Australian Government
Clean Energy Regulator





Exemption declaration guideline

Safeguard Mechanism

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The Safeguard Mechanism

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Disclaimer

This guideline has been developed by the Clean Energy Regulator (CER) to assist responsible emitters to assess their eligibility or apply for an exemption declaration under the Safeguard Mechanism. This guideline must be read in conjunction with the *National Greenhouse and Energy Reporting Act 2007*[1] (the NGER Act), the National Greenhouse and Energy Reporting Regulations 2008[2] (the NGER Regulations), the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015[3] (the Safeguard Rule), and any other legislative instrument referenced in this document in their current form at the time of reading.

Changes to the legislation may affect the information in this document. It is intended that this document will be updated in line with any legislative changes or if further clarity on a particular issue is required.

The information contained in this document is provided as guidance only.

This document is general in nature and does not cover every situation that may arise in relation to an exemption declaration, or the Safeguard Mechanism more broadly.

Responsible emitters are responsible for determining their obligations under the Safeguard Rule, the NGER Regulations and the NGER Act and for applying the legislation to their individual circumstances. Responsible emitters should seek professional advice relevant to their circumstances if they have any concerns.

This document does not contain legal advice and is not a substitute for independent legal advice.

The CER and the Commonwealth of Australia will not be liable for any loss or damage from any cause (including negligence) whether arising directly, incidentally, or as consequential loss or damage, out of or in connection with, any use of this guideline or reliance on it, for any purpose.

[1] https://www.legislation.gov.au/C2007A00175/latest/text
[2] https://www.legislation.gov.au/F2008L02230/latest/text
[3] https://www.legislation.gov.au/F2015L01637/latest/text

Definitions and abbreviations

Term	Meaning
Criminal activity	Any activity that the Regulator has reasonable cause to believe involves the commission of an offence by one or more persons.
Excess emissions situation	Where the net emissions number for a facility for a monitoring period exceeds the facility's baseline emissions number for that monitoring period.
Executive officer (EO)	An executive officer is defined as a: • Director • Chief Executive Officer (however described) • Chief Financial Officer (however described) • Company Secretary.
Facility	Under section 9 of the NGER Act[4] a facility is an activity, or a series of activities (including ancillary activities), that involves greenhouse gas emissions, the production of energy or the consumption of energy and either: • forms a single undertaking or enterprise and meets the requirements of the NGER Regulations[5] • is declared to be a facility under section 54, 54A or 54B of the NGER Act.
Monitoring period	One of the following: • A full financial year that is not included in a declared multi-year monitoring period (MYMP), and during which a responsible emitter had operational control over the facility for the whole of that financial year. • Part of a financial year, if a responsible emitter only had operational control over a facility for that part and the financial year is not included in an MYMP. • An MYMP for a facility, where the facility is a designated large facility for at least one of the financial years in the MYMP, and a responsible emitter had operational control over the facility for the whole of that MYMP. • Part of an MYMP, if a responsible emitter only had operational control over a facility for that part of the MYMP and the facility is a designated large facility for at least one of the financial years in the MYMP.

[4] https://www.legislation.gov.au/C2007A00175/latest/versions
[5] https://www.legislation.gov.au/F2008L02230/latest/text

Term	Meaning
Natural disaster	A sudden and extreme event caused by natural forces that causes serious harm to people, property, and/or the environment. These events often happen with little warning and can disrupt communities, damage infrastructure, and require emergency responses to protect lives and/or support recovery.
Net emissions number	The total amount of covered emissions in t CO_2-e for a facility during a period, plus any ACCUs issued in relation to the facility during that period, minus any ACCUs and SMCs surrendered for the facility for that period.
Operational control	A person is considered to have operational control over a facility if either: • that person has authority to introduce and implement operating, health and safety, and/or environmental policies • the CER declares under section 55 or 55A of the NGER Act that the person has operational control over the facility. If there is uncertainty about which person has operational control over a facility and the agency has not made a declaration under section 55 or 55A of the NGER Act, the person having operational control over the facility will be the one with the greatest authority to introduce and implement operating and environmental policies in relation to the facility. If among 2 or more persons neither has the greatest authority to introduce and implement operating and environmental policies in relation to a facility, and the CER has not made a declaration under section 55 of 55A of the NGER Act, then either: • if a nomination by those persons is in force, then the nominated person will be taken to have operational control • if there is no nomination in force, each of those persons will be taken to have operational control over the facility.
Person	Means any of the following: • a body corporate • a trust • a corporation sole • a body politic • a local governing body • an individual.

