



National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015

I, Greg Hunt, Minister for the Environment, make the following legislative rule.

Dated 7 October 2015

GREG HUNT

Greg Hunt
Minister for the Environment

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Part 1—Preliminary

1 Name

This is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015*.

2 Commencement

This instrument commences on 1 July 2016.

3 Authority

This instrument is made under subsection 22XS(1) of the *National Greenhouse and Energy Reporting Act 2007*.

4 Definitions

In this instrument:

Act means the *National Greenhouse and Energy Reporting Act 2007*.

adverse conclusion has the meaning given by the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

askm means available seat kilometres.

baseline determination means:

- (a) a reported-emissions baseline determination; or
- (b) a calculated-emissions baseline determination; or
- (c) a benchmark-emissions baseline determination; or
- (d) a production-adjusted baseline determination; or
- (e) a landfill-benchmark baseline determination.

baseline intensity comparison year includes the following financial years:

- (a) if a reported-emissions baseline determination applies to the facility in respect of a financial year the subject of an application under subsection 46(1)—the year used to determine the baseline emissions number under subsection 17(1); and
- (b) if a calculated-emissions baseline determination applies to the facility in respect of a financial year the subject of an application under subsection 46(1)—first year of the calculated-emissions baseline determination; and
- (c) if a production-adjusted baseline determination applies to the facility in respect of a financial year the subject of an application under subsection 46(1)—the year used to determine the baseline emissions number under subsection 44(3); and
- (d) if a baseline determination has been varied in respect of a financial year under Subdivision 6 of Part 4—that financial year.

benchmark-emissions baseline determination means a determination under subsection 38(2).

Benchmark Emissions-Intensity Index means index of emissions intensity per unit of a production variable (including the benchmark capture efficiency rate for non-legacy greenhouse gas emissions) set out in Schedule 1.

benchmark facility means a facility for which:

- (a) a benchmark-emissions baseline determination has been made (whether or not that determination remains in force); and
- (b) a production-adjusted baseline determination has been made on the basis of an application under paragraph 40(1)(b) (whether or not that determination remains in force).

by-product means a saleable output or other product that:

- (a) results from a chemical or physical process undertaken by a facility other than for the purpose of producing the output; and
- (b) will be disposed of, by sale or gift, without any further processing by the facility (other than further processing in accordance with standard industry practice).

calculated-emissions baseline determination means a determination under subsection 30(2).

criminal activity means any activity that the Regulator has reasonable cause to believe involves the commission of an offence by one or more persons.

Darwin to Katherine network means the local distribution systems in items 1, 2 and 5 of Schedule 2 to the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT) and any transmission or distribution system which is connected to those local distribution systems.

designated electricity network means one of the following electricity networks:

- (a) the interconnected national electricity system within the meaning of the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA);
- (b) the South West interconnected system within the meaning of section 3 of the *Electricity Industry Act 2004* (WA);
- (c) the North West interconnected system within the meaning of section 2 of the *Electricity Transmission and Distribution Systems (Access) Act 1994* (WA);
- (d) the Darwin to Katherine network;
- (e) the Mount Isa–Cloncurry supply network within the meaning of section 10 of the *Electricity—National Scheme (Queensland) Act 1997* (Qld).

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

- (a) the type of determination or declaration; and
- (b) the facility to which the determination or declaration relates; and
- (c) the responsible emitter for the facility to which the determination or declaration relates; and
- (d) the start and any end date of the determination or declaration; and
- (e) whether the new facility criteria, significant expansion criteria, inherent emissions variability criteria or initial calculated baseline were satisfied in relation to the making of the determination; and
- (f) if the determination specifies a baseline emission number—that number; and
- (g) if a determination or declaration is being varied—the nature of that variation.

dwtm means dead weight tonne nautical miles.

emissions-intensity calculation criteria has the meaning given by section 6.

emissions intensity test means the test set out in section 47.

fixed proportion includes a proportion that varies by less than 5%.

grid-connected electricity generator means a designated generation facility connected to a designated electricity network at any time during a financial year.

identifying details has the meaning given by the NGER Regulations.

identifying information has the meaning given by the NGER Regulations.

inherent emissions variability criteria means the criteria in section 25.

initial calculated baseline criteria means the criteria in section 26.

input means:

- (a) if the input relates to a landfill facility—a tonne of waste received by a landfill facility; and
- (b) otherwise—anything that undergoes a chemical or physical process to produce an intermediate product or an output.

intermediate product means a product that:

- (a) results from a chemical or physical process undertaken by a facility using one or more inputs; and
- (b) is then used as an input for the production of an output at the same facility.

inter-state transport facility means a facility:

- (a) covered by regulation 2.19 of the NGER Regulations; and
- (b) with activities or a series of activities in more than one State or Territory.

landfill baseline emissions formula means the formula for determining the baseline emissions number for a financial year set out in an landfill-benchmark baseline determination under section 54.

landfill-benchmark baseline determination means a determination under subsection 54(2).

landfill facility means a facility for the disposal of solid waste as landfill, and includes a facility that is closed for the acceptance of waste.

large new facility means a facility which:

- (a) meets the new facility criteria; and
- (b) has, or is likely to have, a baseline emissions number of more than 2 million t CO₂-e (assuming a 5 year baseline determination); and
- (c) is not, or will not be, a grid-connected electricity generator.

legacy emissions has the meaning given by subsection 7(2).

limited assurance conclusion has the meaning given by the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

multi-year period declaration has the meaning given by subsection 65(1).

m³km means metres cubed kilometres.

national facility definition means the requirements for a transport facility applying as a result of a nomination under subregulation 2.19A(2) of the NGER Regulations.

new facility criteria means:

- (a) in relation to a calculated-emissions baseline determination—the criteria in section 23.

- (b) in relation to a benchmark-emissions baseline determination—the criteria in section 33.

NGER (Measurement) Determination means the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*.

NGER Regulations means the *National Greenhouse and Energy Reporting Regulations 2008*.

output means a product that is:

- (a) if the output is from a transport facility—a transport service measured by service units; or
- (b) if more than 25,000 megawatt hours of electricity is, or is to be, generated at the facility in a financial year—electricity generated at the facility; or
- (c) otherwise—the last product resulting from a chemical or physical process undertaken by a facility using one or more inputs or intermediate products.

output variable means any of the following:

- (a) if the only output for a facility is electricity generation—the quantity of electricity exported from the facility as measured in megawatt hours;
- (b) if electricity generation is one of 2 or more outputs for a facility—the quantity of electricity generated at the facility as measured in megawatt hours;
- (c) if the facility is a transport facility—the quantity of service units of that facility
- (d) the quantity of a product that is produced or processed by a facility, if:
 - (i) the product is the last saleable output from a chemical or physical process undertaken by the facility; and
 - (ii) an increase in the quantity of the product produced or processed by the facility would result in an increase in the quantity of covered emissions from the facility; and
 - (iii) a decrease in the quantity of the product produced or processed by the facility would result in a decrease in the quantity of covered emissions from the facility; and
 - (iv) the quantity of the product can be expressed in a unit of measurement that complies with the *National Measurement Act 1960*; and
 - (v) the product is not an intermediate product, a by-product or a waste product.

pkm means passenger kilometres.

pnmi means passenger nautical miles.

primary production variable means:

- (a) if there is only one production variable—that variable
- (b) if there is more than one production variable—the variable that is most significant for the operation of the facility having primary regard to the share of revenue and covered emissions directly or indirectly attributable to that production variable.

production assessment period, in relation to a production-adjusted baseline determination, means:

- (a) if paragraph 40(1)(a) applies because of the expiry of a calculated-emissions baseline determination—the period covered by that baseline determination;
- (b) if paragraph 40(1)(a) applies because of the expiry of a benchmark-emissions baseline determination—the production estimation period used in calculating the baseline emissions number for that baseline determination; or

- (c) if paragraph 40(1)(b) applies—the three year period starting on 1 July of the first financial year the facility’s covered emissions exceeded 100,000 t CO₂-e.

production-adjusted baseline determination means a determination under subsection 44(2).

production estimation period has the meaning given by subsection 35(4).

production variable, for a facility, means:

- (a) in relation to:
- (i) a calculated-emissions baseline determination; or
 - (ii) a production-adjusted baseline determination to follow a calculated-emissions baseline determination; or
 - (ii) a variation of a baseline determination under subdivision 6 of Part 3 for a facility other than a benchmark facility;

an output variable, the quantity of an output, the quantity of an input or the quantity of an intermediate product identified as a production variable for the facility in accordance with section 5; and

- (b) in relation to:
- (i) a benchmark-emissions baseline determination; or
 - (ii) a production-adjusted baseline determination that does not follow a calculated-emissions baseline determination; or
 - (ii) a variation of a baseline determination under subdivision 6 of Part 3 for a benchmark facility;

a metric related to production at a facility that is applicable to the facility in accordance with any requirements set out in the Benchmark Emissions-Intensity Index.

qualified limited assurance conclusion has the meaning given by the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

qualified reasonable assurance conclusion has the meaning given by the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

reasonable assurance conclusion has the meaning given by the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

relevant benchmark emissions intensity means the t CO₂-e per unit of a production variable for a kind of facility in the Benchmark Emissions-Intensity Index.

relevant earlier estimates means any of the following:

- (a) an estimate included in an environmental impact assessment statement;
- (b) an estimate made in an earlier application for a baseline determination in relation to the facility;
- (c) an estimate published by the responsible emitter or by a person associated with the responsible emitter, such as their controlling corporation;

that:

- (d) was publically available or submitted to the Regulator before the relevant application for a baseline determination; and
- (e) relates to the expected covered emissions, covered emissions intensity or quantity of a production variable relied upon in an application for a baseline determination.

reported-emissions baseline determination means a determination under subsection 14(1) or (2).

sectoral-baseline financial year means every financial year before the financial year beginning on the first 1 July after the Regulator has published a statement on its website that the total reported scope 1 emissions of all grid-connected electricity generators exceeded 198,000,000 t CO₂-e emissions in the previous financial year based upon reports submitted to the Regulator at the time of the statement. The Regulator must take all reasonable steps to publish the statement at least 4 months before the start of the financial year which is not a sectoral-baseline financial year.

Example: If the sum of reported emissions from each grid-connected electricity generator was 210,000,000 t CO₂-e in 2020-21, by 28 February 2022 the Regulator would publish a statement on its website and the financial year beginning 1 July 2022 would not be a sectoral-baseline financial year and emissions of grid-connected electricity generators would be covered emissions in that year.

service unit means a unit of measure related to a transport facility (such as askm, dwtm, m³km, pkm, pnmi, tkm, tnmi or vkt) determined and measured by the responsible emitter for the facility taking into account:

- (a) standard industry practice; and
- (b) existing measurement systems used by the responsible emitter.

significant expansion criteria means:

- (a) in relation to a calculated-emissions baseline determination—the criteria in section 24.
- (b) in relation to a benchmark-emissions baseline determination—the criteria in section 34.

t CO₂-e means tonnes of carbon dioxide equivalence.

tkm means tonne kilometres.

tnmi means tonne nautical miles.

vkt means vehicle kilometres travelled.

waste product means an output or other product that:

- (a) results from a chemical or physical process undertaken by a facility other than for the purpose of producing the output; and
- (b) will be disposed of without any further processing by the facility (other than further processing in accordance with standard industry practice); and
- (c) is not a by-product.

5 Identification of production variables

- (1) The identification of a production variable in relation to a facility must meet the requirements of this section.
- (2) If the facility has only one output that has an output variable, that output variable must be the production variable.
- (3) If the facility has more than one output that has an output variable, each of those output variables must be a production variable unless subsections (4), (5), (6), (7), (9) or (10) apply.

Similar output variables

- (4) If:
 - (a) 2 or more of a facility's output variables (the **similar variables**) are measured in the same units; and

- (b) the covered emissions per unit of production of all of the similar variables are materially similar;

the responsible emitter for the facility may choose the sum of the similar variables to be treated as a single production variable for the facility instead of the individual output variables.

Inputs and intermediate products

- (5) If:
 - (a) a single input, or a single intermediate product, is used to produce all of a facility's outputs; and
 - (b) the input, or intermediate product, meets the requirements set out in subsection (8);
 - (c) no other input or intermediate product that meets the requirements set out in subsection (8) is used to produce any of the facility's outputs;

the responsible emitter for the facility may choose the quantity of the input, or the quantity of the intermediate product, to be a production variable for the facility instead of the facility's output variables.

Multiple inputs and intermediate products

- (6) If:
 - (a) 2 or more inputs, or 2 or more intermediate products, are used to produce all of a facility's outputs; and
 - (b) the inputs, or intermediate products, are used in a fixed proportion to each other; and
 - (c) the inputs, or intermediate products, meet the requirements set out in subsection (8);

the responsible emitter for the facility may choose the quantity of one of the inputs, or the quantity of one of the intermediate products, to be a production variable for the facility instead of the facility's output variables.

Similar inputs and similar intermediate products

- (7) If:
 - (a) 2 or more inputs, or 2 or more intermediate products, are used to produce all of a facility's outputs; and
 - (b) 2 or more of the inputs (the *similar inputs*), or 2 or more of the intermediate products (the *similar intermediate products*), can be quantified using the same unit of measurement; and
 - (c) the covered emissions produced by the facility per unit of each similar input, or similar intermediate product, used are materially similar; and
 - (d) the similar inputs, or similar intermediate products, meet the requirements set out in subsection (8);

the responsible emitter for the facility may choose the quantity of the similar inputs, or the quantity of the similar intermediate products, to be a single production variable for the facility instead of the facility's output variables.

