

EXPLANATORY STATEMENT

Issued by authority of the Minister for Climate Change and Energy

National Greenhouse and Energy Reporting Act 2007

National Greenhouse and Energy Reporting Amendment (2023 Measures No. 1) Regulations 2023

Background

The *National Greenhouse and Energy Reporting Act 2007* (NGER Act) provides a national framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information. Section 77 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *National Greenhouse and Energy Reporting Regulations 2008* (the NGER Regulations) are made under this provision.

The National Greenhouse and Energy (NGER) Scheme as established under the Act is a key data source which supports Australia's international and domestic reporting obligations and informs domestic climate and energy policies. Emissions reported under the NGER Act underpin the operation of the Safeguard Mechanism, which places emissions limits on Australia's largest greenhouse gas emitters.

The *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (the Measurement Determination), made under subsection 10(3) of the NGER Act, specifies the methods by which the amounts of emissions and energy production and consumption are to be measured for the purposes of the Act.

Purpose and Operation

The purpose of the *National Greenhouse and Energy Reporting Amendment (2023 Measures No. 1) Regulations 2023* (the amending Regulations) is to:

- Add two new biofuels, *renewable diesel* and *renewable aviation kerosene* as reportable fuels under the NGER Act; and
- Make provision for the reporting of information associated with estimates of scope 2 emissions from the consumption of electricity using methods set out in the Measurement Determination.

Details of the amending Regulations are outlined in Attachment A.

Schedule 2 of the amending Regulations commences together with amendments to the Measurement Determination, made by the *National Greenhouse and Energy Reporting (Measurement) Amendment (2023 Update) Determination 2023*. These amendments introduce a new method for estimating scope 2 emissions. Schedule 2 of the amending Regulations creates an obligation to report on information specified in the Measurement Determination relating to estimates of emissions made using this method.

Incorporation of documents by reference

Subsection 77(2) of the NGER Act permits the incorporation of documents as in force from time to time, in Regulations made under the Act.

The definition of *renewable aviation kerosene* refers to two documents which are incorporated by reference, as in force or existing from time to time. These two documents are *Def Stan 91-091* and *ASTM D7566*, which are technical standards.

ASTM D7566 is available for purchase through commercial websites. The prescription of commercial technical standards is a necessary part of technical regulatory regimes such as the NGER Act in order to achieve accurate and consistent measurement by regulated entities. Reporters required to meet reporting thresholds (specified by section 13 of the NGER Act) are corporate entities who regularly use such standards in their commercial activities and for other regulatory purposes.

Interested persons may enquire with the department about viewing ASTM D7566.

At the time of making of this instrument, the standard Def Stan 91-091 Issue 14 is freely available from websites including that of the Joint Inspection Group (<https://www.jig.org/documents/defstan-91-091-issue-14/>).

Consultation

The substance of the amendments made by the amending Regulations was released for public consultation from 3 April to 28 April 2023. Submissions expressed strong support for the inclusion of renewable diesel and renewable aviation kerosene as reportable fuels within the NGER Scheme. Feedback received in submissions has been reflected in the definitions of the new fuels as set out in the amending Regulations.

Regulatory Impact

The regulatory impacts of the amending Regulations have been assessed as not requiring a Regulation Impact Statement by the Office of Impact Assessment (ref OIA23-04928).

A statement of the amending Regulations' compatibility with human rights is set out in Attachment B.

The amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the National Greenhouse and Energy Reporting Amendment (2023 Measures No. 1) Regulations 2023

Section 1—Name

This section provides that the title of the Regulations is the *National Greenhouse and Energy Reporting Amendment (2023 Measures No. 1) Regulations 2023*.

Section 2—Commencement

This section provides for the commencement of the amending Regulations.

Schedule 1 commences on 1 July 2023. Schedule 2 commences on the later of the day after the instrument is registered, or the commencement of the *National Greenhouse and Energy Reporting (Measurement) Amendment (2023 Update) Determination 2023*. If the latter does not commence, then Schedule 2 does not commence at all.

The remainder of the instrument commences the day after it is registered.

Section 3—Authority

This section provides that the amending Regulations are made under the Act. The power to make regulations under section 77 of the Act includes the power to amend or revoke regulations that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4—Schedules

This section provides that each instrument that is specified in a Schedule to the amending Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the amending Regulations has effect according to its terms.

Schedule 1—Amendments commencing 1 July 2023

National Greenhouse and Energy Reporting Regulations 2008

Item 1 – Regulation 1.03

This item inserts definitions of *biodiesel*, *renewable diesel* and *renewable aviation kerosene*.

