EXPLANATORY STATEMENT

Petroleum and Other Fuels Reporting Act 2017
Petroleum and Other Fuels Reporting Rules 2017

Legislative basis

Section 41 of the *Petroleum and Other Fuels Reporting Act 2017* (the Act) provides that the relevant Minister may, by legislative instrument, make legislative rules prescribing matters required or permitted by the Act to be prescribed by legislative rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Minister for the Environment and Energy, the Hon. Josh Frydenberg MP (the Minister) is the relevant Minister.

Purpose of the Instrument

The Act establishes a mandatory reporting regime for fuel and fuel-related information. The information collected under mandatory reporting will be used to monitor energy security, facilitate compliance with international reporting and stockholding obligations, and enable the publication of aggregate statistics for the use of business, investors, academics and government.

The Act provides that the Minister may make rules covering matters such as:

- who has an obligation to report information to the Secretary of the Department responsible for administering the Act;
- specifying additional covered activities;
- specifying additional covered products;
- when reports must be provided to the Secretary;
- exceptions from the reporting obligation;
- any reporting threshold;
- any reporting conditions; and
- any other matters necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

The Rules set out the persons who must report, and the activities and products prescribed as reportable by the Minister, under sections 11 and 12 of the Act. Persons prescribed by the Minister have an obligation to report information on their operations to the Secretary of the Department of the Environment and Energy (the Secretary). The Department of the Environment and Energy (the Department) will use this information to produce statistics on fuels and fuel-related products in accordance with the objectives of the Act.

The data collected by the Department will be used to compile the Australian Petroleum Statistics (APS), a statistical report which provides information on the production, refining, wholesaling and storage of petroleum and other fuels. The data will also be used to monitor energy security and compile reports to the International Energy Agency (IEA) on compliance with the obligation in the *Agreement on an International Energy Program* (IEP Treaty) to hold stocks equivalent to 90 days of the previous year's average daily net imports of petroleum.

The Rules provide for additional activities and products to be covered by the reporting obligation. The activity of operating a fuel storage terminal for covered products that is connected to a refinery or a port by a pipeline is added as a covered activity, but is not prescribed as reportable. The activity of processing natural gas liquid is added and prescribed as reportable. The Rules also add natural gas, ammonia, and certain refining-related gases and refinery feedstocks, as covered products. Most forms of natural gas are not prescribed as reportable except in relation to refining.

The Rules also set out the details of the reporting process. They prescribe the reporting deadline, which for most activities is fifteen days after the end of the relevant calendar month. The Rules provide reduced reporting requirements or longer reporting periods and reporting deadlines for certain products, such as petroleum coke and lubricant. Schedule 1 of the Rules sets out the reporting categories and subcategories for products. Reporters must report the prescribed fuel information in these categories and subcategories to meet their reporting obligation.

Detailed description of the Rules

Attachment A outlines and describes the sections in the Rules.

Public Consultation

The creation of a mandatory reporting requirement for petroleum and other fuels has been subject to discussion with industry, government and international stakeholders, such as the International Energy Agency, since 2013.

The Department released a public consultation paper on mandatory reporting in September 2016, conducting consultation sessions in Perth, Melbourne, Sydney and Brisbane with industry stakeholders in October 2016. Separate consultation was undertaken with Commonwealth, state and territory agencies which use the APS or collect similar information. In response to the feedback received by the Department during this process, a Preferred Design Paper was released in December 2016.

The Department conducted further consultation on biofuels, petroleum coke and petroleum-based greases, lubricants, base oils, waxes and solvents in 2017 to respond to product-specific issues raised in the earlier consultation process. This included the release of discussion papers on these products in February 2017. As a result of the feedback received from stakeholders, tailored reporting requirements are provided in these Rules for those products.

An exposure draft of the Rules was released for public consultation in June 2017. The Rules were revised by the Department to reflect feedback from industry stakeholders.

Human Rights Implications

The *Petroleum and Other Fuels Reporting Act 2017* (the Act) establishes a framework for mandatory reporting of fuel information in relation to petroleum and related products. The Explanatory Memorandum to the Act identified three human rights implications under the Act, being the right to privacy, right to freedom of expression and the right to the presumption of innocence. The Explanatory Memorandum concluded that these limitations were reasonable, necessary and proportionate.

The *Petroleum and Other Fuels Reporting Rules 2017* (Rules) are a legislative instrument made under section 41 of the Act. The Rules set out the detailed reporting requirements of the

mandatory reporting regime, including who must report, what must be reported and when information must be provided.

The Rules do not engage any additional human rights implications beyond those addressed in the Explanatory Memorandum to the Act. The fuel information prescribed as reportable in the Rules concerns the operation of businesses engaged in the production, processing, refining, wholesaling or storage of petroleum. Much of the information prescribed as reportable will be commercially sensitive and some prescribed information could constitute personal information within the meaning of the *Privacy Act 1988*.

Any tangential collection of personal information as a result of the Rules is necessary to achieve the objectives of the Act, and the prescribed reporting requirements are reasonable and proportionate, based on industry feedback on the most effective and least burdensome way to obtain the necessary fuel information. All personal information collected under the Rules will be protected information under the Act, with penalties applicable in the event of an unauthorised disclosure.

PETROLEUM AND OTHER FUELS REPORTING RULES 2017

NOTES ON CLAUSES

Part 1 – Preliminary

1 – Name

1. Section 1 provides that the name of the Rules is the *Petroleum and Other Fuels Reporting Rules 2017*.

2 – Commencement

2. Section 2 provides that the Rules commence one day after they are registered.

3. Section 3 of the *Petroleum and Other Fuels Reporting (Consequential Amendments and Transitional Provisions) Act 2017* (Consequential Amendments) provides that the obligation to report information under the *Petroleum and Other Fuels Reporting Act 2017* (the Act) will commence on 1 January 2018 or the day that the Rules commence, whichever is earlier.

3 – Authority

4. Section 3 provides that the Rules are made under the Act. In particular, section 41 of the Act confers power on the Minster to make legislative rules.

Division 2 – Definitions

5. This Division defines and clarifies the meaning of a number of terms and phrases. This includes prescribing new covered activities and covered products, and prescribing the circumstances where holding a contractual right to take possession of a covered product meets the definition of holding stock.

4 – Definitions

6. Section 4 of the Rules provides definitions of certain terms and phrases to support the operation of the Rules.

7. The definitions are discussed in this explanatory statement where they are relevant to explaining the operation of specific sections.

5 – Covered Activities

8. Section 5 of the Rules provides for additional activities to be added to the definition of covered activities in subsection 5(1) of the Act (to the extent that they are not covered by other paragraphs of that definition).

9. Section 5 prescribes the activity of "operating a fuel storage terminal, for covered products, that is connected to a refinery or a port by a pipeline" as a covered activity. This will enable data-sharing between the Department of the Environment and Energy (the Department) and the Australian Competition and Consumer Commission (ACCC). The ACCC collects information on this activity as part of its fuel industry monitoring

role. Adding this as a covered activity is intended to ensure that this information can be shared with the Department, which intends to use the information to validate and support the statistics that would be produced from the data prescribed as reportable in the Rules. The ACCC consulted with terminal operators which would be affected by data-sharing in February 2017 and the proposed sharing of data was supported.

10. Section 5 prescribes as a covered activity "processing plant product". Plant product is defined in section 4 as liquefied petroleum gas (LPG), naphtha or natural gas liquid (NGL). Each plant product is a covered product and used in the production of transport fuels.

11. The processing of plant product is closely related to both producing and refining transport fuels. This created the potential for confusion over how plant product should be reported. To remove the potential for confusion, processing plant product has been prescribed as a new covered activity and a separate reporting obligation is provided in relation to it in subsection 16(1) of the Rules.

12. The term NGL and the phrase natural gas condensate are used interchangeably and sometimes inconsistently in the petroleum industry. In the Rules, the term NGL is intended to cover a liquid hydrocarbon product produced in Australian plants (non-biofuel) from the output of natural gas fields. NGL is also referred to as 'plant condensate' by some industry stakeholders, which is distinct from 'lease condensate' or 'field condensate', the latter two being condensate extracted directly, without processing, from oil or gas wells. Where the Rules prescribe a reporting obligation in relation to processing NGL, this is intended to cover only liquid hydrocarbon product produced in Australian plants (non-biofuel). Where the Rules prescribe a reporting obligation in relation to producing condensate, this is intended to cover all condensate extracted directly from an Australian field without processing.

13. Australian plants (non-biofuel) and Australian field are defined at section 11.

6 – Covered Product

14. Section 6 of the Rules prescribes additional products for the purposes of the definition of covered products in subsection 5(1) of the Act (to the extent that they are not already covered by another paragraph of that definition).

15. This section prescribes natural gas as a covered product. Natural gas is defined in section 4 as including NGL, compressed natural gas (CNG), liquefied natural gas (LNG), methane and ethane.

16. The inclusion of natural gas as a covered product makes it clear that the Secretary of the Department of Environment and Energy (the Secretary) has powers and responsibilities in relation to the collection and publication of fuel information related to natural gas. By prescribing natural gas as a covered product the data-sharing authorisations in the Act and Consequential Amendments apply to information in relation to natural gas. This allows sharing of natural gas data to take place under the Act.

17. Section 14 of the Rules excludes most forms of natural gas from the reporting obligations in the Act. However, NGL is reportable across all relevant activities and certain gases are reportable in a refining report when used in or produced as a result of refining petroleum.

18. The inclusion of natural gas, being a fuel, would assist in delivering upon all three objectives provided in section 3 of the Act.

19. Section 6 also prescribes ammonia as a covered product where it is intended to be transformed at a later time into hydrogen for use as a transport fuel. Due to the difficulty of storing and transporting hydrogen, some businesses may use ammonia as a form of storage, with the ammonia converted into hydrogen and nitrogen before the hydrogen is used as a transport fuel. The coverage of ammonia is intended to ensure that the use of hydrogen in the transport fuel supply chain can be properly captured.

20. The inclusion of ammonia, being a fuel, would assist in delivering upon the first and third objectives provided in section 3 of the Act.

21. Section 6 also prescribes refining-related gas (other) as a covered product. This is intended to ensure that Australia is able to develop and report statistics on refining activity as required under the *Agreement on an International Energy Program* (IEP Treaty).

22. Refining-related gas (other) is defined in section 4 as a fuel that is an input into or output from the refining of crude oil or condensate at a refinery, where it is not otherwise covered by Schedule 1. There are a range of gases that may be related to the refining of petroleum, including methane, ethane, refinery gas, butane and propane. As some refining-related gases are subcategories of other covered products, such as LPG, the category of refining-related gas (other) is intended to capture gases that are only reportable in relation to refining activities.

23. Due to the application of section 14, refining-related gases are not reportable for any activity except for refining. This means that the production or wholesaling of methane is not reportable under the Rules.

