

EXPLANATORY STATEMENT

Select Legislative Instrument No. 243, 2013

Issued by the Authority of the Minister for the Environment

Clean Energy Act 2011

Renewable Energy (Electricity) Act 2000

Clean Energy Legislation Amendment (Jobs and Competitiveness Program) Regulation 2013

Section 312 of the *Clean Energy Act 2011* (the CE Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the CE Act, or necessary or convenient to be prescribed for carrying out or giving effect to the CE Act. The CE Act, together with the other Acts of the Clean Energy Legislative Package, implements the carbon tax.

Section 161 of the *Renewable Energy (Electricity) Act 2000* (the RET Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the RET Act, or necessary or convenient to be prescribed for carrying out or giving effect to the RET Act. The RET Act establishes the Renewable Energy Target (RET) scheme to encourage electricity generation from eligible energy sources.

The *Clean Energy Legislation Amendment (Jobs and Competitiveness Program) Regulation 2013* (the Regulation) amends the *Clean Energy Regulations 2011* (the CE Regulations) and the *Renewable Energy (Electricity) Regulations 2001* (the RET Regulations) to include the production of coal char and the production of glass wool as eligible EITE activities in the Jobs and Competitiveness Program (the JCP) and the RET scheme. The Regulation also:

- outlines the baselines in Part 4 for these activities which are used to determine the amount of free carbon units under the JCP and Partial Exemption Certificates (PECs) that each applicant would be eligible for in relation to the activities;
- extends the JCP and PEC application deadlines for the activities for the 2013-14 and 2013 year respectively, and allows for JCP applications to be made in respect of the 2012-13 compliance year for these activities; and
- makes a minor amendment to the description of the manufacture of newsprint EITE activity which is prescribed in the CE Regulations and RET Regulations.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Regulation are included in Attachment A.

Consultation

Since 2011, the Department of the Environment (and the former Department of Climate Change and Energy Efficiency and former Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education) have undertaken an extensive consultation process to establish the eligibility of EITE activities and develop regulations to implement the Program.

The policy framework for determining the eligibility of EITE activities for assistance under the Program was originally developed in 2009 and has been used to establish the eligibility of activities with respect to assistance provided under the RET scheme. The process for assessing activities and defining the technical aspects of the activities, including setting assistance rates and allocative baselines, is outlined in the paper titled *Establishing the eligibility of activities under the Jobs and Competitiveness Program*.

The formal process for defining and determining the eligibility of an EITE activity involves a stakeholder workshop to formulate appropriate activity definitions and boundaries, and approval of the activity definitions by the relevant Minister for the purposes of data collection. Audited data based on the approved definition is then submitted to the Australian Government. If determined to be eligible, stakeholders in the relevant industry are consulted on the drafting of the definitions to be included in the Regulations to ensure that the structure of the definitions generally reflects how the activities are conducted. This process has been followed for the coal char and glass wool activities.

The Department has consulted with the coal char and glass wool industries regarding the inclusion of the coal char and glass wool activities and the application deadline extension throughout the process of developing the Regulation.

The Minister has taken into consideration the principles under subsection 145(5) of the CE Act regarding changes that will have a negative impact on recipients of assistance under the Program.

Exposure draft legislation to repeal the carbon tax has been released for public consultation. Under the proposed repeal, assistance under JCP would cease to continue from 2014-15, including in relation to these activities. Until the carbon tax is repealed, the Government remains committed to continuing to assist businesses undertaking activities that meet the eligibility criteria for assistance under the JCP.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment B.

Authority: Section 312 of the
Clean Energy Act 2011

Section 161 of the *Renewable
Energy (Electricity) Act 2000*

Details of the Clean Energy Legislation Amendment (Jobs and Competitiveness Program) Regulation 2013

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *Clean Energy Legislation Amendment (Jobs and Competitiveness Program) Regulation 2013* (the Regulation).

Section 2 – Commencement

This section provides for the Regulation to commence on the day after registration on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section specifies that the Regulation is made under the authority of the *Clean Energy Act 2011* (CE Act) and the *Renewable Energy (Electricity) Act 2000* (the RET Act).

Section 4 – Schedule(s)

This section provides that the Regulation amends or repeals each instrument that is specified in a Schedule to the Regulation, and that any other item in Schedule 1 has effect according to its terms.

Schedule 1 - Amendments

Clean Energy Regulations 2011

Item 1 – Subclause 314(1) of Schedule 1

This item replaces subclause 314(1), which is the description of the manufacture of newsprint activity, with a new subclause 314(1) to add that the activity includes the production of rolls of coated newsprint, as well as uncoated newsprint. The item also amends the specifications of eligible rolls of newsprint to require a moisture content range of 4% to 11% and to provide that the newsprint is generally usable for publication products and newspaper.

