

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

National Greenhouse and Energy Reporting Act 2007

National Greenhouse and Energy Reporting (Audit) Amendment Determination 2012 (No. 1)

Subsection 75 (1) of the *National Greenhouse and Energy Reporting Act 2007* (the NGER Act) provides, in part, that the Minister may determine, by legislative instrument, requirements to be met by registered greenhouse and energy auditors in: (a) preparing for and carrying out greenhouse and energy audits; (b) preparing audit reports in relation to greenhouse and energy audits; (c) preparing for and carrying out CFI audits; and (d) preparing CFI audit reports. A registered greenhouse and energy auditor must comply with requirements determined under subsection 75 (1) (see subsection 75 (3) of the NGER Act).

A determination setting out the requirements to be met by registered greenhouse and energy auditors in preparing for and carrying out greenhouse and energy audits (i.e. audits under sections 73-74C of the NGER Act) and preparing audit reports in relation to such audits was made on 21 December 2009 (the *National Greenhouse and Energy Reporting (Audit) Determination 2009* (the Principal Determination)).

The *National Greenhouse and Energy Reporting (Audit) Amendment Determination 2012 (No. 1)* (the Determination) amends the Principal Determination so that these requirements extend to preparing for and carrying out CFI audits and preparing CFI audit reports. Section 7 of the NGER Act defines ‘CFI audit’ to mean an audit under section 214 or 215 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) or an audit carried out for the purposes of preparing an audit report prescribed for the purposes of paragraph 13 (1) (e), paragraph 23 (1) (d) or paragraph 76 (4) (c) of the CFI Act. The term ‘CFI audit report’ is defined by section 7 of the NGER Act to mean an audit report under section 214 or 215 of the CFI Act or an audit report prescribed for the purposes of paragraph 13 (1) (e), paragraph 23 (1) (d) or paragraph 76 (4) (c) of the CFI Act.

The effect of the Determination is that, in preparing for and carrying out CFI audits and preparing CFI audit reports, audit team leaders must:

- ensure that selected audit team members for a particular audit have the knowledge, skills and availability to satisfactorily conduct the audit;
- be personally involved in the conduct of the audit, and supervise the work of audit team members;
- sign an independence and conduct declaration;
- ensure that the audit is carried out and reported in compliance with the *National Greenhouse and Energy Reporting Regulations 2008* (NGER Regulations) and the terms of the engagement for the audit;
- document the processes used by the audit team leader to prepare for, carry out and report on the audit; and
- prepare terms of engagement, an engagement plan and a report on the engagement that include specified information and comply with specified criteria.

The amendments are consequential to the amendments made to the NGER Act by the *Carbon Credits (Consequential Amendments) Act 2011*, which extended the audit framework under

the NGER Act to preparing for and carrying out CFI audits and preparing CFI audit reports under the CFI Act.

The Determination also amends the Principal Determination by replacing references to the Greenhouse and Energy Data Officer (GEDO) with references to the Regulator. 'Regulator' is defined by section 7 of the NGER Act to mean the Clean Energy Regulator. These amendments to the Principal Determination are consistent with the amendments made to the NGER Act by the *Clean Energy (Consequential Amendments) Act 2011* which replaced references to the GEDO with references to the Regulator.

The Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Background information about the CFI Act and the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* is set out in Attachment A.

Details of Schedule 1 to the Determination (which amends the Principal Determination) are set out in Attachment B.

The statement of compatibility with human rights is set out in Attachment C.

Consultation

The CFI Act and its supporting regulations and legislative instruments have been the subject of comprehensive consultation with stakeholders since October 2010.

A consultation paper seeking comments on the proposed amendments to the Principal Determination and the *National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2010* was released on 5 April 2012. Two submissions were received, neither of which contained comments on the proposed amendments to the Principal Determination. No changes were made to the proposed amendments to the Principal Determination as a result of the consultation process.

