NATIONAL GREENHOUSE AND ENERGY REPORTING ACT 2007

NATIONAL GREENHOUSE AND ENERGY REPORTING (SAFEGUARD MECHANISM) AMENDMENT RULE (NO. 1) 2019

EXPLANATORY STATEMENT

(Issued by the authority of the Minister for the Environment)

Contents

General outline and statements

Purpose

The *National Greenhouse and Energy Reporting Act 2007* (the Act) establishes a single national framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information. The Safeguard Mechanism is part of the Act. Together with the reporting obligations under the Act, the Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions.

Section 22XS of the Act empowers the Minister to make legislative rules to implement the Safeguard Mechanism. The Safeguard Mechanism was established through the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (the Principal Rule). The Principal Rule specifies the administrative detail of how safeguard provisions are implemented and the administrative processes for demonstrating compliance with safeguard obligations.

The *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019* (the Amendment Rule) amends the Principal Rule. The Amendment Rule gives effect to three main policy changes:

1. Bring baselines up-to-date by transitioning all facilities to calculated baselines over 2018-19 and 2019-20.
2. Simplify calculated baseline applications by giving businesses the option to use Government-determined *prescribed production variables* and *default emissions intensity* values for calculating baselines.
3. Update baselines annually for actual production where facilities use eligible *production variables*, so they continue to reflect facility circumstances. This requires business to report production.

Terms that are defined in the Amendment Rule are in italics.

Background

The Safeguard Mechanism places emissions limits—known as baselines—on Australia's largest emitters. It gives covered facility operators a legislated obligation to keep net emissions below their baseline. Baselines are intended to reflect business-as-usual activities—accommodating business growth and allowing businesses to continue normal operations.

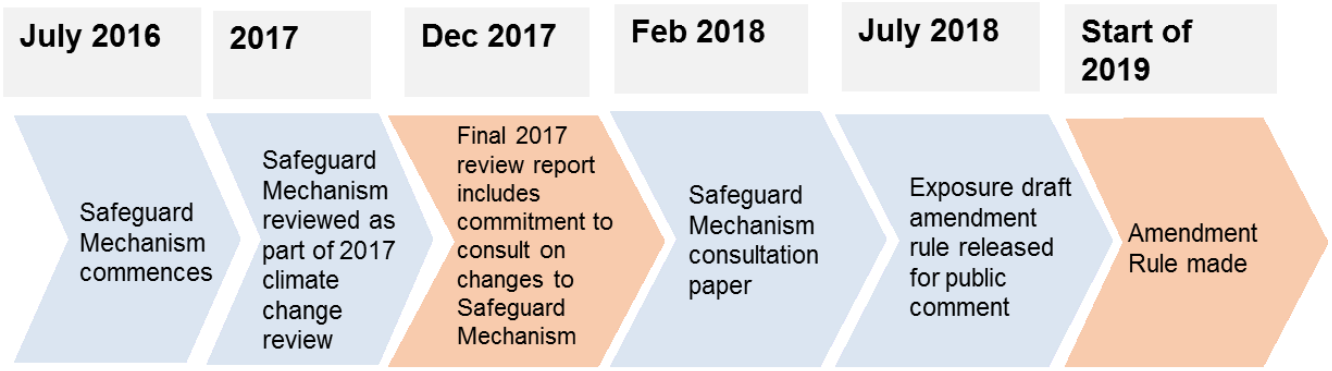
The Safeguard Mechanism was developed through extensive consultation with a broad cross section of industry. Its operation was outlined in the Emissions Reduction Fund White Paper released in April 2014 and refined through a consultation paper released in March 2015. It

was legislated in November 2014, with rules and regulations made in September 2015. The Safeguard Mechanism came into effect on 1 July 2016.

A review of the operation of the Safeguard Mechanism was foreshadowed when the Safeguard Rule was made in 2015. In 2017, the Government reviewed Australia's climate change policies including the Emissions Reduction Fund and its Safeguard Mechanism. As an outcome of the review, the Government committed to consult with businesses and work with the Clean Energy Regulator on ways to bring baselines up-to-date with current circumstances, and make the Safeguard Mechanism fairer and simpler (refer **Figure 1** for a timeline since implementation).

The purpose of this Explanatory Statement is to explain amendments to the Principal Rule that give effect to this commitment. A number of minor amendments have also been made to address technical issues identified in the first year of the Safeguard Mechanism, 2016-17.