24. Schedule 1 lists four subcategories of 'refining-related gas (other)' as reportable. These are methane, ethane, refinery gas and refining-related gas (other)—other. This is not a comprehensive list of the gases that may be reportable in a refining report. Other gases listed elsewhere in the Schedule are reportable in a refining report where they are used as an input or are an output. For example, butane and propane, which are subcategories of LPG, are also reportable in refining reports where relevant.

25. The inclusion of refining-related gases, being fuels, would assist in delivering upon the second objective provided in section 3 of the Act.

26. Section 6 also prescribes other refinery feedstock as a covered product. This is intended to ensure that Australia is able to develop and report statistics on refining activity required under the IEP Treaty. Other refinery feedstocks may be fuels or fuel-related products.

27. Refinery feedstock (other) is defined in section 4 as fuel or fuel-related product that is transformed into another covered product at a refinery, and which is not otherwise covered by Schedule 1. Only liquids and solids can fall within the definition of refinery feedstock (other) due to the definition of refining-related gas (other).

28. Schedule 1 lists four subcategories of 'refinery feedstock (other)' as reportable for refining reports only. These are additives and oxygenates, hydrocarbon blendstocks, non-hydrocarbon blendstocks and refinery feedstock (other)—other. These subcategories capture data required to be reported to the IEA on refining activities. The subcategory of hydrocarbon blendstocks is intended to capture any hydrocarbons not listed elsewhere in the Schedule. Where a blendstock is already prescribed as a covered product, it is reportable under that category. For example, a gasoline blendstock inputted into the refining process would be reportable as 'gasoline—other', rather than 'hydrocarbon blendstock'.

29. The inclusion of refinery feedstock (other), when it is a fuel and when it is a fuel-related product, would assist in the achievement of the second objective provided in section 3 of the Act.

7 – Holding Stock – contractual rights

30. Section 7 of the Rules prescribes certain activities as being within the definition of holding a contractual right to take possession of a covered product for the purposes of the definition of holding stock in subsection 5(1) of the Act. This would mean that the activities are covered activities under the Act.

31. Paragraph 7(a) provides that where a person owns a covered product stored outside of Australia and has a contractual right to remove the product from storage, this falls within the meaning of holding a contractual right to take possession of a covered product, and therefore the definition of holding stock at subsection 5(1) of the Act.

32. This means that where:

- an entity owns stock stored overseas; and
- the stock is in the possession of another entity (including a foreign affiliate or subsidiary) under a contract; and
- the entity owning the stock has a right under the contract to remove it from storage,

then this is a covered activity in relation to which a person can be made subject to a reporting obligation.

33. Reporting obligations for the holding of stock stored overseas as defined by paragraph 7(a) are prescribed at table item 2 of subsection 17(1) of the Rules.

34. All the elements listed above must be satisfied for a reporting obligation to be able to be imposed under the Rules. This means that the person must own the stock, store it in a facility operated by a separate legal entity, and have a right to remove the stock. If any one of these elements is not satisfied, the stock is not required to be reported.

35. Paragraph 7(b) of the Rules provides that where a person has a right to receive covered product on water that this right falls within the meaning of holding a contractual right to take possession of a covered product.

36. The inclusion of a contractual right to take possession of covered product on water is intended to ensure that stock in transit to Australia is reportable by an Australian business regardless of who legally owns the stock. There are a variety of structures used for the transit of petroleum and other fuels and the intention of this provision (in conjunction with sections 15 and 17) is to avoid imposing a reporting obligation on foreign oil and shipping companies that may not have an Australian presence.

37. The IEA requires certain categories of covered product on water to be reported under the IEP Treaty. Capturing the other categories will also provide fuel information which is useful to the Department for monitoring energy security.

38. Section 4 provides that a covered product is on water if:

- the covered product is held in storage in a seagoing tanker ship (excluding the ship's bunker and any stock that falls outside the definition of holding stock in section 5 of the Act); and
- it is intended that the covered product will be unloaded at an Australian port.

39. Section 4 defines fuel stored in a ship's bunker as fuel stored for powering the ship. Section 5 of the Act excludes storing a covered product in a personal vehicle and keeping a covered product wholly or principally for private or household (non-commercial) domestic use from the definition of holding stock (see Explanatory Memorandum to the Act for further discussion). Accordingly, fuel stored to power an oil tanker ship or for a non-commercial use does not fall within the definition of covered product stock held on water.

40. The phrase 'tanker ship' is used in the Rules in the definition of "on water", but is not itself defined in the Rules. The phrase tanker ship is used as a general term for any ship transporting covered products to Australia.

41. Reporting requirements for the holding of covered products on water as defined by paragraph 7(b) are prescribed in table items 3 and 4 of subsection 17(1) of the Rules. Section 15 provides that where one regulated entity has a reporting obligation due to holding stock in storage and another regulated entity has a reporting obligation due to holding the contractual right, it is the entity with the contractual right that must report stock of that covered product.

Division 3 – Other provisions relating to the scope of this instrument

42. This Division sets out two exemptions from the reporting obligations prescribed in sections 16 and 17.

8 – Wholesaling to which this instrument does not apply

43. Section 8 of the Rules exempts from the wholesale reporting obligation prescribed at table items 9-12 of subsection 16(1), any covered product which is not subject to excise or customs duty, and is taken directly from an import terminal to a domestic production facility. For example, crude oil which is unloaded at an import terminal before being transported to an Australian refinery will, by virtue of this section, not be subject to the reporting obligation at table item 11 of subsection 16(1). The crude oil would be reportable when delivered, stored and input into a refining process at an Australian refinery under table items 7 and 8 of subsection 16(1).

44. The intention of this section is to prevent the unnecessary double reporting of covered products in wholesale reports when they are also required to be reported under refining reports.

45. The meaning of wholesale is defined at section 5 of the Act as follows:

wholesaling a covered product means:

(a) entering a covered product for home consumption (within the meaning of the *Customs Act 1901* or the *Excise Act 1901*); or

(b) if a covered product is not subject to duty of excise or duty of customs—removing the covered product from an import terminal or domestic production facility (such as a refinery); or

(c) if another activity is prescribed by the rules for the purposes of this paragraph for a kind of covered product—undertaking that activity in relation to the kind of product.

46. The phrase 'domestic production facility' is not defined in the Act or Rules. It is intended to cover any facility creating covered products. It includes Australian refineries, Australian biofuel plants, Australian plants (non-biofuel) and GLOWS facilities.

9 –Stock holding to which this instrument does not apply

47. Section 9 of the Rules exempts from the stock reporting obligation prescribed at subsection 17(1) any stock held in a seagoing ship's bunker or for the exclusive use of the Australian Defence Force (ADF) or another military force.

48. Stock in seagoing ships bunkers is defined in section 4 as stock held for the purposes of powering a ship. This is in contrast to stock held in the hold of a tanker ship. Bunker fuel is not relevant to the production of the statistics and is not allowed to be counted towards compliance with the IEA oil stockholding obligation.

49. Stock for the exclusive use of the ADF or another military force is stock that has been reserved for defence purposes. This stock cannot be counted towards compliance with the IEA oil stockholding obligation.

50. Commercial stocks that are not reserved, for example stock that may be sold to the ADF or another military force but have not yet been sold or reserved, are reportable.

51. The Act provides a number of additional exemptions to the obligation to report stocks, including exemptions for covered products:

- stored at a service station or retail store;
- stored in a personal vehicle (such as a motor car);
- stored in a road tanker, rail tank car or pipeline; and
- kept wholly or principally for private or domestic (non-commercial) use.

Part 2 – Reports of fuel information

Division 1 – Outline of this Part

52. This Division provides an outline of Part 2 of the Rules.

10 – Outline of this Part

53. The simplified outline provided here is intended to assist readers to understand the substantive provisions. The outline is not comprehensive and readers should rely on the substantive provisions to understand the operation of Part 2.

Division 2 – Definitions

54. This Division defines the meaning of field, plant, refinery and GLOWS facility.

11 – Australian fields and plants

55. Section 11 of the Rules clarifies the meaning of certain phrases in relation to the production and processing of covered products at fields and plants in Australia.

56. Subsection 11(1) provides that an Australian field means a field where crude oil, condensate or LPG is or was produced in Australia by a regulated entity. Field is used here in its ordinary meaning as understood by the upstream petroleum industry.

57. Section 8 of the Act makes clear that any reference to Australia, such as that in subsection 11(1) of the Rules, includes offshore areas. As a result, offshore production fields are covered by the definition of Australian field.

58. Subsection 11(2) provides that a person required to report in relation to production at an Australian field may combine one or more fields in their report in certain circumstances. The intention of this provision is to reduce the reporting burden for businesses that may not separately measure production and related activities for nearby fields.

59. To report more than one field as a single field, two conditions must be met. Firstly, the multiple fields must be located in the same state, territory or offshore region. For offshore regions, common industry distinctions, such as Bass Strait and the North West Shelf will be considered the same region. Secondly, the fields must be either next to

each other or administered by the regulated entity as part of a single project or productive area. Where both conditions are met, multiple fields may be reported to the Secretary as if they were a single field.

60. This provision does not affect the operation of subsection 11(6) which allows opening and closing stock from more than one field to be reported against a single field.

61. Subsection 11(3) provides that a reference to an Australian biofuel plant means a plant where transport biofuel is or was produced in Australia by a regulated entity. Plant is used as a generic term for a facility producing biofuels.

62. Transport biofuel is defined at section 4 of the Rules to mean biofuel that is able to be used as a transport fuel. Transport biofuel includes biofuel that can be used directly to power a vehicle such as a car, truck, ship or plane; and biofuel that would require blending with another covered product before being used.

63. Subsection 11(4) provides that a reference to an Australian plant (non-biofuel) means a plant at which plant products are or were produced in Australia by a regulated entity. Plant is used as a generic term for facilities that process plant product but which do not engage in the refining of petroleum. For example, an Australian plant (non-biofuel) may process methane to form NGL which is also referred to as 'plant condensate' by some stakeholders.

64. Plant product is defined at section 4 of the Rules to mean LPG, naphtha and NGL.

65. Subsection 11(5) extends the meaning of Australian field, Australian biofuel plant and Australian plant (non-biofuel) to include any storage facility in Australia to which a processed or produced covered product is delivered. For example, if crude oil is extracted from an onshore field and then transported to a terminal on the coast for storage until export, this terminal is taken to be part of the field for the purposes of reporting crude oil stored at a field under table items 1 and 2 of subsection 16(1) of the Rules.

66. The extension of the meaning of field and plant to cover storage facilities located offsite is intended to reduce the reporting burden by allowing producers and processors to report all their stocks at various facilities in the one report rather than having to submit a report under section 17 as well.