Biodiesel is a biofuel produced from esterification of oils derived from biomass and consisting mainly of esters. It is technically suitable for use as a fuel component in limited proportions in a blend with conventional, fossil-derived diesel oil. Biodiesel is already a reportable fuel within the NGER Scheme; the insertion of its definition gives clarity on the distinction between it and renewable diesel.

Renewable diesel is a biofuel which may be produced by a variety of production processes including gasification, Fischer-Tropsch synthesis, hydrothermal conversions, and hydroprocessing and which consists mainly of alkanes and other hydrocarbons (not of esters).

Renewable diesel is technically suitable for use as a substitute for diesel oil, either as a fuel component in a blend or as a complete substitute (in this sense it is referred to as a ‘drop-in’ replacement for diesel oil, as it may be used ‘neat’). The definitions provided above mean that renewable diesel and biodiesel are not the same fuels for the purposes of reporting under the NGER Act.

Renewable aviation kerosene is part of a class of fuels commonly referred to as ‘sustainable aviation fuel’. Like renewable diesel, it may be produced by a variety of production processes including gasification, Fischer-Tropsch synthesis, hydrothermal conversions, and hydroprocessing, and it consists mainly of alkanes and other hydrocarbons. Aviation turbine fuel must comply with relevant international technical standards. The definition inserted by this item therefore specifies that renewable aviation kerosene must meet the requirements of one of two such standards: ASTM D7566 (Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons) or DEF STAN 91-091 (Turbine Fuel, Kerosene Type, Jet A1; NATO Code: F-35; Joint Service Designation: AVTUR).

Biofuel is already defined in regulation 1.03 as a liquid fuel derived or recovered from biomass.

Item 2 - In the appropriate position in Part 7

This item inserts a transitional provision to provide that the amendments made by Schedule 1 of the amending Regulations apply in relation to reports under Part 3, 3E, 3F or 3G of the Act for the 2023-24 and subsequent financial years. This ensures reports for the 2022-23 financial year to be submitted by 31 October 2023 are not impacted by the changes.

Item 3 - Schedule 1 (after table item 53)

Schedule 1 of the NGER Regulations (‘Fuels and other energy commodities’) lists fuels and other energy commodities, the consumption of which is reportable within the NGER Scheme and designates whether they are to be considered primary or secondary fuels for energy accounting purposes.

This item inserts renewable diesel and renewable aviation kerosene as new items in Schedule 1. Both are designated as primary fuels, as they are not themselves derived from one or more other fuels reportable within the NGER Scheme.

Item 4 - Schedule 1 (table item 54)

This item makes a minor amendment to item 54 of Schedule 1 of the NGER Regulations to reflect the inclusion of the new biofuel entries by item 3 above.

Schedule 2—Amendments relating to scope 2 emissions

National Greenhouse and Energy Reporting Regulations 2008

Item 1 – After Subdivision 4.4.3

This item inserts a new subdivision 4.4.3 with provisions that require reporting of matters set out in Part 7 of Schedule 4 to the Measurement Determination. Items listed in Schedule 4 of the Measurement Determination specify relevant inputs to calculations performed as part of prescribed emissions estimation methods, the reporting of which allows assurance to be

conducted on emissions estimated under the NGER Scheme. This obligation commences together with the *National Greenhouse and Energy Reporting (Measurement) Amendment (2023 Update) Determination 2023*, which introduces a new method of estimating scope 2 emissions. This method is ‘market-based’ in the sense that, unlike the existing ‘location-based’ methods, it allows reporting entities to factor in their purchase of renewable electricity represented by Renewable Energy Certificates issued under the Renewable Energy Target scheme.

Statement of Compatibility with Human Rights

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

National Greenhouse and Energy Reporting Amendment (2023 Measures No. 1) Regulations 2023

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

Overview of the Legislative Instrument

The National Greenhouse and Energy Reporting (NGER) Scheme provides a framework for the reporting of greenhouse gas emissions, energy production and consumption and other information in Australia.

The purpose of the *National Greenhouse and Energy Reporting Amendment (2023 Measures No. 1) Regulations 2023* is to:

- Add two new biofuels, *renewable diesel* and *renewable aviation kerosene* as reportable fuels under the NGER Scheme; and
- Make provision for the reporting of information associated with estimates of scope 2 emissions from the consumption of electricity using methods set out in the Measurement Determination.

Human rights implications

This Legislative Instrument does not engage any of the applicable human rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Chris Bowen MP
Minister for Climate Change and Energy**