Requirements that must be met

- (8) An input, or an intermediate product, that is used by a facility to produce multiple outputs meets the requirements set out in this subsection if:
 - (a) one or more of the following apply:

- (i) the outputs are produced in a fixed proportion to the input or intermediate product;
- (ii) each output can be quantified using the same unit of measurement, and the covered emissions per unit of production of each output are materially similar;
- (iii) the facility is:
 - (A) a petroleum refinery; or
 - (B) a natural gas processing or liquefaction facility; and
- (b) an increase in the quantity of the input or intermediate product used by the facility to produce the outputs would result in an increase in the quantity of covered emissions from the facility; and
- (c) a decrease in the quantity of the input or intermediate product used by the facility to produce the outputs would result in a decrease in the quantity of covered emissions from the facility; and
- (d) either:
 - (i) the input or intermediate product is an essential component of the production process, and omitting it would prevent the production process working; or
 - (ii) omitting the input or intermediate product from the production process during a financial year would change the covered emissions of the facility by 5% or more; and
- (e) the quantity of the input or intermediate product can be expressed in a unit of measurement that complies with the *National Measurement Act 1960*; and
- (f) for a facility that is:
 - (i) a petroleum refinery; or
 - (ii) a natural gas processing or liquefaction facility;
 - the input or intermediate product is primarily used as an input to a production process (whether or not it is also a fuel that produces energy at the facility); and
- (g) for a facility that is not:
 - (i) a petroleum refinery; or
 - (ii) a natural gas processing or liquefaction facility;
 - the input or intermediate product is not a fuel that produces energy at the facility.

If no discernible output

- (9) If:
 - (a) a facility does not have a discernible output that has an output variable; and
 - (b) the facility has one or more inputs, intermediate products or outputs that are not saleable products, each of which satisfies the following:
 - (i) an increase in the quantity of the input, intermediate product or output used by or produced or processed by the facility would result in an increase in the quantity of covered emissions from the facility; and
 - (ii) a decrease in the quantity of the input, intermediate product or output used by or produced or processed by the facility would result in a decrease in the quantity of covered emissions from the facility; and
 - (iii) the quantity of the input, intermediate product or output can be expressed in a unit of measurement that complies with the *National Measurement Act 1960*;
 - (iv) the input, intermediate product or output is not a by-product or waste product;
- then:
 - (c) the responsible emitter for the facility may choose to use the quantities of those inputs, intermediate products or outputs as production variables for the facility; and
 - (d) subsection (4) applies as if they were output variables.

If emissions-intensive trade-exposed activities conducted

- (10) If the facility carries out one or more emissions-intensive trade-exposed activities (within the meaning of the *Renewable Energy (Electricity) Act 2001*) the responsible emitter for the facility may choose the quantity of all relevant products (within the meaning of Part 3A of the *Renewable Energy (Electricity) Regulations 2001*) associated with a facility to be production variables for a facility instead of the facility's output variables (other than an output variable covered by paragraph (a) or (b) of the definition of output variable in section 4).

Meaning of materially similar

- (11) For the purposes of paragraph (4)(b) and subparagraph (8)(a)(ii), the covered emissions per unit of production of 2 output variables or outputs are **materially similar** if the average covered emissions per unit of production of one of those variables or outputs during the relevant comparison period is, or is expected to be, no more than 5% greater than the average covered emissions per unit of production of the other variable or output during that period.
- (12) For the purposes of paragraph (7)(c), the covered emissions produced by a facility per unit of each similar input, or similar intermediate product, used by the facility are **materially similar** if the average covered emissions per unit of one of the similar inputs, or similar intermediate products, used during the relevant comparison period is, or is expected to be, no more than 5% greater than the average covered emissions per unit of any other similar input, or similar intermediate product, used during that period.
- (13) In this section the relevant comparison period is:
- (a) if production variables are being identified for a calculated-emissions baseline determination—the first 3 years of that baseline determination; and
 - (b) if production variables are being identified for a variation of a baseline determination under subsection 51(2)—both the financial year for which the baseline emissions number is to be varied and the most recent baseline intensity comparison year.

6 Emissions-intensity calculation criteria

- (1) The calculation of the emissions-intensity of a production variable meets the emissions-intensity calculation criteria if:
- (a) the requirements of subsections (2) to (8) are met; and
 - (b) the principles in subsections (9) to (11) have been taken into account.

Requirements

- (2) Only covered emissions are included in the calculation.
- (3) If there is only one production variable—the emissions intensity of the production variable is calculated by dividing the total covered emissions of the facility by the production variable.
- (4) If there are 2 or more production variables—the total covered emissions of the facility are apportioned between each production variable and then the emissions apportioned to each production variable are divided by that production variable.
- (5) The emissions intensity is expressed in t CO₂-e per unit of the production variable.
- (6) If a greenhouse gas other than carbon dioxide has contributed, or is reasonably likely to contribute, more than 1% of the expected covered emissions in the financial year being

considered for the purpose of making of a calculated-emissions baseline determination—the emissions intensity of that gas in t CO₂-e per unit of each production variable must be separately identified.

- (7) The calculation must measure and apportion covered emissions in a manner that is consistent with the NGER (Measurement) Determination.
- (8) The emissions intensity of each production variable must fairly represent the actual emissions attributable to the production variable.

Principles

- (9) If a covered emissions source overlaps 2 or more production variables—emissions from that source are apportioned between the variables so that the sum of the covered emissions apportioned to each variable in:
 - (a) if production variables are being identified for a calculated-emissions baseline determination—each of the first 3 years of that baseline determination; and
 - (b) if production variables are being identified for a variation of a baseline determination under subsection 51(2) and the facility is not a benchmark facility—both the financial year for which the baseline emissions number is to be varied and the most recent baseline intensity comparison year;should be no more than 5% greater than the total covered emissions, or expected covered emissions, from that source during each year.
- (10) The method used to calculate the emissions intensity should be consistent with the method used in any previous successful application for a baseline determination or variation of a baseline determination relating to the same facility.
- (11) The apportionment of covered emissions to individual production variables should be free of bias that may lead to an overestimate of covered emissions in:
 - (a) if production variables are being identified for a calculated-emissions baseline determination—the period to be covered by the baseline determination; and
 - (b) if production variables are being identified for a variation of a baseline determination under subsection 51(2) and the facility is not a benchmark facility—the most recent baseline intensity comparison year;due to changes in the relative mix of production variables.

Part 2—Coverage

7 Covered emissions

- (1) For section 22XI of the Act, the following scope 1 emissions of one or more greenhouse gases are not covered emissions for the purposes of the safeguard mechanism:
 - (a) emissions of one or more greenhouse gases in circumstances where the Minister has not determined, under subsection 10(3) of the Act:
 - (i) methods by which the amounts of the scope 1 emissions of the greenhouse gas are to be measured; or
 - (ii) criteria for methods by which the amounts of the scope 1 emissions of the greenhouse gas are to be measured;
 - (b) legacy emissions from the operation of a landfill facility;
 - (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;
 - (d) if a facility is partly in Australia and partly in either the Greater Sunrise unit area or Joint Petroleum Development Area—scope 1 emissions of greenhouse gases which occurred in the Greater Sunrise unit area or Joint Petroleum Development Area.

Note: A facility wholly in the Greater Sunrise unit area or Joint Petroleum Development Area is not subject to the safeguard provisions in accordance with subsection 6A(2) of the Act.

Legacy emissions

- (2) For the purposes of subsection (1), if:
 - (a) an amount of greenhouse gas was emitted from the operation of a landfill facility; and
 - (b) waste was accepted by the landfill facility before 1 July 2016;so much of the amount mentioned in paragraph (a) as is, under a determination under subsection 10(3) of the Act, taken to be attributable to waste accepted by the facility before 1 July 2016 is a **legacy emission** from the operation of the landfill facility.

8 Designated large facility threshold

For paragraph 22XJ(1)(b) of the Act, the specified number is 100,000.

Part 3—Baselines

Division 1—Baseline emissions number

9 Operation of this Division

For subsection 22XL(1) of the Act, this Division provides for the ascertainment of a baseline emissions number for a facility for a financial year.

10 Baseline emissions number

The baseline emissions number, in t CO₂-e, for a facility for a financial year is:

- (a) if a baseline determination is in force in respect of the facility for a financial year—the number ascertained under that determination; and
- (b) otherwise—100,000.

Division 2—Baseline determinations

Subdivision 1—Preliminary

11 Operation of this Division

This Division provides for the making, variation and expiry of baseline determinations.

12 Minimum baseline emissions number

Despite any other provision in this Division, a baseline determination must not provide that a baseline emissions number for a facility for a financial year is less than 100,000 t CO₂-e.

13 References to covered emissions

A reference to covered emissions in a financial year in this Division:

- (a) is to be calculated on the assumption the financial year is not a sectoral-baseline financial year; and
- (b) other than in subdivision 7—is taken to include legacy emissions from the operation of a landfill facility.

Subdivision 2—Reported-emissions baseline determinations

14 Reported-emissions baseline determinations

General

(1) If, in relation to a facility:

- (a) both:
 - (i) scope 1 emissions of one or more greenhouse gases from the operation of the facility were included in reports under the Act for the 5 financial years beginning 1 July 2009; and
 - (ii) there were more than 100,000 t CO₂-e of covered emissions reported for at least one of the 5 financial years beginning on 1 July 2009; or
- (b) both:

- (i) scope 1 emissions of one or more greenhouse gases from the operation of the facility were included in reports under the Act for at least 3 of the 5 financial years beginning 1 July 2009; and
- (ii) there were more than 100,000 t CO₂-e of covered emissions reported for at least 3 of the 5 financial years beginning on 1 July 2009; or
- (c) all of the following apply:
 - (i) scope 1 emissions of one or more greenhouse gases from the operation of the facility were included in at least one report under the Act for any of the 5 financial years beginning 1 July 2009; and
 - (ii) there were more than 100,000 t CO₂-e of covered emissions reported for at least one of the 5 financial years beginning on 1 July 2009; and
 - (iii) the responsible emitter for the facility had notified the Regulator in writing before 1 August 2016 that it was seeking a reported-emissions baseline determination in respect of the facility;

the Regulator must make a reported-emissions baseline determination in relation to the facility.

Inter-state transport facilities

- (2) If, in relation to an inter-state transport facility:
 - (a) the national facility definition applies to the facility from 1 July of a financial year; and
 - (b) subsection (1) would apply to the facility if:
 - (i) the national facility definition was the basis of reports under the Act for the 5 financial years beginning 1 July 2009; and
 - (ii) the reference to 1 August 2016 in subparagraph (1)(c)(iii) was taken to be a reference to 1 August of the financial year referred to in paragraph (a);

the Regulator must make a reported-emissions baseline determination in relation to the facility.

- (3) For the purposes of subparagraphs (1)(a)(ii), (1)(b)(ii) and (1)(c)(ii):
 - (a) the carbon dioxide equivalence of:
 - (i) carbon dioxide, and
 - (ii) methane; and
 - (iii) nitrous oxide; and
 - (iv) perfluorocarbon emissions attributable to aluminium production;
 is to be determined consistently with the global warming potential of the greenhouse gas under regulation 2.02 of the NGER Regulations as at the time the reported-emissions baseline determination is made; and
 - (b) the carbon dioxide equivalence of each greenhouse gas not covered by paragraph (a) is to be determined consistently with the global warming potential of the greenhouse gas assumed in the relevant report under the Act.

15 Further information

- (1) The Regulator may, by written notice given to the responsible emitter, require the responsible emitter to give the Regulator, within the period specified in the notice, further information in connection with the reported-emissions baseline determination.
- (2) If the responsible emitter breaches the requirement, the Regulator may, by written notice given to the responsible emitter:

- (a) refuse to take any action, or any further action, in relation to making a reported-emissions baseline determination until the information is provided; and
- (b) make any assumptions the Regulator considers appropriate about the information which was not provided.

16 Process for making a reported-emissions baseline determination

- (1) The Regulator must not make a reported-emissions baseline determination in relation to a facility unless the Regulator has provided a written notice to the responsible emitter for the facility:
 - (a) stating that it intends to make a reported-emissions baseline determination in relation to the facility; and
 - (b) specifying the baseline emissions number that would apply under the determination; and
 - (c) stating whether any covered emissions are proposed to be:
 - (i) disregarded under subsection 17(2) or 17(3); or
 - (ii) included under subsection 17(4); and
 - (d) seeking any comments by a date specified in the notice.
- (2) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to make a reported-emissions baseline determination by the later of:
 - (a) the first 1 September after the proposed commencement of the determination; and
 - (b) if the Regulator requires the responsible emitter to give further information under subsection 15(1) in connection with the reported-emissions baseline determination—30 days after the responsible emitter gave the Regulator the information; and
 - (c) 30 days after the date specified in paragraph (1)(d).
- (3) As soon as practicable after making a reported-emissions baseline determination, the Regulator must:
 - (a) provide written notice of the determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the determination on its website.
- (4) It is immaterial whether the written notice under subsection (1) was provided to the responsible emitter before or after the commencement of this section.

