



Australian Government

Department of Climate Change

National Greenhouse and Energy Reporting System (NGERS)

Technical responses to Stakeholder Feedback on the Regulations Policy Paper

May 2008

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Introduction

This paper is intended to inform stakeholders of proposed changes to policy for the National Greenhouse and Energy Reporting Regulations following stakeholder feedback. It should be read in conjunction with the *National Greenhouse and Energy Reporting System, Regulations Policy Paper, February 2008* available at www.climatechange.gov.au/reporting/regulations/index.html

It covers issues such as:

- definitions of greenhouse gas emissions, reductions, removals and offsets;
- fuel types;
- registration and deregistration;
- information for the public register;
- reporting obligations on business units, transport, vertically integrated processes, facilities with major contractors, and materiality.

However, stakeholders should be aware that the policy will not be final until the Regulations have been approved by the Minister for Climate Change and Water and are released before the first reporting period on 1 July 2008.

This paper is presented as a table with the subject or topic in the left column and a summary of the policy change reflected in draft regulations in the right. A centre column provides a guide to the relevant sections of the Act and the policy paper.

Previous consultation

The Australian Government has consulted extensively with business, non-government organisations and the public in developing its National Greenhouse and Energy Reporting System (NGERS), including on proposals for Regulations. A policy paper was released to inform stakeholders about and seek feedback on proposed approaches for all areas to be covered by Regulations under the Act. Information on previous consultations is available at www.climatechange.gov.au/reporting/consultation.html

Following the policy paper's release, the Department of Climate Change held information sessions in most capital cities involving more than 900 individuals, received 106 formal submissions and held numerous focus groups and meetings with interested individuals and organisations. Submissions are available at www.climatechange.gov.au/reporting/submissions.html

Background

The Australian Government is establishing the National Greenhouse and Energy Reporting System as a streamlined framework for the mandatory reporting of greenhouse gas emissions and energy consumption and production by corporations within Australia, to meet the current and prospective needs of government, business and the public.

The legislative framework for NGERs is established by the *National Greenhouse and Energy Reporting Act 2007* (the Act), which was passed by the Australian Parliament and came into effect in September 2007. The Act refers to details of the reporting system to be established by Regulations and other legislative instruments which have been under development since September last year.

The following table outlines a topic for Regulations, the section of the *National Greenhouse and Energy Reporting Act 2007* to which the Regulation would relate, the section of the policy paper which addresses the topic and the intended changes to policy (as at 28 May 2008).

Subject	Act Section	Policy paper reference	Intended changes
Fuel or any other energy commodity to be specified as 'energy'	s 7	s 1.1.2 p 7	The policy paper sets out a list of fuels or other energy commodities to be specified as energy. Additional fuel types have been added based on stakeholder feedback to the Technical Guidelines Discussion Paper. These are sulphur, solid fossil fuels other than those mentioned specifically, wood (green and air dried), natural gas – unprocessed, biogas – captured for combustion, other than those mentioned specifically, uranium, hydrogen and reductants and other energy in the form of steam, compressed air or waste gas acquired from another facility.
Activities connected with the extraction of or exploration for oil or gas	s 7	s 1.1.6 pp 10-11	<p>The Act limits reporting of activities within the Exclusive Economic Zone (EEZ) except to:</p> <p style="padding-left: 40px;"><i>(a) any activity involving extraction of, or exploration for, oil or gas; and</i></p> <p style="padding-left: 40px;"><i>(b) any activity, of a kind specified in the regulations, that is connected with such extraction or exploration.</i></p> <p>The policy paper stated that Regulations under this section would be made to allow the reporting of carbon capture and storage (CCS) within the EEZ.</p> <p>At time of release, the Department of Resources Energy and Tourism (DRET) is drafting a Bill to amend the <i>Offshore Petroleum Act 2006</i> (OPA) to provide access and property rights for CCS in Australian waters. To ensure consistency across government, Regulations on CCS in the EEZ under the <i>National Greenhouse and Energy Reporting Act 2007</i> are not intended until decisions on amending the OPA are finalised. Definitions will then be based on those contained in the OPA.</p> <p>It is intended that Regulations also specify the coverage of liquefied natural gas platforms and transport of oil or gas via pipelines as activities connected with extraction of, or exploration for, oil or gas.</p>
External audit	s 7 and 75	s 1.1.3 pp 7-9	A separate external audit stakeholder consultation paper will be released in mid 2008. This paper will seek submissions to inform the development, during the second half of 2008, of external auditor regulations and the external audit guidelines.