67. The obligation to include stocks stored off-site in production reports does not apply to stocks that have already been sold or exported from Australia. Where stocks have been exported they would no longer be reportable and when they are sold, the stock reporting obligation would apply to the new owner.

68. Subsection 11(6) allows regulated entities to combine the stock volumes they report from multiple fields or plants into a single field or plant report. This is a discretionary choice for reporters and is intended to reduce the regulatory burden associated with reporting where a regulated entity holds stock from several fields or plants and combines these stocks at one or more locations. For example, where an entity owns stock produced from four separate fields and stores this at a single off-site facility, such

as an export terminal, it may report all the stock as being from one field or allocate the stock against each of the four fields in the appropriate proportions.

69. Subsection 11(6) does not permit stock from different covered activities to be combined in the report for one covered activity. For example, if a regulated entity operates 3 Australian fields and 2 Australian plants (non-biofuel), while they may merge stocks from the 3 fields into one report, they may not combine stock for the 3 fields and 2 plants together in the one report. This is because the reportable covered products are different for each activity. This does not limit the power of the Secretary to combine reporting templates for different activities under the Act.

12 – Refineries and GLOWS facilities

70. Section 12 of the Rules provides definitions relevant to the reporting obligations of refiners.

71. Subsection 12(1) defines an Australian refinery as a refinery where covered product is or was refined in Australia by a regulated entity.

72. Paragraph 12(2)(a) defines input stock as a covered product which is an input into a refining process at an Australian refinery.

73. Paragraph 12(2)(b) defines working stock as a covered product which is an intermediate output from a refining process at an Australian refinery.

74. Paragraph 12(2)(c) defines output stock as a covered product which is an output from a refining process at an Australian refinery and which is not working stock.

75. The purposes of these definitions is to apply the common industry understanding of inputs, working stocks and outputs to the reporting obligations at section 16 of the Rules.

76. Some covered products can be both an input into and output from the refining process. For example, refining-related gases such as methane may be an output from the refining of petroleum and then re-entered into the refining processes at a later point. Another example is gasoline which is a common output from refining, but may also be an input. For example, where gasoline blendstock (partially refined gasoline) is entered into the refining process then this will need to be reported as an input.

77. Subsection 12(3) excludes GLOWS—petroleum based greases, lubricants, base oils, waxes and solvents—from the definitions in subsections 12(1) and 12(2). It also excludes GLOWS from the refining reporting obligation prescribed at table item 7 (and by implication table item 8) of subsection 16(1). Separate definitions for GLOWS are provided in subsections 12(4) and 12(5), and a specific reporting obligation for GLOWS re-refiners and recyclers is prescribed at table item 5 of subsection 17(1).

78. The term GLOWS is defined in section 4 as the covered products listed at items 15 to 18 of Column 1 of the table at subclause 1(1) in Schedule 1 of the Rules. That is:

- lubricating oil base stock;

- lubricant (which includes grease and a number of products referred to as types of oil);
- petroleum-based solvent; and
- paraffin wax.

GLOWS is used as a shorthand term as these products have similar reporting obligations.

79. Subsection 12(4) defines an Australian GLOWS facility as a refinery where GLOWS are recycled or re-refined by a regulated entity. Generally, a GLOWS facility recycles or re-refines waste lubricant, but other GLOWS may be processed.

80. Paragraph 12(5)(a) defines input stock as a covered product which is an input into a recycling or re-refining process at a GLOWS facility. For example, used lubricant which could be re-refined or recycled.

81. Paragraph 12(5)(b) defines working stock as a covered product which is an intermediate output from a recycling or re-refining process at a GLOWS facility.

82. Paragraph 12(5)(c) defines output stock as a covered product which is an output from a recycling or re-refining process at a GLOWS facility and which is not working stock. This is intended to cover products that result from a completed recycling or re-refining process, such as re-refined lubricating base oil stock or recycled fuel oil produced from used lubricant.

83. The intended operation of subsections 12(4) to 12(5) is to apply definitions of stock for GLOWS facilities that mirror the approach in the Rules for other refineries so far as it is appropriate.

Division 3 – Reports

84. This Division sets out the detail of the reporting obligations.

Subdivision A – Scope of this Division

13 – Regulated entities

85. Section 13 of the Rules provides, consistently with section 11 of the Act, that the reporting obligations prescribed in sections 16 and 17 apply to covered activities undertaken by regulated entities.

86. The phrase ‘regulated entity’ is defined in section 5 of the Act. Section 12 of the Act extends the meaning of regulated entity in certain circumstances. Section 20 of the Rules would similarly extend the meaning of regulated entity in certain circumstances to enable the reporting obligations in sections 16 and 17 to be applied as broadly as possible within constitutional limits.

87. Where the phrase 'regulated entity' is hereafter used in this explanatory statement, the expanded meaning created by section 12 of the Act and section 20 of the Rules is intended.

14 – Non-reportable natural gas and refining-related gas (other)

88. Section 14 partially excludes natural gas and refining-related gas (other) from the reporting obligations established in this Division.

89. Natural gas is defined in section 4 as including NGL, CNG, LNG, methane and ethane.

90. Refining-related gas (other) is defined in section 4 as a gas which is a fuel and an input into or output from the refining of crude oil or condensate at a refinery, where it is not otherwise covered by Schedule 1. It is intended as a cover all category to include gases that are relevant only for refining activity reporting. Schedule 1 lists four sub-categories of refining-related gas, namely methane, ethane, refinery gas and other refining-related gases. Other gases that may be an input into or output from refining but are listed as a category or subcategory elsewhere in Schedule 1, for example propane, do not fall within the scope of refining-related gas (other).

91. Subsection 14(1) provides a general exemption from the reporting obligations in this Division to all forms of natural gas except NGL and refining-related gas (other).

92. Subsection 14(2) limits the exemption in 14(1) to provide that refining related gases are reportable where they are relevant to the refining activity reporting obligation prescribed at items 7 and 8 of the table in subsection 16(1) and the calculation of the reporting threshold for refineries at paragraph 16(5)(d).

93. This means that methane, ethane, refinery gas and other gases are reportable when they are an input into or output from refining, but not other activities unless in the form of NGL (also known as plant condensate). The intention of this provision is to ensure that gases are only reportable where relevant to meeting Australia's reporting obligations under the IEP Treaty or to the compilation of the Australian Petroleum Statistics.

15 – Holding Stock – entity that stores covered product disregarded if another entity holds contractual right to take possession

94. Section 15 of the Rules clarifies that where two entities are prescribed as having a reporting obligation under section 17 because one party is keeping the stock in storage and another party has a contractual right to take possession of the same stock, then the reporting obligation applies to the entity holding the contractual right to take possession, and the entity keeping the covered product in storage is not subject to the reporting obligation.

95. There are two circumstances provided at section 7 where a contractual right to take possession is prescribed as holding stock for the purposes of the Act. The first is holding a contractual right to take possession of stock held in storage overseas and the second is holding a contractual right to take possession of covered product on water after it is unloaded in Australia.

96. This provision is intended to clarify who has the reporting obligation where both the current owner and future owner would otherwise have a prescribed reporting obligation under subsection 17(1). For example, if one company owns stock which is in transit to Australia and another company has the contractual right to take possession of the stock after it is unloaded, only the company holding the contractual right to take possession is required to report under subsection 17(1).

97. In circumstances where one entity is keeping stock in storage and another has a contractual right to take possession of the same stock, but only one of the entities is subject to prescribed reporting obligations under the Rules, then the entity that is subject to the prescribed requirements must report. Therefore, if a regulated entity keeps a covered product in storage and another entity has a contractual right to take possession of that stock at a later point, but the particular type of contractual right to take possession is not of a kind that is subject to prescribed reporting requirements under subsection 17(1) (that is it does not fall within the definition of holding stock at section 5 of the Act as adjusted by section 7 of the Rules), then the entity keeping the covered product in storage must report. For example, if a fuel wholesaler is keeping diesel in storage, but a retailer holds a contractual right for the diesel to be delivered to one of its service stations, then this arrangement would not exempt the fuel wholesaler from a reporting obligation under section 17 because holding a right to retail a product held in storage is not an activity that attracts prescribed reporting obligations under the Rules.

Subdivision B - Reports

16 – Reports - general

98. Section 16 of the Rules prescribes reporting obligations for a range of covered activities, as envisaged by section 11 of the Act.

99. Subsection 16(1) sets out in a table the reporting requirements prescribed by the Minister. Paragraphs 16(1)(a)-(c) explain how the table should be interpreted. Subsection 16(2) sets the reporting categories and subcategories. Subsection 16(5) sets the volume thresholds below which reporting obligations under the Act do not apply.

100. The table set out at subsection 16(1) prescribes the reporting obligations as follows:

- The covered activity and product/s which are subject to a reporting obligation are set out in Column 1.
- The person to whom the reporting obligation applies is stated in Column 2.
- The fuel information that must be reported is specified in Column 3.

Each table item should be read as a whole to understand the reporting obligation prescribed by the Minister.

101. Paragraph 16(1)(a) provides that only activities occurring in Australia (including Australian territorial waters) are relevant to the reporting obligations prescribed under subsection 16(1). Production, processing, refining and wholesaling taking place outside of Australia are not covered by the obligations.

102. Paragraph 16(1)(c), read alongside subsection 16(2), provides that the fuel information prescribed in Column 3 must be reported using the categories and subcategories set out in Schedule 1. For example, to meet a reporting obligation under paragraph (b)(ix) of Column 3 of table item 7, on output stock held at a refinery at the end of the reporting period, a person would need to report kerosene using the subcategories of 'jet fuel' and 'kerosene—other'.

103. The term 'quantity' is used throughout the reporting requirements without specifying relevant units. In accordance with paragraph 11(4)(b) of the Act, the Secretary (or their delegate) will set the required units for each product and activity in the relevant reporting template. It is envisioned that the reportable units will generally be volume or weight, with liquids reported by volume (at standard temperature and pressure) and solids by weight. However, the Secretary may require other units or specify a particular quantity for reporting such as kilolitres or metric tonnes for certain products. As the best unit for reports will depend on the product and activity, and may differ for large and small reporters, the determination of the appropriate units was left to the Secretary in the Act.

104. The table set out at subsection 16(1) details the prescribed reporting obligations in relation to the following activities and associated holding of stock:

- production of crude oil, condensate and LPG (table items 1 and 2);
- production of transport biofuels (table items 3 and 4);
- processing of plant products (table items 5 and 6);
- refining covered products (table items 7 and 8); and
- wholesaling covered products (table items 9, 10 and 11).

105. The reporting period and reporting deadline is prescribed at section 18. Most covered activities are subject to monthly reporting.

Production of crude oil, condensate and LPG

106. Table items 1 and 2 of subsection 16(1) prescribe for the purposes of section 11 of the Act reporting obligations associated with the production of crude oil, condensate and LPG.

