

# EXPOSURE DRAFT



EXPOSURE DRAFT

## **National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023**

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I, Chris Bowen, Minister for Climate Change and Energy, make the following rules.

Dated 2023

Chris Bowen **DRAFT ONLY—NOT FOR SIGNATURE**  
Minister for Climate Change and Energy

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## 1 Name

This instrument is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2023.	1 July 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under section 22XS of the *National Greenhouse and Energy Reporting Act 2007*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

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## Schedule 1—Amendments

### *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015*

#### 1 Section 4

Insert:

*amount* includes a nil amount.

*assessed cost impact*, for a facility for a financial year, has the meaning given by section 30.

*Australian accounting standards* means the accounting standards in force under section 334 of the *Corporations Act 2001*.

Note: In 2023, the Australian accounting standards were accessible at <http://www.aasb.gov.au>.

#### 2 Section 4

Repeal the following definitions:

- (a) definition of *baseline determination*;
- (b) definition of *baseline intensity comparison year*;
- (c) definition of *benchmark-emissions baseline determination*;
- (d) definition of *Benchmark Emissions-Intensity Index*.

#### 3 Section 4

Insert:

*best practice emissions intensity*, for a production variable for a financial year, means the best practice emissions intensity (if any) specified, in t CO<sub>2</sub>-e per unit of the production variable, in relation to the production variable in Schedule 1 as in force at:

- (a) if the financial year is the financial year beginning on 1 July 2023—the end of the financial year; or
- (b) otherwise—the start of the financial year.

*best practice emissions intensity number*, for a production variable for a financial year, means the number that is equal to the best practice emissions intensity for the production variable for that financial year.

Example: If the best practice emissions intensity for a tonne of glass in the financial year beginning on 1 July 2024 is 0.6 t CO<sub>2</sub>-e per tonne of glass, the best practice emissions intensity number for a tonne of glass in that financial year is 0.6.

*borrowing adjustment*, for a facility for a financial year, has the meaning given by section 37.

*borrowing adjustment determination* means a determination made under section 40.

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*borrowing adjustment number*, for a facility for a financial year: see subsection 40(3).

#### 4 Section 4 (definition of *calculated-emissions baseline determination*)

Repeal the definition.

#### 5 Section 4

Insert:

*decision date*, for an application, has the meaning given by subsection 41(2).

*default decline rate*, for a financial year, has the meaning given by section 26.

#### 6 Section 4 (definition of *default emissions intensity*)

Repeal the definition.

#### 7 Section 4

Insert:

*default emissions intensity*, for a production variable for a financial year, means the default emissions intensity specified, in t CO<sub>2</sub>-e per unit of the production variable, in relation to the production variable in Schedule 1 as in force at the start of that financial year.

*default emissions intensity number*, for a production variable for a financial year, means the number that is equal to the default emissions intensity of the production variable.

Example: If the default emissions intensity for a tonne of glass in the financial year beginning on 1 July 2024 is 0.8 t CO<sub>2</sub>-e per tonne of glass, the default emissions intensity number for a tonne of glass in that financial year is 0.8.

*default emissions reduction contribution*, for a financial year, has the meaning given by section 25.

*designated historical information*, about a historical production variable for a facility, has the meaning given by subsection 13(5).

#### 8 Section 4 (definition of *details*)

Repeal the definition.

#### 9 Section 4

Insert:

*details*, in relation to a declaration under this instrument, includes:

- (a) the type of declaration; and
- (b) the facility to which the declaration relates; and
- (c) the responsible emitter for the facility to which the declaration relates; and
- (d) the start and any end date of the declaration; and
- (e) if the declaration is being varied—the nature of that variation.

*due date*, for an application, has the meaning given by subsection 41(1).

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## Schedule 1 Amendments

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*eligible facility*, for a financial year, has the meaning given by subsection 42(7).

### 10 Section 4 (definition of *emissions-intensity calculation criteria*)

Repeal the definition.

### 11 Section 4

Insert:

*emissions intensity determination* means:

- (a) a determination made under section 18; or
- (b) a successor determination.

### 12 Section 4 (definition of *emissions intensity test*)

Repeal the definition.

### 13 Section 4

Insert:

*emissions reduction contribution*:

- (a) for a regular facility for a financial year—has the meaning given by section 27; or
- (b) for a trade-exposed baseline-adjusted facility for a financial year—has the meaning given by section 28.

### 14 Section 4 (definition of *estimated emissions intensity*)

Repeal the definition.

### 15 Section 4

Insert:

*existing facility* has the meaning given by subsection 11(1).

*facility-specific emissions intensity number*:

- (a) of a historical production variable for a facility—has the meaning given by subsection 18(7); or
- (b) of a transitional production variable for a facility—has the meaning given by subsection 18(10).

*first adjusted financial year*, for a facility, has the meaning given by subsection 30(2).

### 16 Section 4 (definition of *fixed proportion*)

Repeal the definition.

### 17 Section 4

Insert:

*historical financial year* has the meaning given by subsection 11(3).



*historical production variable*, for a facility, has the meaning given by subsection 11(2).

*hypothetical baseline*, of a facility for a financial year for the facility, has the meaning given by subsection 30(3).

## 18 Section 4

Repeal the following definitions:

- (a) definition of *inherent emissions variability criteria*;
- (b) definition of *initial calculated baseline criteria*;
- (c) definition of *inter-state transport facility*;
- (d) definition of *landfill baseline emissions formula*;
- (e) definition of *landfill baseline determination*;
- (f) definition of *large new facility*.

## 19 Section 4

Insert:

*new facility* has the meaning given by subsection 23(3).

## 20 Section 4 (definition of new facility criteria)

Repeal the definition.

## 21 Section 4

Insert:

*non-commercial production variable*, for a facility for a financial year, has the meaning given by subsection 11(5).

## 22 Section 4

Repeal the following definitions:

- (a) definition of *output variable*;
- (b) definition of *prescribed (annually adjusted) production variable*;
- (c) definition of *prescribed (fixed) production variable*;
- (d) definition of *prescribed production variable*;
- (e) definition of *production assessment period*;
- (f) definition of *production-adjusted baseline determination*;
- (g) definition of *production estimation period*;
- (h) definition of *production variable*.

## 23 Section 4

Insert:

*production variable* means a metric that is set out in a Part of Schedule 1.

*production variable*, for a facility, means a production variable that is applicable to the facility in accordance with Schedule 1.

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**quantity**, of a production variable for a facility for a financial year, means the number of units of the production variable for the facility for that financial year.

Example: If a facility produces 500 tonnes of glass in a financial year, the quantity of glass for that financial year is 500.

**ratio of cost impacts**, for a facility for a financial year, has the meaning given by section 29.

**regular facility**: a facility that is not a trade-exposed baseline-adjusted facility in a financial year is a **regular facility** in that financial year.

### 24 Section 4

Repeal the following definitions:

- (a) definition of **relevant benchmark emissions intensity**;
- (b) definition of **relevant earlier estimates**.

### 25 Section 4

Insert:

**relevant historical financial year**, for a production variable, has the meaning given by subsection 18(8).

**relevantly associated with** has the meaning given by section 15.

### 26 Section 4 (definition of **reported-emissions baseline determination**)

Repeal the definition.

### 27 Section 4

Insert:

**responsible financial officer**, of a responsible emitter for a facility, means any of the following:

- (a) if the person with operational control of the facility is an individual—that person;
- (b) a person who holds or performs the duties of the position of the chief executive officer, chief financial officer or chief operating officer for the person with operational control of the facility;
- (c) a person who holds or performs the duties of a position with equivalent or similar responsibilities to a person with a position in paragraph (b);
- (d) an individual employed by the person with operational control of the facility who:
  - (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or affairs of the person; or
  - (ii) has the capacity to significantly affect the person's financial standing.

**Safeguard Mechanism default prescribed unit price**, for a financial year, has the meaning given by section 31.

**Secretary** means the Secretary of the Department.

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## 28 Section 4 (definition of *significant expansion criteria*)

Repeal the definition.

## 29 Section 4

Insert:

*successor determination* means a determination made under section 19.

*trade-exposed baseline-adjusted facility*: a facility is a *trade-exposed baseline-adjusted facility* in a financial year if it is determined to be a trade-exposed baseline-adjusted facility in that financial year under section 35.

*trade-exposed production variable* means a production variable that is listed in Schedule 2.

## 30 Section 4 (definition of *transitional calculated baseline criteria*)

Repeal the definition.

## 31 Section 4

Insert:

*transitional production variable*, for a facility, has the meaning given by subsection 11(4).

*transition proportion*, for a financial year, has the meaning given by section 12.

## 32 Sections 5 and 6

Repeal the sections.