Subject	Act Section	Policy paper reference	Intended changes
Nominating or revoking nominations for responsible entities for joint ventures or partnerships.	s 8	s 1.2.1 pp 11-12	<p>It is proposed that application requirements be simplified where possible to minimise hurdles to registration. Requirements for facility-based information are not proposed for applications under this section.</p> <p>The policy paper indicated that Regulations would require applications to include a statement that information provided is accurate. Legal advice indicates that this is unnecessary and has been removed.</p> <p>The required form for applications will be published by the Greenhouse and Energy Data Officer in the Government Gazette.</p>
Requirements for an activity or activities to constitute a facility	s 9 (1a)	1.3 pp 13-21	<p><u>Transport</u></p> <p>The policy paper states that where a corporation has operational control over activities where the principal activity is in a transport industry sector, these activities will be attributed to a national transport facility. The policy paper further states that sub-facility reporting would be required by each State or Territory in which the activities occur.</p> <p>This is to be changed, so that where a corporation has operational control over activities where the principal activity is in a transport industry sector, these activities will be attributed to the State or Territory in which fuel was purchased (fuel purchased is therefore taken to be fuel consumed), creating a transport facility bounded by State or Territory borders. The requirement for sub-facility reporting for transport by states and territories has been removed on this basis.</p> <p>This change from the policy paper is based on feedback from the transport industry indicating concern that a transport facility at the national level would create an unequal reporting burden on transport operators as it would effectively mean a 25ktCO₂-e or 100TJ corporate threshold for transport corporations.</p>
Definitions of reductions, removals and offsets	s 7, 10, 21, 24	7.0 pp 51-54	<p>Definitions and reporting requirements in relation to reductions, removals and offsets will not be provided in the Regulations to be released on 1 July 2008. Because these data elements are voluntary and stakeholders have expressed confusion in relation to emissions trading requirements, these components of the Regulations will be included once emissions trading approaches are finalised.</p>

Subject	Act Section	Policy paper reference	Intended changes
Define 'emissions' of greenhouse gas	s 10 (1a)	1.4.1 pp 21-22	The definition of scope 2 emissions in the policy paper specified <i>indirect emissions from the consumption of purchased electricity, heat or steam</i> . It is proposed to update the definition to cover <i>emissions from activities that generate electricity, heating, cooling or steam that is consumed by the facility but that do not form part of the facility</i> .
Form of applications for registration	s 15 (1d)	2.1.2	The policy paper notes that it is expected that applications will be made online. While it is still intended that applications will be made online, it is proposed that the Regulations would specify that a form for applications will be published by the Greenhouse and Energy Data Operator in the Government Gazette.
Information to be included in applications for registration	s 15 (1c)	2.1.1 pp 29-31	Details required at registration have been reduced from the list provided in the policy paper to minimise barriers to registration. The following will be removed from application requirements: the registered corporation's Australian Company Number (ACN); the corporation's ANZSIC classification; all details of other group members other than the ABN; a representation of the group's corporate structure; facility details; identities of joint venture or partnership participants; and a declaration that application details are correct. The requirement that an application under s 12 of the Act must include the financial year to which it relates has been added.
Information to be entered on the register	s 16 (4b)	4.0 pp 44-46	<p>The policy paper outlines details that will be entered on the register and disclosed. It is proposed that information to be entered on the register would also include corporate group ABNs and emissions totals to be disclosed under s 24 of the Act.</p> <p>Compliance information to be entered on the Register would relate to whether the corporation has been convicted of an offence against the Act and whether a court order has been made against it for contravening a civil penalty provision.</p>
Form of applications for deregistration	s 18 (2b)	2.3 pp 32 - 33	The policy paper specified that applications for deregistration must be provided in hard copy. It is now intended that Regulations will specify an approved form for an application will be published by the Greenhouse and Energy Data Officer in the Government Gazette.
Information to be included in applications for deregistration	s 18 (2a)	2.3 pp 32-33	Requirements for applications to deregister will be changed to remove the registered corporation's Australian Company Number (ACN); corporation names; details for a contact person; head office street and postal address. The form of an application for deregistration will be published by the Greenhouse and Energy Data Officer in the Government Gazette.