107. Column 1 of table item 1 prescribes the covered activity to which reporting obligations apply as producing crude oil, condensate (field condensate) or LPG at an Australian field.

108. Producing a covered product is defined in section 5 of the Act as:

producing a covered product means recovering a covered product through a process of extraction or otherwise creating a covered product, but does not include refining a covered product.

109. An Australian field is defined at section 11 of the Rules as a field where crude oil, condensate or LPG is or was produced in Australia by a regulated entity.

110. Subsection 11(2) permits a person to report two or more Australian fields as a single field where they are all located within the one state, territory or offshore region and the fields are either adjacent or administered as a single production area or project.

111. Column 2 of table item 1 imposes the reporting obligation on each person who first owns any crude oil, condensate or LPG when it is extracted or otherwise created. Where joint venture partners in a field each own a share of production, each joint venture partner would have a reporting obligation.

112. It should be noted that subsection 18(3) of the Rules would allow for a joint reporting obligation, such as that applying to a joint venture in an Australian field, to be satisfied by the submission of a single comprehensive report. For example, the project manager for a field could submit a combined report on behalf of each joint venture partner.

113. Column 3 prescribes particular fuel information that must be reported to satisfy the reporting obligation under table item 1. This fuel information is:

- the state, territory or offshore region where the field is located;

and, the quantity and average density of:

- crude oil, condensate and LPG stored at the field at the beginning of the month;
- crude oil, condensate and LPG produced at the field during the month;
- crude oil, condensate and LPG consumed as a fuel at the field during the month;
- crude oil, condensate and LPG delivered from the field during the month; and
- crude oil, condensate and LPG stored at the field at the end of the month.

114. When reporting average density it should be reported as a single figure per covered product per field. Where two or more fields are combined in accordance with section 11(2), then the average density will be the average across both fields, accounting for the respective volume of production in the relevant month.

115. When determining the quantity of crude oil, condensate or LPG stored at a field at the start and end of the month, the extended meaning of field under subsection 11(5) would apply. This means that offsite storage forms part of a field for the purposes of satisfying the reporting obligations under table item 1.

116. The phrase ‘delivered from the field’ is intended to capture the removal of a covered product away from a field and its associated storage. For example, when crude oil is sold, exported or transferred to a refinery it would be considered delivered from the field.

117. Subsection 16(4) excludes from the reporting obligation crude oil, condensate and LPG sold or exported before the start of the relevant calendar month. For example, LPG sold on 17 May would not be required to be included in a report for the month of June, even if it had remained in the same storage facility throughout all of May and June due to the buyer not yet taking delivery. The LPG would be reportable in the May report as being delivered from the field. Where stock remains in a field’s storage after it is sold, it may be captured by the stock reporting obligations at subsection 17(1) of the Rules.

However, if a stock reporting obligation applied, it is the owner (i.e. the purchaser) who would be required to report.

118. Table item 2 prescribes the holding of crude oil, condensate or LPG at an Australian field at the start of the month as reportable. The reporting obligation applies to the owner of the stock and the fuel information that must be reported is the same as for item 1.

119. Table item 2 is intended to ensure that where no production takes place at a field in a month, for example due to maintenance, changes such as reductions in stock levels are reported.

120. Where a field permanently ceases production, the reporting obligation would continue to apply under table item 2 until it ceased to meet the threshold prescribed at paragraph 16(5)(a). In the event that a field fell below the threshold, but still stored over 3kt of stock, then a residual reporting obligation could apply under subsection 17(1) of the Rules.

121. Paragraph 16(5)(a) relieves from the reporting obligations imposed by table items 1 and 2 any field which produced less than 3kt in total of crude oil, condensate and LPG over the previous financial year. This means that if a field produced 2kt of crude oil, 0.7kt of condensate and 0.3kt of LPG in a financial year then a reporting obligation under table items 1 or 2 would apply.

Production of transport biofuels

122. Table items 3 and 4 of section 16(1) prescribe for the purposes of section 11 of the Act reporting obligations associated with producing transport biofuel.

123. Column 1 of table item 3 prescribes the covered activity to which reporting obligations attach as producing transport biofuel at an Australian biofuel plant.

124. Producing is defined in the Act to include creating a covered product other than by refining it.

125. Transport biofuel is defined at section 4 of the Rules to mean biofuel that is able to be used as a transport fuel. This includes biofuel that can be used directly to power a vehicle such as a car, truck, ship or plane; and biofuel that would require blending with another covered product before being used. Biofuels unable to be used as a transport fuel are not reportable.

126. Australian biofuel plant is defined at subsection 11(3) of the Rules to mean a plant where transport biofuel is or was produced in Australia by a regulated entity.

127. Column 2 of table item 3 imposes the reporting obligation on each person who first owns any biofuel created at the plant. This would generally be the owner of the Australian biofuel plant.

128. Column 3 prescribes particular fuel information that must be reported to satisfy the reporting obligation under table item 3. This information is:

- the transport biofuel held at the plant at the start of the month;
- the transport biofuel created at the plant during the month;

- the transport biofuel held at the plant at the end of the month; and
- the average density of each transport biofuel required to be reported.

129. When reporting average density, a single figure should be given to each relevant subcategory of biofuel. Schedule 1 lists four subcategories, namely ethanol, biodiesel, renewable diesel and other. If a plant produces two different types of a subcategory, for example two types of biodiesel, and these have a different density, then the average density across both types accounting for quantity produced must be reported.

130. The extended meaning of Australian biofuel plant under subsection 11(5) would apply when determining stock levels. This means that biofuel stocks held offsite, such as at a fuel storage terminal, are to be included when determining stock levels for reporting purposes.

131. Table item 4 prescribes the holding of biofuels at an Australian biofuel plant at the start of the month as reportable. This replicates the approach at table item 2 for Australian fields and is intended to ensure that where no production takes place at a plant during a month, for example due to maintenance, that changes at the biofuel plant such as reductions in stock levels are reported.

132. Paragraph 16(5)(b) relieves from the reporting obligation any biofuel plant where less than 3kt of biofuel was produced in the previous financial year. If over 3kt of biofuel is held at a plant exempted under paragraph 16(5)(b), it may still have a residual stock reporting obligation under subsection 17(1) of the Rules.

Processing of plant product at an Australian plant (non-biofuel)

133. Table items 5 and 6 of section 16(1) prescribe for the purposes of section 11 of the Act reporting obligations associated with the processing of plant product.

134. Column 1 of table item 5 prescribes the covered activity to which reporting obligations attach as processing plant product at an Australian plant (non-biofuel).

135. The phrase 'Australian plant (non-biofuel)' is intended to distinguish plants processing LPG, naphtha and NGL from those producing biofuels.

136. Section 4 of the Rules defines processing as follows:

processing plant product means undertaking a process from which plant product is an output.

137. Plant product is defined in section 4 as LPG, naphtha or NGL.

138. Column 2 of table item 5 imposes the reporting obligation on each person who first owns any plant product that is an output from the process. This will generally be the owner of the plant.

139. Column 3 of table item 5 prescribes particular fuel information that must be reported to satisfy the reporting obligation. This information is the quantity of:

- plant product stored at the plant at the beginning of the month;
- plant product which is consumed as a fuel at the plant during the month;

- plant product which is an output from the processing undertaken at the plant during the month;
- plant product delivered from the plant during the month;
- plant product stored at the plant at the end of the month; and
- the average density of plant product required to be reported.

140. When determining the amount of plant product stored at an Australian plant (non-biofuel), the extended meaning created by subsection 11(5) applies.

141. The phrase 'delivered from' is intended to capture the removal of plant products from a plant and its associated storage. For example, when NGL is sold, exported or transferred to a refinery it would be considered delivered from the plant.

142. Table item 6 prescribes the holding of plant product at a non-biofuels plant at the start of the month as reportable. The reporting obligation applies to the owner of the stock and the fuel information that must be reported is the same as for item 5.

143. The intention of table item 6 is to ensure that where a plant does not produce plant product in a month, changes in the other categories of fuel information are reportable.

144. Paragraph 16(5)(c) relieves from the reporting obligation prescribed at table items 5 and 6 any non-biofuel plant where less than 3kt of plant product in total was produced in the previous financial year. If over 3kt of plant product is held at a plant exempted under paragraph 16(5)(c), a residual stock reporting obligation may still apply under subsection 17(1) of the Rules.

Refining a covered product

145. Table items 7 and 8 in subsection 16(1) prescribe for the purposes of section 11 of the Act reporting obligations associated with refining covered products.

146. Column 1 of table item 7 prescribes the covered activity to which reporting obligations attach as refining a covered product at an Australian refinery.

147. Refining is defined in section 5 of the Act as:

refining a covered product means transforming a covered product into another covered product, or recycling or re-refining a covered product.

148. An Australian refinery is defined in subsection 12(1) of the Rules as a refinery at which a covered product is or was refined in Australia by a regulated entity. Subsection 12(3) provides that a facility which only recycles or re-refines GLOWS is not treated as an Australian refinery for reporting purposes. Accordingly, where a refinery produces GLOWS and other covered products such as diesel and bitumen it is covered by table item 7. However, if a facility only recycles or re-refines GLOWS (i.e. a GLOWS facility) it would not be subject to the reporting obligations prescribed under table item 7 or table item 8. GLOWS recyclers and re-refiners have other reporting obligations under the Rules

149. Column 2 of table item 7 places the reporting obligation on each person who first owns a covered product which is an output from the refining process. This would generally be the owner of the refinery.

150. Column 3 of table item 7 prescribes the particular fuel information that must be reported to satisfy the reporting obligation. The required fuel information is:

- input stock, working stock and output stock held at the start of the month
- input stock delivered to the refinery during the month;
- inputs, outputs or working stock delivered from a petrochemical facility to the refinery during the month (i.e. backflows);
- inputs (of any covered product) entered into the refining process over the month;
- inputs, outputs or working stock consumed as fuel by the refinery during the month;
- outputs (of any covered product) from any refining process over the month;
- inputs, outputs or working stock delivered from the refinery to a petrochemical facility during the month;
- remaining input stock, working stock and output stock held at the end of the month;
- the total losses over the month, including any covered products flared, destroyed, spilled or otherwise unable to be accounted for. This should be reported as a single figure, rather than by product; and
- the average density of all reported covered products.

151. When reporting on opening stocks, deliveries and closing stocks of inputs, reporters must identify whether the input stock was imported or produced domestically. For example, when reporting the crude oil delivered to the refinery over a month, a reporter must specify the proportion that was produced in Australia and was imported.