## 33 At the end of section 7

Add:

*Emissions not included as emissions from grid-connected electricity generators*

- (3) For the purposes of paragraph (1)(c), emissions of one or more greenhouse gases from the operation of a grid-connected electricity generator in respect of a sectoral-baseline financial year do not include:
- (a) fugitive emissions from coal mining (within the meaning of the NGER (Measurement) Determination); or
  - (b) emissions covered by Chapter 2 (fuel combustion) of the NGER (Measurement) Determination that are not for electricity generation; or
  - (c) emissions from fuel combustion for the purposes of coal mining.

## 34 Part 3

Repeal the Part, substitute:

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## Part 3—Baseline emissions number

### Division 1—General

#### 9 Baseline emissions number

- (1) Unless otherwise provided, the provisions of this Part are made for the purposes of subsection 22XL(1) of the Act.
- (2) The baseline emissions number for a facility for a financial year is ascertained in relation to the facility in accordance with this Part.
- (3) However, if the baseline emissions number for a facility for a financial year ascertained in accordance with this Part (apart from this subsection) is a number less than 100,000, the baseline emissions number for the facility for the financial year is 100,000.

### Division 2—Existing facilities

#### Subdivision A—Baseline emissions number for existing facility

#### 10 Baseline emissions number for existing facility

- (1) The baseline emissions number for an existing facility (other than a landfill facility) for a financial year is the number worked out using the following formula:

$$ERC \times \left( \sum_p (hEI_p + (1 - h)EI_{F,p}) \times Q_p + EI_{B,p} \times Q_{B,p} \right) + BA$$

where:

**ERC** is the emissions reduction contribution for the facility for the financial year.

**p** is a production variable for the facility for the financial year.

**h** is the transition proportion for the financial year.

**EI**, in relation to a production variable for the facility for the financial year, is the default emissions intensity number of the production variable for the financial year.

**EI<sub>F</sub>**, in relation to a production variable for the facility for the financial year, is:

- (a) if an emissions intensity determination that applies in relation to the facility for the financial year specifies a facility-specific emissions intensity number of the production variable—that number; or
- (b) otherwise—0.

**Q**, in relation to a production variable for the facility for the financial year, is:

- (a) if an emissions intensity determination that applies in relation to the facility for the financial year specifies a facility-specific emissions intensity number of the production variable—the quantity of the production variable for the facility for the financial year; or
- (b) otherwise—0.

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***EI<sub>B</sub>***, in relation to a production variable for the facility for the financial year, is:

- (a) if there is a best practice emissions intensity number for the production variable for the financial year—that number; or
- (b) otherwise—the default emissions intensity number for the production variable for the financial year.

***Q<sub>B</sub>***, in relation to a production variable for the facility for the financial year, is:

- (a) if an emissions intensity determination that applies in relation to the facility for the financial year specifies a facility-specific emissions intensity number of the production variable—0; or
- (b) otherwise—the quantity of the production variable for the facility for the financial year.

***BA*** is the borrowing adjustment for the facility for the financial year.

- (2) The number worked out using the formula in subsection (1) is to be rounded to the nearest whole number (rounding up if the first decimal place is 5 or more).

## 11 Meaning of *existing facility*

- (1) A facility is an ***existing facility*** if there are one or more historical production variables or transitional production variables for the facility.
- (2) A ***historical production variable***, for a facility, is a production variable that:
  - (a) was applicable to the facility, in accordance with Schedule 1, at any time during a historical financial year; and
  - (b) was not a non-commercial production variable for the facility for a historical financial year.
- (3) A ***historical financial year*** is:
  - (a) the financial year beginning on 1 July 2018; or
  - (b) the financial year beginning on 1 July 2019; or
  - (c) the financial year beginning on 1 July 2020; or
  - (d) the financial year beginning on 1 July 2021.
- (4) A ***transitional production variable***, for a facility, is a production variable that:
  - (a) was not applicable to the facility, in accordance with Schedule 1, at any time during a historical financial year; and
  - (b) was applicable to the facility, in accordance with Schedule 1, at any time during the financial year beginning on 1 July 2022; and
  - (c) was not a non-commercial production variable for the facility for the financial year beginning on 1 July 2022.
- (5) A ***non-commercial production variable***, for a facility for a financial year, is production variable that was applicable to the facility, in accordance with Schedule 1, at any time during the financial year only because of testing or piloting activities undertaken at the facility.

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### Subdivision B—Transition proportion

#### 12 Transition proportion

The *transition proportion* for a financial year beginning on a day specified in column 1 of an item of the following table is the number specified in column 2 of that item.

Transition proportion		
	Column 1	Column 2
Item	Financial year	Transition proportion
1	1 July 2023	0.1
2	1 July 2024	0.2
3	1 July 2025	0.3
4	1 July 2026	0.4
5	1 July 2027	0.6
6	1 July 2028	0.8
7	1 July 2029 or a later 1 July	1

### Subdivision C—Emissions intensity determination

#### 13 Application for emissions intensity determination

- (1) The responsible emitter for an existing facility may apply to the Regulator for an emissions intensity determination.
- (2) The application must be made:
  - (a) in a manner and form approved, in writing, by the Regulator; and
  - (b) before the end of the due date for the application unless the Regulator agrees to accept the application after that date.

Note: For the due date for the application, see section 41.

- (3) The application must specify:
  - (a) the first financial year in relation to which the determination would apply; and
  - (b) the historical production variables (if any) for the facility; and
  - (c) for each historical financial year—a calculation, in accordance with section 14, of the amount of covered emissions of greenhouse gases (in t CO<sub>2</sub>-e) from the operation of the facility during the historical financial year; and
  - (d) the estimates and assumptions (if any) made in accordance with subsection 14(3); and
  - (e) the transitional production variables (if any) for the facility.
- (4) For each historical production variable for the facility, the application must, to the extent reasonably practicable, include designated historical information about the production variable.

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- (5) The following information is **designated historical information** about a historical production variable for a facility:
- (a) the quantity of the production variable in each historical financial year that is measured in accordance with any measurement requirements or procedures specified in Schedule 1 in relation to the production variable;
  - (b) the amount of covered emissions of greenhouse gases (in t CO<sub>2</sub>-e) relevantly associated with the production variable in each historical financial year.

Note: See the definition of **relevantly associated with** in section 15.

- (6) If the application does not include designated historical information about a historical production variable for the facility, the application must include an explanation of why such information has not been included.
- (7) If a greenhouse gas other than carbon dioxide comprises more than 1% of the covered emissions relevantly associated with a production variable for the facility in a particular historical financial year, the application must specify the amount of that gas (in t CO<sub>2</sub>-e).

## 14 Calculating an amount of covered emissions

- (1) This section specifies requirements for the purposes of calculating an amount of covered emissions of greenhouse gases from the operation of a facility during a historical financial year.
- (2) The amount must be calculated:
- (a) in accordance with the NGER (Measurement) Determination; and
  - (b) using the Global Warming Potentials specified for the relevant greenhouse gas in regulation 2.02 of the NGER Regulations; and
  - (c) using the same method as the method (the **most recent method**) that was used in the most recent report provided to the Regulator relating to the greenhouse gas emissions from the operation of the facility.
- (3) For the purposes of paragraph (2)(c), if:
- (a) a report was provided to the Regulator relating to the greenhouse gas emissions from the operation of the facility during the historical financial year; and
  - (b) the report used a method other than the most recent method;
- estimates and assumptions may be made for the purposes of using the most recent method to calculate the amount.

- (4) In this section:

**method** has the same meaning as in the NGER (Measurement) Determination.

## 15 Covered emissions **relevantly associated with a historical production variable**

- (1) Covered emissions of greenhouse gases from the operation of a facility during a particular historical financial year are **relevantly associated with** a historical production variable for the facility in that financial year if those emissions are attributed to the production variable for the financial year in accordance with subsection (2) or (3).

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### *Emissions relevant to default emissions intensity*

- (2) Covered emissions of greenhouse gases from the operation of a facility during a particular historical financial year that are of a particular kind are attributed to a production variable for the facility for that financial year if:
  - (a) having regard to the Safeguard Mechanism document, covered emissions of that kind are relevant to the default emissions intensity of that production variable for that financial year; and
  - (b) those emissions are not attributed to another production variable in accordance with this section.

### *Emissions from minor emissions sources*

- (3) Covered emissions of greenhouse gases from the operation of a facility during a particular historical financial year are attributed to a production variable for the facility for that financial year if:
  - (a) the emissions come from a minor emissions source for the facility for the historical financial year; and
  - (b) the emissions fairly represent the actual emissions from the production of the production variable; and
  - (c) the emissions are apportioned to the production variable consistently with the NGER (Measurement) Determination; and
  - (d) the emissions are not apportioned to another production variable for the facility for that financial year.
- (4) In this section, a source of emissions is a ***minor emissions source*** for a facility in a historical financial year if the sum of the emissions from that source, and every other minor emissions source for the facility in that historical financial year, is less than 10% of the facility's total covered emissions in that financial year.