Item 2 – Subclause 314(4) of Schedule 1

This item replaces subclause 314(4), which outlines the manufacture of newsprint activity for the purpose of describing the basis for the issue of free carbon units to eligible applicants, with a new subclause 314(4) to add that the activity includes the production of rolls of coated newsprint, as well as uncoated newsprint. The item also amends the specifications of eligible rolls of newsprint to require a moisture content range of 4% to 11% and to provide that the newsprint is generally usable for publication products and newspaper.

Item 3 - At the end of Part 3 of Schedule 1

This item prescribes two additional activities as eligible emissions-intensive trade-exposed (EITE) activities for free carbon units under the Jobs and Competitiveness Program (the JCP).

Clause 351 – Production of glass wool

Clause 351 provides that the production of glass wool is the chemical and physical transformation of either or both of the following:

- a) recycled materials (such as cullet); and/or
 - b) silicon dioxide (SiO₂, silica);
- and both of the following:
- c) sodium carbonate (Na₂CO₃, soda ash); and
 - d) other raw materials

through a melting, fiberising, binding and curing process into saleable glass wool. Glass wool is generally used in domestic and commercial building insulation products.

The production of glass wool is an EITE activity eligible for assistance at the moderately emissions-intensive rate.

The activity as conducted during the period used to assess the eligibility of the activity involved the physical and chemical transformation of recycled materials (such as cullet) and/or silicon dioxide (SiO₂, silica), sodium carbonate (Na₂CO₃, soda ash) and other raw materials through a melting, fiberising, binding and curing process into saleable glass wool.

The inputs of the activity have been defined to include recycled materials (such as cullet), silicon dioxide (silica), sodium carbonate (soda ash) and other raw materials. The output of this activity is tonnes of saleable glass wool.

The activity does not include the extraction or production of any of the raw materials, such as silica or soda ash, or the collection of recycled materials from a location that is not the same as the activity. The activity also does not include any downstream processes such as unitisation, compressing, facing and packaging.

Subclause 351(4) outlines that the basis of issue of free carbon units is by a tonne of saleable glass wool which results from carrying out the activity as described.

To be eligible for assistance, the glass wool must have been produced by carrying on the activity (as defined by clause 351) to be eligible as a relevant product. For example, if imported glass wool is mixed with output produced from the activity, only the proportion of glass wool that is an output from the activity would be included in the tonnes of the relevant product. The glass wool must be of saleable quality (as defined by regulation 202). In particular, the tonnes of glass wool which are lost or discarded are not to be included in the tonnes of saleable glass wool.

Clause 352 – Production of coal char

Clause 352 provides that the production of coal char is the chemical and physical transformation of coal or a coal-based input at a temperature higher than 700°C into coal char that, on a dry weight basis:

- a) has a volatile matter of less than 2% after production; and
- b) exhibits a silicon oxide (SiO) reactivity R10 corrected value of less than 1,100 ml of SiO gas at standard temperature and pressure.

Coal char is used in ferroalloy production, steel manufacturing, activated carbon production, barbeque heat bead production and as a filter medium in industries.

The production of coal char is an EITE activity eligible for assistance at the highly emissions-intensive rate.

The activity as conducted during the period used to assess the eligibility of the activity involved the chemical and physical transformation of coal or a coal-based input at a temperature higher than 700°C into saleable that has a volatile matter of less than 2% after production; and exhibits a SiO reactivity R10 corrected value of less than 1,100 ml of SiO gas at standard temperature and pressure.

The inputs of the activity have been defined to include coal or a coal based inputs. The output of this activity is dry tonnes of saleable coal char which meets the volatile matter and silicon oxide reactivity specifications.

The activity does not include the production of brown coal briquettes. The activity also does not include any downstream processes that involve the transformation of coal char into products suitable for barbeque fuel applications.

Subclause 352(4) outlines that the basis of issue of free carbon units is by a tonne of saleable coal char on a dry weight basis that meets the volatile matter and silicon oxide reactivity specifications as prescribed and which results from carrying out the activity as described.

To be eligible for assistance, the coal char must have been produced by carrying on the activity (as defined by clause 352) to be eligible as a relevant product. For example, if imported coal char is mixed with output produced from the activity, only the proportion of coal char that is an output from the activity would be included in the tonnes of the relevant product. The coal char must be of saleable quality (as defined by regulation 202). In particular, the tonnes of coal char which are lost or discarded are not to be included in the tonnes of relevant product.

Item 4 - Subclause 401(1) of Schedule 1 (table item 1.6)

This item amends item 1.6 in the table of allocative baselines under subclause 401(1) to add dried coated and uncoated newsprint of saleable quality as the eligible output under the manufacture of newsprint activity (as defined by regulation 314), reflecting the changes made under item 2.