152. Input stock, working stock and output stock is defined in subsection 12(2) of the Rules. These definitions are intended to align with current reporting categories and industry usage. A covered product may be both an input and an output at a refinery. For example, outputs of refining-related gas are commonly returned to the refining process as an input. Another example is blendstock, where a product such as diesel is entered as an input into the refining process (that is blended with working stock) to improve the quality of, or provide particular characteristic to, the diesel which becomes an output from the refinery.

153. When reporting input stock, working stock and output stock, a reporter must report using the relevant categories and subcategories set out in Schedule 1 of the Rules. Specific reporting subcategories apply for refinery reports to capture data that is only relevant to refining and to avoid irrelevant subcategories.

154. Table item 8 prescribes a reporting obligation where input stock or output stock is held at an Australian refinery at the start of the month, but no outputs are produced in that month. This reporting obligation applies to the person who owns the stock and the reportable fuel information is the same as for table item 7.

155. The intention of table item 8 is to ensure that where a refinery does not produce any output stock in a month that changes in relevant fuel information are reportable. This ensures that stock held at a refinery undergoing maintenance continues to be reported.

156. Paragraph 16(5)(d) relieves from the reporting obligations any refinery which had a total output of covered products less than 3kt in the previous financial year. If over 3kt of covered products are held at a refinery exempted under paragraph 16(5)(d), there may still be a residual stock reporting obligation under subsection 17(1).

Wholesaling

157. Table items 9 – 12 of subsection 16(1) prescribe for the purposes of section 11 of the Act reporting obligations in relation to wholesaling. Table item 9 applies to petroleum coke, table item 10 applies to GLOWS, table item 11 applies to crude oil, condensate, NGL and refinery feedstock (other), and table item 12 applies to other covered products.

158. Wholesaling is defined in the Act at section 5 as:

wholesaling a covered product means:

(a) entering a covered product for home consumption (within the meaning of the *Customs Act 1901* or the *Excise Act 1901*); or

(b) if a covered product is not subject to duty of excise or duty of customs—removing the covered product from an import terminal or domestic production facilities (such as a refinery); or

(c) if another activity is prescribed by the rules for the purposes of this paragraph for a kind of covered product—undertaking that activity in relation to the kind of product.

159. The Rules do not prescribe an activity for the purposes of paragraph (c) of the definition of wholesaling in the Act.

160. Table items 9-12 prescribe that the fuel information is to be broken down by state marketing area. State marketing area is defined in section 4 as:

State marketing area, in relation to wholesaling a covered product, means:

(a) the State or Territory in which it is expected that the covered product will be consumed, or sold for final consumption; or

(b) if the State or Territory mentioned in paragraph (a) is not known—the State or Territory in which the wholesaling occurs.

161. This means that when reporting wholesales, regulated entities should report the State where they expect the product will be consumed or sold for final consumption. For example, if a regulated entity enters for home consumption 10ML of diesel in Brisbane, but plans to sell 2ML of this in northern New South Wales, then it should report 8ML as wholesaled in Queensland and 2ML in New South Wales.

162. If the state of final consumption or sale is not known, a reporter should report the state or territory where they triggered the obligation to pay excise or customs duty or removed the product from an import terminal or domestic production facility. For

example, if a regulated entity enters for home consumption 10ML of diesel in Brisbane and on-sells this to another business which retails fuel in Queensland and New South Wales and the regulated entity does not know where the fuel will be sold to motorists, then it should simply report 10ML of wholesales in Queensland.

Wholesaling - petroleum coke

163. Table item 9 in subsection 16(1) prescribes for the purposes of section 11 of the Act reporting obligations associated with wholesaling petroleum coke.

164. Column 1 of table item 9 prescribes the covered activity to which reporting obligations attach as wholesaling of petroleum coke.

165. Petroleum coke is not subject to excise or customs duty for the purposes of entering a covered product for home consumption within the meaning of the *Customs Act 1901* or the *Excise Act 1901*. The reportable action would therefore be removing petroleum coke from an import terminal or Australian refinery.

166. Column 2 imposes the reporting obligation on the regulated entity that removed the petroleum coke from an import terminal or refinery. This would generally be the owner of the product. For example, an aluminium smelter which imported petroleum coke for use in the production of aluminium would be expected to report the amount of petroleum coke they had removed from import terminals.

167. Column 3 of table item 9 prescribes the fuel information that must be reported to satisfy the reporting obligation. This information is the quantity of petroleum coke wholesaled during the financial year by state marketing area.

168. Paragraph 16(5)(e) relieves from the wholesale reporting obligation any regulated entity which wholesaled less than 3kt of covered products during the previous financial year. Therefore, if an entity only wholesaled 2kt of petroleum coke and no other covered product in the previous financial year, it would not have a reporting obligation. A residual stock reporting obligation may apply under subsection 17(1) where 3kt or more of petroleum coke is held as stock at the end of the financial year.

169. Subsection 18(1) of the Rules imposes less frequent reporting on wholesalers of petroleum coke compared to that for other covered products. This reduced reporting requirement has been developed in consultation with petroleum coke wholesalers. Petroleum coke consumption and stock levels change little month to month, so annual data supported by data-sharing with other government agencies will enable reliable monthly estimates to be produced. These reporting requirements minimise the regulatory burden and align the reporting process prescribed in the Rules with existing reporting requirements under the National Greenhouse and Energy Reporting Scheme (NGERS).

Wholesaling - GLOWS

170. Table item 10 in subsection 16(1) prescribes for the purposes of section 11 of the Act reporting obligations associated with wholesaling GLOWS.

171. Column 1 of table item 10 prescribes the covered activity to which reporting obligations attach as wholesaling GLOWS.

172. The term GLOWS is defined in section 4 of the Rules as the covered products listed at items 15 to 18 in Column 1 of the table at subclause 1(1) of Schedule 1, which are:

- lubricating oil base stock;
- lubricant (which includes grease and a number of products referred to as oils);
- petroleum-based solvent; and
- paraffin wax.

173. Some, but not all, GLOWS are subject to excise or customs duty. Therefore, for products subject to excise or customs duty, such as lubricant, the relevant reportable action will be entering the product for home consumption under the Product Stewardship for Oil (PSO) Program. For products not subject to excise or duty, such as paraffin wax, the relevant activity will be removing the product from an import terminal or domestic production facility such as a refinery.

174. Applying section 8, where a GLOWS, such as lubricating oil base stock, is removed from an import terminal and taken directly to a refinery to be used as an input into the refining of other covered products, such as lubricant and grease, then this is not reportable as a wholesale. In such a case, the lubricating oil base stock would be reportable as an input in a refining report.

175. Column 2 of table item 10 imposes the reporting obligation on the regulated entity that wholesaled the product.

176. Column 3 of table item 10 prescribes the fuel information that must be reported to satisfy the reporting obligation. This information is the quantity of GLOWS wholesaled during the six month reporting period, separated by state marketing area and the categories and sub-categories prescribed in Schedule 1.

177. Paragraph 16(5)(e) relieves from the reporting obligation any entity which wholesaled less than 3kt of covered products in total during the previous financial year. A residual stock reporting may apply under subsection 17(1) of the Rules if a regulated entity holds over 3kt of GLOWS at the end of a reporting period.

178. It should be noted that a separate stock reporting obligation applies under subsection 17(1). This includes a specific reporting requirement for recyclers and re-refiners of GLOWS.

179. Subsection 18(1) of the Rules imposes less frequent reporting on wholesalers of GLOWS compared to that for other covered products. This reduced reporting requirement has been developed in consultation with GLOWS wholesalers and is intended to minimise the reporting burden on these businesses, many of which wholesale relatively small amounts of GLOWS for specialised purposes and report under the PSO Program. The Department envisions that a combination of six monthly reports, data-sharing by the Australian Taxation Office on PSO Program data and estimation will enable reasonably accurate monthly statistics on GLOWS wholesales to be developed.

Wholesales - certain refinery related products

180. Table item 11 in subsection 16(1) prescribes for the purposes of section 11 of the Act reporting obligations associated with wholesaling crude oil, condensate, NGL and refinery feedstock (other).

181. Column 1 of table item 11 prescribes the covered activity to which reporting obligations attach as wholesaling crude oil, condensate, NGL and refinery feedstock (other).

182. Column 2 of table item 11 imposes the reporting obligation on the regulated entity that wholesaled the product.

183. Column 3 of table item 11 prescribes the fuel information that must be reported to satisfy the reporting obligation. This information is the total quantity of crude oil, condensate, NGL and refinery feedstock (other) wholesaled in Australia, separated by state marketing area.

184. Paragraph 16(3)(b) makes clear that the total quantity prescribed in Column 3 should be provided as a single figure encompassing all products.

185. Section 8 excludes from the wholesale reporting obligation any product which is not subject to excise or customs duty where it is removed from an import terminal and transferred to a domestic production facility. Accordingly, crude oil, condensate, NGL and refinery feedstock (other) transferred from an import terminal to a domestic refinery is not reportable under table item 11.

Wholesales - all other products

186. Table item 12 in subsection 16(1) prescribes for the purposes of section 11 of the Act reporting obligations associated with wholesaling all other covered products.

187. Column 1 of table item 12 prescribes the covered activity to which reporting obligations attach as wholesaling a covered product other than petroleum coke, GLOWS, crude oil, condensate, NGL or refinery feedstock (other).

188. The wholesaling of natural gas covered by section 14 (i.e. all products falling within the definition of natural gas in section 4, other than NGL) is excluded from the reporting obligation prescribed at table item 12. This means wholesales of CNG, LNG, methane and ethane are not prescribed as reportable.

189. Column 2 of table item 12 imposes the reporting obligation on the regulated entity that undertook the wholesaling.

190. The majority of covered products are subject to excise and/or customs duty. For these products, the reporting obligation would apply to the person who entered the product for home consumption. That is, the person who is obliged to pay excise or custom duty on the product is prescribed as required to report, even if payment is made on behalf of a third party. For example, if a regulated entity pays excise on behalf of another entity which does not hold an excise license, the regulated entity that paid the excise has the reporting obligation.

191. Some covered products, such as bitumen or jet fuel supplied to a departing international aircraft, are not subject to excise or customs duty. For these products, the reporting

obligation applies to the person who removed the product from the import terminal or domestic production facility.

192. Column 3 of table item 12 prescribes the fuel information that must be reported to satisfy the reporting obligation. This information is the reportable quantity (which may be volume or weight) of covered products wholesaled during the month, separated by state marketing area and the categories and sub-categories prescribed in Schedule 1.

193. Paragraph 16(5)(e) relieves from the reporting obligation any entity which wholesaled less than 3kt of covered products in total the previous financial year. For example, if a company only wholesaled 2kt of diesel over the previous financial year it would not have a reporting obligation. However, if a company wholesaled 2kt of diesel and 1kt of regular unleaded gasoline then it would have a reporting obligation.

194. Subsection 18(1) of the Rules sets a reporting period of a calendar month and a reporting deadline of 15 days after the end of the reporting period for reports required under table items 11 and 12.

