EXPLANATORY STATEMENT

**Select Legislative Instrument 2013 No. 175**

Issued by the Authority of the Minister for Climate Change

*National Greenhouse and Energy Reporting Act 2007*

*National Greenhouse and Energy Reporting Amendment (Streamlining Reporting) Regulation 2013*

Section 77 of the *National Greenhouse and Energy Reporting Act 2007* (the NGER Act) provides, in part, that the Governor-General may make regulations required or permitted by the NGER Act, or necessary or convenient to be prescribed for carrying out or giving effect to the NGER Act. The NGER Act and its supporting legislative instrument, the *National Greenhouse and Energy Reporting Regulations 2008* (the NGER Regulations) provide a data and accounting framework in relation to greenhouse gas emissions, energy consumption and energy production. This framework underpins the carbon pricing mechanism.

The *National Greenhouse and Energy Reporting Amendment (Streamlining Reporting) Regulation 2013* (the Regulation) amends the NGER Regulations.

*Amendments to streamline the reporting requirements of entities under the NGER Scheme*

A person that triggers a threshold in section 13 of the NGER Act must register with and report to the Clean Energy Regulator on their energy consumption, energy production and greenhouse gas emissions. The details of the information required in these reports are set out in the NGER Regulations.

The Regulation, which is a result of the consultation processes described below, introduces amendments to streamline the reporting requirements under the NGER Scheme. The amendments will allow many reporters to reduce their compliance costs, without reducing the integrity of the Scheme. The amendments are briefly outlined below.

*Amendment to regulation 4.17A - reporting of statistical uncertainty*

Controlling corporations (constitutional corporations that do not have a holding company incorporated in Australia) that trigger a threshold under the NGER Act must provide an estimate of the statistical uncertainty associated with their total reported scope 1 emissions (the greenhouse gases emitted as a direct result of an activity or activities that constitute the facility). This requires the controlling corporation to estimate the statistical uncertainty associated with the measurement of emissions from each source, and aggregate that information to the facility and corporate group levels.

The Regulation amends the NGER Regulations so that the requirement to calculate and report uncertainty only applies to very large uses of fuel and other sources of emissions.

The Department estimates that with these amendments, uncertainty information will still be collected for approximately 90 per cent of reported scope 1 emissions, whilst the majority of reporters would be relieved from having to calculate or report uncertainty at all.

*Amendments to regulations 4.26 and 4.27 - percentage and incidental reporting*

NGER regulations 4.26 and 4.27 allow reporters to develop and use their own simplified methods for estimating emissions and energy production and consumption associated with small sources and small facilities, instead of using the more sophisticated measurement methods set out in the Measurement Determination.

The Regulation amends regulations 4.26 and 4.27 to make them more accessible to reporters by increasing the thresholds and removing other restrictions on their use.

*Amendment to regulation 4.25 - facility aggregates*

Regulation 4.25 allows controlling corporations to report information for their smaller facilities in aggregated form. The Regulation would make regulation 4.25 available for use by more reporters.

The Regulation also prevents designated generation facilities from being reported under regulation 4.25. This amendment will ensure that the Clean Energy Regulator can meet its obligation under section 24(1AF) of the NGER Act to publish the emissions, energy consumption and energy production associated with each designated generation facility.

*Amendment to regulation 4.29 - vertically integrated production processes*

Regulation 4.29 allows the totals for facilities grouped as a vertically integrated production process to be reported, rather than requiring data for each facility. Use of regulation 4.29 in liable entity reports is inconsistent with the requirement of the *Clean Energy Act 2011* that liable entities report on each facility individually.

The Regulation removes the ability of liable entities to report under regulation 4.29 from the day after registration, in order to remove this inconsistency.

Additionally, experience with the NGER Scheme has indicated that reporting under regulation 4.29, even for non-liable entity reports, does not provide sufficient information about individual facilities for the Clean Energy Regulator’s purposes. Thus, the Regulation removes regulation 4.29 altogether from 1 July 2014. This later date gives reporters time to transition to the new arrangements.

Details of the Regulation are set out in Attachment A.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 of the Regulation will commence on the day after it is registered, but will not apply for 2012-13 reporting obligations that must be met in 2013-14. Schedule 2 of the Regulation commences on 1 July 2014.

**Consultation**

On 5 December 2012, the then Department of Climate Change and Energy Efficiency (now the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education) (the Department) commenced a public consultation process on the efficiency of reporting under the NGER Scheme by releasing a consultation paper. The consultation process closed on 1 February 2013 and 49 submissions were received. The comments received informed the development of draft amendments to the NGER Regulations.

On 23 May 2013 the Department released the exposure draft of the Regulation for public comment, together with a position paper to assist stakeholders in their consideration of the draft Regulation. The Department also held discussions on the exposure draft: over 50 people participated in a teleconference and 11 people attended face-to-face discussions. Comments closed on 7 June 2013 and 17 submissions were received. The suggestions made in the discussions and submissions were taken into account in finalising the Regulation.

**Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Authority: Section 77 of the *National Greenhouse and Energy Reporting Act 2007*

**Attachment A**

**Details of the *National Greenhouse and Energy Reporting Amendment (Streamlining Reporting) Regulation 2013***

**Section 1 – Name of Regulation**

Section 1 provides that the name of the Regulation is the *National Greenhouse and Energy Reporting Amendment (Streamlining Reporting) Regulation 2013* (the Regulation).

**Section 2 – Commencement**

Section 2 provides that the Regulation commences on the day after the Regulation is registered, with the exception of Schedule 2 which commences on 1 July 2014.

**Section 3 – Authority**

Section 3 specifies that the Regulation is made under the *National Greenhouse and Energy Reporting Act 2007.*

**Section 4 – Schedule(s)**

Section 4 provides that the Regulation amends or repeals each instrument that is specified in a Schedule to the Regulation.

**Schedule 1 – Amendments commencing on the day after registration**

***National Greenhouse and Energy Reporting Regulations 2008***

**Item 1**

Item 1 adds a note to regulation 2.02, indicating that the Global Warming Potential figures will be updated from 1 July 2017. This change will not alter the liability of landfill operators from 1 July 2017 for emissions from waste collected between 1 July 2012 and 30 June 2017.

**Items 2-4**

Items 2 and 3 make a minor amendment for consistency of wording.

Item 4 amends regulation 4.07 to require reporters to report the percentage of carbon in each solid fuel or coal based product consumed, if they used method 2 or 3. Prior to this amendment, affected reporters have been required to collect, retain and record, but not report, this information in order to meet their obligations.

**Item 5**

Item 5 introduces regulation 4.08 to require reporters to calculate and report the uncertainty associated with the scope 1 emissions associated with the combustion of a fuel type, if the emissions from the combustion of that fuel type have CO2-e of more than 25 kilotonnes in the reporting year. Fuel types are listed in schedule 1 of the NGER Regulations.

For example, a reporter with emissions of 25 kilotonnes CO2-e from the combustion of diesel, and emissions of 15 kilotonnes CO2-e from the combustion of petrol would only have to calculate and report the uncertainty associated with the emissions from the combustion of the diesel.

Together, Item 5 and Item 8 reduce the total requirements for reporters to calculate and report the uncertainty associated with their emissions.

**Item 6**

Item 6 corrects a typographical error in regulation 4.16. Subregulation 4.16(1A)(b) was erroneously included in this regulation as it is unrelated.

**Item 7**

Item 7 amends regulation 4.17 to require reporters to report the criteria used to estimate the amount of waste. Prior to this amendment, affected reporters have been required to collect, record and retain, but not report, this information in order to meet their obligations.

**Item 8**

Item 8 amends regulation 4.17A to require reporters to calculate and report the uncertainty associated with the scope 1 emissions from sources of emissions that have CO2-e of more than 25 kilotonnes in the reporting year. Prior to this amendment, reporters were required to calculate and report the uncertainty with all scope 1 emissions, at the source, facility and corporate group levels.

Together, Item 8 and Item 5 reduce the total requirements for reporters to calculate and report the uncertainty associated with their emissions.

**Items 9-10**

Items 9 and 10 correct minor typographical errors.

**Items 11-15**

Items 11-15 amend regulation 4.25 to allow reporters to report single facilities by business unit, in situations where they would have been able to aggregate information from those facilities by member of the corporate group. This gives reporters more options for using regulation 4.25.

Items 11-15 also prevent designated generation facilities from being reported under regulation 4.25. This amendment will ensure that the Clean Energy Regulator can meet its obligation under section 24(1AF) of the NGER Act to publish the emissions, energy consumption and energy production associated with each designated generation facility.

**Item 16**

Item 16 amends regulation 4.26 so that it can be used to report on more facilities and larger facilities by changing the thresholds that limit its availability to:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Scope 1 Emissions (CO2-e)** | **Scope 2 Emissions (CO2-e)** | **Energy Production** | | **Energy Consumption** | |
| A corporation or responsible member must meet threshold (1) and threshold (2) or (3) | | | | | | |
| (1) Maximum size of a facility reported under r4.26 | 3 kt | 3 kt | 30 TJ | 30 TJ | |
| (2) Maximum amount reported under r4.26 by a  controlling corporation’s group | 12 kt | 12 kt | 120 TJ | 120 TJ | |
| (3) Maximum percentage of a controlling  corporation’s totals reported under r4.26 | 5 % of (scope 1 + scope 2) | | 5 % | 5 % | | |

Item 16 also amends regulation 4.26 so that it may be used for reports under section 22X of the Act, noting that a facility reported under section 22X of the Act is considered part of the controlling corporation’s group of facilities. Use of regulation 4.26 in a report under section 22X of the Act will require coordination of the use of regulation 4.26 across the corporate group, and it will require the responsible member to access to the corporate groups’ totals.