Authority: Section 75 of the *National Greenhouse and Energy Reporting Act 2007*

Background information about the CFI Act and the CFI Regulations

The CFI Act sets up a scheme for the issue of Australian carbon credit units in relation to eligible offsets projects. The person responsible for conducting an eligible offsets project, the project proponent, is required to provide the Clean Energy Regulator (the Regulator) with a report about the project (an offsets report) at intervals of not less than 12 months and not more than five years (known as the reporting period). In general, the offsets report must be accompanied by a prescribed audit report prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for that purpose (paragraph 76 (4) (e) of the CFI Act). Section 5 of the CFI Act defines ‘registered greenhouse and energy auditor’ to have the same meaning as in the NGER Act.

After the end of the reporting period for an eligible offsets project, a person may apply to the Regulator for a certificate of entitlement in respect of the project for that reporting period. The application must be accompanied by a prescribed audit report prepared by a registered greenhouse and energy auditor (paragraph 13 (1) (e) of the CFI Act). Small non-Kyoto projects may be exempted from this requirement if a prescribed audit report has already been submitted for the project (subsection 13 (2) of the CFI Act and regulation 1.13 of the CFI Regulations).

Regulation 1.11 of the CFI Regulations specifies what is a prescribed audit report for paragraphs 13 (1) (e) and 76 (4) (c) of the CFI Act. A prescribed audit report must set out, for each of the matters audited, a reasonable assurance conclusion (in the terms of paragraph 3.17 (1) (a) of the Principal Determination) or a qualified reasonable assurance conclusion (in the terms of paragraph 3.16 (1) (b) of the Principal Determination).

In addition, a prescribed audit report must be a report of an audit that complies with regulation 1.12. Regulation 1.12 of the CFI Regulations provides that the audit must cover various matters, including whether the project is in accordance with the declaration that the project is an eligible offsets project, the applicable methodology determination and the requirements of the CFI Act. The audit must have an audit team leader who is registered as a Category 2 auditor or a Category 3 auditor under the NGER Regulations, and must be conducted in accordance with the relevant requirements for reasonable assurance engagements under the Principal Determination. These requirements provide assurance that the abatement claimed in relation to an eligible offsets project for the relevant reporting period is genuine.

If the Regulator has reasonable grounds to suspect that a person who is, or has been, a project proponent for an eligible offsets project has contravened, or is contravening, or is proposing to contravene the CFI Act or the associated provisions, the Regulator may, by notice, require the person to arrange for an audit to be undertaken (section 214 of the CFI Act). The term ‘associated provisions’ is defined by section 5 of the CFI Act to mean the regulations and certain provisions in the *Criminal Code* in so far as those provisions relate to the CFI Act or the regulations made under the CFI Act. The notice given to the person must specify the type of audit to be carried out; the matters to be covered by the audit; and the form of the audit report and the kinds of details it is to contain (subsection 214 (2) of the CFI Act).

The Regulator may also appoint a registered greenhouse and energy auditor as an audit team leader to carry out an audit of a person’s compliance with one or more aspects of the CFI Act or the associated provisions if the person is, or has been, the project proponent for an eligible offsets project (section 215 of the CFI Act). The Regulator must give written notice to the person of a decision to appoint an audit team leader. The notice must specify various matters, including the type of audit to be carried out and the matters to be covered by the audit (subsection 215 (2) of the CFI Act).