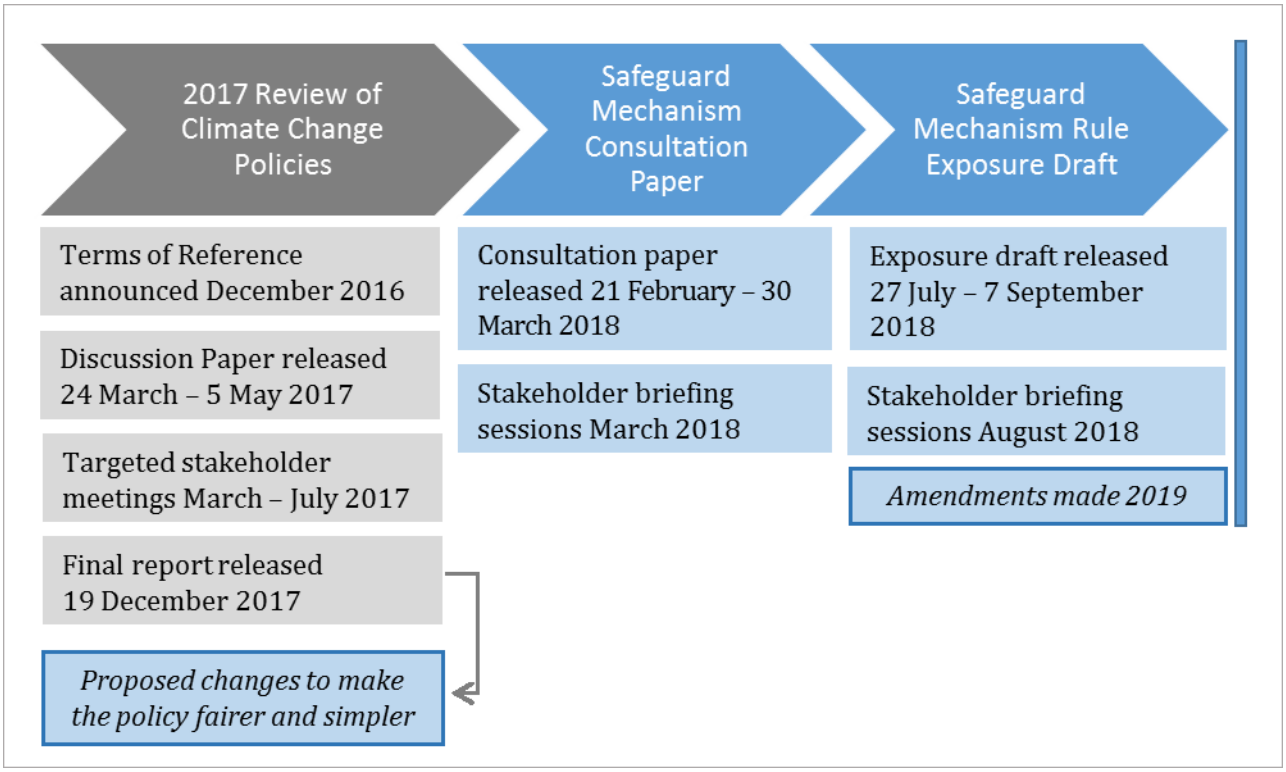
Figure 1: Timeline for the Safeguard Mechanism



Public consultation

Extensive consultation efforts have underpinned the amendments to the Safeguard Mechanism (refer **Figure 2**).

Figure 2: Summary of key consultation activities



2017 review of climate change policies

Stakeholders were initially invited to comment on the effectiveness of the Safeguard Mechanism—along with the Government's other climate change policies—upon the release of the Government's 2017 review of climate change policies discussion paper in March 2017.

Over the course of 2017, the Department consulted widely with businesses across all sectors of the economy and with the community. The discussion paper generated over 350 public submissions (105 from individuals and 252 from organisations). The Department met with more than 270 stakeholders and the then Minister for the Environment and Energy hosted two roundtables, attended by representatives from 42 business, community, environmental and Indigenous organisations.

Through the review, businesses told the Government they support the Safeguard Mechanism, but there are opportunities to improve it. The focus of suggested improvements was on how baselines are set. Businesses asked the Government to make the Safeguard Mechanism fairer by avoiding arbitrary constraints on business growth, and make baseline setting arrangements simpler to lower administrative costs. On 19 December 2017, the Government released the final report for the 2017 review of climate change policies. In the final report, the

Government committed to consult with businesses and work with the Clean Energy Regulator on ways to bring baselines up-to-date with current circumstances, and make the Safeguard Mechanism fairer and simpler.