17 Determining the baseline emissions number

- (1) Subject to section 12, a reported-emissions baseline determination must specify the baseline emissions number for the facility for each financial year during which the determination is in force as the highest annual number of t CO₂-e of covered emissions based on the available reports under the Act for the 5 financial years beginning on 1 July 2009.
- (2) For the purposes of subsection (1), any covered emissions reported as a vertically integrated production process which were not from the operation of the facility that is the subject of the reported-emissions baseline determination are to be disregarded.
- (3) For the purposes of subsection (1), the Regulator must disregard any significant covered emissions attributable to activities previously conducted at the facility (the *original activities*) if:
 - (a) both:

- (i) the Regulator is satisfied that activities of the same kind as the original activities are no longer conducted at the facility; and
 - (ii) the Regulator has reasonable evidence to consider that activities of the same kind as the original activities are unlikely to be conducted for at least the next three financial years; or
 - (b) the Regulator is satisfied that covered emissions of the original activities are now reported under the Act as part of another facility.
- (4) Any significant covered emissions attributable to activities previously conducted at another facility are to be included in the reported covered emissions of the facility to be covered by the reported-emissions baseline determination for the purposes of subsection (1) if:
- (a) those activities are now conducted as part of the facility to be covered by the reported-emissions baseline determination because the boundaries or scope of activities of that facility have changed; and
 - (b) the covered emissions from those activities will be reported under the Act as resulting from the operation of that facility; and
 - (c) the covered emissions were previously included in a report under the Act in relation to another facility.
- (5) If:
- (a) a reported-emissions baseline determination is being made on the basis of subsection 14(2) in relation to an inter-state transport facility; and
 - (b) a calculated-emissions baseline determination, benchmark-emissions baseline determination or production-adjusted baseline determination in respect of one or more state-based facilities whose activities constitute the inter-state transport facility applied in the financial year immediately before the commencement of the reported-emissions baseline determination;
- the baseline emissions number for the state-based facilities in the year immediately before the commencement of the reported-emissions baseline determination is to be used under subsection (1) in lieu of the reported emissions of the state-based facilities in the relevant financial year.
- (6) For the purposes of subsection (1):
- (a) the carbon dioxide equivalence of :
 - (i) carbon dioxide, and
 - (ii) methane; and
 - (iii) nitrous oxide; and
 - (iv) perfluorocarbon emissions attributable to aluminium production;
 is to be determined consistently with the global warming potential of the greenhouse gas under regulation 2.02 of the NGER Regulations as at the time the reported-emissions baseline determination is made; and
 - (b) the carbon dioxide equivalence of each greenhouse gas not covered by paragraph (a) is to be determined:
 - (i) if the responsible emitter has provided sufficient data for each greenhouse gas with the intention that it is to be used by the Regulator under this section—consistently with the global warming potential of the greenhouse gas under regulation 2.02 of the NGER Regulations as at the time the reported-emissions baseline determination is made; or
 - (ii) if the responsible emitter has not provided sufficient data for each greenhouse gas to be used by the Regulator under this section—consistently with the global warming potential of the greenhouse gas assumed in the relevant report under the Act;

- (c) in determining the baseline emissions number of the facility, if the facility's emissions had at any time previously been reported in relation to 2 or more facilities, the reported covered emissions of those separate facilities may be summed.
- (7) For the purposes of subsections (3) and (4), significant covered emissions means emissions from the operation of the facility in a year exceeding 5% of the number which would otherwise be the baseline emissions number for the facility.
- (8) When disregarding covered emissions under subsection (2) or (3) or including covered emissions under subsection (4), the Regulator may:
 - (a) take into account disaggregated emissions information provided by the responsible emitter for the facility and any audit reports associated with information; or
 - (b) disregard emissions on a pro rata basis using one or more reports under the Act that:
 - (i) if subsection (2) applies—include covered emissions from the activities previously conducted at the facility; or
 - (ii) if subsection (3) applies—were not aggregated as a vertically integrated production process; or
 - (c) include covered emissions on a pro rata basis using one or more reports under the Act that include covered emissions from the activities now conducted at the facility; or
 - (d) disregard covered emissions under subsection (2) or (3) or not include covered emissions under subsection (4) if the Regulator has requested that the emissions information be audited and the responsible emitter has not provided an audit report in relation to those emissions that meets any requirements notified in writing by the Regulator to the responsible emitter for the facility.
- (9) The baseline emissions number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).

18 Duration of reported-emissions baseline determination

- (1) A reported-emissions baseline determination made on the basis of subsection 14(1) is to come into force on 1 July 2016 unless a calculated-emissions baseline determination has been made with effect from 1 July 2016.
- (2) A reported-emissions baseline determination made on the basis of subsection 14(2) is to come into force on the first 1 July that the national facility definition applies to the inter-state transport facility unless a calculated-emissions baseline determination has been made with effect from that 1 July.
- (3) A reported-emissions baseline determination:
 - (a) ceases to be in force from the date when another baseline determination commences in relation to the facility; and
 - (b) comes into, or comes back into, force at the expiry of a calculated-emissions baseline determination or a benchmark-emissions baseline determination until replaced by another baseline determination.
- (4) A reported-emissions baseline determination made on the basis of subsection 14(2) replaces any other baseline determination which previously applied to the activities or series of activities which constitute the inter-state transport facility.

19 Variation of reported-emissions baseline determination because of reporting error or changes in activities

- (1) If:
- (a) a report under the Act used to establish a baseline emissions number for a reported-emissions baseline determination is resubmitted after the determination is made; or
 - (b) the Regulator has reasonable evidence to consider that a report under the Act used to establish a baseline emissions number for a reported-emissions baseline determination was incorrect; or
 - (c) all of the following apply:
 - (i) covered emissions attributable to one or more activities (the *original activities*) were included in a report under the Act used to establish a baseline emissions number for a reported-emissions baseline determination;
 - (ii) the covered emissions attributable the original activities were significant covered emissions (within the meaning of section 17);
 - (iii) the Regulator is satisfied that activities of the same kind as the original activities were not conducted at the facility during a financial year;
 - (iv) the Regulator has reasonable evidence to consider that activities of the same kind as the original activities are unlikely to be conducted for at least the next three financial years;

the Regulator may vary the baseline emissions number in the reported-emissions baseline determination to address the issue with effect from the start of the financial year in which the decision to vary the determination is made.

- (2) Before the Regulator varies a baseline determination for a facility under this section, the Regulator must provide a written notice to the responsible emitter for the facility:
- (a) stating that it intends to vary the baseline determination in relation to the facility under this section; and
 - (b) specifying the baseline emissions number that would apply under the determination; and
 - (c) seeking any comments by a date specified in the notice.
- (3) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to vary, or decide not to vary, a reported-emissions baseline determination by the later of:
- (a) if the Regulator requires the responsible emitter to give further information under subsection 21(1) in connection with the variation of the baseline determination—30 days after the responsible emitter gave the Regulator the information; and
 - (b) 30 days after the date specified in paragraph (2)(c).
- (4) As soon as practicable after varying a baseline determination, the Regulator must:
- (a) provide written notice of the varied determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the varied determination on its website.
- (5) To avoid doubt, a decision to vary a baseline determination under this section is a reviewable decision under section 56 of the Act.

20 Variation of transport reported-emissions baseline determination where calculated-emissions baseline determination or benchmark-emissions baseline determination incorporated

- (1) If:

- (a) a baseline emissions number in a calculated-emissions baseline determination or benchmark-emissions baseline determination was used in determining the baseline emissions number in a reported-emissions baseline determination under subsection 17(5); and
 - (b) the calculated-emissions baseline determination or benchmark-emissions baseline determination would have expired at the end of a financial year had it not been replaced by the reported-emissions baseline determination;
- the Regulator must vary the reported-emissions baseline determination with effect from the start of the next financial year.
- (2) The Regulator must vary the baseline emissions number in the reported-emissions baseline determination so that it reflects:
 - (a) if the responsible emitter has provided the information and audit report that would be required to make a production-adjusted baseline determination for the facility covered by the calculated-emissions baseline determination or benchmark-emissions baseline determination no later than the first 31 October after the financial year in paragraph (1)(b)—the number that would have been the baseline emissions number under section 17 if the production-adjusted baseline determination applied to that facility in place of the calculated-emissions baseline determination or benchmark-emissions baseline determination; or
 - (b) if the responsible emitter has not provided the information and audit report that would be required to make a production-adjusted baseline determination for the facility covered by the calculated-emissions baseline determination or benchmark-emissions baseline determination no later than the first 31 October after the financial year in paragraph (1)(b)—the number that would have been the baseline emissions number under section 17 if the calculated-emissions baseline determination or benchmark-emissions baseline determination had never been made.
 - (3) Before the Regulator varies a baseline determination for a facility under this section, the Regulator must provide a written notice to the responsible emitter for the facility:
 - (a) stating that it intends to vary the baseline determination in relation to the facility under this section; and
 - (b) specifying the baseline emissions number that would apply under the determination; and
 - (c) seeking any comments by a date specified in the notice.
 - (4) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to vary the reported-emissions baseline determination by the later of:
 - (a) if the Regulator requires the responsible emitter to give further information under subsection 21(1) in connection with the variation of the baseline determination—30 days after the responsible emitter gave the Regulator the information; and
 - (b) 30 days after the date specified in paragraph (3)(c).
 - (5) As soon as practicable after varying a baseline determination, the Regulator must:
 - (a) provide written notice of the varied determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the varied determination on its website.
 - (6) To avoid doubt, a decision to vary a baseline determination under this section is a reviewable decision under section 56 of the Act.

21 Further information

- (1) The Regulator may, by written notice given to the responsible emitter, require the responsible emitter to give the Regulator, within the period specified in the notice, further information in connection with the variation of a baseline determination under section 19 or 20.
- (2) If the responsible emitter breaches the requirement, the Regulator may, by written notice given to the responsible emitter:
 - (a) refuse to take any action, or any further action, in relation to varying the baseline determination until the information is provided; and
 - (b) make any assumptions the Regulator considers appropriate about the information which was not provided.

Subdivision 3—Calculated-emissions baseline determination

22 Application

- (1) The responsible emitter for a facility may apply to the Regulator for a calculated-emissions baseline determination for the facility if one or more of the following are satisfied:
 - (a) the new facility criteria;
 - (b) the significant expansion criteria;
 - (c) the inherent emissions variability criteria;
 - (d) the initial calculated baseline criteria.
- (2) An application under subsection (1) must:
 - (a) be given in a manner and form approved, in writing, by the Regulator; and
 - (b) specify the desired start date for the calculated-emissions baseline determination as 1 July of a particular year; and
 - (c) include information required by section 27; and
 - (d) be accompanied by an audit report which complies with section 28.
- (3) Unless subsection (5) applies, an application under subsection (1) must be given to the Regulator:
 - (a) no earlier than one year before the requested start date for the calculated-emissions baseline determination; and
 - (b) no later than the first 31 October after the end of the first financial year to which the calculated-emissions baseline determination is to apply.
- (4) The responsible emitter for the facility may, by written notice to the Regulator, withdraw an application at any time before the Regulator makes a decision on the application.
- (5) If:
 - (a) an application which complies with subsection (2) is made within the period allowed by subsection (3); and
 - (b) the Regulator has refused to make the calculated-emissions baseline determination the subject of the application; and
 - (c) a new application would not comply with paragraph (3)(b);the Regulator may accept a new application made no later than 1 February after the end of the first financial year to which the calculated-emissions baseline determination is to apply.

23 New facility criteria

- (1) The new facility criteria are satisfied in relation to a facility if all of the criteria in this section are met.
- (2) The facility is not covered by the criteria for making a reported-emissions baseline determination in subsection 14(1) or (2).
- (3) Scope 1 emissions of one or more greenhouse gases from the operation of the facility were not included in reports under the Act for all of the 5 financial years starting on 1 July 2009.
- (4) The facility has emitted, or is reasonably expected to emit, more than 100,000 t CO₂-e of covered emissions in the first year of the proposed calculated-emissions baseline determination.
- (5) The responsible emitter for the facility has not:
 - (a) changed, or is not expected to change, the manner in which scope 1 emissions are reported or calculated under the Act; or
 - (b) caused, or is not expected to cause, scope 1 emissions of greenhouse gases; for the primary purpose of meeting the threshold in subsection (4).
- (6) A calculated-emissions baseline determination has never been made in relation to the facility.
- (7) The calculated-emissions baseline determination to which the application relates is to commence on 1 July 2016, 1 July 2017, 1 July 2018 or 1 July 2019.

24 Significant expansion criteria

- (1) The significant expansion criteria are satisfied in relation to a facility if all of the criteria in this section are met.

Significant expansion must occur

- (2) For a facility that is not a landfill facility: the facility must have completed a significant expansion during a relevant expansion period where:
 - (a) new equipment is installed and used by the facility during a relevant expansion period to produce or process a production variable; and
 - (b) after the equipment is in use, and any existing equipment that is to be decommissioned has been decommissioned, either:
 - (i) the maximum productive capacity of the equipment used to produce one or more production variables will be more than 20% greater than the maximum productive capacity of the equipment that existed before the installation in relation to those production variables; or
 - (ii) one or more production variables will be produced at the facility which:
 - (A) were not produced before the relevant expansion period; and
 - (B) are not a replacement for other production variables produced before the relevant expansion period; and
 - (c) the production variables which meet the requirements of subparagraph (2)(b)(i) or (ii) are significant to the operation of the facility having regard to:
 - (i) whether one of the production variables is the primary production variable for the facility; or
 - (ii) whether more than 20% of the revenue expected from the facility in the financial year with the highest expected production of the primary production

variable over the period to be covered by the calculated-emissions baseline determination is attributable to the new or expanded production variables; or

(iii) if the production variable is onsite electricity—whether the electricity will supply over 30% of the electricity needs of the facility in the period to be covered by the calculated-emissions baseline determination.

- (3) For the purposes of this section:
- (a) the installation of new equipment at a transport facility includes the addition of new or used equipment, such as trucks or planes, to carry out the activities which constitute the facility; and
 - (b) if a production variable for a facility is the quantity of an input, the input is taken to be produced at a facility if it is used to produce the outputs of the facility; and
 - (c) the production variables used for the purposes of subsection (2) need not be the same as the production variables used for the purposes of paragraph 27(1)(c).
- (4) For a landfill facility: the facility must have undergone a significant expansion where during a relevant expansion period its licenced capacity has increased by more than 20% since the start of the period.
- (5) For the purposes of this section, a *relevant expansion period* ends either:
- (a) immediately before the period to be covered by the calculated-emissions baseline determination; or
 - (b) 30 June of the first financial year to be covered by the calculated-emissions baseline determination
- and starts:
- (c) if a calculated-emissions baseline determination in relation to the facility has expired, or will expire, before the start of the proposed period of the calculated-emissions baseline determination the subject of the application—on the later of:
 - (i) the 1 July of the last financial year of the expired, or expiring, baseline determination; and
 - (ii) 3 years before the end of the period; or
 - (d) otherwise—on the later of:
 - (i) 1 July 2014; and
 - (ii) 3 years before the end of the period.
- (6) For the purposes of subparagraph (2)(c)(ii), the calculation of the expected revenue must be based upon prices related to the production variable current at the time of the application.