Item 5 - Subclause 401(1) of Schedule 1 (after table item 1.34)

This item inserts into the table in Part 4 of Schedule 1 the allocative baselines for assistance that relate to the production of coal char as prescribed by item 3, which is categorised as a highly emissions-intensive activity.

Item 6 - Subclause 401(1) of Schedule 1 (at the end of the table)

This item inserts into the table in Part 4 of Schedule 1 the allocative baselines for assistance that relate to the production of glass wool as prescribed by item 3, which is categorised as a moderately emissions-intensive activity.

The baselines outlined in items 5 and 6 are for the direct emissions and electricity use for the activities in clauses 351 and 352.

The formula for calculating the number of free permits in Part 9 of Schedule 1 to *Clean Energy Regulations 2011* (the Principal Regulations) applies the baselines as outlined in the table.

Item 7 - Subclauses 702(1A) to (1H) of Schedule 1

This item amends the timeframes in which applications for free carbon units must be made under section 702. In particular, this item allows for applications for free carbon units for the production of glass wool and the production of coal char to be given to the Clean Energy Regulator (the Regulator) by:

- a. 13 December 2013 in relation to applications for the 2012-13 compliance year; and
- b. 31 December 2013 in relation to applications for the 2013-14 compliance year.

Item 8 – At the end of clause 906 of Schedule 1

This item allows for the number of free carbon units for applicants in respect of the production of glass wool and the production of coal char activities to be based on the actual production for the 2012-13 year, rather than providing production data for the previous financial year (2011-12). This allows the applicants to provide to the Regulator audited information on actual production at the facility in order to calculate the free carbon units based on the entity's actual production for the 2012-13 financial year and avoids the need for the Regulator to calculate the number of free carbon units for these applicants on the previous financial year's (2011-12) production and then undertake a process to true-up the allocation of free carbon units based on the actual production.

Renewable Energy (Electricity) Regulations 2001

Item 9 – Subregulations 22X(1A) to (1D)

This item allows for applications for PECs for the production of glass wool and the production of coal char to be given to the Regulator before 13 December 2013.

Item 10 – After subregulation 22ZB(2)

This item allows for the number of PECs for applicants in respect of the production of glass wool and the production of coal char activities to be based on the actual production for the 2012-13 year, rather than providing production data for the previous financial year (2011-12). This allows the applicants to provide to the Regulator audited information on actual production at the site in order to calculate the PECs based on the entity's actual production for the 2012-13 financial year and avoids the need for the Regulator to calculate the number of PECs for these applicants on the previous financial year's (2011-12) production and then undertake a process to true-up the allocation of PECs based on the actual production.

Item 11 – Subclause 635(1) of Schedule 6

This item replaces subclause 635(1), which is the description of the manufacture of newsprint activity, with a new subclause 635(1) to add that the activity includes the production of rolls of coated newsprint, as well as uncoated newsprint. The item also amends the specifications of eligible rolls of newsprint to require a moisture content range of 4% to 11% and to provide that the newsprint is generally usable for publication products and newspaper.

Item 12 – Subclause 637(1) of Schedule 6

This item replaces subclause 637(1), which outlines the basis for the issue of PECs (the baseline) in relation to the manufacture of newsprint activity, with a new subclause 637(1) to add that the activity includes the production of rolls of coated newsprint, as well as uncoated newsprint. The item also amends the specifications of eligible rolls of newsprint to require a moisture content range of 4% to 11% and to provide that the newsprint is generally usable for publication products and newspaper.

Item 13 – At the end of Schedule 6

Item 13 inserts in Schedule 6 to the RET Regulations two new Parts 51 and 52, each comprising 3 divisions which together define the activities of the production of glass wool and the production of coal char respectively, including the scope of the activity, its emissions-intensity classification and electricity baseline. The inclusion of the production of glass wool and the production of coal char in the RET Regulations as an EITE activity will enable partial exemptions from liability under the RET scheme to be provided in respect of electricity used in undertaking this activity.

Part 51 – Production of glass wool

Division 1 – Production of glass wool

Clause 749 – Production of glass wool

Clause 749 provides that the production of glass wool is the chemical and physical transformation of either or both of the following:

- a) recycled materials (such as cullet); and/or

- b) silicon dioxide (SiO₂, silica);
and both of the following:
- c) sodium carbonate (Na₂CO₃, soda ash); and
- d) other raw materials

through a melting, fiberising, binding and curing process into saleable glass wool. Glass wool is generally used in domestic and commercial building insulation products.

The activity as conducted during the period used to assess the eligibility of the activity involved the physical and chemical transformation of recycled materials (such as cullet) and/or silicon dioxide (SiO₂, silica), sodium carbonate (Na₂CO₃, soda ash) and other raw materials through a melting, fiberising, binding and curing process into saleable glass wool.