Term	Meaning
Responsible emitter	The person with operational control of a Safeguard facility. The responsible emitter must both: • meet the Safeguard Mechanism requirements if the facility exceeds the safeguard threshold for a financial year • ensure the facility's net emissions number for a monitoring period do not exceed its baseline for that period. The responsible emitter may be an individual, a body corporate, a trust, a corporation sole, a body politic or a local governing body.

Revision history

Date	Description
21 August 2026	• Updated guidance to clarify the submission deadline when falling on a weekend or ACT public holiday (page 9). • General language clarification and formatting updates.

Who this guideline is for

This guideline provides information about the eligibility requirements of an exemption declaration and guidance on how to complete an application.

The CER recommends that responsible emitters applying for an exemption declaration for a facility consider this guideline.

All references to legislative provisions in this guideline relate to the Safeguard Rule unless otherwise indicated.

1 Introduction

1.1 Safeguard compliance obligations

Section 22XE of the NGER[6] Act defines an excess emissions situation as the situation where a safeguard facility's net emissions number for a monitoring period exceeds its baseline.

Under section 22XF of the NGER Act[7] responsible emitters of safeguard facilities whose net emissions number exceeds their baseline for a monitoring period must manage the excess emissions situation[8] to ensure the excess emissions situation does not exist before **1 April** following the end of the financial year in which the monitoring period ended.

Exemption declarations

In limited circumstances, an exemption declaration is an applicable option for responsible emitters of safeguard facilities in excess. Section 62 of the Safeguard Rule[9] empowers the CER to declare that an excess emissions situation does not exist in relation to a facility for a specified monitoring period, if specific requirements of the Safeguard Rule are met.

An exemption declaration can only be made if a facility demonstrates the entire excess for a specific monitoring period was the direct result of a natural disaster, and/or a criminal activity. The CER does not have the power to grant an exemption declaration for any other exceptional circumstances. See more detail about the eligibility criteria.

1.2 Application deadline

Applications must be received no later than the **31 October following the end of the monitoring period** relating to the proposed exemption declaration. For example, on or before 31 October 2025 is the deadline for an exemption declaration proposed to apply to the monitoring period beginning on 1 July 2024 and ending on 30 June 2025.

If the application deadline falls on a Saturday, Sunday or Public Holiday in the Australian Capital Territory then the application can be submitted on the next business day, in accordance with subsection 36(2) of the *Acts Interpretation Act 1901*.

[6] https://www.legislation.gov.au/C2007A00175/2024-10-14/2024-10-14/text/original/epub/OEBPS/document_1/document_1.html#_Toc177213663
[7] https://www.legislation.gov.au/C2007A00175/2024-10-14/2024-10-14/text/original/epub/OEBPS/document_1/document_1.html#_Toc177213664
[8] https://cer.gov.au/schemes/safeguard-mechanism/managing-excess-emissions
[9] https://www.legislation.gov.au/F2015L01637/2024-08-31/2024-08-31/text/original/epub/OEBPS/document_1/document_1.html#_Toc178768300

1.3 Criminal activity

One of the circumstances where the Safeguard Rule allows the CER to issue an exemption declaration is if an excess for a particular monitoring period is the direct result of criminal activity.

> The Safeguard Rule[3] defines criminal activity as 'any activity that the Regulator has reasonable cause to believe involves the commission of an offence by one or more persons.'