Safeguard Mechanism consultation paper

In line with its December 2017 commitment, the Government released a consultation paper on 21 February 2018 on proposed options to improve the Safeguard Mechanism. Comments closed on 30 March 2018.

In March 2018, the Department met with over 60 organisations through a series of group briefing sessions. Attendees included businesses with facilities covered by the Safeguard Mechanism, their industry bodies, and industry consultants including auditors and lawyers. The Department also separately met with eleven Safeguard businesses, three industry groups and their members. The Department received 57 submissions from individuals, businesses, non-government organisations, local councils and peak bodies in response to the consultation paper.

Exposure draft amendments to the Safeguard Rule

On 27 July 2018, the Government released exposure draft amendments to the Principal Rule. Comments closed 7 September 2018. Accompanying documents were also released, including:

- an explanatory document to support understanding of the draft amendments
- a consultation outcomes paper explaining how stakeholder comments on the preceding consultation paper had been considered.

The Department again met with over 60 organisations through a series of group briefing sessions, meetings with four Safeguard businesses, three industry groups and their members. The Department received 26 submissions from the public consultation process.

Future consultation

Further consultation on the schedules to the Rule will be undertaken to support the updated policy.

Defining defaults

The Amendment Rule includes the addition of two new schedules, which are to define *prescribed production variables* and their corresponding *default emissions intensity* values. The Government will develop these in consultation with businesses and supported by independent technical advice. The Government will release draft *prescribed production variables* and *default emissions intensity* values for public comment, with the aim of publishing priority production variables in 2019, for use from the 2018-19 reporting and compliance year.

Reporting production data

To give effect to elements of the amendments, some facilities will be required to report additional production data under the National Greenhouse and Energy Reporting Scheme. The new reporting requirement will be established through amendments to the *National Greenhouse and Energy Reporting Regulations 2008*. The Government will release an exposure draft of the proposed regulation amendments in 2019.

Regulatory impact

The Final Assessment Regulation Impact Statement (RIS) for the Amendment Rule is at Attachment A, and is also available on the Office of Best Practice Regulation's website. The RIS was prepared by the Department of the Environment and Energy in accordance with the *Australian Guide to Regulation* (2014) and has been assessed as compliant and best practice by the Office of Best Practice Regulation.

Safeguard Rule details

The Principal Rule and the Amendment Rule are legislative instruments within the meaning of the *Legislation Act 200*3. The Principal Rule commenced on 1 July 2016. The Amendment Rule will commence on the day after registration.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights, prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011,* is at Attachment B of the Explanatory Statement.

Policy context – Improving the operation of the Safeguard Mechanism

This section summarises the approach enabled by the Amendment Rule for updating the Safeguard Mechanism.

Transitioning to calculated baselines

Baselines were initially set with reference to historical emissions—specifically, the high point of emissions between 2009-10 and 2013-14. Reported (historical) baselines recognise past investments and are administratively simple to make, but they quickly become out of date. In recognition of this, the Principal Rule allows a facility to access a baseline adjustment if it meets certain criteria. Through this process a new baseline is calculated using a forecast of a facility's emissions-intensity and production over three years (or five years for large new facilities). This is called a calculated baseline.

To promote consistency in how baselines are set and ensure all facilities can access baselines using up-to-date data, the Amendment Rule allows all facilities, including those already with calculated baselines, to apply for a new calculated baseline beginning 1 July 2018 using the *transitional calculated baseline criteria*. Reported baselines expire on 30 June 2020, except for those facilities covered by the electricity sectoral baseline.