Details of Schedule 1 to the Determination

Items [1]-[5]: Overview of Determination

1. Section 1.3 of the Principal Determination provides an overview of the instrument.
2. Item [1] amends subsection 1.3 (3) of the Principal Determination by inserting a reference to a ‘person’ and omitting a reference to ‘a registered corporation, or a person required to provide information under section 20 of the NGER Act’. This amendment mirrors an amendment to the NGER Act by the *Clean Energy (Consequential Amendments) Act 2011* that inserted a definition of ‘person’.
3. Item [2] amends section 1.3 of the Principal Determination so that it explains that under the CFI Act a person who is or has been the project proponent for an eligible offsets project may be audited or required to undertake an audit. In addition, an audit may be carried out for the purposes of preparing an audit report prescribed for the purposes of paragraph 13 (1) (e), paragraph 23 (1) (d) or paragraph 76 (4) (c) of the CFI Act. Items [3] and [4] make minor consequential amendments that ensure the overview in the Principal Determination refers to both CFI audits and greenhouse and energy audits where appropriate.
4. Item [5] amends section 1.3 of the Principal Determination by explaining that an audit of an eligible offsets project carried out for the purposes of preparing an audit report prescribed for the purposes of paragraph 13 (1) (e) or 76 (4) (c) of the CFI Act is a reasonable assurance engagement. An audit carried out under section 214 or 215 of the CFI Act may be either an assurance engagement or a verification engagement.
5. A prescribed audit report is a reasonable assurance engagement led by a category 2 or 3 auditor. It examines whether an eligible offsets project conforms with the applicable methodology for the project, and whether there has been any material misstatement in relation to the amount of greenhouse gas abatement generated by a project during the reporting period (regulations 1.11 and 1.12 of the CFI Regulations). A prescribed audit report must accompany an offsets report (paragraph 76 (4) (c) of the CFI Act) and an application for a certificate of entitlement (paragraph 13 (1) (e) of the CFI Act).

Items [6]-[11]: Definitions

6. These items insert a number of definitions relevant to CFI audits and make a number of other consequential amendments to existing definitions.
7. Most significantly, item [6] inserts a definition for the term ‘associated provision’. The term is defined to have the same meaning as in the CFI Act. Items [8], [9] and [11] insert definitions for the terms ‘audit team leader’, ‘audit team member’, ‘CFI Act’, ‘CFI legislation’, ‘eligible offsets project’ and ‘project proponent’.

Items [13]-[18]: Types of audits

8. Section 1.5 of the Principal Determination provides an overview of the types of greenhouse and energy audits. Items [13]-[18] amend the provision so that it also provides an overview of the types of CFI audits.
9. The effect of item [14] is to update the reference to sections of the NGER Act under which greenhouse and energy audits are conducted. Since the Principal Determination was made,

the NGER Act has been amended to include sections 74B and 74C, which are relevant for greenhouse and energy audits.

Item [19]: Technical correction

10. The heading ‘Division 2.1 – Overview of Part’ is unnecessary because there is no Division 2.2. This item fixes this discrepancy.

Items [20] and [22]: Requirements on all audit team leaders

11. These items make amendments to sections 2.1 and 2.5 of the Principal Determination by including references to CFI audits. The effect of these amendments is that the existing requirements that apply to all audit team leaders in preparing for and carrying out greenhouse and energy audits also apply to all audit team leaders in preparing for and carrying out CFI audits.

Items [21], [24], [25], [34], [39]-[41] and [43]: References to the Regulator

12. These items replace references to the Greenhouse and Energy Data Officer (GEDO) with references to the Clean Energy Regulator (the Regulator).

Item [23]-[25]: Assurance engagement terms

13. Subsection 3.3 (1) of the Principal Determination requires an audit team leader to prepare the terms of the assurance engagement. Subsection 3.3 (2) sets out various matters the terms must include. The effect of item [23] is that, where the terms of the assurance engagement relate to a CFI audit, the terms must include a reference to the provisions of the CFI legislation or the associated provisions that relate to the matter being audited.
14. Section 3.4 of the Principal Determination requires the assurance engagement terms to be agreed in writing. The effect of the amendments made by item [24] is that if the Regulator appoints the audit team leader to carry out the assurance engagement, the team audit team leader must ensure that the assurance engagement terms are agreed to in writing by the Regulator. If there is no agreement, the Regulator must be notified (item [25]).

