. Taniela Likuohihifo Fusimalohi
Minister responsible for energy