**Item 17**

Item 17 amends regulation 4.27 so that it can be used to report on more sources, and larger sources. This is achieved by removing the requirement to prove that significant hardship or expense would be incurred if regulation 4.27 were not used, and by changing the thresholds that limit its availability to:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Scope 1 Emissions (CO2-e)** | **Scope 2 Emissions (CO2-e)** | **Energy Production** | **Energy Consumption** |
| Maximum size of a source reported under r4.27 (for emissions from a source other than fuel combustion) | 3 kt | 3 kt | 30 TJ | 30 TJ |
| Maximum amount reported under r4.27 per facility | 12 kt | 12 kt | 120 TJ | 120 TJ |

These amendments should also make it easier for reporters to meet their obligations in regard to fuel combustion by contractors. Reporters may need to work with their auditors to develop methods that are suitable for this purpose.

**Item 18**

Item 18 amends regulation 4.29 to correct an inconsistency between the *Clean Energy Act 2011* and liable entity reporting requirements as set out in the NGER Regulations. As a result, regulation 4.29 will no longer be available for reports under sections 22A, 22E and 22G of the NGER Act.

**Item 19**

Item 19 corrects an inconsistency between the NGER Regulations and the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*, with regard to units of measurement.

**Item 20**

Item 20 requires persons to report the amount of any adjustment to their Provisional Emissions Number made in accordance with the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*.

**Item 21**

Item 21 introduces a self-repealing transitional provision which states that the amendments made by Schedule 1 to the Regulation do not apply to reports given for the 2013-2013 financial year.

**Items 22-32**

Items 22-32 clarify that more than one emissions factor can be used for a facility, and require reporting of each emissions factor.

**Items 33-37**

Items 33-37 set out new reporting requirements associated with improved methods for solid waste disposal on land in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*. This will ensure that the information is reported.

**Schedule 2 – Amendments commencing on 1 July 2014**

***National Greenhouse and Energy Reporting Regulations 2008***

**Items 1**

Item 1 removes regulation 1.03.

**Items 2-3**

Items 2 and 3 remove regulation 4.29 and subregulations related to regulation 4.29, as of 1 July 2014. The delay will give reporters time to transition to the new arrangements.

**Attachment B**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**National Greenhouse and Energy Reporting Amendment (Streamlining Reporting) Regulation 2013**

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the National Greenhouse and Energy Reporting Amendment (Streamlining Reporting) Regulation 2013**

The *National Greenhouse and Energy Reporting Amendment (Streamlining Reporting) Regulation 2013*(the Amendment Regulation) introduces amendments to streamline the reporting requirements under the National Greenhouse and Energy Reporting Scheme (the NGER Scheme), reducing the compliance costs for many reporters. The Amendment Regulation:

* reduces the requirements for reporting uncertainty, so that only reporters with the largest sources of emissions will be required to calculate the statistical uncertainty associated with emissions reporting; and
* encourages broader access to existing provisions designed to reduce reporting costs for minor amounts of emissions or energy by revising existing application thresholds.

The Amendment Regulation also makes some minor technical amendments to the *National Greenhouse and Energy Reporting Regulations 2008* (the existing regulations) to correct anomalies or clarify existing provisions.

The Amendment Regulation may provide some advantages to persons required to report under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act). It reduces the requirement to report the statistical uncertainty associated with the measurement of greenhouse gas emissions. It also allows greater access to existing measures which can be used to simplify measurement of emissions and energy from small sources and small facilities.

The Amendment Regulation also removes regulation 4.29 of the existing regulations, from 1 July 2014. That means that persons required to report information under the NGER Act, will no longer be able to report aggregated information from facilities that form part of a vertically aggregated production process. Obligations that apply to all other facilities under the NGER Act will apply to those facilities from the 2014-15 reporting year.

The NGER Act has a civil penalty regime which applies if a person does not comply with reporting and record keeping requirements (for example, under sections 19, 22, 22A and 22X). A contravention of a civil penalty provision under the NGER Act is not an offence (section 32) and the quantum of the penalty is determined by a Court. There are also other protections in the NGER Act which provide, for example, that a Court cannot make a pecuniary penalty order against a person for contravention of a civil penalty provision, if the person is convicted of a criminal offence for substantially the same conduct (section 35 of the NGER Act). Civil penalty court proceedings are also stayed while criminal proceedings for substantially the same conduct are on foot (sections 36 and 37 of the NGER Act).

Generally, the Amendment Regulation will make it easier for persons to comply with existing requirements under the NGER Act, including existing measuring, reporting and record keeping requirements (for example, reporting requirements under sections 19, 22A, 22E, 22G and 22X and sections 22, 22B, 22F, 22H and 22XA for recording keeping requirements).

**Human rights implications**

This Amendment Regulation does not engage any human rights. It makes a series of changes to the reporting scheme which will make it easier for persons to comply with existing reporting requirements under the NGER Act. The Amendment Regulation does not introduce new civil penalties, modify existing ones or expand the scope of the conduct which attracts civil penalties.

**Conclusion**

The Amendment Regulation is compatible with human rights because it does not engage any human rights.

**Mark Butler**

**Minister for Climate Change**