'Reasonable cause to believe' means the CER does not need absolute proof that a criminal offence has occurred. However, it does require more than a *mere* suspicion. In other words, a criminal conviction is not necessarily needed for the CER to have reasonable cause to believe that criminal activity has occurred. However, the CER's belief must be based on objective facts or circumstances and not suspicions or assumptions. It is up to the responsible emitter of a facility to provide sufficient evidence to the CER to enable it to form reasonable cause to believe an offence has occurred.

'Involves the commission of an offence by one or more persons' means that the activity involves one or more persons doing something that is against the criminal law (an offence). This includes a criminal offence under Commonwealth, State or Territory law. As an indicator of the meaning of this phrase, the *Criminal Code Act 1995* (the Criminal Code) distinguishes between the commission of an offence and the attribution of criminal responsibility for that offence. The Safeguard Rule does not require responsible emitters to attribute legal liability for an offence to any particular person/s, but only to demonstrate that an offence occurred.

1.3.1 Complicity in criminal activity

An exemption declaration can only be granted for an excess directly caused by criminal activity if the CER is satisfied that the responsible emitter was not complicit in the criminal activity. The responsible emitter does not have to be found guilty of a criminal offence for the CER to have reasonable cause to believe that the responsible emitter was complicit in criminal activity.

As an indicator of the meaning of complicit, the Criminal Code[10] describes complicity as occurring when a person intentionally 'aids, abets, counsels or procures the commission of an offence by another person'. Omission to perform a duty may also amount to complicity by way of encouraging criminal activity by an offender who takes the omission as implied permission, or as aid to the offender.

Complicity does not require that a person be aware of what specific offence the main offender commits. It is enough if they intended to aid an offence of the same general type as the offence that is committed.

1.4 Natural disasters

The second circumstance where the Safeguard Rule allows the CER to issue an exemption declaration is if an excess for a particular monitoring period is the direct result of a natural disaster.

[10] https://www.legislation.gov.au/C2004A04868/2025-02-08/2025-02-08/text/original/epub/OEBPS/document_1/document_1.html#_Toc189835196

> The CER considers that a natural disaster would generally mean a sudden and extreme event caused by natural force that causes serious harm to people, property, and/or the environment. These events often happen with little warning and can disrupt communities, damage infrastructure, and require emergency responses to protect lives and/or support recovery.

A sudden and extreme event caused by natural forces may include storms, floods, earthquakes or bushfires.

Events caused by human action, such as acts of war or terrorism, are not a natural disaster. Unintended events which are not caused by sudden and extreme natural forces, such as industrial faults, machinery malfunctions, or accidents, are also not a natural disaster.

Natural disasters are distinguished from events caused by less-disastrous weather or environmental conditions by their characteristic to causes a serious harm to people, property and the environment. This may include:

- loss of life, injury, distress or danger to persons
- loss of, or damage to, property.

Natural disasters are typically events of such a nature or magnitude that they are beyond the scope of a community's own resources to manage, requiring assistance on a national scale to restore safe conditions, functioning communications and a continuing livelihood for people.

The CER will consider whether a particular event constitutes a natural disaster on a case-by-case basis considering the full circumstances.

2 Eligibility requirements

In making an exemption declaration, the CER declares that an excess emissions situation does not exist for a facility for a specified monitoring period under section 22XE of the NGER Act[11].

The CER can only make an exemption declaration if satisfied that the entire excess is the direct result of a natural disaster and/or criminal activity. The CER has no power to issue an exemption declaration where the excess is the result of any other type of exceptional circumstances.[12]

Additionally, the CER must be satisfied that the responsible emitter has taken reasonable steps to mitigate risks of an excess being caused by the event, both before and after the event occurs.

[11] https://www.legislation.gov.au/C2007A00175/2024-10-14/2024-10-14/text/original/epub/OEBPS/document_1/document_1.html#_Toc177213663

[12] This is because the Safeguard Rule currently does not make any provision for the purposes of s 22XE(b)(iii) of the NGER Act.

2.1 Reason why an exemption declaration is being sought

Section 60 of the Safeguard Rule[13] requires the responsible emitter to provide information and documents substantiating why an exemption declaration is being sought. This explanation should detail the event/s to which the application relates.