Other criteria

- (7) The facility either:
- (a) has previously emitted more than 100,000 t CO₂-e of covered emissions in a financial year; or
 - (b) is reasonably expected to emit more than 100,000 t CO₂-e of covered emissions in the first financial year to be covered by the calculated-emissions baseline determination.
- (8) The facility has, or is reasonably expected to, emit more than the baseline emissions number that would otherwise apply to the facility in at least one financial year of the period to be covered by the calculated-emissions baseline determination.
- (9) A calculated-emissions baseline determination in relation to the facility:
- (a) has never been made; or

- (b) was made but has expired, or will expire, before the start of the proposed period of the calculated-emissions baseline determination the subject of the application.
- (10) The calculated-emissions baseline determination to which the application relates is to commence on a 1 July 2016, 1 July 2017, 1 July 2018 or 1 July 2019.

25 Inherent emissions variability criteria

- (1) The inherent emissions variability criteria are satisfied in relation to a facility if all of the criteria in this section are met.
- (2) At least one of the following has been made in relation to the facility:
 - (a) a reported-emissions baseline determination;
 - (b) a calculated-emissions baseline determination.
- (3) The facility must satisfy all of the following:
 - (a) either:
 - (i) the extraction of a natural resource is the principal activity which constitutes the facility; or
 - (ii) the facility is a natural gas processing or liquefaction facility that is associated with the extraction of natural gas from a natural gas reserve; and
 - (b) the properties of the natural resource or natural gas reserve have a direct effect on the covered emissions or covered emissions intensity of the facility; and
 - (c) the facility has limited cost-effective ability to control for the covered emissions related to the natural resource or natural gas reserve.
- (4) The facility's covered emissions in respect of the first financial year to be covered by the calculated-emissions baseline determination have exceeded, or are reasonably expected to exceed the baseline emissions number which would otherwise apply to the facility in that financial year.
- (5) The properties of the natural resource or natural gas reserve are the primary reason for the excess in subsection (4).
- (6) No more than one calculated-emissions baseline determination has been made in relation to the facility.
- (7) A benchmark-emissions baseline determination has never been made in relation to the facility.
- (8) The facility is not a grid-connected electricity generator.
- (9) The calculated-emissions baseline determination to which the application relates is to commence on a 1 July up to and including 1 July 2024.
- (10) For the purposes of this section, the properties of a natural resource or natural gas reserve include the following:
 - (a) grade;
 - (b) depth;
 - (c) distance from a processing plant;
 - (d) greenhouse gas content;
 - (e) other similar properties.

26 Initial calculated baseline criteria

- (1) The initial calculated baseline criteria are satisfied in relation to a facility if all of the criteria in this section are met.
- (2) Either:
 - (a) a reported-emissions baseline determination has been made in relation to the facility; or
 - (b) scope 1 emissions of one or more greenhouse gases from the operation of the facility were included in reports under the Act for all of the 5 financial years starting on 1 July 2009.
- (3) The facility's covered emissions in respect of the financial year beginning 1 July 2016 have exceeded, or are reasonably expected to exceed, the baseline emissions number which applies to the facility in that financial year.
- (4) The responsible emitter for the facility has not:
 - (a) changed, or is not expected to change, the manner in which scope 1 emissions are reported or calculated under the Act; or
 - (b) caused, or is not expected to cause, scope 1 emissions of greenhouse gases; for the primary purpose of exceeding the baseline emissions number in subsection (3).
- (5) The facility is not a grid-connected electricity generator.
- (6) The calculated-emissions baseline determination to which the application relates is to commence on 1 July 2016.

27 Information required in applications

- (1) An application for a calculated-emissions baseline determination must include the following information:
 - (a) an explanation and supporting evidence substantiating that one or more of the following are satisfied:
 - (i) the new facility criteria;
 - (ii) the significant expansion criteria;
 - (iii) the inherent emissions variability criteria;
 - (iv) the initial calculated baseline criteria;
 - (b) an outline of the measures to reduce greenhouse gas emissions intensity undertaken, or to be undertaken, at the facility;
 - (c) in accordance with subsection (3), the quantity of all production variables that are reasonably likely to be produced by the facility in:
 - (i) if the application is received by the Regulator before the first 31 July after the proposed commencement of the calculated-emissions baseline determination—the financial year with the highest expected production level of the primary production variable over the period to be covered by the calculated-emissions baseline determination; or
 - (ii) if the application is received by the Regulator before the second 31 July after the proposed commencement of the calculated-emissions baseline determination—the financial year with the highest expected production level of the primary production variable over the period to be covered by the calculated-emissions baseline determination other than the first year; or
 - (iii) if the application is received by the Regulator after the second 31 July after the proposed commencement of the calculated-emissions baseline determination—the financial year with the highest expected production level

of the primary production variable over the period to be covered by the calculated-emissions baseline determination other than the first or second year;

- (d) the expected emissions intensity per unit of production for each production variable outlined under paragraph (c) consistent with the emissions-intensity calculation criteria;
 - (e) the expected covered emissions from the facility calculated by multiplying the quantity of each of the production variables under paragraph (c) by the expected emissions intensity of that variable under paragraph (d), and summing the results;
 - (f) copies of the most recent environmental impact assessments (if any) relating to activities at the facility which result in significant emissions of greenhouse gases;
 - (g) any relevant earlier estimates of the information required by paragraph (c), (d) and (e);
 - (h) if the information provided under paragraph (c), (d) or (e) is different from the relevant earlier estimates under paragraph (g)—the reasons why this is the case;
 - (i) historical emissions and production data that supports the estimates in paragraphs (c) and (d).
- (2) If the significant expansion criteria are met in relation to the application, the application for a calculated-emissions baseline determination must include the following information or documents:
- (a) if subparagraph 24(2)(b)(i) applies—evidence of the maximum productive capacity of the equipment at the facility before and after the significant expansion;
 - (b) if subparagraph 24(2)(b)(ii) applies—evidence that the new production variable was not produced before the relevant expansion period and is not a replacement production variable;
 - (c) if the facility is a landfill facility—evidence of the licensed capacity of the facility before and after the significant expansion.
- (3) For the purposes of paragraph (1)(c), the quantity of a production variable other than a service unit must be calculated on that basis that the variable will be measured at a time that is as close as possible to when the variable enters, or leaves, the production or processing process or landfill facility.

28 Audit reports

- (1) An application must be accompanied by an audit report which complies with this section.
- (2) The matters to be audited and covered by the audit report are whether, in all material respects:

Reasonable assurance matters

- (a) if the new facility criteria, significant expansion criteria, inherent emissions variability criteria or initial calculated baseline criteria are relied upon by the applicant—those criteria are satisfied; and
- (b) the application has been
 - (i) prepared in accordance with section 27; and
 - (ii) presented fairly; and

Limited assurance matters

- (c) the estimates of the quantity of each production variable under paragraph 27(1)(c) and emissions intensity of each production variable are:

- (i) based on the applicant's assumptions which provide a reasonable basis for the estimates; and
 - (ii) calculated on the basis of the applicant's assumptions and any historical data that is:
 - (A) fairly stated; and
 - (B) if related to emissions intensity—reasonably expected to reflect the emissions intensity of the facility in the financial year determined under paragraph 27(1)(c); and
 - (iii) reasonable.
- (3) The audit report must include one of the following conclusions for the matters in paragraphs (2)(a) and (b):
- (a) a reasonable assurance conclusion;
 - (b) a qualified reasonable assurance conclusion;
 - (c) an adverse conclusion;
 - (d) a conclusion that the assurance provider is unable to form an opinion about the matter being audited.
- (4) The audit report must include one of the following conclusions for the matters in paragraph (2)(c):
- (a) a limited assurance conclusion;
 - (b) a qualified limited assurance conclusion;
 - (c) an adverse conclusion;
 - (d) a conclusion that the assurance provider is unable to form an opinion about the matter being audited.
- (5) An audit report under this section must be the result of an audit which:
- (a) was conducted in accordance with the relevant requirements for limited assurance engagements and reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*; and
 - (b) had an audit team leader who is registered as a Category 2 auditor under subregulation 6.25(3) of the NGER Regulations; and
 - (c) was otherwise in accordance with subsection 75(1) of the Act.

29 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

30 Making of calculated-emissions baseline determination

Scope

- (1) This section applies if an application under section 22 has been made for a calculated-emissions baseline determination for a facility.

Determination

- (2) The Regulator may make a calculated-emissions baseline determination for the facility if satisfied that:
 - (a) the audit report accompanying an application contains a reasonable assurance conclusion or qualified reasonable assurance conclusion for the matters in paragraphs 28(2)(a) and (b); and
 - (b) the audit report accompanying an application contains a limited assurance conclusion or qualified limited assurance conclusion for the matters in paragraph 28(2)(c); and
 - (c) the relevant new facility criteria, significant expansion criteria, inherent emissions variability criteria or initial calculated baseline criteria are met; and
 - (d) if an explanation is included under paragraph 27(1)(h)—that explanation is reasonable.

Baseline emissions number

- (3) The baseline emissions number specified in the determination made under subsection (2) must be the total amount of tonnes of carbon dioxide equivalent covered emissions calculated by multiplying the quantity of each of the production variables in the financial year determined under paragraph 27(1)(c) by the expected emissions intensity of that variable and summing the results.

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information under subsection 29(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
 - (b) otherwise—within 60 days after the application was made.

Notification and publication

- (5) As soon as practicable after making a calculated-emissions baseline determination, the Regulator must:
 - (a) provide written notice of the determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish on its website:
 - (i) the details of the determination; and
 - (ii) the information included in an application in compliance with paragraph 27(1)(b).
- (6) If the Regulator decides to refuse to make a calculated-emissions baseline determination, the Regulator must give written notice of the decision to the applicant.

Rounding

- (7) The baseline emissions number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).

31 Duration of calculated-emissions baseline determination

- (1) If a calculated-emissions baseline determination is made within 2 years after the requested start of the determination, it must come into force on the 1 July requested in the application.
- (2) A calculated-emissions baseline determination made later than specified in subsection (1) is to come into force from the earliest 1 July possible under subsection 22XQ(2) of the Act.
- (3) Subject to subsections (4) and (5), a calculated-emissions baseline determination must expire:
 - (a) if the facility is a large new facility—5 years after the requested start of the determination; and
 - (b) if the facility is not a large new facility—3 years after the requested start of the determination.

Note: If subsection (2) applies and the determination's commencement is delayed from that requested in the original application, the period will be less than the 5 or 3 years in paragraph (a) and (b).

- (4) If:
 - (a) a calculated-emissions baseline determination was made in relation to a facility (the *first determination*); and
 - (b) a second calculated-emissions baseline determination is made on the basis of the inherent emissions variability criteria to cover the facility in one or more years of the first determination (the *second determination*);

the first determination expires immediately before the commencement of the second determination.

- (5) If:
 - (a) a calculated-emissions baseline determination was made on the basis of the new facility criteria; and
 - (b) the covered emissions of the facility were not over 100,000 t CO₂-e in any of the 4 financial years starting on 1 July 2016;the determination expires on 1 July 2020.

Subdivision 4—Benchmark-emissions baseline determination

32 Application

- (1) The responsible emitter for a facility, other than a landfill facility, may apply to the Regulator for a benchmark-emissions baseline determination for the facility if:
 - (a) one or more of the following are satisfied:
 - (i) the new facility criteria;
 - (ii) the significant expansion criteria; and
 - (b) there is a relevant benchmark emissions intensity applicable to one or more of the production variables of the facility.
- (2) An application under subsection (1) must:
 - (a) be given in a manner and form approved, in writing, by the Regulator; and
 - (b) specify the desired start date for the benchmark-emissions baseline determination as 1 July of a particular year; and
 - (c) include information required by section 35; and
 - (d) be accompanied by an audit report which complies with section 36.

- (3) Unless subsection (5) applies, an application under subsection (1) must be given to the Regulator:
 - (a) no earlier than one year before the requested start date for the benchmark-emissions baseline determination; and
 - (b) no later than the first 31 October after the end of the first financial year to which the benchmark-emissions baseline determination is to apply.
- (4) The responsible emitter for the facility may, by written notice to the Regulator, withdraw an application at any time before the Regulator makes a decision on the application.
- (5) If:
 - (a) an application which complies with subsection (2) is made within the period allowed by subsection (3); and
 - (b) the Regulator has refused to make the benchmark-emissions baseline determination the subject of the application; and
 - (c) a new application would not comply with paragraph (3)(b);
 the Regulator may accept a new application made no later than 1 February after the end of the first financial year to which the benchmark-emissions baseline determination is to apply.

33 New facility criteria

- (1) The new facility criteria are satisfied in relation to a facility if all of the criteria in this section are met.
- (2) Unless subsection (7) applies, the facility is not covered by a baseline determination.
- (3) Scope 1 emissions of one or more greenhouse gases from the operation of the facility were not required to be included in reports under the Act for any 5 or more financial years before the start of the proposed benchmark-emissions baseline determination.
- (4) The facility either:
 - (a) has previously emitted more than 100,000 t CO₂-e of covered emissions in a financial year; or
 - (b) is reasonably expected to emit more than 100,000 t CO₂-e of covered emissions in the first year of the proposed benchmark-emissions baseline determination.
- (5) Either:
 - (a) a calculated-emissions baseline determination has never been made in relation to the facility; or
 - (b) a calculated-emissions baseline determination was made in relation to the facility but expired under subsection 31(5).
- (6) The benchmark-emissions baseline determination to which the application relates is to commence no earlier than 1 July of the first financial year after the financial year ending on 30 June 2020 that the facility has emitted, or is reasonably expected to emit, more than 100,000 t CO₂-e of covered emissions.
- (7) Despite subsection (2), a facility covered by a benchmark-emissions baseline determination made on the basis of the new facility criteria may apply for another benchmark-emissions baseline determination to apply for all or part of the same period as the original determination if a new applicable production variable for the facility has been added to the Benchmark Emissions-Intensity Index since the first determination was made.