Quantities and densities must be broken down into categories and subcategories of covered products

195. Subsection 16(2) requires that the fuel information prescribed in Column 3 of the table at 16(1) be reported using the categories and subcategories prescribed in Schedule 1.

196. The intention of this provision is to make clear that when reporting quantities and density that regulated entities must break down the fuel information into the categories and subcategories set out at Schedule 1.

197. For aviation gasoline, marine diesel, jet fuel and marine fuel oil, regulated entities must separate wholesales between domestic and international uses. The international use subcategory is defined at subclause 1(3) of Schedule 1 as covered products supplied or intended to be supplied to a ship or aircraft for use outside Australia or in departing Australia. The intention of this distinction is to identify wholesales of covered products not consumed in Australia, which can be reported separated under the IEP Treaty to reduce a member's net imports and accordingly stockholding obligation. International fuel wholesales are not subject to excise so these transactions are easily identified by regulated entities.

198. Subsection 16(3) provides an exemption to the requirement to separate products into categories and subcategories for the fuel information prescribed at paragraph (d) of Column 3 of table item 7 and Column 3 of table item 11. This is because breakdowns are not required for either of these pieces of fuel information to produce the statistics. Further, for refinery losses in particular, it can be difficult to apportion to particular covered product when they occur during the transition of inputs into outputs.

199. The manner and form of reports is left to the Secretary (or their delegate) under the Act. Accordingly, it remains open to Secretary to have the categories and subcategories set out at Schedule 1 reported in a different order or structure. For example, it will be open to the Secretary to develop one or more templates for GLOWS to make it easier for businesses to report these products separately given their different reporting requirements.

Field stocks sold or exported before reporting period

200. Subsection 16(4) makes clear that the reporting obligations for Australian fields do not apply to crude oil, condensate and LPG which is sold or exported before the start of the relevant reporting period, even if the product remains stored at an Australian field. Once these products are sold or exported, a reporting obligation may remain, but it will apply to the new owner, even if the stock remains stored in the producer's storage facilities.

Thresholds

201. Subsection 16(5) sets the reporting thresholds for the activities prescribed as reportable in subsection 16(1). These thresholds are discussed against each activity above.

17 – Reports – Holding stock

202. Section 17 of the Rules prescribes reporting obligations in relation to the covered activity of holding stock of a covered product.

203. Holding stock is defined in section 4 of the Act as:

> ***holding stock*** of a covered product means:
>
> (a) keeping a covered product in storage (whether on land or at sea), but does not include:
>
> (i) storing a covered product in a service station, retail store, personal vehicle, road tanker, rail tank car or pipeline; or
>
> (ii) keeping a covered product wholly or principally for private or domestic use; or
>
> (b) holding, in circumstances prescribed by the rules for the purposes of this paragraph, a contractual right to take possession of a covered product.

204. Section 7 of the Rules prescribes two circumstances where holding a contractual right to take possession of a covered product would fall within the meaning of holding stock under paragraph (b) of the definition. These are owning stock stored overseas and holding a right to take possession of covered products on water after it is unloaded in Australia.

205. Section 5 of the Act excludes holding certain types of stock from the meaning of holding stock. These are therefore not covered activities and do not attract reporting obligations under the Act. Section 9 of the Rules also excludes from coverage under the Rules the storage of stocks in ships' bunkers, and the holding of military stocks. As a result of these provisions, the Act and the Rules exclude the following types of stock from any reporting obligation:

- stock held wholly or principally for private or domestic (i.e. household) use;
- stock held in a service station or retail store;
- stock held in a personal vehicle, road tanker, rail tank car or pipeline;
- stock held in a ship's bunker;
- stock held exclusively for the use of the Australian Defence Force or another military; and

- stock held in circumstances not covered by the above categories that also falls outside of the circumstances set out in section 7 of the Rules (discussed at paragraphs 27 – 37 of this Explanatory Statement).

206. The meaning of 'private or domestic use' is explained in the Explanatory Memorandum to the Act at paragraph 46 as follows:

> The exclusion of stocks for private or domestic use from the definition of holding stock is not intended to cover stocks held for commercial use. For example, if a mining company imported diesel from an overseas supplier to use in its own operations, it would be required to report the stock that remained in storage at the end of the month.

Therefore, it is only stocks held for personal and private household consumption that are not reportable.

207. Subsection 17(1) sets out in a table the reporting obligations prescribed by the Minister. Paragraphs 17(1)(a)-(c) explain how the table should be read, which is that:

- The activity (keeping a covered product in storage or holding a contractual right to take possession of a covered product) and covered products which are subject to the reporting obligation are set out in Column 1.
- The person to whom the reporting obligation applies is stated in Column 2.
- The fuel information that must be reported is specified in Column 3.

208. Each table item should be read as a whole to understand the prescribed reporting obligation.

209. The reporting periods and reporting deadlines are prescribed in section 18.

210. The reporting requirements in relation to holding stock are provided in a separate table to other covered activities due to a number of specific requirements for stockholding reports, including:

- Stock may only be subject to a reporting obligation when it is in a particular location. For example, certain types of stock held outside Australia are prescribed as reportable under table item 2, 3 and 4.
- Stock may only be subject to the reporting obligation when it is subject to a particular type of contractual relationship. For example, covered product on water under table item 3.

211. The reporting requirements in subsection 17(1) are intended to align with the approach of the IEA Secretariat when determining compliance with the oil stockholding obligation in the IEP Treaty and capture stock data relevant to monitoring energy security.

General stock reporting obligation

212. Table item 1 of subsection 17(1) of the Rules prescribes for the purposes of section 11 of the Act a general stock reporting obligation.

213. Column 1 provides that unless table items 2 to 5 apply to reportable stock, then the stock is reportable under table item 1.

214. Table item 1 is intended as a 'catch all provision'. Any stock that is not covered by table items 2 to 5 or excluded by the Act or the Rules is prescribed. No stock stored outside Australia is prescribed under table item 1, due to the application of subsection 17(2).

215. Column 2 prescribes that the reporting obligation applies to the regulated entity who holds the stock. For the purposes of table item 1, the owner of the stock is the person who is required to report.

216. Column 3 prescribes that the fuel information is the total quantity of the stock held in each state or territory of Australia broken down by the categories and subcategories prescribed at Schedule 1.

217. Stocks should be reported in the state or territory they were stored in at the end of the relevant month. For example, if fuel oil is stored in Melbourne at the end of the month, but the owner intends to transport the fuel oil to South Australia the next day (and then does so), the relevant state for reporting remains Victoria.

218. When reporting under table item 1, the fuel information must be separated into the relevant categories and sub-categories set out at Schedule 1. The subcategories relevant to reports under table item 1 are set out in Column 4 of the table at subclause 1(1) of Schedule 1.

219. The reporting period is specified at subsection 18(1). For the fuel information prescribed under table item 1 it is a calendar month and the reporting deadline is 15 days after the end of that month.

Stocks kept in storage outside Australia

220. Table item 2 prescribes for the purposes of section 11 of the Act a reporting obligation for stocks held outside Australia that are not 'covered products on water'.

221. Column 1 refers to the circumstances set out at paragraph 7(a). This means that a reporting obligation applies if:

- stock is stored outside Australia; and
- the stock is owned by a regulated entity in Australia; and
- the stock is not stored on a tanker ship awaiting delivery to Australia (this is covered by table items 3 and 4); and
- the stock is held in connection with the regulated entity's Australian business. That is, the stock is intended to be sold or consumed in Australia; and
- the stock is in the possession of another entity under contract. For example, a third party storage provider or the regulated entity's affiliate or subsidiary is the owner of the storage facility where the stock is stored; and
- the regulated entity owning the stock has a right under contract to remove the fuel from storage. For example, if the regulated entity owns the stock but could not take

the stock out of storage and bring it to Australia under the law of the country where the oil is stored, then it would not be reportable; and

- the stock is not otherwise exempted or excluded under the Act or these Rules. For example, if an Australian business held jet fuel in Singapore and had a right to bring the oil to Australia, but the jet fuel was for the exclusive use of the Australian Air Force then it would not be reportable.

222. Column 2 of table item 2 imposes the reporting obligation on the person who owns the stock.

223. Column 3 of table item 2 prescribes the fuel information that must be reported to satisfy the reporting obligation. This is the quantity of the stock broken down by the categories and subcategories in Schedule 1 and the country it is located in. The subcategories relevant to reports under table item 2 are set out in Column 4 of the table at subclause 1(1) of Schedule 1.

224. It is important to note that where an Australian company holds a covered product outside Australia, but the covered product is not held in connection with their Australian business, it is not reportable.

Covered products on water

225. Table items 3 and 4 prescribe for the purposes of section 11 of the Act a specific stock reporting obligation where stock is in transit from a foreign port to Australia. This is called 'covered products on water' in the Rules.

226. Column 1 of table item 3 prescribes as reportable having a contractual right to take possession of covered products on water

227. Holding a contractual right to take possession of stock of a covered product on water is prescribed as a reportable instance of holding stock under subsection 5(1) of the Act at paragraph 7(b) of the Rules.

228. Column 1 of table item 4 prescribes as reportable holding covered products on water.

229. This means that stock on water is reportable both when it is owned directly and when a person will take possession of the stock after it is unloaded in Australia.

230. Section 4 provides that a covered product will be on water if:

- it is kept in storage in a seagoing ship, excluding the ship's bunker;
- it is intended the covered product will be unloaded at an Australian port; and
- it is not excluded under the definition of holding stock in section 5 of the Act.

231. The definition applies the concept of intention because stock on water reporting is meant to capture a regulated entity's intentions at the end of the month. It may be that a regulated entity redirects additional stock to Australia in the next month or diverts a tanker ship which was on route to Australia to meet a supply shortfall elsewhere, but it is the quantity intended to be supplied to Australia at the end of the month that is reportable.

232. The following covered products are prescribed as reportable for the purposes of table items 3 and 4:

- Crude oil;
- Condensate;
- LPG;
- NGL;
- Gasoline;
- Diesel;
- Kerosene;
- Fuel Oil;
- Biofuel; and
- Refinery feedstock (other).

233. Covered products not prescribed as reportable under table items 3 and 4 are still reportable under table items 1, 2 and 5.

234. Column 2 of table item 3 places the reporting obligation on the entity that holds a contractual right to take possession of the stock after it is unloaded in Australia.

235. Column 2 of table item 4 places the reporting obligation on the entity that owns the stock in the tanker ship.

236. The intended operation of the reporting obligations in table items 3 and 4 is to ensure that an Australian-based business always has a reporting obligation in relation to stock on water. In some cases, Australian companies own covered products, while in other cases, companies only hold a contractual right to take possession once the fuel is unloaded.