A responsible emitter is only eligible for an exemption declaration if their facility's entire excess is the direct result of a natural disaster and/or criminal activity. The CER has no power to issue an exemption declaration where the excess is the result of any other type of exceptional circumstances.[14]

2.2 Distinguishing between direct and indirect causes of an excess

Section 22XE of the NGER Act requires that for an exemption declaration to be made, the entire excess emissions situation must be the direct result of a natural disaster and/or criminal activity. This is the case if there is a direct causal link between the natural disaster or criminal activity and the increase in emissions which caused the facility to be in the excess emissions situation.

The CER will calculate the excess emissions situation by determining the net emissions number of the relevant facility for the relevant monitoring period (before any surrender of ACCUs or SMCs for the period), minus the baseline emissions number for the facility for the period. We will then consider whether the entire excess was caused by the natural disaster or criminal activity.

> **Example of an excess emission situation that is likely a direct result of a natural disaster**
>
> An earthquake opened a methane seam at a coal mine. The opening of the seam caused the release of a large amount of methane from the mine, which caused the mine's net emissions number to exceed its baseline emissions number.
>
> Without the earthquake, the mine's net emissions number would likely have been below its baseline emissions number.

Conversely, excesses which are the indirect result of an event often involve a choice or financial decision in response to a market circumstance caused by the event. In this case, the potential excess will not be considered the direct result of the event, regardless of the nature or severity of the event.

[13] https://www.legislation.gov.au/F2015L01637/2024-08-31/2024-08-31/text/original/epub/OEBPS/document_1/document_1.html#_Toc178768298
[15] https://www.legislation.gov.au/F2015L01637/2024-08-31/2024-08-31/text/original/epub/OEBPS/document_1/document_1.html#_Toc178768300

Example of an excess emission situation that is likely an indirect result of a natural disaster

A smelter normally acquires high-grade coal from a particular mine. The mine ceases operation because of a major flooding event. The smelter then switches to a lower-grade coal because the price of high-grade coal has dramatically increased, due to supply stopping from the flooded mine.

The excess is likely the direct result of the smelter's decision to use a more emissions intensive coal, not the natural disaster itself.

The CER will consider whether an excess is a direct result of an event on a case-by-case basis, considering the full circumstances.

2.3 Reasonable steps to mitigate risks of an excess

To issue an exemption declaration, section 62 of the Safeguard Rule[15] requires the CER be satisfied that the responsible emitter has taken reasonable steps to mitigate the risks of the natural disaster or criminal activity resulting in an excess, both before and after the event occurred.

Examples of likely reasonable mitigation steps before an event

- Industrial design aimed at improving resilience to extreme weather conditions
- Procedures for greenhouse gas management during natural disasters
- Security arrangements
- Emergency shut-down procedures

Example of likely reasonable mitigation steps after an event

- Promptly acting to replace damaged emissions reduction equipment
- Utilising low emissions fuel sources
- Taking reasonable actions to limit emissions in the remaining part of the applicable monitoring period

The CER will consider what constitutes reasonable steps before and after an event on a case-by-case basis considering the full circumstances.

[15] https://www.legislation.gov.au/F2015L01637/2024-08-31/2024-08-31/text/original/epub/OEBPS/document_1/document_1.html#_Toc178768300

2.4 Other factors that have significantly impacted covered emissions

Under section 60 of the Safeguard Rule[16], an application for an exemption declaration must detail any other factors that have significantly impacted the covered emissions of the facility over the monitoring period.

This provides the CER with relevant contextual background on how the facility came to be in an excess, to assess whether the entire excess is the direct result of the criminal activity or natural disaster.

Although the inclusion of 'any other factors' is important in creating a comprehensive picture of the facility's circumstances, this does not change the requirement that the entire excess must be the direct result of criminal activity and/or a natural disaster.

3 Application process

3.1 Preparing and submitting the application

Responsible emitters who wish to apply for an exemption declaration must contact the CER to be provided with an application form. You may either:

- email the CER's Safeguard team at cer-safeguardbaselines@cer.gov.au
- call the general enquiries line on 1300 553 542.