## **16 Application must be accompanied by safeguard audit report**

- (1) This section is made for the purposes of subsection 22XQ(3) of the Act.
- (2) An application for an emissions intensity determination by the responsible emitter for an existing facility must be accompanied by an audit report that meets the requirements of this section.

Note: Under subsection 75(1) of the Act, the Minister may determine requirements to be met by registered greenhouse and energy auditors in preparing for and carrying out safeguard audits.

### *Reasonable assurance matters*

- (3) The audit report must include a conclusion in relation to each of the following matters:
  - (a) whether, in all material respects, the application correctly specifies the historical production variables (if any) for the facility;
  - (b) if the application includes designated historical information about a historical production variable for the facility for a historical financial year—whether, in all material respects, the application correctly specifies the quantity of the historical production variable in the historical financial year;



- (c) whether, in all material respects, the application correctly specifies the amount of covered emissions for the facility in each historical financial year;
- (d) whether, in all material respects, the application correctly specifies the transitional production variables (if any) for the facility.

*Limited assurance matters*

- (4) The audit report must include a conclusion in relation to each of the following matters:
  - (a) if the application specifies one or more historical production variables for the facility—whether, in all material respects, the application correctly specifies the amount of covered emissions of greenhouse gases from the operation of the facility that are relevantly associated with each of those production variables;
  - (b) whether, in all material respects, calculations of amounts of covered emissions of greenhouse gases from the operation of the facility that are included in the application meet the requirements specified in section 14;
  - (c) if the application includes estimates and assumptions made in accordance with subsection 14(3)—whether, in all material respects, those estimates and assumptions are reasonable.

## 17 Consideration of application

- (1) This section applies if the responsible emitter for an existing facility applies for an emissions intensity determination in accordance with this Subdivision.
- (2) Subject to subsection (4), the Regulator must take all reasonable steps to decide the application under section 18 before the end of the decision date for the application.

Note: For the decision date for the application, see section 41.

- (3) The Regulator may, by notice in writing, require the applicant to give the Regulator, within the period specified in the notice, such further information in relation to the application as the Regulator requires.
- (4) The Regulator is not required to consider the application, or may cease considering the application, if the applicant does not provide the required information within the period specified in the notice.

## 18 Emissions intensity determination

- (1) If the responsible emitter for an existing facility applies for an emissions intensity determination in accordance with this Subdivision, the Regulator must decide to:
  - (a) make the determination; or
  - (b) refuse to make the determination.
- (2) The Regulator must not make the determination unless:
  - (a) the audit report that accompanies the application includes:

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- (i) a reasonable assurance conclusion, or a qualified reasonable assurance conclusion, in relation to each of the matters specified in subsection 16(3); and
- (ii) a limited assurance conclusion, or a qualified limited assurance conclusion, in relation to each of the matters specified in subsection 16(4); and
- (b) the Regulator is reasonably satisfied, having regard to any matter the Regulator considers relevant, that:
  - (i) the information included in the application is correct; and
  - (ii) any explanation in the application of why designated historical information about a historical production variable for the facility has not been included in the application is reasonable; and
  - (iii) calculations of amounts of covered emissions of greenhouse gases from the operation of the facility that are included in the application meet the requirements specified in section 14; and
  - (iv) any estimates and assumptions made in accordance with subsection 14(3) and included in the application are reasonable.
- (3) The determination must be in writing and must specify:
  - (a) the facility-specific emissions intensity number of:
    - (i) any historical production variable for the facility; and
    - (ii) any transitional production variable for the facility; and
  - (b) the first financial year in relation to which the determination applies.
- (4) The determination:
  - (a) comes into force on the first day of the financial year specified for the purposes of paragraph (3)(b); and
  - (b) applies in relation to the facility for that financial year and each subsequent financial year.

Note: See subsection 22XQ(2) of the Act (commencement of determination).

- (5) If the Regulator makes the determination, the Regulator must:
  - (a) notify the applicant for the determination that the Regulator has made the determination; and
  - (b) publish the determination on the Regulator's website.
- (6) If the Regulator decides to refuse to make the determination, the Regulator must give the applicant for the determination a written notice of the decision that includes the Regulator's reasons for the decision.

*Facility-specific emissions intensity number of historical production variable*

- (7) The **facility-specific emissions intensity number**, of a historical production variable for a facility, is the number that is ascertained by dividing the total number of tonnes of carbon dioxide equivalence of covered emissions relevantly associated with the production variable in the relevant historical financial years for the production variable by the total quantity of the production variable in those financial years.
- (8) If the condition specified in column 1 of an item of the following table is satisfied in relation to a historical production variable specified in an application

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for an emissions intensity determination, each of the historical financial years specified in column 2 of that item is a *relevant historical financial year* for that production variable.

Relevant historical financial year		
Item	Column 1 Condition	Column 2 Relevant historical financial year
1	The application includes designated historical information about all 4 historical financial years for the historical production variable	Each of the 2 historical financial years that is not: (a) the historical financial year with the highest emissions intensity for the historical production variable; or (b) the historical financial year with the lowest emissions intensity for the historical production variable
2	The application includes designated historical information about only 3 historical financial years for the historical production variable	Each of the 2 historical financial years that is not the historical financial year with the highest emissions intensity for the historical production variable
3	The application includes designated historical information about only 2 historical financial years for the historical production variable	The historical financial year with the lowest emissions intensity for the historical production variable
4	The application includes historical information about only 1 historical financial year for the historical production variable	That historical financial year

- (9) For the purposes of items 1, 2 and 3 of the table in subsection (8), the emissions intensity of a historical production variable for a historical financial year is ascertained by dividing the emissions relevantly associated with the production variable in the historical financial year by the quantity of the production variable in that financial year.

*Facility-specific emissions intensity number of transitional production variable*

- (10) The *facility-specific emissions intensity number*, of a transitional production variable for a facility, is the number that is equal to the default emissions intensity number of the production variable:
- (a) if the production variable was applicable to the facility at any time during a historical financial year—for that financial year; or
  - (b) otherwise—for the financial year beginning on 1 July 2022.

## Subdivision D—Successor determination

### 19 Successor determination for restructured facility

- (1) This section applies if an activity, or a series of activities, that constitute a facility (the *original facility*) in relation to which an emissions intensity determination (the *original determination*) is in force:

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- (a) ceases to constitute the original facility; and
- (b) either:
  - (i) begins to constitute one or more other facilities; or
  - (ii) becomes included in the activity, or series of activities, that constitutes another facility.

Note: See the definition of *facility* in section 9 of the Act.

- (2) Subject to section 20, the Regulator may make a determination in relation to a facility covered by paragraph (1)(b) (a *successor facility*).
- (3) The determination must be in writing and must specify:
  - (a) the facility-specific emissions intensity number of:
    - (i) any historical production variable for the successor facility that was also a historical production variable for the original facility; and
    - (ii) any transitional production variable for the successor facility that was also a transitional production variable for the original facility; and
  - (b) the first financial year in relation to which the determination applies.
- (4) In making the determination, the Regulator may have regard to any matter the Regulator considers relevant
- (5) The determination:
  - (a) comes into force on the first day of the financial year specified for the purposes of paragraph (3)(b); and
  - (b) applies in relation to the successor facility for that financial year and each subsequent financial year.

Note: See subsection 22XQ(2) of the Act (commencement of determination).

## 20 Process for making successor determination

- (1) If the Regulator proposes to make a successor determination in relation to a facility, the Regulator must notify the responsible emitter for the facility in writing that the Regulator proposes to do so.
- (2) The notice must:
  - (a) specify:
    - (i) the facility-specific emissions intensity number of any historical production variable, and any transitional production variable, for the facility that would be specified in the determination; and
    - (ii) the first financial year in relation to which the determination would apply; and
  - (b) invite the responsible emitter to provide a written response to the proposed determination within the period specified in the notice.
- (3) The notice may request that the responsible emitter provide the Regulator with specified information that the Regulator considers relevant to the proposed determination.
- (4) Within 30 days after the end of the period specified in the notice, the Regulator must consider the responsible emitter's response (if any) to the proposed determination and decide to:

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- (a) make the determination; or
  - (b) refuse to make the determination.
- (5) If the Regulator makes the determination, the Regulator must:
- (a) notify the responsible emitter that the Regulator has made the determination; and
  - (b) publish the determination on the Regulator's website.