34 Significant expansion criteria

- (1) The significant expansion criteria are satisfied in relation to a facility if all of the criteria in this section are met.

Significant expansion must occur

- (2) The facility must have completed a significant expansion during a relevant expansion period where:
 - (a) new equipment is installed and used by the facility during a relevant expansion period to produce or process a production variable; and
 - (b) after the equipment is in use, and any existing equipment that is to be decommissioned has been decommissioned, either:
 - (i) the maximum productive capacity of the equipment used to produce one or more production variables will be more than 20% greater than the maximum productive capacity of the equipment that existed before the installation in relation to that production variable; or
 - (ii) one or more production variables will be produced at the facility which:
 - (A) were not produced before the relevant expansion period; and
 - (B) are not a replacement for other production variables produced before the relevant expansion period; and
 - (c) the production variables which meet the requirements of subparagraph (2)(b)(i) or (ii) are significant to the operation of the facility having regard to:
 - (i) whether one of the production variables is the primary production variable for the facility; or
 - (ii) whether more than 20% of the revenue expected from the facility in financial year with the highest expected production of the primary production variable over the period to be covered by the benchmark-emissions baseline determination is attributable to the new or expanded production variables; or
 - (iii) if the production variable is onsite electricity—whether the electricity will supply over 30% of the electricity needs of the facility in the period to be covered by the benchmark-emissions baseline determination.
- (3) For the purposes of this section:
 - (a) the installation of new equipment at a transport facility includes the addition of new or used equipment, such as trucks or planes, to carry out the activities which constitute the facility; and
 - (b) if a production variable for a facility is the quantity of an input, the input is taken to be produced at a facility if it is used to produce the outputs of the facility.
- (4) For the purposes of this section, a **relevant expansion period** ends either:
 - (a) immediately before the period to be covered by the benchmark-emissions baseline determination; or
 - (b) 30 June of the first financial year to be covered by the benchmark-emissions baseline determination;and starts:
 - (c) if a calculated-emissions baseline determination or benchmark-emissions baseline determination in relation to the facility has expired, or will expire, before the start of the proposed period of the benchmark-emissions baseline determination the subject of the application—on the later of:
 - (i) the 1 July of the last financial year of the expired, or expiring, baseline determination; and
 - (ii) 3 years before the end of the period; or

- (d) otherwise—3 years before the end of the period.
- (5) For the purposes of subparagraph (2)(c)(ii), the calculation of the expected revenue must be based upon prices related to the production variable current at the time of the application.

Other criteria

- (6) The facility either:
 - (a) has previously emitted more than 100,000 t CO₂-e of covered emissions in a financial year; or
 - (b) is reasonably expected to emit more than 100,000 t CO₂-e of covered emissions in the first financial year to be covered by the benchmark-emissions baseline determination.
- (7) The facility has emitted, or is reasonably expected to emit, more than the baseline emissions number that would otherwise apply to the facility in at least one financial year of the period to be covered by the benchmark-emissions baseline determination.
- (8) A calculated-emissions baseline determination or benchmark-emissions baseline determination in relation to the facility:
 - (a) has never been made; or
 - (b) was made but has expired, or will expire, before the start of the proposed period of the benchmark-emissions baseline determination the subject of the application.
- (9) The benchmark-emissions baseline determination to which the application relates is to commence on or after 1 July 2020.

35 Information required in applications

New facility applications

- (1) If the new facility criteria are met in relation to the application, an application for a benchmark-emissions baseline determination must include the following information:
 - (a) an explanation and supporting evidence substantiating that the new facility criteria are satisfied;
 - (b) in accordance with subsection (3), the quantity of all production variables that have been, or are reasonably likely to be, produced by the facility in the financial year with the highest expected production level of the primary production variable over the production estimation period;
 - (c) the emissions intensity per unit of production for each production variable outlined under paragraph (b) consistent with its relevant benchmark emissions intensity;
 - (d) the expected covered emissions from the facility calculated by multiplying the quantity of each of the production variables under paragraph (b) by the expected emissions intensity of that variable under paragraph (c), and summing the results;
 - (e) any relevant earlier estimates of the information required by paragraph (b);
 - (f) if the information provided under paragraph (b) is different from the relevant earlier estimates under paragraph (e)—the reasons why this is the case.

Significant expansion applications

- (2) If the significant expansion criteria are met in relation to the application, the application for a benchmark-emissions baseline determination must include the following information or documents:

- (a) an explanation and supporting evidence substantiating that the significant expansion criteria are satisfied;
 - (b) in accordance with subsection (3), the quantity of all production variables that have been, or are reasonably likely to be, produced by the facility in the financial year with the highest expected production level of the primary production variable over the production estimation period;
 - (c) in accordance with subsection (3), the quantity of all production variables produced by the facility in the financial year with the highest production of the primary production variable out of the 3 financial years before the financial year during which the new equipment began to be installed at the facility;
 - (d) the change in production for each production variable calculated by subtracting the quantity of each production variable identified under paragraph (b) from the quantity of that production variable under paragraph (c);
 - (e) the emissions intensity per unit of production for each production variable outlined under paragraph (b) consistent its relevant benchmark emissions intensity;
 - (f) the expected additional covered emissions from the facility calculated by multiplying the change in production for each production variable under paragraph (d) by the emissions intensity of that variable under paragraph (e), and summing the results;
 - (g) if subparagraph 34(2)(b)(i) applies—evidence of the maximum productive capacity of the equipment at the facility before and after the significant expansion;
 - (h) if subparagraph 34(2)(b)(ii) applies—evidence that the new production variable was not produced before the relevant expansion period and is not a replacement production variable;
 - (i) if a baseline emissions number applies to the facility because of paragraph 10(b)—the covered emissions of the facility in the financial year used for the purpose of paragraph (c);
 - (j) any relevant earlier estimates of the information required by paragraph (b) and (c);
 - (k) if the information provided under paragraph (b) or (c) is different from the relevant earlier estimates under paragraph (i)—the reasons why this is the case.
- (3) The quantity of a production variable must:
- (a) be measured using the units specified in the Benchmark Emissions-Intensity Index; and
 - (b) meet any measurement requirements or procedures specified in the Benchmark Emissions-Intensity Index.
- (4) For the purposes of this section, the *production estimation period* is 3 or 5 financial years which would be the duration of the benchmark-emissions baseline determination if it were made to commence from the earliest 1 July possible.
- Note: Under section 39 the duration of a benchmark-emissions baseline determination may be less than the maximum 3 or 5 year duration.

36 Audit reports

- (1) An application must be accompanied by an audit report which complies with this section.
- (2) The matters to be audited and covered by the audit report are whether, in all material respects:

Reasonable assurance matters

- (a) if the significant expansion criteria are relied upon by the applicant—those criteria are satisfied; and
- (b) the application has been:

- (i) prepared in accordance with section 35; and
- (ii) presented fairly; and

Limited assurance matters

- (c) the estimates of the quantity of each production variable under paragraphs 35(1)(b), (2)(b) and (2)(c):
 - (i) meet the requirements in subsection 35(3); and
 - (ii) are based on the applicant's assumptions which provide a reasonable basis for the estimates; and
 - (iii) are calculated on the basis of the applicant's assumptions and any historical data that is fairly stated; and
 - (iv) are reasonable.
- (3) The audit report must include one of the following conclusions for the matters in paragraphs (2)(a) and (b):
 - (a) a reasonable assurance conclusion;
 - (b) a qualified reasonable assurance conclusion;
 - (c) an adverse conclusion;
 - (d) a conclusion that the assurance provider is unable to form an opinion about the matter being audited.
- (4) The audit report must include one of the following conclusions for the matters in paragraph (2)(c):
 - (a) a limited assurance conclusion;
 - (b) a qualified limited assurance conclusion;
 - (c) an adverse conclusion;
 - (d) a conclusion that the assurance provider is unable to form an opinion about the matter being audited.
- (5) An audit report under this section must be the result of an audit which:
 - (a) was conducted in accordance with the relevant requirements for limited assurance engagements and reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit Determination 2009)*; and
 - (b) had an audit team leader who is registered as a Category 2 auditor under subregulation 6.25(3) of the NGER Regulations; and
 - (c) was otherwise in accordance with subsection 75(1) of the Act.

37 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

38 Making of benchmark-emissions baseline determination

Scope

- (1) This section applies if an application under section 32 has been made for a benchmark-emissions baseline determination for a facility.

Determination

- (2) The Regulator may make a benchmark-emissions baseline determination for the facility if satisfied that:
 - (a) the audit report accompanying an application contains a reasonable assurance conclusion or qualified reasonable assurance conclusion for the matters in paragraphs 36(2)(a) and (b); and
 - (b) the audit report accompanying an application contains a limited assurance conclusion or qualified limited assurance conclusion for the matters in paragraph 36(2)(c); and
 - (c) the relevant new facility criteria or significant expansion criteria are met; and
 - (d) the production variables used in the application:
 - (i) are applicable to the facility in accordance any requirements set out in the Benchmark Emissions-Intensity Index; and
 - (ii) meet the requirements of s 35(3); and
 - (e) if an explanation is included under paragraph 35(1)(f) or (2)(k)—that explanation is reasonable.

Baseline emissions number

- (3) The baseline emissions number specified in the determination made under subsection (2) must be:
 - (a) if the new facility criteria are met—the total amount of t CO₂-e of covered emissions calculated by multiplying the quantity of each of the production variables in the financial year determined under paragraph 35(1)(b) by the relevant benchmark emissions intensity of that variable and summing the results; or
 - (b) if the significant expansion criteria are met—the total amount of t CO₂-e of covered emissions calculated by summing:
 - (i) the change in production for each production variable determined under paragraph 35(2)(d) multiplied by its relevant benchmark emissions intensity; and
 - (ii) if a reported-emissions baseline determination or production-adjusted baseline determination would otherwise apply in the first year of the benchmark-emissions baseline determination—the baseline emissions number applicable under that determination; and
 - (iii) if a baseline emissions number applies because of paragraph 10(b)—the lesser of:
 - (A) 100,000 t CO₂-e; and
 - (B) the covered emissions of the facility in the financial year used in paragraph 35(2)(c).

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:

- (a) if the Regulator requires the applicant to give further information under subsection 37(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
- (b) otherwise—within 60 days after the application was made.

Notification and publication

- (5) As soon as practicable after making a benchmark-emissions baseline determination, the Regulator must:
 - (a) provide written notice of the determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the determination on its website.
- (6) If the Regulator decides to refuse to make a benchmark-emissions baseline determination, the Regulator must give written notice of the decision to the applicant.

Rounding

- (7) The baseline emissions number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).

39 Duration of benchmark-emissions baseline determination

- (1) If a benchmark-emissions baseline determination is made within 2 years after the requested start of the determination, it must come into force on the 1 July requested in the application.
- (2) A benchmark-emissions baseline determination made later than specified in subsection (1) is to come into force from the earliest 1 July possible under subsection 22XQ(2) of the Act.
- (3) A benchmark-emissions baseline determination must expire:
 - (a) if the facility is a large new facility—5 years after the start of the first year the facility's covered emissions exceeded, or were expected to exceed, 100,000 t CO₂-e; and
 - (b) if the facility is not a large new facility and meets the new facility criteria—3 years after the start of the first year the facility's covered emissions exceeded, or were expected to exceed, 100,000 t CO₂-e; and
 - (c) if the facility meets the significant expansion criteria—3 years after it commences; and
 - (d) if replaced by a new benchmark-emissions baseline determination to which subsection 33(7) applies—immediately before the commencement of that new determination.

Subdivision 5—Production-adjusted baseline determination

40 Application

- (1) The responsible emitter for a facility may apply to the Regulator for a production-adjusted baseline determination for the facility to commence either:
 - (a) after the expiry of a calculated-emissions baseline determination or benchmark-emissions baseline determination; or
 - (b) if:
 - (i) the facility:

- (A) is eligible for benchmark-emissions baseline determination on the basis of the new facility criteria; or
 - (B) could have been eligible for a benchmark-emissions baseline determination on the basis of the new facility criteria if an application was made in an earlier year (disregarding paragraph 32(1)(b)); and
- (ii) a benchmark-emissions baseline determination was not made in relation to the facility—
 - no earlier than the third financial year after the facility's covered emissions first exceeded 100,000 t CO₂-e.
- (2) An application under subsection (1) must:
 - (a) be given in a manner and form approved, in writing, by the Regulator; and
 - (b) specify the desired start date for the production-adjusted baseline determination as 1 July of a particular year; and
 - (c) include information required by section 41; and
 - (d) be accompanied by an audit report which complies with section 42.
- (3) Unless subsection (5) applies, an application under subsection (1) must be given to the Regulator:
 - (a) no earlier than the requested start date for the production-adjusted baseline determination; and
 - (b) no later than the first 31 October after the end of the first financial year to which the production-adjusted baseline determination is to apply.
- (4) The responsible emitter for the facility may, by written notice to the Regulator, withdraw an application at any time before the Regulator makes a decision on the application.
- (5) If:
 - (a) an application which complies with subsection (2) is made within the period allowed by subsection (3); and
 - (b) the Regulator has refused to make the production-adjusted baseline determination the subject of the application; and
 - (c) a new application would not comply with paragraph (3)(b);
 the Regulator may accept a new application made no later than 1 February after the end of the first financial year to which the production-adjusted baseline determination is to apply.
- (6) Paragraph (1)(a) does not apply to a calculated-emissions baseline determination which expired under subsection 31(4) or (5).