Responsible emitters are encouraged to contact the Safeguard team as early as possible if they may apply for an exemption declaration, to allow time to submit a thorough application before the deadline.

The application must include supporting documentation to substantiate any claims made. The exemption declaration application form must be signed and submitted by the responsible emitter's executive officer.

The completed application form and supporting documentation must be sent to cer-safeguardbaselines@cer.gov.au by **31 October after the end of a monitoring period** for which the exemption declaration is sought.

3.2 After the application is submitted

On receipt of the application, the CER will formally assess the application.

If the CER requires additional information in order to assess the application, the CER may request further information under section 61 of the Safeguard Rule.[17] The request will specify when the information must be provided, which is typically within 14 days. If the requested information is not provided within the specified period, the CER may with written notice refuse to consider the application.

The CER will take all reasonable steps to ensure a decision is made by 60 days after receiving the application. If a request for further information was made, the CER will take all reasonable steps to ensure a decision is made by 60 days after the end of the period specified in the request.

[16] https://www.legislation.gov.au/F2015L01637/2024-08-31/2024-08-31/text/original/epub/OEBPS/document_1/document_1.html#_Toc178768298
[17] https://www.legislation.gov.au/F2015L01637/2024-08-31/2024-08-31/text/original/epub/OEBPS/document_1/document_1.html#_Toc178768299

If the CER intends to refuse the application, it will generally provide the responsible emitter with written notice of the intended decision and an opportunity to make a submission before the CER issues its final decision.

A responsible emitter may provide written notice to the CER to withdraw an application at any time before a decision is made on the application.

3.2.1 Review rights

A person whose interests are affected by a decision of the CER to make or refuse to make an exemption declaration and who is not satisfied with the decision may apply to the Administrative Review Tribunal for review of the decision. Refer to section 56 of the NGER Act[18] for more details.

The CER will notify the responsible emitter of their review rights in the notice of any decision to refuse to make an exemption declaration.

3.2.2 Revoking an exemption declaration

Under section 63 of the Safeguard Rule[19], the CER may revoke an exemption declaration if satisfied that information provided by the responsible emitter in connection with making the declaration was false or misleading, and the declaration would have otherwise not been made.

If the CER intends to revoke an exemption declaration, the responsible emitter will be notified in writing and given an opportunity to respond before a decision is made.

The CER is required to publish the details of the revocation of an exemption declaration on its website as soon as practicable after the revocation.

3.2.3 Publishing exemption declaration

The CER is required to publish the details of an approved exemption declaration on its website as soon as practicable to do so. The information published would include:

- the name of the facility and responsible emitter
- the monitoring period
- whether the exemption declaration was made due to a natural disaster or criminal activity.

Under specific circumstances, responsible emitters can apply under section 25 of the NGER Act[20] to request that some information included in an exemption declaration not be published.

The CER can only not publish the information if satisfied that it reveals, or could be capable of revealing, certain details about a specific facility, technology or corporate initiative relating to the responsible emitter. This includes trade secrets, or any other matter with commercial value where the information disclosure would, or could reasonably be expected to, destroy or diminish that commercial value.

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[18] https://www.legislation.gov.au/C2007A00175/2024-10-14/2024-10-14/text/original/epub/OEBPS/document_1/document_1.html#_Toc177213742
[19] https://www.legislation.gov.au/F2015L01637/2024-08-31/2024-08-31/text/original/epub/OEBPS/document_1/document_1.html#_Toc178768301
[20] https://www.legislation.gov.au/C2007A00175/2024-10-14/2024-10-14/text/original/epub/OEBPS/document_1/document_1.html#_Toc177213702

In assessing a request not to publish information, the CER will consider whether the applicant has demonstrated that there are real and substantial grounds to find that publishing the information will (or could reasonably) reveal a trade secret or affect commercial value, about a specific facility, technology, or corporate initiative. Grounds that are speculative, hypothetical, or theoretical will not be sufficient.

For more information about how to make a request for information not to be published see application for information not to be published.[21]

[21] https://cer.gov.au/document/cer-nger-009-application-information-not-to-be-published