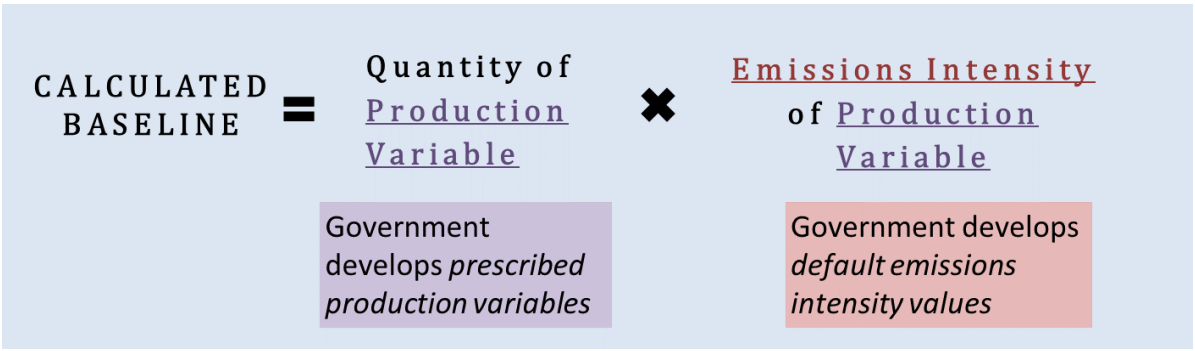
Landfill facilities will transition to baselines using gas capture rates, similar to the current baseline setting approach for new landfills. As with *production variables*, a default capture rate will be set by the Government. The timing for developing the default capture rate will be determined in consultation with stakeholders.

Simplifying calculated baselines

To simplify the calculated baseline application process, facilities will have the option of using *prescribed production variables* and *default emissions intensity* values in place of site specific *production variables* and *estimated emissions intensity* values. This will lower administrative costs through making applications easier and reducing auditing costs. Production variables and default values will be published by the Government in Schedules 2 and 3 of the Rule.

A facility with a calculated baseline can choose to move to a *default emissions intensity* value at any time, but once it is using the *default emissions intensity* value it would not be able to move back to an *estimated emissions intensity* value. **Figure 3** illustrates the use of a *prescribed production variable* and a *default emissions intensity* value.

Figure 3: Using default values to calculate the baseline



The ***production variable*** identifies the product or service being delivered, for example, tonnes of alumina or passenger kilometres.

The **emissions intensity value** specifies the emissions intensity of production, for example, emissions per tonne of alumina or emissions per passenger kilometre.

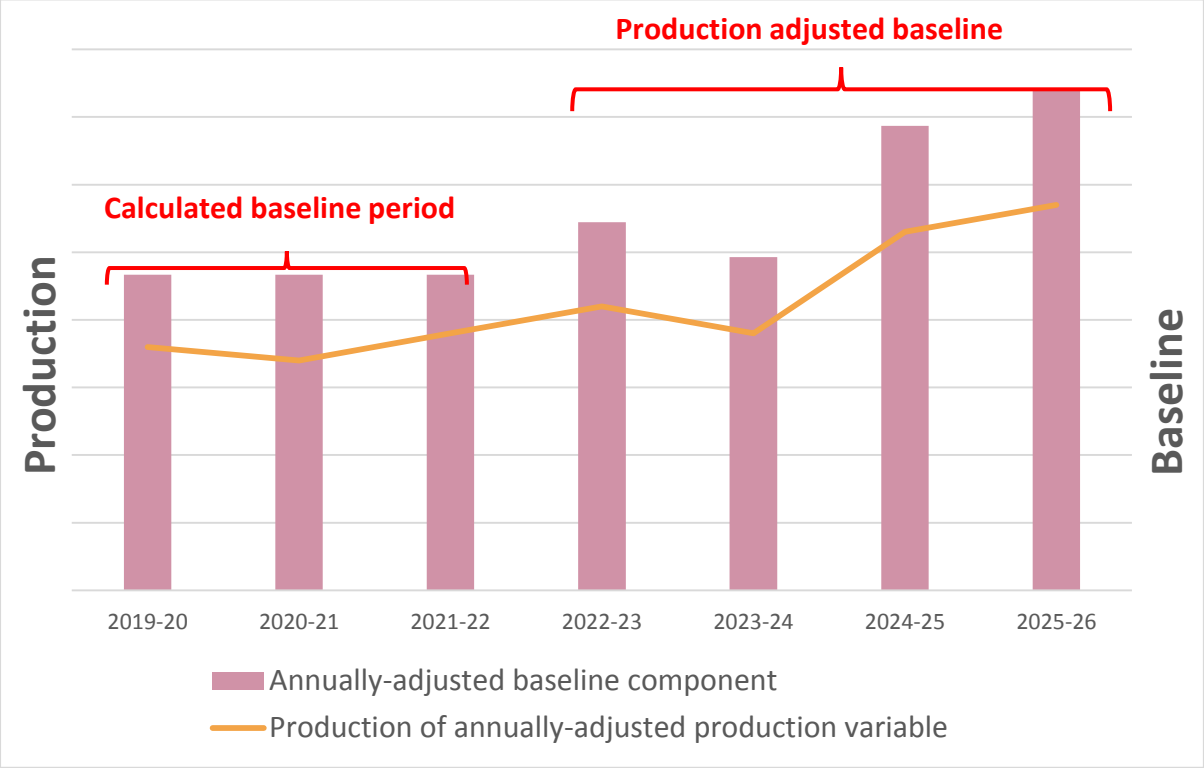
Prescribed production variables and *default emissions intensity* values will be set out in Schedules 2 and 3.