## Subdivision E—Variation of emissions intensity determination

### 21 Variation by Regulator of emissions intensity determination

- (1) Subject to section 22, if an emissions intensity determination is in force in relation to a facility, the Regulator may vary a facility-specific emissions intensity number specified in the determination if satisfied that:
- (a) the amount of covered emissions of greenhouse gases from the operation of the facility during a historical financial year differs by at least 1% from the amount specified in the application for the determination; and
  - (b) the difference is due to:
    - (i) a relevant regulatory change that came into force after the determination was made; or
    - (ii) a different method being used, after the determination was made, to report the facility's emissions in accordance with the Act; or
    - (iii) a change of activities at the facility after the determination was made.
- (2) The variation:
- (a) comes into force on the first day of the first financial year in which:
    - (i) the relevant regulatory change came into force; or
    - (ii) the different method was used; or
    - (iii) the change of activities occurred; and
  - (b) applies in relation to the facility for that financial year and each subsequent financial year.

Note: See subsection 22XQ(2) of the Act (commencement of determination).

- (3) If, under this section, the Regulator varies an emissions intensity determination that is in force in relation to a facility, the Regulator must:
- (a) notify the responsible emitter for the facility of the variation; and
  - (b) publish the determination, as varied, on the Regulator's website.
- (4) This section does not limit subsection 33(3) of the *Acts Interpretation Act 1901*.
- (5) In this section:

**method** has the same meaning as in the NGER (Measurement) Determination.

**relevant regulatory change** means:

- (a) an amendment to the NGER Regulations, including a change to the Global Warming Potentials specified for a greenhouse gas in regulation 2.02 of the NGER Regulations; or
- (b) an amendment to the NGER (Measurement) Determination; or

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- (c) an amendment to a fuel standard, within the meaning of the *Fuel Quality Standards Act 2000*, in force under that Act.

## 22 Process for making variation

- (1) If the Regulator proposes to vary a facility-specific emissions intensity number specified in an emissions intensity determination that is in force in relation to a facility, the Regulator must notify the responsible emitter for the facility in writing that the Regulator proposes to do so.
- (2) The notice must:
  - (a) specify the facility-specific emissions intensity number of any historical production variable, and any transitional production variable, for the facility that would be specified in the determination as proposed to be varied; and
  - (b) invite the responsible emitter to provide a written response to the proposed variation within the period specified in the notice.
- (3) The notice may request that the responsible emitter provide the Regulator with specified information that the Regulator considers relevant to the proposed variation.
- (4) Within 30 days after the end of the period specified in the notice, the Regulator must consider the responsible emitter's response (if any) to the proposed variation and decide to:
  - (a) make the variation; or
  - (b) refuse to make the variation.
- (5) The variation must be made before the end of the first 31 January after the first financial year in relation to which the variation is to apply.
- (6) If the Regulator makes the variation, the Regulator must:
  - (a) notify the responsible emitter that the Regulator has made the variation; and
  - (b) publish the determination, as varied, on the Regulator's website.

## Division 3—New facilities

### 23 Baseline emissions number for new facility

- (1) The baseline emissions number for a new facility (other than a landfill facility) for a financial year is the number worked out using the following formula:

$$\left( ERC \times \sum_p EI_{B,p} Q_p \right) + BA$$

where:

*ERC* is the emissions reduction contribution for the facility for the financial year.

*p* is a production variable for the facility for the financial year.

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*EI<sub>B</sub>*, in relation to a production variable for the facility for the financial year, is the best practice emissions intensity number for the production variable for the financial year.

*Q*, in relation to a production variable for the facility for the financial year, is the quantity of the production variable for the facility for the financial year.

*BA* is the borrowing adjustment for the facility for the financial year.

- (2) The number worked out using the formula in subsection (1) is to be rounded to the nearest whole number (rounding up if the first decimal place is 5 or more).

Note: The baseline emissions number for a new facility for a financial year would be the same if it were worked out using the formula in section 10.

- (3) A facility is a *new facility* if there are no historical production variables or transitional production variables for the facility.

## Division 4—Landfill facilities

### 24 Baseline emissions number for landfill facility

- (1) The baseline emissions number for a landfill facility for a financial year is the number worked out using the following formula:

$$ERC \times NLCH_4 \times (1 - CER) \times (1 - OF) + BA$$

where:

*ERC* is the emissions reduction contribution for the facility for the financial year.

*NLCH<sub>4</sub>* is the number of tonnes of carbon dioxide equivalence of scope 1 greenhouse gases that would be emitted by the facility if emissions were not captured, and oxidation did not occur, at the facility during the financial year.

*CER* (known as the capture efficiency rate) is 0.372.

*OF* is the oxidation factor specified in section 5.4 of the NGER (Measurement) Determination (as in force at the start of the financial year) for near surface methane in landfill.

*BA* is the borrowing adjustment for the facility for the financial year.

- (2) The number worked out using the formula in subsection (1) is to be rounded to the nearest whole number (rounding up if the first decimal place is 5 or more).

## Division 5—Emissions reduction contribution

### Subdivision A—Default values

#### 25 Default emissions reduction contribution

The *default emissions reduction contribution* for a financial year beginning on a day specified in column 1 of an item of the following table is the number specified in column 2 of that item.

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Default emissions reduction contribution		
	Column 1	Column 2
Item	Financial year	Default emissions reduction contribution
1	1 July 2023	0.951
2	1 July 2024	0.902
3	1 July 2025	0.853
4	1 July 2026	0.804
5	1 July 2027	0.755
6	1 July 2028	0.706
7	1 July 2029	0.657
8	1 July 2030 or a later 1 July	The greater of: (a) the default emissions reduction contribution for the previous financial year minus 0.03285; and (b) 0

Note: Until the financial year beginning on 1 July 2030, the default emissions reduction contribution in column 2 declines by 0.049 (the default decline rate).

## 26 Default decline rate

The *default decline rate* for a financial year beginning on a day specified in column 1 of an item of the following table is the number specified in column 2 of that item.

Default decline rate		
	Column 1	Column 2
Item	Financial year	Default decline rate
1	1 July 2023	0.049
2	1 July 2024	0.049
3	1 July 2025	0.049
4	1 July 2026	0.049
5	1 July 2027	0.049
6	1 July 2028	0.049
7	1 July 2029	0.049
8	1 July 2030 or a later 1 July	0.03285

## Subdivision B—Regular facilities

### 27 Emissions reduction contribution for regular facility

- (1) If:
- (a) a facility is a regular facility in a financial year; and
  - (b) the facility was not a trade-exposed baseline-adjusted facility in any previous financial year;



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the **emissions reduction contribution** for the facility for the financial year is the default emissions reduction contribution for that financial year.

- (2) If:
- (a) a facility is a regular facility in a financial year (the **relevant financial year**); and
  - (b) the facility was a trade-exposed baseline-adjusted facility in a previous financial year;

the **emissions reduction contribution** for the facility for the relevant financial year is the number worked out using the following formula:

$$ERC_y - DR$$

where:

**ERC<sub>y</sub>** is the emissions reduction contribution for the facility for the financial year ending immediately before the relevant financial year.

**DR** is the default decline rate for the relevant financial year.

- (3) The number worked out using the formula in subsection (2) is to be rounded to 5 decimal places (rounding up if the sixth decimal place is 5 or more).

## Subdivision C—Trade-exposed baseline-adjusted facilities

### 28 Emissions reduction contribution for trade-exposed baseline-adjusted facility

- (1) If a facility is a trade-exposed baseline-adjusted facility in a financial year, the **emissions reduction contribution** for the facility for the financial year is the number worked out using the following formula:

$$ERC_y - DR + RCI \times (DR - DR_m)$$

where:

**ERC<sub>y</sub>** is the emissions reduction contribution for the facility for the previous financial year.

**DR** is the default decline rate for the financial year.

**RCI** is the ratio of cost impacts for the facility for the financial year.

**DR<sub>m</sub>** (known as the minimum decline rate) is 0.02.

- (2) The number worked out using the formula in subsection (1) is to be rounded to 5 decimal places (rounding up if the sixth decimal place is 5 or more).

### 29 Ratio of cost impacts

- (1) If a facility is a trade-exposed baseline-adjusted facility in a financial year, the **ratio of cost impacts** for the facility for the financial year is worked out in accordance with this section.

- (2) If the assessed cost impact for the facility for the financial year is equal to or greater than 0.08 (known as the significant cost impact threshold), the ratio of cost impacts for the facility for the financial year is 1.

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- (3) If the assessed cost impact for the facility for the financial year is less than 0.08 (the significant cost impact threshold), the ratio of cost impacts for the facility for the financial year is the number worked out using the following formula:

$$\frac{CI_A - CI_M}{CI_S - CI_M}$$

where:

$CI_A$  is the assessed cost impact for the facility for the financial year.

$CI_M$  (known as the material cost impact threshold) is 0.03.

$CI_S$  (the significant cost impact threshold) is 0.08.