41 Information required in applications

- (1) Unless subsection (2) applies, an application for a production-adjusted baseline determination must include the following information:
 - (a) in accordance with subsection (3), the quantity of all production variables that:
 - (i) were produced by the facility in the financial year with the highest actual production level of the primary production variable over the production assessment period; and
 - (ii) if the determination is to commence after a calculated-emissions baseline determination—were used in making that determination; and
 - (iii) if the determination is to commence after a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—are applicable to the facility in

- accordance with any requirements set out in the Benchmark Emissions-Intensity Index;
- (b) the emissions intensity per unit of production for each production variable outlined under paragraph (a):
 - (i) if the determination is to commence after a calculated-emissions baseline determination—consistent with the emissions intensity per unit of production used in making that determination; or
 - (ii) if the determination is to commence after a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—consistent with its relevant benchmark emissions intensity; and
 - (c) the adjusted total covered emissions from the facility calculated by multiplying the quantity of each of the production variables under paragraph (a) by the expected emissions intensity of that variable under paragraph (b), and summing the results.
- (2) If the significant expansion criteria were met in relation to the previous benchmark-emissions baseline determination, the application for a production-adjusted baseline determination must include the following information or documents:
- (a) in accordance with subsection (3), the quantity of all production variables that were produced by the facility in the financial year with the highest actual production level of the primary production variable over the period covered by the previous benchmark-emissions baseline determination;
 - (b) the change in production for each production variable calculated by subtracting the quantity of each production variable identified under paragraph (a) from the amount of that production variable previously provided under paragraph 35(2)(c);
 - (c) the emissions intensity per unit of production for each production variable outlined under paragraph (b) consistent with its relevant benchmark emissions intensity;
 - (d) the adjusted additional covered emissions from the facility calculated by multiplying the change in production for each production variable under paragraph (b) by the emissions intensity of that variable under paragraph (c), and summing the results.
- (3) The quantity of a production variable must:
- (a) if the determination is to commence after a calculated-emissions baseline determination and the production variable is not a service unit—be measured at a time that is as close as possible to when the variable enters, or leaves, the production or processing process or landfill facility;
 - (b) if the determination is to commence after a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—both:
 - (i) be measured using the units specified in the Benchmark Emissions-Intensity Index; and
 - (ii) meet any measurement requirements or procedures specified in the Benchmark Emissions-Intensity Index.

42 Audit reports

- (1) An application must be accompanied by an audit report which complies with this section.
- (2) The matters to be audited and covered by the audit report are whether, in all material respects:

Reasonable assurance matters

- (a) the selection of the production variable for the facility:

- (i) if the determination is to commence after a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—is applicable to the facility in accordance with the Benchmark Emissions-Intensity Index; and
 - (ii) is supported by historical data that is fairly stated; and
 - (b) the application has been:
 - (i) prepared in accordance with section 41; and
 - (ii) presented fairly; and
 - (c) the estimates of the quantity of each production variable under paragraph 41(1)(a) or (2)(a):
 - (i) meet the requirements in subsection 41(3); and
 - (ii) are supported by historical data that is fairly stated.
- (3) The audit report must include one of the following conclusions for the engagement under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*:
- (a) a reasonable assurance conclusion;
 - (b) a qualified reasonable assurance conclusion;
 - (c) an adverse conclusion;
 - (d) a conclusion that the assurance provider is unable to form an opinion about the matter being audited.
- (4) An audit report under this section must be the result of an audit which:
- (a) was conducted in accordance with the relevant requirements for reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*; and
 - (b) had an audit team leader who is registered as a Category 2 auditor under subregulation 6.25(3) of the NGER Regulations; and
 - (c) was otherwise in accordance with subsection 75(1) of the Act.

43 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

44 Making of production-adjusted baseline determination

Scope

- (1) This section applies if an application under section 40 has been made for a production-adjusted baseline determination for a facility.

Determination

- (2) The Regulator may make a production-adjusted baseline determination for the facility if satisfied that:
 - (a) the audit report accompanying an application contains a reasonable assurance conclusion or qualified reasonable assurance conclusion; and
 - (b) if paragraph 40 (1)(b) applies—the requirements in that paragraph are met; and

- (c) the production variables used in the application:
 - (i) if the determination is to commence after a calculated-emissions baseline determination—were used in making that determination; and
 - (ii) if the determination is to commence after a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—are applicable to the facility in accordance with any requirements set out in the Benchmark Emissions-Intensity Index; and
 - (iii) meet the requirements of subsection 41(3).

Baseline emissions number

- (3) The baseline emissions number specified in the determination made under subsection (2) must be:
 - (a) if the determination is to commence after a calculated-emissions baseline determination—the total amount of t CO₂-e of covered emissions calculated by multiplying the quantity of each of the production variables in the financial year determined under subparagraph 41(1)(a)(i) by the emissions intensity of that variable used in making the previous calculated-emissions baseline determination and summing the results; or
 - (b) if the determination is to commence after a benchmark-emissions baseline determination made on the basis of the new facility criteria or paragraph 40(1)(b) applies—the total amount of t CO₂-e of covered emissions calculated by multiplying the quantity of the production variables in the financial year determined under subparagraph 41(1)(a)(i) with the relevant benchmark emissions intensity of each variable and summing the results; or
 - (c) if the determination is to commence after a benchmark-emissions baseline determination made on the basis of the significant expansion criteria—the total amount of t CO₂-e of covered emissions calculated by summing:
 - (i) the change in production for each production variable determined under paragraph 41(2)(b) multiplied by its relevant benchmark emissions intensity; and
 - (ii) if a reported-emissions baseline determination or production-adjusted baseline determination would otherwise apply in the first year of the proposed production-adjusted baseline determination—the baseline emissions number applicable under that determination; and
 - (iii) if a baseline emissions number applies in the first year of the proposed production-adjusted baseline determination because of paragraph 10(b)—the lesser of:
 - (A) 100,000 t CO₂-e; and
 - (B) the covered emissions of the facility in the financial year used in paragraph 35(2)(c) of the application for the previous benchmark-emissions baseline determination.

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information under subsection 43(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
 - (b) otherwise—within 60 days after the application was made.

Notification and publication

- (5) As soon as practicable after making a production-adjusted baseline determination, the Regulator must:
 - (a) provide written notice of the determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the determination on its website.
- (6) If the Regulator decides to refuse to make a production-adjusted baseline determination, the Regulator must give written notice of the decision to the applicant.

Rounding

- (7) The baseline emissions number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).

45 Duration of production-adjusted baseline determination

- (1) If a production-adjusted baseline determination is made within 2 years after the requested start of the determination, it must come into force on the 1 July requested in the application.
- (2) A production-adjusted baseline determination made later than specified in subsection (1) is to come into force from the earliest 1 July possible under subsection 22XQ(2) of the Act.
- (3) A production-adjusted baseline determination:
 - (a) ceases to be in force from the date when another baseline determination commences in relation to the facility; and
 - (b) unless a more recent production-adjusted baseline determination has been made—comes back in force at the expiry of a calculated-emissions baseline determination or a benchmark-emissions baseline determination until replaced by another baseline determination.

Subdivision 6— Variation of baseline determination for reduction in emissions intensity

46 Application

- (1) The responsible emitter for a facility may apply to the Regulator for a variation of a baseline determination which applies to the facility in respect of a financial year if the facility meets the emissions intensity test in respect of that financial year.
- (2) However, an application may not be made if:
 - (a) both:
 - (i) the responsible emitter has also applied for a multi-year period declaration such that the financial year will be the first year of a declared multi-year period; and
 - (ii) the Regulator has not refused to make a multi-year period declaration; or
 - (b) the financial year is the first year of a declared multi-year period; or
 - (c) a landfill-benchmark baseline determination applies to the facility in respect of the financial year the subject of the application.
- (3) An application under subsection (1) must:
 - (a) be given in a manner and form approved, in writing, by the Regulator; and

- (b) specify the financial year for which the baseline emissions number is to be varied; and
 - (c) include information required by section 48; and
 - (d) be accompanied by an audit report which complies with section 49.
- (4) Unless subsection (6) or (7) applies, an application under subsection (1) must be given to the Regulator no later than the first 31 October after the end of the financial year.
- (5) The responsible emitter for the facility may, by written notice to the Regulator, withdraw an application at any time before the Regulator makes a decision on the application.
- (6) If:
- (a) an application which complies with subsection (3) is made within the period allowed by subsection (4); and
 - (b) the Regulator has refused to vary the baseline determination the subject of the application; and
 - (c) a new application would not comply with subsection (4);
- the Regulator may accept a new application made no later than 1 February after the end of the financial year.
- (7) If the responsible emitter provides reasons why it was impractical to meet the 31 October deadline, the Regulator may accept an application made no later than 1 February after the end of the financial year.

47 Emissions intensity test

- (1) A facility, other than a landfill facility or benchmark facility, passes the emissions intensity test in respect of a financial year if:
- (a) if the facility has only one production variable identified in accordance with section 5—the emissions intensity of the production variable in the financial year the subject of the application is lower than the emissions intensity of the production variable in the most recent baseline intensity comparison year; and
 - (b) if the facility has 2 or more production variables identified in accordance with section 5—the result of the following formula is positive:

$$\sum_p (EI_{b,p} - EI_{f,p}) \times Q_{f,p}$$

where:

$EI_{b,p}$ is the emissions intensity of the production variable (p) in the most recent baseline intensity comparison year (b).

$EI_{f,p}$ is emissions intensity of the production variable (p) in the financial year the subject of the application (f).

$Q_{f,p}$ is the quantity of the production variable (p) produced in the financial year the subject of the application (f).

- (2) A benchmark facility passes the emissions intensity test in respect of a financial year:
- (a) if the facility has only one production variable for which there is a relevant benchmark emissions intensity—the emissions intensity of the production variable in the financial year the subject of the application is lower than the relevant benchmark emissions intensity; and

- (b) if the facility has 2 or more production variables for which there is a relevant benchmark emissions intensity—the result of the following formula is positive:

$$\sum_p (EI_{r,p} - EI_{f,p}) \times Q_{f,p}$$

where:

$EI_{r,p}$ is the relevant benchmark emissions intensity (r) of the production variable (p)

$EI_{f,p}$ is emissions intensity of the production variable (p) in the financial year the subject of the application (f).

$Q_{f,p}$ is the quantity of the production variable (p) produced in the financial year the subject of the application (f):

- (a) measured using the units specified in the Benchmark Emissions-Intensity Index; and
 - (b) meeting any measurement requirements or procedures specified in the Benchmark Emissions-Intensity Index.
- (3) A landfill facility passes the emissions intensity test in respect of a financial year if the percentage of landfill gas captured during the financial year is higher than the percentage of landfill gas captured in the most recent baseline intensity comparison year.

Calculating the emissions intensity of a production variable

- (4) For the purpose of this section the emissions intensity of a production variable is the number of t CO₂-e of covered emissions per unit of the quantity of the production variable which is:
- (a) if a year is the most recent baseline intensity comparison year only because of paragraph (b) of the definition of baseline intensity comparison year—deemed to be the emissions intensity of the production variable used to determine the baseline emissions number in the calculated-emissions baseline determination which applies to the facility; and
 - (b) otherwise:
 - (i) determined for a financial year based on the covered emissions of the facility in that financial year; and
 - (ii) if there is only one production variable—calculated by dividing the covered emissions for the facility by the quantity of the production variable produced in the financial year; and
 - (iii) if there is more than one production variable—worked out in a manner that apportions covered emissions consistently with the emissions-intensity calculation criteria; and
 - (iv) if the facility is a benchmark facility—based on the quantity of each production variable in the financial year:
 - (A) as measured using the units specified in the Benchmark Emissions-Intensity Index; and
 - (B) meeting any measurement requirements or procedures specified in the Benchmark Emissions-Intensity Index;
 - (v) subject to subparagraph (iv), worked out in a manner that is consistent for both apportioning covered emissions and measuring of the quantity of the production variable between all of the following:
 - (A) the most recent baseline intensity comparison year;

- (B) the financial year the subject of the application;
- (C) any previous successful application under subsection 46(1) that is based on the same production variables.

48 Information to accompany applications

- (1) For a facility that is not a landfill facility or benchmark facility, an application for a variation of a baseline determination must include the following information:
 - (a) in accordance with subsection (2), the quantity of all production variables that were produced by the facility in the financial year the subject of the application and the most recent baseline intensity comparison year;
 - (b) if there is more than one production variable—set out:
 - (i) the emissions intensity per unit of production for each production variable outlined under paragraph (a) in each financial year consistent with the requirements of subsection 47(4); and
 - (ii) the total covered emissions in the financial year calculated by multiplying the quantity of each of the production variables in the financial year the subject of the application under paragraph (a) by the emissions intensity of that variable in that financial year under subparagraph (b)(i), and summing the results;
 - (c) an explanation of the method used to calculate the emissions intensity of each production variable and apportion any emissions consistently with the requirements of subsection 47(4).
- (2) For the purposes of subsection (1), the quantity of a production variable that is not a service unit must be measured at a time that is as close as possible to when the variable enters, or leaves, the production or processing process.
- (3) For a benchmark facility, an application for a variation of a baseline determination must include the following information:
 - (a) the quantity of all production variables that were produced by the facility in the financial year the subject of the application:
 - (i) measured using the units specified in the Benchmark Emissions-Intensity Index; and
 - (ii) meeting any measurement requirements or procedures specified in the Benchmark Emissions-Intensity Index;
 - (b) if there is more than one production variable—set out:
 - (i) the emissions intensity per unit of production for each production variable outlined under paragraph (a) in each financial year consistent with the requirements of subsection 47(4); and
 - (ii) the total covered emissions in the financial year calculated by multiplying the quantity of each of the production variables in the financial year that is the subject of the application under paragraph (a) by the emissions intensity of that variable in that financial year under subparagraph (b)(i), and summing the results;
 - (c) an explanation of the method used to calculate the emissions intensity of each production variable and apportion any emissions consistently with the requirements of subsection 47(4).
- (4) For a landfill facility, an application for a variation of a baseline determination must include the following information:
 - (a) the amount, in t CO₂-e of landfill gas captured at the landfill facility in the financial year the subject of the application and the baseline intensity comparison year; and

- (b) the amount, in t CO₂-e, of scope 1 greenhouse gas emissions of the facility in the financial year disregarding any capture of those emissions at the facility in relation to the facility and the financial year.