Annually updating baselines for actual production

After a calculated baseline forecast period, calculated baselines are replaced with a new baseline, called a production-adjusted baseline. This updates the baseline that was set under the calculated baseline period for actual production.

Under the Principle Rule, a production-adjusted baseline remained fixed. The Amendment Rule introduces another type of production-adjusted baseline—an annually-updating production-adjusted baseline. To help prevent baselines becoming out of date in the future, the Amendment Rule allows baselines to be updated automatically for certain changes. Where a facility has used an eligible *production variable* in its production-adjusted baseline application, baselines will automatically change for production on an annual basis. This means that a facility's baseline would increase when its production grows and decrease when its production falls (refer **Figure 4** for an example of an annually-updated production-adjusted baseline). Existing calculated baseline arrangements will be used where facilities do not use a *prescribed (annually adjusted) production variable*.

Figure 4: Annually-updated production-adjusted baseline



The Government will identify which *prescribed production variables* will be used for annually-updated production-adjusted baselines. These eligible *production variables* will be as closely aligned to outputs as possible.

The Amendment Rule establishes two new schedules setting out:

1. *prescribed (annually adjusted) production variables* (set out in Schedule 2) that facilities can use for baselines that update **annually** with actual production; and
2. *prescribed (fixed) production variables* (set out in Schedule 3) that facilities can use for baselines that update **once** for actual production.

Where possible, *prescribed production variables* will be annually adjusted. Schedule 3 will accommodate instances where an annually adjusted production variable is not practical or appropriate.

Default emissions intensity values for *prescribed production variables* will also be set out in Schedules 2 and 3.

To assist the transition to the new approach, facilities can move to a production-adjusted baseline following the first, second or third year of a calculated baseline period. Previously, a facility had to wait until the end of the calculated baseline period (i.e. following the third year). In addition, facilities electing to use *default emissions intensity* values can move directly from a reported baseline to an annually-updated production-adjusted baseline. No calculated baseline application is required in these cases.

Reporting

Facilities with annually-updated production-adjusted baselines will report production through the National Greenhouse and Energy Reporting Scheme in the same way they currently report greenhouse gas emissions and energy information. Data reported under the National Greenhouse and Energy Reporting Scheme is protected by strong data disclosure restrictions.

Annually-updated production-adjusted baselines will be set based on actual annual production data reported by 31 October each year, to coincide with emissions reporting.

Baseline adjustments

The Amendment Rule ensures all facilities have access to multi-year monitoring, provided the Clean Energy Regulator is satisfied there are no compliance risks. The deadline for applications is extended from 31 October until 1 February in the year following the first year of the multi-year monitoring period. These changes give facilities exceeding their baselines more flexibility in managing variations in their emissions, for example due to production cycles or maintenance requirements. The Amendment Rule requires applications to provide an estimate of the number of Australian carbon credit units likely to be used to comply with the Act for the multi-year monitoring period. The Clean Energy Regulator will use this information to publish aggregated information about the future demand for Australian carbon credit units.

The Amendment Rule removes the emissions intensity test and the significant expansion criteria for calculated baselines. These flexibility mechanisms are not necessary where facilities can access a *transitional calculated baseline criteria* to reset their baseline and annually-updated production-adjusted baselines, if using a *prescribed (annually adjusted) production variable*. The inherent emissions variability provision is retained.

Future reviews

Through the 2017 review of climate change policies, the Government committed to review the Safeguard Mechanism by 2020 and then as part of Australia's five-yearly review and refine cycle under the Paris Agreement.

The Amendment Rule updates the baseline setting approach for existing facilities. The Government will consider the policy for new investments as part of the review by 2020. In line with the 2017 review of climate change policies commitment, the review will also consider the role of the Safeguard Mechanism, including consideration of any updates to rules and regulations in the context of progress towards Australia's 2030 target. This will include when and how international units can be used and under what conditions, and appropriate lead times.