### 30 Assessed cost impact

- (1) The **assessed cost impact** for a facility for a financial year is the number worked out using the following formula:

$$\frac{P_{SM} \times PE}{RF}$$

where:

$P_{SM}$  is the number of dollars in the Safeguard Mechanism default prescribed unit price for the first adjusted financial year for the facility.

$PE$  is the number equal to the difference between:

- (a) the number that is equal to the total number of tonnes of carbon dioxide equivalence of greenhouse gases from the operation of the facility during the first adjusted financial year for the facility; and
- (b) the hypothetical baseline of the facility for the first adjusted financial year for the facility.

$RF$  is the number of dollars in the revenue of the facility in the first adjusted financial year for the facility.

- (2) The **first adjusted financial year**, for a facility, is:
- (a) if the assessed cost impact for the facility is being worked out for the purposes of making or considering an application under section 32 for a determination that the facility is a trade-exposed baseline-adjusted facility in a particular financial year and the next 2 financial years—that particular financial year; or
  - (b) if:
    - (i) the facility is a trade-exposed baseline-adjusted facility in a financial year because of a determination in force under section 35; and
    - (ii) the assessed cost impact for the facility is being worked out for the purposes of working out the emissions reduction contribution for the facility for the financial year;the first financial year in which the facility is a trade-exposed baseline-adjusted facility because of that determination.

- (3) The **hypothetical baseline** of a facility for a financial year is:
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- 
- (a) in the case where an application under section 32 for a determination that the facility is a trade-exposed baseline-adjusted facility in that financial year and the next 2 financial years is being made or considered—the number that is equal to what the baseline emissions number for the facility for that financial year would be if that determination were not to be made; or
  - (b) in the case where:
    - (i) the facility is a trade-exposed baseline-adjusted facility in a financial year because of a determination in force under section 35; and
    - (ii) the assessed cost impact for the facility is being worked out for the purposes of working out the emissions reduction contribution for the facility for the financial year;the number that is equal to what the baseline emissions number for the facility for that financial year would be if that determination had not been made.

## 31 Safeguard Mechanism default prescribed unit price

Before the end of each financial year beginning after 30 June 2023, the Secretary must publish on the Department's website an estimate of the average price of a prescribed carbon unit during that financial year. The estimate is to be known as the *Safeguard Mechanism default prescribed unit price* for the financial year.

## Subdivision D—Determination that a facility is a trade-exposed baseline-adjusted facility

### 32 Application for determination that a facility is a trade-exposed baseline-adjusted facility

- (1) The responsible emitter for a facility may apply to the Regulator for a determination that the facility is a trade-exposed baseline-adjusted facility in a particular financial year (the *first financial year*) and the next 2 financial years.
  - (2) The application must be made:
    - (a) in a manner and form approved, in writing, by the Regulator; and
    - (b) before the end of the due date for the application unless the Regulator agrees to accept the application after that date.
- Note: For the due date for the application, see section 41.
- (3) The application must include the following information:
    - (a) the revenue of the facility in the first financial year, calculated in accordance with the Australian accounting standards in force at the time the application is made;
    - (b) the assessed cost impact for the facility for the first financial year;
    - (c) information about the assumptions made when working out the revenue and assessed cost impact mentioned in paragraphs (a) and (b);
    - (d) the hypothetical baseline for the facility for the first financial year;
    - (e) the emissions reduction contribution, and the baseline emissions number, for the facility for the first financial year if:
      - (i) the determination were made; and

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- (ii) those numbers were worked out using the assessed cost impact for the facility for the first financial year;
  - (f) an estimate of the emissions reduction contribution for the facility for each of the next 2 financial years after the first financial year if the determination were made.
- (4) The application must include a declaration that the amount of covered emissions of greenhouse gases from the operation of the facility in the first financial year was not increased for the sole or substantial purpose of:
  - (a) achieving the result that the Regulator makes the determination; or
  - (b) achieving the result that the emissions reduction contribution for the facility for the first financial year and the next 2 financial years is higher than it would have been but for that increase.
- (5) The application, and the declaration under subsection (4), must be signed by:
  - (a) if the responsible emitter is a body corporate—the chief financial officer (however described) of the responsible emitter; or
  - (b) otherwise—a person whose duties in relation to the responsible emitter are equivalent to those of the chief financial officer of a body corporate.
- (6) The responsible emitter for a facility may make an application under this section even if the facility is already a trade-exposed baseline-adjusted facility in the first financial year.

### 33 Application must be accompanied by safeguard audit report

- (1) This section is made for the purposes of subsection 22XQ(3) of the Act.
- (2) An application for a determination that a facility is a trade-exposed baseline-adjusted facility must be accompanied by an audit report that meets the requirements of this section.

Note: Under subsection 75(1) of the Act, the Minister may determine requirements to be met by registered greenhouse and energy auditors in preparing for and carrying out safeguard audits.

#### *Reasonable assurance matters*

- (3) The audit report must include a conclusion in relation to each of the following matters:
  - (a) whether, in all material respects, the information included in the application is correct;
  - (b) whether, in all material respects, the facility satisfies the criteria specified in subparagraphs 35(2)(a)(iii) and (iv).

### 34 Consideration of application

- (1) This section applies if the responsible emitter for a facility applies for a determination, in accordance with this Subdivision, that the facility is a trade-exposed baseline-adjusted facility.
- (2) Subject to subsection (4), the Regulator must take all reasonable steps to decide the application before the end of the decision date for the application.

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Note: For the decision date for the application, see section 41.

- (3) The Regulator may, by notice in writing, require the applicant to give the Regulator, within the period specified in the notice, such further information in relation to the application as the Regulator requires.
- (4) The Regulator is not required to consider the application, or may cease considering the application, if the applicant does not provide the required information within the period specified in the notice.

## **35 Determination that a facility is a trade-exposed baseline-adjusted facility**

- (1) If the responsible emitter for a facility applies for a determination, in accordance with this Subdivision, that the facility is a trade-exposed baseline-adjusted facility in a particular financial year (the *first financial year*) and the next 2 financial years, the Regulator must:
  - (a) make the determination; or
  - (b) refuse to make the determination.
- (2) The Regulator must not make the determination unless:
  - (a) the Regulator is reasonably satisfied, having regard to any matter the Regulator considers relevant, that:
    - (i) the information included in the application is correct; and
    - (ii) the amount of covered emissions of greenhouse gases from the operation of the facility in the first financial year was not increased for the sole or substantial purpose of achieving a result mentioned in subsection 32(4); and
    - (iii) the primary production variable for the facility in the first financial year is a trade-exposed production variable; and
    - (iv) the assessed cost impact for the facility for the first financial year is greater than 0.03 (known as the material cost impact threshold); and
  - (b) the audit report accompanying the application includes a reasonable assurance conclusion, or a qualified reasonable assurance conclusion, in relation to each of the matters specified in subsection 33(3).
- (3) The Regulator may make the determination even if the facility is already a trade-exposed baseline-adjusted facility in the first financial year.
- (4) The determination must be in writing and comes into force on the first day of the first financial year.

Note: See subsection 22XQ(2) of the Act (commencement of determination).

- (5) The determination must specify the emissions reduction contribution for the facility for the first financial year and the next 2 financial years.

*Notification of decision etc.*

- (6) If the Regulator makes a determination under this section, the Regulator must:
  - (a) notify the applicant for the determination that the Regulator has made the determination; and
  - (b) publish the determination on the Regulator's website.

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- (7) If the Regulator decides to refuse to make a determination under this section, the Regulator must give the applicant for the determination a written notice of the decision that includes the Regulator's reasons for the decision.

### **36 Variation by Regulator of determination that a facility is a trade-exposed baseline-adjusted facility**

- (1) This section applies if a determination that a facility is a trade-exposed baseline-adjusted facility in a particular financial year (the *first financial year*) and the next 2 financial years is in force.
- (2) Subject to subsection (3), the Regulator may vary the determination if the Regulator is satisfied that:
- (a) the assessed cost impact for the facility for the first financial year was incorrectly calculated; or
  - (b) information provided to the Regulator in connection with the application for the determination was false or misleading in a material particular.
- (3) If the Regulator proposes to vary the determination, the Regulator must notify the responsible emitter for the facility in writing that the Regulator proposes to do so.
- (4) The notice must:
- (a) specify what the emissions reduction contribution for the facility would be in the first financial year and the next 2 financial years if the variation were made; and
  - (b) invite the responsible emitter to provide a written response to the proposed variation within the period specified in the notice.
- (5) Within 30 days after the end of the period specified in the notice, the Regulator must consider the responsible emitter's response (if any) to the proposed variation and decide to:
- (a) vary the determination; or
  - (b) not vary the determination.
- (6) This section does not limit subsection 33(3) of the *Acts Interpretation Act 1901*.
- Notification of decision etc.*
- (7) If the Regulator decides to vary the determination, the Regulator must:
- (a) give the responsible emitter a written notice of the decision that includes the Regulator's reasons for the decision; and
  - (b) publish the determination, as varied, on the Regulator's website.
- (8) If the Regulator decides not to vary the determination, the Regulator must notify the responsible emitter of that decision in writing.