237. Section 15 means that where one entity has the contractual right to take possession and another entity owns the stock, it is the entity with the contractual right that must report. This is because the owner in such a situation may be based overseas and it would be inappropriate to require them to report.

238. Column 3 of table items 3 and 4 prescribe the fuel information which is reportable for covered products on water. This is the quantity of the stock broken down by category (but not subcategory) and its location.

239. When reporting quantity for table items 3 and 4, subsection 17(4) requires covered products be split by category, but not subcategory. Reports on covered products on water must provide the product category as set out in Column 1 of the table at subclause 1 of Schedule 1, but do not need to provide the subcategory as set out in Column 4. For example, stock of ‘premium unleaded—RON 98’ in transit between two Australian ports can be reported as ‘gasoline’.

240. When reporting location for covered products on water, there is no need to report the state marketing area as the stock is still in transit. Instead, subsection 17(5) requires stock to be split into four specific location categories.

241. Subsection 17(5) requires that reports of stocks on water prescribed under table items 3 and 4 be split into four location categories. These are:

- Stock held in storage in a tanker ship at a foreign port. That is stock which has been loaded onto a ship which is yet to leave the port of loading. The IEP Treaty allows stocks held in a tanker ship at port to be counted towards compliance with the oil stockholding obligation.
- Stock in a tanker ship which has left the port of loading, but which has not yet entered Australia's Exclusive Economic Zone (EEZ). This data is useful to monitoring energy security, especially in the event of a potential supply disruption.
- Stock in a tanker ship which has entered within Australia's EEZ, including stock which is in the territorial sea, but which has not yet met the conditions of the final category below.
- Stock in a tanker ship which meets any of the following conditions:
    i. the tanker ship is at an Australian port, whether awaiting unloading, moored for unloading or preparing to depart after unloading; or
    ii. the tanker ship has issued a notice of readiness with respect to an Australian port in preparation of unloading; or
    iii. the tanker ship is travelling between two Australia ports.

242. Stock must be reported against the most appropriate category at the end of the month. Accordingly, if a tanker ship enters Gladstone Harbour at 11.59pm on the last day of the month then it should be reported under the fourth category of subsection 17(5) as it is at an Australian port at the end of the month.

243. When reporting stock held in storage in a tanker ship at a foreign port (that is under paragraph 17(5)(a)), a person must report the country where the stock (i.e. the port) is held. There is no requirement to report the country for any other category of covered product on water.

244. The phrase 'exclusive economic zone' is defined in the *Acts Interpretation Act 1901*.

245. Subsection 17(6) provides that when reporting on whether stock is inside or outside the EEZ that the relevant standard is whether a person reasonably believes the ship is located inside or outside the EEZ. A reporter may not be certain of the exact location of a ship at the end of the month, especially if the ship is under the control of a third party.

Stock at an Australian GLOWS facility

246. Table item 5 prescribes for the purposes of section 11 of the Act a stock reporting obligation for stocks held at an Australian GLOWS facility.

247. Australian GLOWS facility is defined in subsection 12(4) as a refinery at which GLOWS are recycled or re-refined in Australia by a regulated entity.

248. Recycling is the process of turning a used petroleum-based substance into a new covered product. For example, waste lubricant may be recycled into fuel oil. Re-refining is the process of turning used lubricants into lubricating oil base stock which can be used to create new lubricant.

249. Column 1 prescribes as reportable all covered products held at GLOWS facilities that are input stock, working stock or output stock.

250. Subsection 12(5) defines the meaning of input stock, working stock and output stock for GLOWS facilities.

- Paragraph 12(5)(a) defines input stock as a covered product which is an input into a recycling or re-refining process at a GLOWS facility.
- Paragraph 12(5)(b) defines working stock as a covered product which is an intermediate output from a recycling or re-refining process at a GLOWS facility.
- Paragraph 12(5)(c) defines output stock as a covered product which is an output from a recycling or re-refining process at a GLOWS facility and which is not working stock.

251. Column 2 places the reporting obligation on the regulated entity that holds the stock. This would generally be the business which owns the recycling or re-refining facility.

252. Column 3 requires the same fuel information as for the general stock reporting obligation under table 1, with the added requirement that the stock be reported in the categories of input stock, working stock and output stock. This means that quantities in the reports must be broken down by state or territory, into the categories and subcategories set out in Schedule 1, and into input, output and working stock categories.

Prescribed Circumstances

253. Subsection 17(2) limits the reporting obligation in table items 1 and 5 under subsection 17(1) to stock held in Australia. This means that the general stock reporting obligation and the Australian GLOWS facility stock reporting obligation do not apply to stock outside of Australia.

254. Subsection 17(3) extends the reporting obligation in table items 2 to 4 under subsection 17(1) to stock both in Australia and stock that is outside Australia when it is held in connection with a business carried on in Australia.

Quantities of covered products on water

255. Subsection 17(4) sets specific reporting requirements for covered products on water for table items 3 and 4 under subsection 17(1).

256. Paragraph 17(4)(a) requires that the fuel information prescribed in Column 3 of table items 3 and 4 at subsection 17(1) be reported using the categories specified at Schedule 1. Reports do not need to include the subcategories set out at Column 4 of subclause 1(1) of Schedule 1. The intention of this provision is to reduce the reporting requirements for persons required to report covered products on water as a detailed product differentiation is not required to produce the statistics.

257. Paragraph 17(4)(b) requires that the fuel information prescribed in Column 3 of table items 3 and 4 at subsection 17(1) be reported by country when stock is held in storage in a ship in a foreign port. That is, when a person reports stock against the category set out at paragraph 17(5)(a), they must also report the country where this stock is located.

258. There is no requirement that country be reported for the other three categories of covered product on water set out at subsection 17(5).

259. Subsection 17(5) sets out four categories which must be used when reporting the location of stock which is covered product on water under table item 3 and 4 at subsection 17(1). These categories are discussed in relation to the table items above.

260. Subsection 17(6) provides guidance on the standard to be applied when determining whether covered products on water should be reported under paragraphs 17(5)(b) or 17(5)(c).

261. The intention of this provision is to provide comfort to regulated entities required to report under table items 3 and 4 of subsection 17(1). Where a person is required to report on covered products on water, it should be relatively easy to determine objectively whether a covered product falls within paragraph 17(5)(a) or 17(5)(d). This is because businesses should know if their stock is at a foreign port (17(5)(a)), at an Australian port (17(5)(d)(i)), awaiting unloading after a notice of readiness has been given (17(5)(d)(ii)) or in transit between Australian ports (17(5)(d)(iii)). However, it may not always be easy to determine whether a covered product in transit to Australia should be reported under paragraph 17(5)(b) or 17(5)(c). For example, if another person is operating the ship containing a covered product, its exact position relative to the EEZ at the end of the month may be uncertain.

262. Accordingly, persons required to report on whether a covered product on water is inside or outside the EEZ should report their reasonable belief as to its location at the end of the month.

263. If a reporter wishes to document the basis for its belief, relevant information could include ship location records (such as global positioning system records), information on the expected route and any information provided by the shipping company.

264. Subsection 17(6) does not change the standard for covered products on water which fall within paragraph 17(5)(a) (stocks kept in storage in a ship in a foreign port) and paragraph 17(5)(d) (stocks kept in storage in a ship within the EEZ if the ship is at an Australian port, has issued a notice of readiness or is travelling between Australian ports).

Interaction with section 16

265. Subsection 17(7) provides that where stock is reportable under section 16 that it is not required to be re-reported under section 17.

266. The reporting obligations for Australian fields, Australian biofuel plants, Australian plants (non-biofuel) and Australian refineries in section 16 include stock reporting obligations. The intention of subsection 17(7) is to ensure that subsection 17(1) does not impose an obligation to report the same stock information twice.

Threshold

267. Subsection 17(8) establishes reporting thresholds on the stock reporting requirements imposed by subsection 17(1), in accordance with subsection 13(2) of the Act.

268. The threshold for stock reporting created by subsection 17(8) is a two-limbed test. A person must satisfy both limbs of the test to be relieved of the reporting obligations created by subsection 17(1).

269. The first limb of the test is that the person must have wholesaled less than 3kt in total of reportable products during the previous financial year. This is the same threshold as that applied in paragraph 16(5)(e) for wholesale reporting. Therefore, if a person has an obligation to report wholesales under subsection 16(1) they must also report stocks under section 17.

270. The second limb of the test is that at the end of the relevant reporting period, a person holds less than 3kt of reportable stock in total over table items 1 to 5 of subsection 17(1).

271. The impact of the second limb is that if a person who does not have a wholesale reporting obligation under subsection 16(1), holds:

- 3kt or more of reportable stock, excluding petroleum coke and GLOWS, at the end of a month,
- 3kt or more of GLOWS at the end of a calendar or financial year, or
- 3kt or more of petroleum coke at the end of a financial year,

Then this person must report their stock holdings.

272. Therefore, even if a person did not wholesale 3kt of covered products in the previous financial year, they must still report their stocks if they are holding 3kt of stock at the end of a relevant reporting period. This is intended to ensure those holding significant stocks report them to the Secretary.

18 – Reporting Period and Giving Reports

273. Section 18 of the Rules prescribes the reporting requirements where a person prescribed under sections 16 or 17 is required to provide a report.

Reporting periods and when reports must be given

274. Subsection 18(1) defines the reporting period for a covered activity in relation to a covered product and prescribes the reporting deadline (the period within which a report on a covered activity in relation to a covered product must be provided to the Secretary in accordance with paragraph 11(4)(c) of the Act).

275. The table at subsection 18(1) sets out the reporting requirements as follows:

- Column 1 specifies the covered activity to which the table item applies.
- Column 2 prescribes the reporting period.
- Column 3 prescribes the reporting deadline.

276. Table item 1 prescribes the general reporting requirements which apply unless a different reporting obligation is prescribed at another item in the table.

277. The general reporting requirements are that:

- the reporting period is a calendar month; and
- the reporting deadline is 15 days after the end of the relevant calendar month.

278. These general reporting requirements apply to the following prescribed reporting obligations:

- Australian field reports under table items 1 and 2 of subsection 16(1).
- Biofuel plant production reports under table items 3 and 4 of subsection 16(1).
- Australian plant (non-biofuel) processing reports under table items 5 and 6 of subsection 16(1).
- Refining reports under table items 7 and 8 of subsection 16(1).
- Wholesaling reports under table items 11 and 12 of subsection 16(1).
- Stock holding reports under table items 1 to 4 of subsection 17(1), except where the reportable stock is petroleum coke or a GLOWS.

279. For example, this would mean that a refining activity report prescribed at table item 7 of subsection 16(1) must be compiled each month and submitted to the Secretary within 15 days of the end of that month. Accordingly, the report for January 2018 would be due on 15 February 2018.