Item [26]: Preparing an assurance engagement plan

15. Subsection 3.6 (1) of the Principal Determination requires that, after the assurance engagement terms are agreed, the audit term leader must prepare, in writing, an assurance engagement plan for the assurance engagement that complies with the requirements of section 3.6. Subsection 3.6 (2) provides that the plan must set out various matters.
16. The effect of the proposed replacement subparagraph 3.6 (5) (h) (iii) in item [26] is to expand the requirement for an assurance engagement plan to set out the audited body’s systems and processes for identifying the risks of misstatements to encompass all those that are material and relevant to its reporting requirements under the NGER legislation, rather than just the NGER Act. This is because much of the detail relating to NGER reporting requirements is contained in the subordinate legislation.
17. The effect of proposed new subparagraph 3.6 (5) (h) (iiia) in item [26] is that, if the plan relates to a CFI audit, the assurance engagement plan must set out the audit team leader’s understanding of the audited body’s systems and processes for identifying the risks of misstatement that are material and relevant to its reporting requirements under the CFI legislation and the body’s procedures to address those risks.

Items [27]-[29]: Performing assurance engagement

18. Section 3.9 of the Principal Determination requires an audit team leader to perform a risk assessment to determine the timing and extent of evidence gathering necessary to carry out the assurance engagement and the amount of time necessary to carry out the engagement.
19. If the risk assessment indicates that it is necessary or appropriate to do so, the audit team leader may be required to test the operating effectiveness of the systems and processes used to prevent, detect or correct misstatements in the matter being audited. If the audit team leader carries out this procedure, he or she must design tests of the systems and processes that the audited body has in place to ensure the reliability and accuracy of the matter audited throughout the period to which the audit relates (subsection 3.11 (1) of the Principal Determination). The audit team leader may also rely on evidence about those systems and processes gained in previous greenhouse and energy audits relating to the audited body (subsection 3.11 (2) of the Principal Determination).
20. If the audit team leader intends to use evidence gained from the performance of procedures undertaken in an earlier greenhouse and energy audit of the audit body, the audit team leader must undertake procedures during the current assurance engagement to establish the continuing relevance of the evidence gained (section 3.12 of the Principal Determination).
21. Section 3.14 of the Principal Determination provides for the types of evidence that may be gathered, including evidence gained from previous greenhouse and energy audits in relation to the audited body's systems and processes for ensuring the reliability and accuracy of the matter being audited (paragraph 3.14 (1) (e)).
22. The effect of items [27]-[29] is to modify these provisions in relation to CFI audits so that:
 - the audit team leader may also rely on evidence about those systems and processes gained in a previous CFI audit relating to the audited body (item [27]);
 - if the audit team leader intends to use evidence gained from the performance of procedures undertaken in an earlier CFI audit of the audited body, the audit team leader must undertake procedures during the current assurance engagement to establish the continuing relevance of the evidence gained from the previous audit (item [28]); and
 - the types of evidence that may be gathered include the evidence gained from previous CFI audits in relation to the audited body's systems and processes for ensuring the reliability and accuracy of the matter being audited (item [29]).

Items [30]-[33]: Technical corrections

23. Items [30] to [33] make technical corrections to the notes in subsections 3.17 (2) and (3) and 3.18 (2) and (3) of the Principal Determination. Each of these notes includes the words 'as follows' in the chapeau, meaning that a conjunction is not required between each of the following paragraphs. These amendments therefore remove 'or' from each of these notes.

Items [35]-[36]: Requirements for assurance engagement report

24. Subsections 3.21 (1) and (2) of the Principal Determination provides that an assurance engagement report must be in writing and contain specified information. The effect of items [34]-[35] is to modify these provisions in relation to CFI audits so that:

- Part A of the assurance engagement report must contain the provisions of the CFI legislation or the associated provisions that relate to the matter audited (item [35]); and
- Part B of the assurance engagement report must contain details of any matter, related to the matter being audited, that the audit team leader has found during the carrying out of the assurance engagement that he or she believes amounts to a contravention of the CFI legislation or associated provisions (item [36]).