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## Division 6—Borrowing adjustment

### 37 Borrowing adjustment

The *borrowing adjustment*, for a facility for a financial year, is the number worked out using the following formula:

$$BD - 1.1 \times BDP$$

where:

*BD* is:

- (a) if a borrowing adjustment determination specifies a borrowing adjustment number for the facility for the financial year—that number; or
- (b) otherwise—0.

*BDP* is:

- (a) if a borrowing adjustment determination specified a borrowing adjustment number for the facility for the previous financial year—that number; or
- (b) otherwise—0.

### 38 Application for borrowing adjustment determination

- (1) The responsible emitter for a facility may apply to the Regulator for a borrowing adjustment determination for the facility for a financial year.
- (2) The application must be made:
  - (a) in a manner and form approved, in writing, by the Regulator; and
  - (b) before the end of the due date for the application unless the Regulator agrees to accept the application after that date.

Note: For the due date for the application, see section 41.

- (3) The application must specify a number as the proposed borrowing adjustment number for the facility for the financial year.

### 39 Consideration of application

- (1) This section applies if the responsible emitter for an existing facility applies for a borrowing adjustment determination in accordance with section 38.
- (2) Subject to subsection (4), the Regulator must take all reasonable steps to decide the application before the end of the decision date for the application.

Note: For the decision date for the application, see section 41.

- (3) The Regulator may, by notice in writing, require the applicant to give the Regulator, within the period specified in the notice, such further information in relation to the application as the Regulator requires.
- (4) The Regulator is not required to consider the application, or may cease considering the application, if the applicant does not provide the required information within the period specified in the notice.

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## 40 Borrowing adjustment determination

- (1) If the responsible emitter for a facility applies in accordance with section 38 for a borrowing adjustment determination for the facility for a financial year, the Regulator must decide to:
  - (a) make the determination; or
  - (b) refuse to make the determination.
- (2) The Regulator must not make the determination unless the Regulator is satisfied that:
  - (a) the facility is likely to be a designated large facility in the next financial year; and
  - (b) the number proposed as the borrowing adjustment number in the application is not greater than 10% of the unadjusted baseline for the facility for the financial year.
- (3) A borrowing adjustment determination for a facility for a financial year must be in writing and must specify the ***borrowing adjustment number*** for the facility for the financial year.
- (4) In this section, the ***unadjusted baseline*** for a facility for a financial year (the ***relevant financial year***) is:
  - (a) if a borrowing adjustment determination specified a borrowing adjustment number for the facility for the previous financial year—the baseline emissions number for the facility for the relevant financial year worked out using that borrowing adjustment number; or
  - (b) otherwise—the baseline emissions number for the facility for the relevant financial year if the borrowing adjustment number for the facility for the relevant financial year were 0.

### *Notification of decision etc.*

- (5) If the Regulator makes a determination under this section, the Regulator must:
  - (a) notify the applicant for the determination that the Regulator has made the determination; and
  - (b) publish the determination on the Regulator's website.
- (6) If the Regulator decides to refuse to make a determination under this section, the Regulator must give the applicant for the determination a written notice of the decision that includes the Regulator's reasons for the decision.

## Division 7—Miscellaneous

### 41 Due date and decision date for applications

- (1) The ***due date*** for an application specified in column 1 of an item of the following table is the day specified in column 2 of that item.
- (2) The ***decision date*** for an application specified in column 1 of an item of the following table is the day specified in column 3 of that item.



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<b>Due date and decision date for applications</b>			
<b>Item</b>	<b>Column 1 Application</b>	<b>Column 2 Due date</b>	<b>Column 3 Decision date</b>
1	Application under section 13 for an emissions intensity determination that specifies the financial year beginning on 1 July 2023 as the first financial year to which the determination would apply	30 April 2024	The later of: (a) 31 January 2025; and (b) the day that is 60 days after the end of a period specified in any notice under subsection 17(3) in relation to the application
2	Application under section 13 for an emissions intensity determination that specifies a financial year beginning on 1 July 2024 or a later 1 July as the first financial year to which the determination would apply	The first 31 October after the end of the financial year	The later of: (a) the first 31 January after the end of the financial year; and (b) the day that is 60 days after the end of a period specified in any notice under subsection 17(3) in relation to the application
3	Application under section 35 for a determination that a facility is a trade-exposed baseline-adjusted facility in a particular financial year (the <i>first financial year</i> ) and the next 2 financial years	The first 31 October after the end of the first financial year	The later of: (a) the first 31 January after the end of the first financial year; and (b) the day that is 60 days after the end of a period specified in any notice under subsection 34(3) in relation to the application
4	Application under section 38 for a borrowing adjustment determination for a facility for a financial year	The first 28 February after the end of the financial year	The earlier of: (a) the first 31 March after the end of the financial year; and (b) the day that is 60 days after the end of a period specified in any notice under subsection 39(3) in relation to the application

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## Part 3A—Safeguard mechanism credit units

### 42 Issuing safeguard mechanism credit units

#### *Application for safeguard mechanism credit units*

- (1) For the purposes of subsection 22XNA(2) of the Act, the responsible emitter for a facility may apply to the Regulator to issue safeguard mechanism credit units to the responsible emitter in relation to the facility for a financial year beginning after 30 June 2023.
- (2) The application must be in writing and must:
  - (a) specify the Registry account kept by the responsible emitter in which, if the Regulator decides to issue the units, the Regulator must make an entry for the units; and
  - (b) include an acknowledgement that the Regulator may require the relinquishment of safeguard mechanism credit units issued on false or misleading information or as a result of fraudulent conduct.

Note: For the requirement to relinquish safeguard mechanism credit units in certain circumstances, see sections 22XNE and 22XNF of the Act.

#### *Issue of safeguard mechanism credit units*

- (3) The Regulator must consider the application as soon as reasonably practicable after receiving it, and if the Regulator:
  - (a) is satisfied of the matters specified in subsection (5); and
  - (b) has no evidence to suggest that the quantity of a production variable for the facility for the financial year, or the covered emissions of greenhouse gases from the operation of the facility in the financial year, have been inaccurately reported to the Regulator;the Regulator must:
  - (c) determine, in accordance with subsection (6), the number of units to be issued; and
  - (d) decide to issue that number of units to the responsible emitter.
- (4) If the application is made before the first 31 January after the end of the financial year, and the Regulator decides to issue safeguard mechanism credit units to the responsible emitter in relation to the facility for the financial year, the Regulator must issue those credits on a day that is as close to that 31 January as is reasonably practicable.
- (5) The following matters are specified:
  - (a) the financial year is not included in a declared multi-year period (within the meaning of Division 2 of Part 4) for the facility;
  - (b) no borrowing adjustment determination is in force in relation to the facility for the financial year;
  - (c) the baseline emissions number for the facility for the financial year is greater than the sum of:

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- (i) the number of tonnes of carbon dioxide equivalence of covered emissions of greenhouse gases from the operation of the facility during the financial year; and
  - (ii) the number of Australian carbon credit units (if any) by which the net emissions number for the facility for the financial year is increased under subsection 22XK(4) of the Act;
  - (d) the facility is not a landfill facility;
  - (e) the facility is a designated large facility, or an eligible facility, for the financial year.
- (6) The number of units to be issued is worked out using the following formula:

$$BEN - E - Increase$$

where:

**BEN** is the baseline emissions number for the facility for the financial year that would be ascertained in accordance with Part 3 if subsection 9(3) (which provides for a minimum baseline emissions number of 100,000) had not been enacted.

**E** is the number of tonnes of carbon dioxide equivalence of covered emissions of greenhouse gases from the operation of the facility during the financial year.

**Increase** is the number of Australian carbon credit units (if any) by which the net emissions number for the facility for the financial year is increased under subsection 22XK(4) of the Act.

- (7) A facility is an **eligible facility**, for a financial year, if:
- (a) the facility was a designated large facility in a financial year that:
    - (i) began after 30 June 2023; and
    - (ii) was one of the 5 financial years immediately preceding the financial year (the **crediting financial year**) in relation to which safeguard mechanism credit units are to be issued in relation to the facility; and
  - (b) either:
    - (i) an emissions intensity determination applies in relation to the facility for the crediting financial year; or
    - (ii) the facility is a new facility; and
  - (c) no Australian carbon credit units have been issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* in respect of an eligible offsets project that reduced covered emissions of greenhouse gases from the operation of the facility during the crediting financial year.

## 43 Identifying safeguard mechanism credit units with a financial year

For the purposes of subsection 22XNC(2) of the Act, if the Regulator decides to issue a safeguard mechanism credit unit to a person in relation to a facility for a financial year, the Regulator must identify the unit with that financial year.