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Reporting obligations – corporate details	s 19	3.0 pp 34-43	<p>Corporate details</p> <p>Much of the information proposed in the policy paper to be included in registration applications will now be required as part of a corporation’s reporting obligations.</p> <p>These would include ABN, address and contact details for the registered corporation, ABNs for group members and for joint ventures and partnerships in which members are participants. Facility details would also be required in the report.</p>
Reporting obligations – subsidiaries or business units	s 19	NA	<p>Business units</p> <p>It is proposed that Regulations will specify definitions and reporting requirements for corporations who chose to provide data by business units.</p> <p>In their submissions to the policy paper, a significant number of stakeholders expressed a preference to report data according to business unit . Reasons included that reporting by subsidiary would create a significant additional reporting burden given the large number of subsidiaries, current internal reporting is on a divisional or ‘business unit’ basis and public disclosure of data may be more meaningful at the business unit level.</p> <p>Level of detail, and form, of the greenhouse emission and energy data provided by the reporter will not change due to the inclusion of this optional reporting specification.</p>
Reporting obligations – vertically integrated facilities	s 19	3.0 pp 34-43	<p>Vertically integrated processes</p> <p>The policy paper proposed that vertically integrated processes that span multiple locations could be reported as one facility. Corporations indicated that this was potentially confusing. Regulations will instead retain the site-based facility definition but allow corporations to group vertically integrated processes within a state or territory for reporting.</p> <p>This would be on the proviso that facility data be apportioned based on ANZSIC Divisions if facilities are in different ANZSIC Divisions.</p>

Subject	Act Section	Policy paper reference	Intended changes
Reporting obligations – major contractors	s 19	3.1.2 p 36	<p>Facilities with major contractors operating on site</p> <p>Corporations would be required to separately identify data from major contractors operating at a facility. A major contractor would be defined as:</p> <p>A corporation that does not have operational control over a facility, but which conducts activities at a facility that during the reporting year:</p> <ul style="list-style-type: none"> a) emits more than 25ktCO₂-e greenhouse gases; or b) produces 100 terajoules or more of energy; or c) consumes 100 terajoules or more of energy.
Reporting obligations – materiality of small facilities	s 19	3.1.4 pp 37 - 38	<p>Materiality</p> <p>Based on feedback in submissions, the proposed energy materiality threshold for facilities has been raised so that a corporation is not required to report detailed data on a facility that, for a given reporting year:</p> <ul style="list-style-type: none"> a. produces less than 15 TJ energy; and b. consumes less than 15 TJ energy. <p>These numbers are higher than those in the policy paper, which set these thresholds at less than 12TJ energy produced or consumed.</p>

Subject	Act Section	Policy paper reference	Intended changes
Reporting obligations – materiality of small emissions and energy sources	s 19	3.1.4 pp 37 - 38	<p>The policy paper identified that a materiality threshold had not been set for the coverage of small sources within a facility. It is now intended that small emissions or energy sources (incidental emissions and energy) could be estimated using a methodology of a corporation's choosing, subject to meeting the criteria set out below and criteria provided in the methodologies legislative instrument:</p> <ul style="list-style-type: none"> ▪ each individual source of incidental emissions cannot emit greater than 0.5% of the facility's total emissions; and ▪ each individual source of incidental emissions cannot emit greater than 3ktCO₂-e per annum; and ▪ each individual point of incidental energy consumption or production cannot consume or produce greater than 0.5% of the facility's total energy consumption or production; and ▪ each individual point of energy consumption cannot consume more than 15TJ of energy; and ▪ each individual point of energy production cannot produce more than 15TJ of energy; and ▪ the aggregate total of all incidental emissions and energy consumption within a facility may not amount to greater than 2% or 12ktCO₂-e or 60TJ, whichever is the lesser, of the facility's total emissions and energy production or consumption; and ▪ emissions and energy points may only be treated as 'incidental' where more accurate estimation is demonstrably difficult and/or expensive. <p>Regulations would specify that incidental emissions and energy for a facility are to be reported as a separate line item, listed by fuel type for each identifying the calculation method used.</p>
Manner and form of application for information to be provided by another person	s 20 (2)	3.4 p 41	<p>The requirement for a signature on a s 20 application has been removed. It is intended that Regulations will specify that the identity of the corporation will require authentication using a method (if any) approved by the Greenhouse and Energy Data Officer and published in the Government Gazette.</p>

Subject	Act Section	Policy paper reference	Intended changes
Information may be disclosed to specified persons or bodies	s 26 (1)	4.2 pp 46 - 47	<p>There are two additions to the list of authorities to which data can be disclosed:</p> <ul style="list-style-type: none"> • the Australian Energy Regulator; and • the Australian Energy Market Commission.
Application to declare that a corporation has operational control of a facility	s 55 (2c)	6.2 p 49	<p>It is intended to replace requirements for copies of contracts to be provided in an application for a s 55 declaration with details of contracts or arrangements. Policies used to determine operational control would also be changed to 'operational and environmental policies' rather than just 'policies'.</p>