49 Audit reports

- (1) An application must be accompanied by an audit report which complies with this section.
- (2) For a facility that is not a landfill facility, the matters to be audited and covered by the audit report are whether, in all material respects:

Reasonable assurance matters

- (a) the emissions intensity test is satisfied; and
 - (b) the application has been:
 - (i) prepared in accordance with section 48; and
 - (ii) presented fairly; and
 - (c) that the estimates of the quantity of each production variable:
 - (i) meet the requirements of subsection 48(2) or paragraph 48(3)(a); and
 - (ii) are supported by historical data that is fairly stated; and
 - (d) the calculation of the emissions intensity of each production variable:
 - (i) meets the requirements of subsection 47(4); and
 - (ii) is supported by historical data that is fairly stated.
- (3) For a landfill facility, the matters to be audited and covered by the audit report are whether, in all material respects:
 - (a) the emissions intensity test is satisfied; and
 - (b) the information included under subsection 48(4) is:
 - (i) correctly stated; and
 - (ii) supported by historical data that is fairly stated.
 - (4) The audit report must include one of the following conclusions for the engagement under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*:
 - (a) a reasonable assurance conclusion;
 - (b) a qualified reasonable assurance conclusion;
 - (c) an adverse conclusion;
 - (d) a conclusion that the assurance provider is unable to form an opinion about the matter being audited.
 - (5) An audit report under this section must be the result of an audit which:
 - (a) was conducted in accordance with the relevant requirements for reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*; and
 - (b) had an audit team leader who is registered as a Category 2 auditor under subregulation 6.25(3) of the NGER Regulations; and
 - (c) was otherwise in accordance with subsection 75(1) of the Act.

50 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.

- (2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

51 Variation of baseline determination

Scope

- (1) This section applies if an application under section 46 has been made for variation of a baseline determination for a facility.

Variation

- (2) The Regulator may vary the baseline determination to increase the baseline emissions number for the year so that it equals the amount of covered emissions (in t CO₂-e) for the financial year the subject of the application if satisfied that:
 - (a) the audit report accompanying an application contains a reasonable assurance conclusion or qualified reasonable assurance conclusion; and
 - (b) the emissions intensity test is met in relation to the financial year the subject of the application; and
 - (c) if the facility is not a landfill facility—the quantity of each production variable met the requirements of subsection 48(2) or paragraph 48(3)(a);
 - (d) if there is more than one production variable and the facility is not a landfill facility—the emissions intensity of each production variable meets the requirements of subsection 47(4).
- (3) The varied baseline emissions number is to be rounded up to the next whole number.

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information under subsection 50(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
 - (b) otherwise—within 60 days after the application was made.

Notification and publication

- (5) As soon as practicable after varying a baseline determination, the Regulator must:
 - (a) provide written notice of the variation to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the variation of the baseline determination on its website.
- (6) If the Regulator decides to refuse to vary a baseline determination, the Regulator must give written notice of the decision to the applicant.
- (7) To avoid doubt, a decision to vary, or refuse to vary, a baseline determination under this section is a reviewable decision under section 56 of the Act.

Subdivision 7—Landfill-benchmark baseline determination

52 Application

- (1) The responsible emitter for a landfill facility may apply to the Regulator for a landfill-benchmark baseline determination for the facility if the landfill facility:
 - (a) has previously emitted more than 100,000 t CO₂-e of covered emissions in a financial year; or
 - (b) is reasonably expected to emit more than 100,000 t CO₂-e of covered emissions in the first financial year to be covered by the landfill-benchmark baseline determination.
- (2) An application under subsection (1) must:
 - (a) be given in a manner and form approved, in writing, by the Regulator; and
 - (b) specify the desired start date for the landfill-benchmark baseline determination as 1 July of a particular year on or after 1 July 2020; and
 - (c) include information establishing that the facility is a landfill facility.
- (3) An application under subsection (1) must be given to the Regulator no later than the first 31 October after the end of the first financial year to which the landfill-benchmark baseline determination is to apply.

53 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

54 Making of landfill-benchmark baseline determination

Scope

- (1) This section applies if an application under section 52 has been made for a landfill-benchmark baseline determination for a facility.

Determination

- (2) The Regulator may make a landfill-benchmark baseline determination for the facility if satisfied that the facility is a landfill facility that:
 - (a) has previously emitted more than 100,000 t CO₂-e of covered emissions in a financial year; or
 - (b) is reasonably expected to emit more than 100,000 t CO₂-e of covered emissions in the first financial year to be covered by the landfill-benchmark baseline determination.
- (3) Subject to section 12, a landfill-benchmark baseline determination must specify the landfill baseline emissions formula for the facility for each financial year during which the determination is in force as:

$$B_t = NLCH_{4t} \times (1 - BC_t) \times (1 - OF)$$

where:

B_t is the baseline emissions number for the facility for the financial year (t).

$NLCH_{jt}$ is the amount, in t CO₂-e, of non-legacy scope 1 greenhouse gas emissions of the facility in the financial year disregarding any capture of those emissions at the facility included in a report under the Act in relation to the facility and the financial year.

BC_t is benchmark capture efficiency rate for non-legacy greenhouse gas emissions set out in the Benchmark Emissions-Intensity Index as in force at the start of the financial year.

OF is the oxidation factor in the near surface conditions of the landfill in subsection 5.4(1) of the NGER (Measurement) Determination as in force at the start of the financial year.

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information under subsection 53(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
 - (b) otherwise—within 60 days after the application was made.

Notification

- (5) As soon as practicable after making a landfill-benchmark baseline determination, the Regulator must:
 - (a) provide written notice of the determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the determination on its website.
- (6) If the Regulator decides to refuse to make a landfill-benchmark baseline determination, the Regulator must give written notice of the decision to the applicant.

Rounding

- (7) The baseline emissions number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).

55 Duration of landfill-benchmark baseline determination

- (1) If a landfill-benchmark baseline determination is made within 2 years after the requested start of the determination, it must come into force on the 1 July requested in the application.
- (2) A landfill-benchmark baseline determination made later than specified in subsection (1) is to come into force from the earliest 1 July possible under subsection 22XQ(2) of the Act.
- (3) A landfill-benchmark baseline determination:
 - (a) replaces another baseline determination in force in relation to the facility; and
 - (b) ceases to be in force from:
 - (i) the date when another baseline determination commences in relation to the facility; or

- (ii) a 30 June notified to the Regulator in writing by the responsible emitter for the facility.

Subdivision 8—General variation and remaking of baseline determinations

56 Variation relating to changes in carbon dioxide equivalence

- (1) If:
 - (a) the carbon dioxide equivalence of one or more greenhouse gases changes at the start of, or during a, financial year; and
 - (b) one of the following determinations for a facility is in force (the *relevant determination*):
 - (i) a reported-emissions baseline determination;
 - (ii) a calculated-emissions baseline determination which was based upon an emissions-intensity per unit of a production variable identified by greenhouse gas under subsection 6(6);
 - (iii) a benchmark-emissions baseline determination;
 - (iv) a production-adjusted baseline determination which was based upon:
 - (A) an emissions intensity per unit of a production variable identified by greenhouse gas in an application for a calculated-emissions baseline determination under subsection 6(6); or
 - (B) an emissions intensity per unit of production consistent with the Benchmark Emissions-Intensity Index;

the Regulator must vary the relevant determination to reflect the changed carbon dioxide equivalence of the baseline emissions number with effect from the start of that financial year.
- (2) For the purposes of subsection (1):
 - (a) the baseline emissions number in reported-emissions baseline determination need only be varied in relation to carbon dioxide, methane, nitrous oxide, perfluorocarbon emissions attributable to aluminium production and other greenhouse gases identified under subparagraph 17(6)(b)(i); and
 - (b) greenhouse gas emissions included in the baseline emissions number of a calculated-emissions baseline determination or production-adjusted baseline determination without an identified emissions intensity of non-carbon dioxide greenhouse gas per unit of a production variable under subsection 6(6) are assumed to be emissions of carbon dioxide; and
 - (c) the changed carbon dioxide equivalence of a baseline emissions number derived from the Benchmark Emissions-Intensity Index must be determined consistently with the changed emissions intensity of the relevant production variable in that Index.
- (3) The baseline emissions number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).
- (4) Before the Regulator varies a baseline determination for a facility under this section, the Regulator must provide a written notice to the responsible emitter for the facility:
 - (a) stating that it intends to vary the baseline determination in relation to the facility under this section; and
 - (b) specifying the baseline emissions number that would apply under the determination; and
 - (c) seeking any comments by a date specified in the notice.

- (5) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to vary the baseline determination by the later of:
 - (a) if the Regulator requires the responsible emitter to give further information under subsection 58(1) in connection with the variation of the baseline determination—30 days after the responsible emitter gave the Regulator the information; and
 - (b) 30 days after the date specified in paragraph (4)(c).
- (6) As soon as practicable after varying a baseline determination, the Regulator must:
 - (a) provide written notice of the varied determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the varied determination on its website.
- (7) To avoid doubt, a decision to vary a baseline determination under this section is a reviewable decision under section 56 of the Act.

57 Remaking of baseline determinations because of error

- (1) If the Regulator is satisfied that:
 - (a) a baseline determination or purported baseline determination has incorrectly calculated the baseline emissions number for a facility; or
 - (b) the making of a baseline determination or purported baseline determination was subject to jurisdictional error by the Regulator; or
 - (c) information provided to the Regulator by the responsible emitter in connection with the making of the baseline determination was false or misleading in a material particular;
 the Regulator may remake the decision to make or refuse to make the baseline determination with effect from the start of that financial year in which the decision is remade.
- (2) Before the Regulator remakes a decision to make or refuse to make a baseline determination for a facility under this section, the Regulator must provide a written notice to the responsible emitter for the facility:
 - (a) stating that it intends to remake the decision in relation to the facility under this section; and
 - (b) if a baseline determination is to be remade—specifying the baseline emissions number that would apply under that determination; and
 - (c) seeking any comments by a date specified in the notice.
- (3) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to make or refuse to make the baseline determination by the later of:
 - (a) if the Regulator requires the responsible emitter to give further information under subsection 58(1) in connection with the remaking of a decision to make or refuse to make the baseline determination—30 days after the responsible emitter gave the Regulator the information; and
 - (b) 30 days after the date specified in paragraph (2)(c).
- (4) As soon as practicable after remaking or refusing to make a baseline determination, the Regulator must:
 - (a) provide written notice of the decision to the responsible emitter for the facility covered by the baseline determination; and
 - (b) publish the details of any remade baseline determination on its website.

- (5) Despite subsection (1), the baseline emissions number for a facility in a financial year before the start of the remade baseline determination or decision to refuse to make the baseline determination is the baseline emissions number calculated in accordance with the original baseline determination or purported baseline determination.
- (6) To avoid doubt, a decision to remake or refuse to make a baseline determination under this section is a reviewable decision under section 56 of the Act.

58 Further information

- (1) The Regulator may, by written notice given to the responsible emitter, require the responsible emitter to give the Regulator, within the period specified in the notice, further information in connection with the variation of a baseline determination under section 56 or remaking of a decision to make or refuse to make baseline determination under section 57.
- (2) If the responsible emitter breaches the requirement, the Regulator may, by written notice given to the responsible emitter:
 - (a) refuse to take any action, or any further action, in relation to varying the baseline determination until the information is provided; and
 - (b) make any assumptions the Regulator considers appropriate about the information which was not provided.

Part 4—Compliance

Division 1—Exemption declarations

59 Operation of this Division

For subsections 22XE(2), (3) and (4) of the Act, this Division provides for an exemption declaration to be issued in relation to a facility for a monitoring period.

60 Application

- (1) The responsible emitter for a facility may apply to the Regulator for an exemption declaration for the facility for a monitoring period.
- (2) The application must:
 - (a) be given in a manner and form approved, in writing, by the Regulator; and
 - (b) specify the facility and monitoring period for which an exemption declaration is sought; and
 - (c) include information and documents substantiating:
 - (i) why an exemption declaration should be made; and
 - (ii) if the application relates to criminal activity—the reasonableness of the steps the responsible emitter took:
 - (A) before the criminal activity occurred, to mitigate risks that criminal activity could result in an excess; and
 - (B) after the criminal activity occurred, to mitigate the likelihood of an excess as a result of the criminal activity; and
 - (iii) if the application relates to a natural disaster—the reasonableness of the steps the responsible emitter took:
 - (A) before the natural disaster occurred, to mitigate risks that a natural disaster could result in an excess; and
 - (B) after the natural disaster occurred, to mitigate the likelihood of an excess as a result of the natural disaster; and
 - (iv) any other factors that have significantly impacted the covered emissions of the facility over the monitoring period.
- (3) An application under subsection (1) must be given to the Regulator no later than the first 31 October after the end of a monitoring period for which the exemption declaration is sought.
- (4) The responsible emitter for the facility may, by written notice to the Regulator, withdraw an application at any time before the Regulator makes a decision on the application.

61 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

62 Issue of exemption declaration

Scope

- (1) This section applies if an application under section 60 has been made for an exemption declaration for a facility for a monitoring period.

Issue of exemption declaration

- (2) If the Regulator is satisfied that:
 - (a) disregarding subsections 22XK(2) and (3) of the Act, the net emissions number for the facility for the monitoring period exceeds the baseline emissions number for the facility for the monitoring period; and
 - (b) that excess is the direct result of either or both of the following:
 - (i) a natural disaster;
 - (ii) criminal activity; and
 - (c) if the excess relates to criminal activity—the responsible emitter:
 - (i) had, before the criminal activity occurred, taken reasonable steps to mitigate risks that criminal activity could result in an excess; and
 - (ii) has, after the criminal activity occurred, taken reasonable steps to mitigate the likelihood of an excess as a result of the criminal activity; and
 - (iii) the responsible emitter was not complicit in the criminal activity; and
 - (d) if the excess relates to a natural disaster—the responsible emitter:
 - (i) had, before the natural disaster occurred, taken reasonable steps to mitigate risks that a natural disaster could result in an excess; and
 - (ii) has, after the natural disaster occurred, taken reasonable steps to mitigate the likelihood of an excess as a result of the natural disaster;

the Regulator must issue an exemption declaration for the facility for the monitoring period.