## 35 Subsection 65(3)

Repeal the subsection, substitute:

- (3) The application must:

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- (a) be given in a manner and form approved, in writing, by the Regulator; and
- (b) specify the facility and declared multi-year period for which the declaration is sought; and
- (c) specify the amount of covered emissions (in t CO<sub>2</sub>-e) emitted, or reasonably likely to be emitted, for the proposed first financial year of the declared multi-year period; and
- (d) include a declaration that the facility will be able to avoid an excess emissions situation at the end of the declared multi-year period for which the declaration is sought because technology has, or will, become available to reduce the facility's covered emissions intensity; and
- (e) include a plan setting out a credible basis for how the facility will, before the end of the declared multi-year period, utilise technology that has, or will, become available to reduce the facility's covered emissions below the facility's baseline emissions number for the declared multi-year period; and
- (f) include a summary of the plan mentioned in paragraph (e); and
- (g) if the responsible emitter is aware of any risks they will breach section 22XF of the Act at the end of the declared multi-year period—provide an explanation of those risks; and
- (h) be signed by the responsible financial officer for the responsible emitter for a facility, or a person authorised by the responsible officer.

Note: The Regulator is required to publish a summary included in an application for the purpose of paragraph (3)(f): see paragraph 72(1)(f).

### **36 Subsection 65(4)**

Omit “1 February”, substitute “15 November”.

### **37 Subsection 67(1)**

Omit “64”, substitute “65”.

### **38 Subsection 67(2)**

Omit “reasonably likely to be”.

### **39 After paragraph 67(2)(c)**

Insert:

- (ca) whether the Regulator considers that the plan mentioned in paragraph 65(3)(e) is likely to reduce the facility's covered emissions below the facility's baseline emissions number for the declared multi-year period; and

### **40 Subsection 67(3)**

Repeal the subsection, substitute:

- (3) If the Regulator decides to make a multi-year period declaration, it must specify a declared multi-year period for the facility that is:
  - (a) 2 financial years; or
  - (b) 3 financial years; or
  - (c) 4 financial years; or
  - (d) 5 financial years.

## **41 After subsection 67(3)**

Insert:

- (3A) The Regulator must not make a multi-year period declaration with an end date later than 30 June 2030.

## **42 Subsection 67(4)**

Repeal the subsection, substitute:

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application by the later of:
- (a) 31 January after the end of the proposed first financial year of the declared multi-year period; and
  - (b) if the Regulator requires the applicant to give further information under subsection 65(1) in relation to the application—60 days after the applicant gave the Regulator the information.

## **43 Subsection 68(1)**

Repeal the subsection, substitute:

- (1) The responsible emitter for a facility may apply to the Regulator to:
- (a) reduce the length of the declared multi-year period in a multi-year period declaration by 1 or more years, down to a minimum of 2 years; or
  - (b) extend the length of a declared multi-year period in a multi-year period declaration by 1 or more years, up to a maximum of 5 years; or
  - (c) revoke the multi-year period declaration.

## **44 After section 69**

Insert:

### **69A Report on performance against plan for avoiding an excess emissions situation at end of declared multi-year period**

- (1) This section applies if:
- (a) under subsection 65(1), a responsible emitter for a facility applied for a multi-year period declaration on or after the day this section commences; and
  - (b) under section 67, the Regulator made a multi-year declaration for the facility.
- (2) By 31 October after the end of the last financial year of the declared multi-year period, the responsible emitter must submit to the Regulator a report describing how the facility performed against its plan provided for the purposes of paragraph 65(3)(e).

Note: The Regulator is required to publish a report given under this section: see paragraph 72(1)(g).

## **45 Paragraph 71(3)(c)**

Repeal the paragraph.

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## 46 Paragraph 72(1)(a)

After “that is a designated large facility”, insert “, or an eligible facility, for a financial year”.

## 47 Subparagraphs 72(1)(a)(iv) and (v)

After “designated large facility”, insert “or an eligible facility (as the case may be)”.

## 48 At the end of paragraph 72(1)(a)

Add:

- and (xii) if there is an emissions reduction contribution for the facility for a financial year (the *facility-specific ERC*) that is different from the default emissions reduction contribution for that financial year—the facility-specific ERC; and
- (xiii) if there is a borrowing adjustment number for the facility for a financial year—that borrowing adjustment number; and
- (xiv) if a number of safeguard mechanism credit units is issued to the responsible emitter for the facility for a financial year—the number of safeguard mechanism credit units issued to the responsible emitter for that financial year;

## 49 Paragraphs 72(1)(d) and (e)

Repeal the paragraphs, substitute:

- (d) in respect of each application for declaration of a specified period as a declared multi-year period for a facility, the summary mentioned in paragraph 65(3)(f);
- (e) each report submitted to the Regulator under subsection 69A(2).

## 50 Subsection 72(3)

Omit “March”, substitute “April”.

## 51 Division 4 of Part 4 (heading)

Omit “Excess surrender situations”, substitute “Net emissions number”.

## 52 Section 72A

Repeal the section, substitute:

### 72A Circumstances in which subsection 22XK(4) of the Act does not apply

For the purposes of subsection 22XK(5) of the Act, if a facility is a designated large facility, the net emissions number for the facility for a period is not increased under subsection 22XK(4) of the Act by a number of Australian carbon credit units if those units are not attributable to the avoidance of covered emissions of greenhouse gases from the operation of the facility during the period.

## 53 At the end of Part 4

Add:

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## Division 5—Surrender of prescribed carbon units

### 72B Requirements for period for which net emissions number is reduced by surrendering units

For the purposes of paragraph 22XN(1)(c) of the Act, the registered holder of one or more prescribed carbon units may surrender any or all of those units for the purposes of reducing the net emissions number for a facility for a period if the period meets the following requirements:

- (a) the period is a monitoring period for the facility in relation to the responsible emitter for the facility;
- (b) the period commenced before the surrender is made.

### 72C Circumstances in which subsection 22XN(6) of the Act does not apply

- (1) This section is made for the purposes of subsection 22XN(7) of the Act.
- (2) Subsection 22XN(6) of the Act does not apply in relation to a period beginning after 30 June 2025.
- (3) Australian carbon credit units are not taken under subsection 22XN(6) of the Act to have been surrendered for the purpose of reducing the net emissions number for a facility for a period if those units are not attributable to the avoidance of covered emissions of greenhouse gases from the operation of the facility during the period.

## 54 At the end of Part 6

Add:

## Division 5—Application, saving and transitional provisions relating to the National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023

### 87 Application provisions

- (1) The amendment of section 7 made by the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023* applies in relation to emissions of one or more greenhouse gases from the operation of a grid-connected electricity generator in respect of a sectoral-baseline financial year that begins after 30 June 2023.
- (2) Part 3, as substituted by the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*, applies in relation to the ascertainment of the baseline emissions number for a facility for a financial year that begins after 30 June 2023.
- (3) Sections 72A and 72B, and subsection 72C(3), as inserted by the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*, apply in relation to a period beginning after 30 June 2022.

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## 88 Saving provisions

- (1) Despite the repeal of Part 3 by the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*, that Part, as in force immediately before 1 July 2023, continues to apply, on and after that day, in relation to the ascertainment of the baseline emissions number for a facility for a financial year that ends on or before 30 June 2023.
- (2) However, for the ascertainment of the baseline emissions number for a facility for the financial year beginning on 1 July 2022, Part 3, as continued in force under subsection (1), applies as if the following were omitted:
  - (a) subsection 26A(6) (criteria for a transitional calculated baseline);
  - (b) subparagraphs 40(1)(ab)(i) and (ii) (criteria for a production-adjusted baseline determination);
  - (c) paragraph 40(1)(b) (criteria for a production-adjusted baseline determination).
- (3) Despite the repeal of Part 3 by the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*, a determination made under that Part that is in force immediately before 1 July 2023 continues to apply, on and after that day, in relation to the ascertainment of the baseline emissions number for a facility for a financial year that ends on or before 30 June 2023.

## 89 Updated end date for declared multi-year periods ending after 30 June 2024

- (1) This section applies to a declared multi-year period in a multi-year period declaration in force immediately before this section commences.
- (2) If the end date of the declared multi-year period is a date later than 30 June 2024, the end date is taken to be 30 June 2024.

## 55 Schedule 1

Repeal the Schedule.

## 56 Schedule 2 (heading)

Repeal the heading, substitute:

### **Schedule 1—Production variables**

Note: See the definition of *production variable* in section 4.