280. Table item 2 prescribes a specific reporting period and reporting deadline for wholesaling and holding stock of petroleum coke. Specifically:

- The reporting period is a financial year; and
- The reporting deadline is 4 months after the end of the financial year (31 October).

281. Therefore reports on wholesaling and holding stock of petroleum coke would be due once per year, by 31 October.

282. Where petroleum coke is reportable under a refining report, the reporting period will remain a calendar month and the reporting deadline 15 days after the end of the relevant calendar month.

283. Table item 3 prescribes a specific reporting period and reporting deadline for reports on wholesaling and holding stock of GLOWS, including holding stock of GLOWS at an Australian GLOWS facility (see item 5 of the table at subsection 17(1)). Specifically:

- The reporting period is every six months (1 January to 30 June and 1 July to 31 December); and
- The reporting deadline is 31 days after the end of the reporting period (31 July and 31 January).

284. Therefore reports on wholesaling and holding stocks of GLOWS are due every six months, by the end of the following month.

285. Subsection 18(2) provides that the reporting deadlines in Column 3 are not changed when the end of the reporting period falls on a weekend or public holiday.

Reports only need to be given by one person

286. Subsection 18(3) provides an exemption from the reporting obligation where another person has already submitted the prescribed information for a covered activity in relation to a covered product.

287. This section is intended to make clear that where one person reports on behalf of another that this would remove any obligation on the regulated entity prescribed to report this information again.

288. For example, the output from an Australian field may be owned in proportion by multiple parties in a joint venture. In the event that one owner or their agent submits the prescribed fuel information for the entire field, then this would satisfy the reporting obligation for all owners.

19 – Exception to duty to report – reporting to NOPTA or Western Australia

289. Under subsection 13(1) of the Act the Minister may prescribe in the Rules circumstances which are an exception to the duty to report fuel information to the Secretary in accordance with subsection 11(2) of the Act.

290. Section 19 provides an exception to the reporting obligations in subsection 16(1) where a regulated entity has already reported prescribed information to the National Offshore Petroleum Titles Administrator (NOPTA) or the Western Australian Department of Mines, Industry Regulation and Safety (DMIRS). This is intended to reduce the reporting burden on regulated entities where re-reporting of this information is unnecessary.

291. NOPTA currently collects monthly production data for offshore petroleum wells in Commonwealth waters and DMIRS collects similar information for onshore wells in Western Australia. Following consultation between these agencies and reporting businesses, the agencies have agreed that a data-sharing arrangement with the Department is appropriate. NOPTA and DMIRS are working with the Department to establish data-sharing arrangements for commencement in 2018. Data-sharing between the Department and DMIRS will only proceed with the consent of producers as required under data protection provisions.

292. Under data sharing arrangements with NOPTA or DMIRS, fuel information that is personal information or commercial-in-confidence information and is provided to the Secretary would be protected information under the Act. The collection of this information by the Secretary would occur under section 15 of the Act.

293. Subsection 19(1) sets out three circumstances that must be met before a person is excepted from the reporting obligations in accordance with section 13(1) of the Act:

- First, the exception only applies to the Australian field production reporting obligations prescribed at table items 1 and 2 at subsection 16(1).
- Second, the regulated entity must meet its reporting obligations to NOPTA or DMIRS under the respective legislation listed at paragraph 19(1)(b).

- Third, the Minister must have declared the type of report submitted by the regulated entity to NOPTA or DMIRS to be an acceptable alternative report in accordance with subsection 19(2).

294. Importantly, the exception will not apply if a regulated entity fails to provide a report to NOPTA or DMIRS in line with the relevant legislative requirements specified at paragraph 19(1)(b). For example, if a report to NOPTA under the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* is submitted to NOPTA but it is late, incomplete or inaccurate, then the exception from having to report to the Department will not apply.

295. Subsection 19(2) confers a power on the Minister to declare, by notifiable instrument, that a monthly production report given to NOPTA or to DMIRS is an acceptable alternative report.

296. The instrument made by the Minister under subsection 19(2) will be registered on the Federal Register of Legislation as a notifiable instrument under the *Legislation Act 2003*. This instrument is declaratory in nature only and is not of legislative character.

297. The requirement for a notifiable instrument is intended to ensure the exception does not commence before the Department has established data-sharing arrangements with NOPTA and DMIRS. It may be that the arrangements are not in place by the due date of the first Australian field reports on 15 February 2018.

298. The Minister may revoke or replace the notifiable instrument made under subsection 19(2). The instrument might, for example, be revoked or replaced if NOPTA or DMIRS ceased under laws listed in paragraph 19(1)(b) to collect the fuel information prescribed under subsection 16(1).

299. The legislation referred to in paragraph 19(1)(b) are references to the legislation as in force from time to time. The legislation can be accessed electronically.

- The *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* can be accessed at the Federal Register of Legislation at www.legislation.gov.au.
- The *Petroleum and Geothermal Energy Resources (Resource Management and Administration) Regulations 2015* and *Petroleum (Submerged Lands) (Resource Management and Administration) Regulations 2015* can be accessed at the State Law Publisher of West Australia at www.slp.wa.gov.au.

Only density required to be reported in January

300. Subsection 19(3) provides that where a person is excepted from reporting production information for an Australian field because they meet the criteria set out under subsection 19(1), that they must still report the average density of any crude oil, condensate or LPG produced at the excepted field to the Secretary to meet their reporting obligation under subsection 11(2) of the Act as detailed at paragraph 11(4)(a) of the Act.

301. Put simply, where a regulated entity is not required to report fuel information in relation to an Australia field due to this section, they must still report density for January each year.

302. The average density is required to be reported for January. This means that the report on average density is due by 15 February each year.

303. Subsection 19(3) only requires average density to be reported for January. It does not require any other fuel information set out in column 3 of items 1 and 2 of that table in subsection 16(1) to be reported. This is because this other fuel information (by virtue of the requirements in subsection 19(1)) will be given in accordance with the legislation referred to in paragraph 19(1)(b).

304. Subsection 19(3) only applies to regulated entities that are excepted under section 19. Regulated entities that are not excepted must provide monthly reports on average density in accordance with subsection 16(1).

305. This residual reporting obligation is required as neither NOPTA nor DMIRS currently require their reporters to specify the average density of products. Density information is essential to enable the volumetric production data collected by NOPTA and DMIRS to be converted into weight, and this is necessary to meet Australia's reporting obligations under the IEP Treaty.

No report required for other months

306. Subsection 19(4) prescribes an exception (in accordance with subsection 13(1) of the Act) to the duty to provide a monthly production report under subsection 11(2) of the Act. The exception applies if subsections 19(1) and 19(2) are fulfilled and density has been reported for the relevant year (i.e. in January of that year). This section also allows for the possibility that a person may have reported under subsection 11(2) of the Act in the previous month, that is before a person was within the scope of subsection 19(1).

307. The note to paragraph 19(4)(a) explains that if the previous month was January, the person may have reported average density in accordance with subsection 19(3) and that this would be a report in accordance with subsection 11(2) of the Act.

Division 3 – Extended application of this Part

20 – Extended application of this Part

308. Section 20 of the Rules extends the application of the reporting obligation in sections 16 and 17 to entities that are not regulated entities in certain circumstances.

309. A regulated entity is defined in the Act as:

> ***regulated entity*** means:
>
> (a) a constitutional corporation; or
>
> (b) a trust, all of the trustees of which are constitutional corporations; or
>
> (c) a body corporate that is incorporated in a Territory; or

(d) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or

(e) a trust, if the proper law of the trust and the law of the trust's administration are the law of a Territory; or

(f) an entity, the core or routine activities of which are carried out in or in connection with a Territory.

310. Section 13 of the Act extends the application of section 11 of the Act in certain circumstances. Section 20 is intended to replicate this extension to the reporting obligations prescribed in these Rules.

Part 3 – Application and transitional provisions

Division 1 – Application of this instrument

21 – Application of this instrument

311. This section specifies when the obligations imposed by the Rules commence and establishes a transitional reporting obligation for petroleum coke.

312. Subsection 21(1) provides that the reporting obligations in Part 2 of the Rules commence on or after 1 January 2018.

313. Subsection 21(2) provides a different reporting treatment for petroleum coke, to require a one-off report on 31 October 2018 on petroleum coke wholesales between 1 January and 30 June 2018, and stock holdings on 30 June 2018. This is intended to avoid an outcome where the first prescribed report for petroleum coke would not be due until 31 October 2019.

314. Subsection 21(3) clarifies the application of sections 16 and 17 to relevant covered activities that are undertaken on or after 1 January 2018.

Schedule 1 – Categories and subcategories of covered product

Clause 1 – Categories and subcategories of covered product

315. This clause prescribes the categories and subcategories that fuel information must be reported against when prescribed under Part 2 of the Rules.

316. Subclause 1(1) sets the categories and subcategories by which covered products must be reported. It also explains how the table is to be applied.

317. Column 1 sets the categories which apply to all products.

318. Column 2 sets the subcategories which apply to all reportable activities except refining and holding stock.

319. Column 3 sets the subcategories that apply to refining reports prescribed by table items 7 and 8 of subsection 16(1).

320. Column 4 sets the subcategories that apply to holding stock reports under table items 1, 2 and 5 of subsection 17(1). The subcategories do not apply to holding stock reports under table items 3 and 4 of subsection 17(1) due to the operation of subsection 17(4). The categories in Column 1 still apply to table items 3 and 4 of subsection 17(1).

321. Subclause 1(2) of the Schedule provides specific reporting subcategories for LPG in relation to wholesaling. LPG wholesales are to be reported as either automotive or non-automotive in wholesale reports only. All other reportable activities are to use the subcategories of propane, butane and a mixture of propane and butane.

322. Subclause 1(3) provides explanations for the meaning of particular terminology in Schedule 1. The definitions of these terms and phrases contained in section 4 of the Rules cross-refers to these provisions.

- The term 'international' when used in a subcategory, is intended to cover any covered product that has been supplied or is intended to be supplied to a vessel (ship or plane) departing Australia or any covered product supplied or intended to be supplied for use outside Australia. For example, jet fuel wholesaled to an aircraft departing Tullamarine Airport for New Zealand would be a covered product supplied to a vessel departing Australia.
- The term 'domestic' is intended to cover all other circumstances.

This distinction is important to enable the impact of international aviation and shipping to be accounted for in the statistics and can be relevant to determining Australia's net import levels under IEA rules.

- The phrase 'high sulphur' is intended to cover fuel oil which meets the IEA definition of high sulphur. This is fuel oil with a sulphur content of one per cent or higher.
- The phrase 'low sulphur' is intended to cover any fuel oil with less than one per cent sulphur content.

The International Maritime Organisation recently revised international standards on sulphur content in ship bunker fuels and this distinction will help to track the impact and implementation of this requirement in Australia.