Timing

- (3) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information under subsection 61(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
 - (b) otherwise—within 60 days after the application was made.

Notification

- (4) As soon as practicable after making an exemption declaration, the Regulator must:
 - (a) provide written notice of the declaration to the responsible emitter for the facility covered by the declaration; and
 - (b) publish the details of the declaration on its website.

Refusal

- (5) If the Regulator decides to refuse to issue an exemption declaration, the Regulator must give written notice of the decision to the applicant.

63 Revocation of exemption declaration because of false or misleading information

- (1) If the Regulator is satisfied that:
 - (a) information provided to the Regulator by the responsible emitter in connection with the making of an exemption declaration was false or misleading in a material particular; and
 - (b) the Regulator would not have been satisfied of the matters set out in subsection 62(2) if the false or misleading information had not been provided;the Regulator may revoke the exemption declaration with effect from at least 30 days after the notification of a decision under this section.
- (2) Before the Regulator revokes an exemption declaration, the Regulator must provide a written notice to the responsible emitter for the facility for the monitoring period covered by the exemption declaration:
 - (a) stating that it intends to revoke the exemption declaration in relation to the facility under this section; and
 - (b) seeking any comments by a date specified in the notice.
- (3) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to revoke or decide not to revoke the exemption declaration no later than 30 days after the date specified in the notice.
- (4) As soon as practicable after revoking an exemption declaration, the Regulator must:
 - (a) provide written notice of the decision to the responsible emitter for the facility for the monitoring period covered by the exemption declaration; and
 - (b) publish the details of the revocation of the exemption declaration on its website.
- (5) To avoid doubt, a decision to revoke an exemption declaration under this section is a reviewable decision under section 56 of the Act.

Division 2—Declared multi-year periods

64 Operation of this Division

For subsection 22XG(5) of the Act, this Division provides for the declaration of a specified period as a declared multi-year period for a facility.

65 Application

- (1) The responsible emitter for a facility may apply to the Regulator for declaration of a specified period as a declared multi-year period for a facility (a ***multi-year period declaration***).
- (2) However, an application may not be made if:
 - (a) both:
 - (i) the responsible emitter has also applied for a variation of a baseline determination under subsection 46(1) in respect of the proposed first financial year of a declared multi-year period; and
 - (ii) the Regulator has not refused to make the variation; or
 - (b) the Regulator has varied the baseline determination which applies for the proposed first year of the declared multi-year period under subsection 51(2); or
 - (c) the proposed declared multi-year period would overlap with an existing declared multi-year period for the facility.

- (3) The application must:
 - (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 CO₂-e) emitted, or reasonably likely to be emitted, for the proposed first financial year of the declared multi-year period; and
 - (d) include information and documents substantiating:
 - (i) why a multi-year period declaration should be made; and
 - (ii) why the net emissions number for the facility will be lower in subsequent financial years.
- (4) Subject to subsection (6), an application under subsection (1) must be given to the Regulator no later than the first 31 October after the end of the proposed first financial year of the declared multi-year period.
- (5) The responsible emitter for the facility may, by written notice to the Regulator, withdraw an application at any time before the Regulator makes a decision on the application.
- (6) If the responsible emitter provides reasons why it was impractical to meet the 31 October deadline, the Regulator may accept an application made no later than 1 February after the end of the financial year.

66 Further information

- (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

67 Making of multi-year period declaration

Scope

- (1) This section applies if an application under section 64 has been made for a multi-year period declaration for a facility.

Making of multi-year period declaration

- (2) If the Regulator is satisfied the facility's covered emissions (in t CO₂-e) for the proposed first financial year of the declared multi-year period are reasonably likely to be greater than the baseline emissions number with respect to that facility, it may make a multi-year period declaration for the facility having regard to:
 - (a) whether the responsible emitter has previously had an excess emissions situation; and
 - (b) whether reasonable evidence has been provided that the proposed declared multi-year period would enable the responsible emitter to avoid an excess emissions situation; and
 - (c) whether the responsible emitter has proposed to enter into an enforceable undertaking under section 45 of the Act with respect to measures aimed at ensuring

an excess emissions situation does not exist in respect of the declared multi-year period; and

(d) such other matters (if any) as the Regulator considers relevant.

- (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 either:
- (a) 2 financial years; or
 - (b) 3 financial years.

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Regulator requires the applicant to give further information under subsection 65(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
 - (b) otherwise—within 60 days after the application was made.

Notification

- (5) As soon as practicable after making a multi-year period declaration, the Regulator must:
- (a) provide written notice of the declaration to each responsible emitter for the facility in the period covered by the declaration; and
 - (b) publish the details of the declaration on its website.

Refusal

- (6) If the Regulator decides not to make a multi-year period declaration, the Regulator must give written notice of the decision to the applicant.

68 Variation or revocation of multi-year period declaration on request

- (1) The responsible emitter for a facility may apply to the Regulator:
- (a) to vary the length of the declared multi-year period in a multi-year period declaration:
 - (i) from 3 year to 2 years; or
 - (ii) from 2 years to 3 years; or
 - (b) to revoke the multi-year period declaration.
- (2) The application must:
- (a) be given in a manner and form approved, in writing, by the Regulator; and
 - (b) specify the facility and multi-year period declaration to be varied or revoked; and
 - (c) include the reasons for the proposed variation or revocation; and
 - (d) if the variation or revocation would impact the length of a monitoring period for a person other than the applicant—include the written consent of that person to the making of the application.
- (3) After considering an application which complies with subsection (1) and (2), the Regulator may vary or revoke the multi-year period declaration as requested by the applicant.

Notification

- (4) As soon as practicable after varying or revoking a multi-year period declaration, the Regulator must:
 - (a) provide written notice of the decision to the responsible emitter for the facility for the declared multi-year period covered by the multi-year period declaration; and
 - (b) publish the details of the variation or revocation of the multi-year period declaration on its website.

Refusal

- (5) If the Regulator decides not to vary or revoke a multi-year period declaration, the Regulator must give written notice of the decision to the applicant.
- (6) To avoid doubt, a decision to decide to vary or revoke, or decide not to vary or revoke, a multi-year period declaration under this section is a reviewable decision under section 56 of the Act.

69 Revocation of multi-year period declaration because of false or misleading information

- (1) If, during a declared multi-year period, the Regulator becomes satisfied that:
 - (a) information provided to the Regulator by the responsible emitter in connection with the making of the multi-year period declaration for the declared multi-year period was false or misleading in a material particular; and
 - (b) the Regulator would not have made the multi-year period declaration if the false or misleading information had not been provided;the Regulator may revoke the multi-year period declaration with effect from at least 30 days after the notification of the decision under this section.
- (2) Before the Regulator revokes the multi-year period declaration, the Regulator must provide a written notice to each responsible emitter for the facility for the declared multi-year period:
 - (a) stating that it intends to revoke the multi-year period declaration in relation to the facility under this section; and
 - (b) seeking any comments by a date specified in the notice.
- (3) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to revoke or decide not to revoke the multi-year period declaration no later than 30 days after the date specified in the notice.
- (4) As soon as practicable after revoking a multi-year period declaration, the Regulator must:
 - (a) provide written notice of the decision to each responsible emitter for the facility for the declared multi-year period; and
 - (b) publish the details of the revocation of the multi-year period declaration on its website.
- (5) To avoid doubt, a decision to revoke a multi-year period declaration under this section is a reviewable decision under section 56 of the Act.

Division 3—Notification and publication requirements

70 Operation of this Division

For subsection 22XP(2) and paragraph 22XS(1)(b) of the Act, this Division provides for the issue of advisory notices and other information publication requirements.

71 Advisory notices

- (1) The Regulator must notify the responsible emitter for a facility as soon as practicable after:
 - (a) the net emissions number for the facility is increased under subsection 22XK(4) of the Act; or
 - (b) deemed surrender occurs under subsection 22XN(6) of the Act in relation to the facility.
- (2) A notification under paragraph (1)(a) must include the unique identification numbers for each Australian carbon credit unit that has resulted in the increase in the net emissions number for the facility.
- (3) The Regulator may notify the responsible emitter for a facility of any of the following:
 - (a) the number that the Regulator considers is the net emissions number of the facility;
 - (b) that an offsets report has been submitted which attributes abatement to the facility;
 - (c) that a baseline emissions number applies to the facility:
 - (i) because of paragraph 10(b); or
 - (ii) because of a landfill baseline emissions formula in a landfill-benchmark baseline determination;
 - (d) any other matters relating to the safeguard provisions that the Regulator considers appropriate to provide notification.
- (4) At the request of the responsible emitter for a facility, the Regulator may provide the responsible emitter with any reports relating to the facility under the Act relevant to the making or variation of a baseline determination under this instrument.

72 Publication

- (1) The Regulator must publish on its website and keep up-to-date the following information relating to the safeguard mechanism:
 - (a) in respect of each facility that is a designated large facility:
 - (i) the responsible emitter for the facility; and
 - (ii) whether or not the facility is a grid-connected electricity generator; and
 - (iii) the current baseline emissions number for the facility; and
 - (iv) the baseline emissions number for each financial year that the facility is a designated large facility; and
 - (v) the covered emissions of the facility for each financial year that the facility is a designated large facility; and
 - (vi) if the facility is a grid-connected electricity generator—the covered emissions for each financial year after 1 July 2016 calculated on the basis that no financial year is a sectoral-baseline financial year; and
 - (vii) the net emissions number for each monitoring period that applies to the facility; and
 - (viii) the number of prescribed carbon units surrendered under section 22XN(1) of the Act for each monitoring period that applies to the facility; and

- (ix) if a multi-year period declaration applies to the facility—the start date and end date of the declared multi-year period for the facility; and
- (x) the start date and end date of any monitoring period for which an exemption declaration has been made in relation to the facility;
- (b) in respect of any excess emissions situations:
 - (i) the responsible emitter for the excess emissions situation; and
 - (ii) when the excess emissions situation started; and
 - (iii) if the excess emissions situation no longer exists—the date when the excess emissions situation ended;
- (c) the covered emissions of each grid-connected electricity generator for each financial year after 1 July 2016 calculated on the basis that no financial year is a sectoral-baseline financial year.

Note: The publication of certain types of information is subject to section 25 of the Act.

- (2) The information required to be published under paragraph (1)(c) and subparagraphs (1)(a)(v) and (vi) need not be published until information is published in respect of the relevant financial year under section 24 of the Act.
- (3) The information required to be published under subparagraphs (1)(a)(vii) and (viii) need not be published until after the first 1 March following the end of the relevant monitoring period.

Part 5—Registration, reporting and record-keeping

Division 1—Registration

73 Operation of this Division

For paragraph 15B(4)(c) of the Act, this Division provides for information to accompany an application to register under section 15B of the Act.

74 Application requirements

- (1) An application under section 15B of the Act must set out the following information:
 - (a) the applicant's name and trading name (if any);
 - (b) which section of the Act the applicant is applying under;
 - (c) the year for which the applicant is first required to register;
 - (d) if a personal identification number has been issued by the Regulator to the applicant—the applicant's personal identification number;
 - (e) if the applicant is a subsidiary of a controlling corporation registered under the Act—a statement to that effect, and the identifying details of the controlling corporation.
- (2) The application must also set out the identifying information for the applicant if that information has not previously been given to the Regulator.

Division 2—Reporting

75 Operation of this Division

For paragraph 22XB(2)(b) of the Act, this Division provides for information to be set out in a report under section 22XB of the Act.

76 Required information

A report under section 22XB of the Act must set out:

- (a) the identifying information for the responsible emitter providing the report; and
- (b) the information required by Subdivisions 4.4.2 and 4.4.3 and regulations 4.04A and 4.27 of the NGER Regulations as if the person was a corporation to which those subdivisions and regulations 4.04A and 4.27 applied; and
- (c) the covered emissions from the operation of the facility, in t CO₂-e; and
- (d) any information required under section 77.

77 Reporting a change in principal activity for facility

- (1) This section applies in relation to a report provided to the Regulator under section 22XB of the Act if the principal activity for a facility that has been included in a report under the Act stops being the principal activity for the facility for a period of at least 24 months.
- (2) The responsible emitter for the facility must identify a new principal activity for the facility and the industry sector to which the principal activity is attributable in accordance with Subdivisions 2.4.2 and 2.4.3 of the NGER Regulations.

- (3) The report for the reporting year that includes the last day of the period mentioned in subsection (1) must include the industry sector to which the new principal activity is attributable.
- (4) The responsible emitter must record the new principal activity and the date that the principal activity changed.
- (5) In this regulation, *principal activity*, in relation to a facility, means the activity that:
 - (a) results in the production of a product or service that is produced for sale on the market; and
 - (b) produces the most value for the facility out of any of the activities forming part of the facility.

Division 3—Record-keeping

78 Form of records

- (1) This section applies to records mentioned in subsection 22XC(1) of the Act.
- (2) For paragraph 22XC(3)(b) of the Act, the records must be kept in a form that is easily and quickly accessible for inspection and audit.
Note: This may be in an electronic or hard copy format.

Schedule 1—Benchmark Emissions-Intensity Index

Note: See the definition of *Benchmark Emissions-Intensity Index* in section 4.

1 Benchmark Emissions-Intensity Index

This Schedule will set out benchmark levels of emissions intensity per unit of a production variable for certain kinds of facilities and the benchmark capture efficiency rate for non-legacy greenhouse gas emissions.