## 57 At the end of Schedule 2

Add:

## **Part 46—Petroleum refining**

### 97 Petroleum refinery feedstocks

- (1) Kilolitres of the following substances that are used in carrying on the activity of petroleum refining at the facility in accordance with subsection (2):
  - (a) stabilised crude petroleum oil at 15 °C and 1 atmosphere; and



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- (b) condensate at 15 °C and 1 atmosphere; and
  - (c) tallow at 15 °C and 1 atmosphere; and
  - (d) vegetable oil at 15 °C and 1 atmosphere; and
  - (e) eligible petroleum feedstocks at 15 °C and 1 atmosphere.
- (2) A substance mentioned in paragraphs (1)(a) to (e) is used in carrying on the activity of petroleum refining if the substance is, or is to be, refined:
- (a) by 1 or both of the processes mentioned in paragraphs (3)(a) and (b); and
  - (b) into either of the following:
    - (i) 1 or more petroleum products mentioned in paragraphs (3)(c) and (d);
    - (ii) other by-products that result from carrying on the petroleum refining activity.
- (3) The metric in subsection (1) is applicable to a facility that conducts the activity of petroleum refining through the chemical and physical transformation of stabilised crude petroleum oil, which may be supplemented with 1 or more of condensate, tallow, vegetable oil, eligible petroleum feedstocks or other petroleum feedstocks, to produce a range of refined petroleum products through the following processes:
- (a) the distillation of stabilised crude petroleum oil, condensate, tallow, vegetable oil and other petroleum feedstocks;
  - (b) the adjustment of the molecular weight and structure of hydrocarbons (such as that which occurs through catalytic or hydro-cracking, steam or catalytic reforming, polymerisation, isomerisation or alkylation);
  - (c) the blending of products from distillation and adjustment of molecular weight and structure to produce Australian and international standard diesel, jet fuel and unleaded petrol;
  - (d) the production of 2 or more of the following refinery products saleable in Australian or international markets:
    - (i) hydrogen;
    - (ii) ethane;
    - (iii) propane;
    - (iv) refinery grade propylene;
    - (v) polymer grade propylene;
    - (vi) liquefied petroleum gas;
    - (vii) butane;
    - (viii) naphtha;
    - (ix) aviation gasoline;
    - (x) before oxygenate blend;
    - (xi) kerosene;
    - (xii) heating oil;
    - (xiii) solvents;
    - (xiv) lubricant base stocks;
    - (xv) leaded petrol;
    - (xvi) waxes;
    - (xvii) bitumen.
- (4) However, the metric in subsection (1) is not applicable to a facility unless:
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- (a) each of the processes mentioned in paragraphs (3)(a) to (d) are conducted within the year at the facility; and
  - (b) the combined volume of diesel, jet fuel, unleaded petrol, lubricant base stocks and bitumen at 15°C and 1 atmosphere produced from stabilised crude petroleum oil, condensate, tallow, vegetable oil and eligible petroleum feedstocks is equal to or greater than 75% of the total kilolitres of stabilised crude petroleum oil, condensate, tallow, vegetable oil and eligible petroleum feedstocks used in the year at the facility.
- (5) The activity in subsection (3) is the petroleum refining activity.
- (6) The default emissions intensity is 0.138 t CO<sub>2</sub>-e per kilolitre of the substances mentioned in paragraphs (1)(a) to (e).
- (7) In this section:

*condensate* has the same meaning as in the *Excise Act 1901*.

*eligible petroleum feedstocks* means any 1 or more of the following that were not produced through the conduct of the petroleum refining activity carried on at another facility in Australia:

- (a) catalytic cracker feedstocks that are processed in the catalytic cracker in carrying on the petroleum refining activity and have a density of 0.84 to 0.98 kg/L at 15 °C and 1 atmosphere;
- (b) hydro-cracker unit feedstocks that are processed in the hydro-cracking unit in carrying on the petroleum refining activity and have a density of 0.84 to 0.98 kg/L at 15 °C and 1 atmosphere;
- (c) reformer unit feedstocks that are used to produce reformat in carrying on the petroleum refining activity and have a density of 0.6 to 0.80 kg/L at 15 °C and 1 atmosphere;
- (d) alkylation unit feedstocks that are used to produce alkylate in carrying on the petroleum refining activity and have a density of 0.55 to 0.62 kg/L at 15 °C and 1 atmosphere;
- (e) bitumen feedstocks that are used to produce bitumen in carrying on the petroleum refining activity and have a density greater than or equal to 0.95 kg/L at 15 °C and 1 atmosphere;
- (f) lubricant base stock feedstocks that are used to produce lubricant base stocks in carrying on the petroleum refining activity and have a density of 0.84 to 0.98 kg/L at 15 °C and 1 atmosphere.

*stabilised crude petroleum oil* has the meaning given in the Australian Taxation Office Interpretative Decision, ATO ID 2008/154, published on 18 November 2008.

Note: In 2023, the decision could be accessed from <http://www.ato.gov.au>.

*unleaded petrol* means all grades of unleaded petrol meeting Australian or international standards, including standard unleaded petrol, premium unleaded petrol and other proprietary forms of unleaded petrol.

## 58 Schedule 3

Repeal the Schedule, substitute:

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## Schedule 2—Trade-exposed production variables

Note: See the definition of *trade-exposed production variable* in section 4.

### 1 Trade-exposed production variables

The production variables in the following table are trade-exposed production variables.

Trade-exposed production variables	
Item	Trade-exposed production variables
1	Bulk flat glass
2	Glass containers
3	Aluminium
4	Alumina
5	Ammonia
6	Ammonium nitrate
7	Carbamide (urea)
8	Ammonium phosphate (diammonium phosphate and monoammonium phosphate)
9	Sodium cyanide
10	Synthetic rutile
11	White titanium dioxide pigment
12	Run-of-mine coal
13	Iron ore
14	Manganese ore
15	Bauxite
16	Run of mine metal ore
17	Extracted oil and gas
18	Stabilised crude oil or condensate (stabilisation only)
19	Stabilised crude oil (integrated extraction and stabilisation)
20	Processed natural gas (processing only)
21	Processed natural gas (integrated extraction and processing)
22	Liquefied natural gas (from unprocessed natural gas)
23	Liquefied natural gas (from processed natural gas)
24	Ethane
25	Liquefied petroleum gas
26	Coke oven coke (integrated iron and steel manufacturing)
27	Lime (integrated iron and steel manufacturing)
28	Iron ore sinter (integrated iron and steel manufacturing)
29	Iron ore pellets (integrated iron and steel manufacturing)
30	Continuously cast carbon steel products and ingots of carbon steel (integrated iron and steel manufacturing)
31	Hot rolled long products produced at integrated iron and steel manufacturing facilities
32	Hot rolled flat products produced at integrated iron and steel manufacturing facilities

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<b>Trade-exposed production variables</b>	
<b>Item</b>	<b>Trade-exposed production variables</b>
33	Continuously cast carbon steel products and ingots of carbon steel (manufacture of carbon steel products from cold ferrous feed)
34	Hot rolled long products not produced at integrated iron and steel manufacturing facilities
35	Hot rolled flat products not produced at integrated iron and steel manufacturing facilities
36	Iron ore pellets not from integrated iron and steel manufacturing
37	Treated steel flat products
38	Clinker not used by facility to make cement
39	Cement produced from clinker at a facility
40	Lime
41	Silicon
42	Lead bullion
43	Refined lead
44	Zinc in fume
45	Caustic calcined magnesia
46	Copper anode
47	Manganese sinter
48	Primary nickel products from nickel bearing inputs
49	Primary nickel products from imported intermediate nickel products
50	Intermediate nickel products from nickel bearing inputs
51	Tissue paper
52	Packaging and industrial paper
53	Printing and writing paper
54	Newsprint
55	Pulp
56	Ethene (ethylene)
57	Polyethylene
58	Wheat protein products (dried gluten)
59	Direct wheat starch
60	Wheat based dried distillers grain
61	Ethanol—95
62	Ethanol—absolute
63	Beverage grade ethanol
64	Raw sugar
65	Petroleum refinery feedstocks

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### **59 Amendments of listed provisions—prescribed (annually adjusted) production variables**

Omit “prescribed (annually adjusted)” in the following provisions:

- (a) section 1 of Schedule 2;
- (b) paragraph 2(1)(a) of Schedule 2;

- (c) paragraph 2(3)(b) of Schedule 2;
- (d) subsection 64(5) of Schedule 2.

## **60 Amendments of listed provisions—Schedule 2**

Omit “Schedule 2”, substitute “this Schedule” in the following provisions:

- (a) section 3 of Schedule 2 (definition of *saleable quality*);
- (b) paragraph 17(2)(b) of Schedule 2;
- (c) paragraph 18(2)(b) of Schedule 2;
- (d) paragraph 31(1)(f) of Schedule 2;
- (e) paragraph 32(1)(f) of Schedule 2;
- (f) paragraph 55A(1)(c) of Schedule 2.