Items [37]-[40]: Verification engagement terms

25. Subsection 4.2 (1) of the Principal Determination provides that the audit team leader must prepare the terms of the verification engagement before agreeing to carry out a verification engagement. Subsection 4.2 (2) provides that the terms of the engagement must include various matters, including the objective of the verification engagement; the matter being audited; the type of greenhouse and energy audit to be carried out; and the provisions of the NGER legislation that relate to the matter being audited.
26. Items [37] and [38] modify these provisions so that, where the terms relate to a CFI audit, the terms must set out the type of CFI audit to be carried out and include a reference to the provisions of the CFI legislation or the associated provisions that relate to the matter being audited. A CFI audit will only involve a verification engagement if the audit is required to be carried out under a notice issued under section 214 or 215 of the CFI Act and the notice specifies that the audit is to be a verification engagement.
27. Subsection 4.3 (1) of the Principal Determination requires the audit team leader to ensure that the verification engagement terms are agreed to by the GEDO if the GEDO appoints the audit team leader to carry out the verification engagement. The effect of item [39] is to modify this provision so that, if the Regulator appoints the audit team leader to carry out the verification engagement, the audit team leader must ensure that the verification engagement terms are agreed to by the Regulator. If the terms are not so agreed, the audit team leader must not carry out the verification engagement and must inform the Regulator in writing accordingly (item [40]). For greenhouse and energy audits, this would mean that either the audited body or the Regulator would need to agree to the engagement terms. For CFI audits, a verification engagement would only ever be instigated by the Regulator, meaning the Regulator would be aware of a failure to reach agreement, and thus it would not be necessary to separately notify the Regulator of this fact.

Items [42] and [44]-[45]: Requirements for verification engagement report

28. Section 4.7 of the Principal Determination provides for the preparation by the audit team leader of a verification engagement report for a verification engagement. The report must include a cover sheet that contains certain information in respect of the verification engagement, including the type of greenhouse and energy audit carried out. Section 4.8 of the Principal Determination provides that the verification engagement report must contain certain information, including the type of greenhouse and energy audit carried out and details of any matter, related to the matter being audited, that the audit team leader has found during the carrying out of the verification engagement that he or she believes amount to a contravention of the NGER Act or the NGER Regulations.
29. The effect of items [42] and [44]-[45] is to modify these provisions in relation to CFI audits so that:

- the cover sheet for the verification engagement report and the verification engagement report itself must set out the type of CFI audit carried out (items [42] and [44]); and
- the verification engagement report must contain details of any matter, related to the matter being audited, that the audit team leader has found during the carrying out of the verification engagement that he or she believes amounts to a contravention of the CFI legislation or associated provisions (item [45]).

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 (Audit) Amendment Determination 2012 (No. 1)

This instrument 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 instrument

The instrument amends the *National Greenhouse and Energy Reporting (Audit) Determination 2009* to extend the requirements that currently apply to registered greenhouse and energy auditors in preparing for and carrying out greenhouse and energy audits and preparing audit reports in relation to such audits, to registered greenhouse and energy auditors in preparing for and carrying out CFI audits and preparing CFI audit reports.

The effect of the instrument is that, in preparing for and carrying out CFI audits and preparing CFI audit reports, audit team leaders must:

- ensure that selected audit team members for a particular audit have the knowledge, skills and availability to satisfactorily conduct the audit;
- be personally involved in the conduct of the audit, and supervise the work of audit team members;
- sign an independence and conduct declaration;
- ensure that the audit is carried out and reported in compliance with the *National Greenhouse and Energy Reporting Regulations 2008* and the terms of the engagement for the audit;
- document the processes used by the audit team leader to prepare for, carry out and report on the audit; and
- prepare terms of engagement, an engagement plan and a report on the engagement that include specified information and comply with specified criteria.

Human rights implications

The instrument does not engage any of the applicable rights or freedoms.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

GREG COMBET
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