The inputs of the activity have been defined to include recycled materials (such as cullet), silicon dioxide (silica), sodium carbonate (soda ash) and other raw materials. The output of this activity is tonnes of saleable glass wool.

The activity does not include the extraction or production of any of the raw materials, such as silica or soda ash, or the collection of recycled materials from a location that is not the same as the activity. The activity also does not include any downstream processes such as unitisation, compressing, facing and packaging.

The activity is an eligible EITE activity for the purpose of PECs issued under the RET scheme.

Division 2 Classification of activity

Clause 750 – Classification of activity

Clause 750 prescribes that the production of glass wool is classified as a moderately emissions-intensive activity. This has the effect that electricity used in the activity as defined is eligible for a partial exemption from RET liability at the moderately emissions-intensive rate.

Division 3 Electricity baseline for calculating partial exemption

Clause 751 – Electricity baseline for product

Clause 751 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the production of glass wool is 1.78 megawatt-hours (MWh) per tonne of saleable glass wool.

To be eligible for assistance, the glass wool output must have been produced by carrying on the activity (as defined by clause 749) to be eligible as a relevant product. For example, if imported glass wool is mixed with output produced from the activity, only the proportion of glass wool that is an output from the activity would be included in the tonnes of the relevant product.

The glass wool must be of saleable quality (as defined in Regulation 22C of the Principal Regulations). In particular, the tonnes of glass wool which are lost or discarded are not to be included in the tonnes of relevant product.

Part 52 – Production of coal char

Division 1 – Production of coal char

Clause 752 – Production of coal char

Clause 752 provides that the production of coal char is the chemical and physical transformation of coal or a coal-based input at a temperature higher than 700°C into coal char that, on a dry weight basis:

- a) has a volatile matter of less than 2% after production; and
- b) exhibits a silicon oxide (SiO) reactivity R10 corrected value of less than 1,100 ml of SiO gas at standard temperature and pressure.

Coal char is used in ferroalloy production, steel manufacturing, activated carbon production, barbeque briquette production and as a filter medium in industries.

The activity as conducted during the period used to assess the eligibility of the activity involved the chemical and physical transformation of coal or a coal-based input at a temperature higher than 700°C into saleable that has a volatile matter of less than 2% after production; and exhibits a SiO reactivity R10 corrected value of less than 1,100 ml of SiO gas at standard temperature and pressure.

The inputs of the activity have been defined to include coal or a coal based inputs. The output of this activity is dry tonnes of saleable coal char which meets the volatile matter and silicon oxide reactivity specifications.

The activity does not include the production of brown coal briquettes. The activity also does not include any downstream processes that involve the transformation of coal char into products suitable for barbeque fuel applications.

The activity is an eligible EITE activity for the purpose of PECs issued under the RET scheme.

Division 2 Classification of activity

Clause 753 – Classification of activity

Clause 753 prescribes that the production of coal char is classified as a highly emissions-intensive activity. This has the effect that electricity used in the activity as defined is eligible for a partial exemption from RET liability at the highly emissions-intensive rate.

Division 3 Electricity baseline for calculating partial exemption

Clause 754 – Electricity baseline for product

Clause 754 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the production of coal char is 0.120 megawatt-hours (MWh) per tonne of saleable coal char on a dry weight basis that meets the volatile matter and silicon oxide reactivity specifications as prescribed.

To be eligible for assistance, the coal char output must have been produced by carrying on the activity (as defined by clause 752) to be eligible as a relevant product. For example, if imported coal char is mixed with output produced from the activity, only the proportion of coal char that is an output from the activity would be included in the tonnes of the relevant product.

The coal char must be of saleable quality (as defined in Regulation 22C of the Principal Regulations). In particular, the tonnes of coal char which are lost or discarded are not to be included in the tonnes of relevant product.

Statement of Compatibility with Human Rights

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

Clean Energy Legislation Amendment (Jobs and Competitiveness Program) Regulation 2013

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

Overview of the Clean Energy Legislation Amendment (Jobs and Competitiveness Program) Regulation 2013

The Regulation is designed to include two additional activities, the production of coal char and the production of glass wool, as eligible under the Jobs and Competitiveness Program (the Program) and the Renewable Energy Target (RET) scheme. The Program is a key component of the carbon pricing mechanism targeted at supporting industries that produce a lot of carbon pollution but are constrained in their capacity to pass through costs in global markets.

The Regulation is also designed to extend the deadline for applications to be made under the Program and the RET scheme in relation to the two new activities and to make other minor amendments to the description of the manufacture of newsprint activity.

Human rights implications

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

Conclusion

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

Greg Hunt
Minister for the Environment