Summary of changes to the Safeguard Mechanism framework

Table 1 summarises the updated policy settings to the Safeguard Mechanism enabled by the Amendment Rule, against the policy settings in the Principal Rule.

Table 1: Summary of changes to the Safeguard Mechanism framework

Principle Rule	Amendment Rule
Objective	
Duty to avoid excess emissions: covered facilities must keep net emissions at or below baseline emissions levels.	No change.
Coverage	
Coverage: the Safeguard Mechanism applies to facilities with direct emissions of more than 100,000 tonnes of carbon dioxide equivalence.	No change.
Baselines for existing facilities	
Reported baselines: baselines for existing facilities reflect the highest level of reported emissions over the historical period 2009-10 to 2013-14.	Reported baselines expire on 1 July 2020.
Calculated baseline: calculated baselines reflect an audited emissions-intensity and production forecast provided by the facility operator. Following the forecast period, the facility must apply for a production-adjusted baseline to 'true-up' (adjust) the calculated baseline estimate based on actual performance.	Retained. Facilities have the option to use *default emissions intensity* values published by the Government to avoid forecasting and auditing cost. Facilities that choose to use defaults can avoid the calculated baseline process and move directly from a reported to a production-adjusted baseline.
Criteria for a baseline adjustment: **Initial calculated:** To accommodate circumstances where historical emissions are not representative of future business-as-usual emissions performance, baselines could be adjusted if facilities exceed their	**Transitional calculated:** New criteria introduced to allow all facilities to apply for a calculated baseline.

baseline in the Safeguard Mechanism's first year. **Significant expansion:** To support economic growth, baselines could be increased if a facility undertakes a significant expansion, defined as an increase in maximum productive capacity of more than 20 per cent. **Emissions intensity test:** to accommodate incremental growth, baselines could be temporarily increased in any year where expanding production is accompanied by an emissions intensity improvement. **Natural resource variability:** baselines can be adjusted to accommodate emissions variability associated with the extraction of a natural resource or reserve.	Significant expansion and emissions intensity test removed. Where practical, baselines are updated each year to reflect actual production, making these criteria redundant. The natural resource variability criteria is retained.
Baselines for new investments	
Before 2020: new entrants can apply for a calculated baseline. **After 2020:** baselines for new investments after 2020 will encourage facilities to achieve and maintain best practice.	No change. No change.
Compliance	
'Net emissions' approach: allows businesses to use Australian carbon credit units to offset emissions.	No change.
Multi-year monitoring: allows a facility to exceed its baseline in one year, so long as average net emissions over two or three years are below baseline.	Now easier to access.
Exceptional circumstances: an exemption will be available for facilities whose emissions are the direct result of exceptional circumstances, such as a natural disaster or criminal activity by another party.	No change.

Details of the sections in the Amendment Rule

1 Name

The name of the Amendment Rule is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019*.

2 Commencement

The Amendment Rule commences the day after it is registered.

3 Authority

The Amendment Rule is made under subsection 22XS of the *National Greenhouse and Energy Reporting Act 2007*. The power to make rules under this subsection includes the power to amend or revoke rules that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

4 Schedules

This section provides for the Principal Rule to be amended by each of the items in Schedule 1. The intent of changes made through the Amendment Rule is set out below.

Schedule 1 – Amendments

Definitions

Section 4 is amended to allow broader changes in the Amendment Rule aimed at making the Safeguard Mechanism simpler and fairer to take effect. In some cases (Items 2 and 5), definitions are updated to address minor issues identified by facilities and the Clean Energy Regulator from the scheme's first year of operation.

1. Section 4 (paragraph (e) of the definition of *baseline determination*)

Landfill facilities are able to transition to baselines using the baseline setting approach for new landfills in the Principal Rule. The Amendment Rule enables this change by allowing landfill facilities to apply for baselines set using gas capture efficiency rates before 1 July 2020. This item updates the definition to remove 'benchmark' which is a term used for baselines that apply from 1 July 2020.

2. Section 4 (paragraph (d) of the definition of *baseline intensity comparison year*)

The definition of *baseline intensity comparison year* is amended to refer to Subdivision 6 of Division 2 of Part 3 of the Principal Rule. The purpose of this amendment is to correct a typographic error, as the definition originally referred to Part 4.

3. Section 4 (definition of *Benchmark Emissions-Intensity Index*)

This item amends the definition of *Benchmark Emissions-Intensity Index* in section 4 to replace the word 'benchmark' with 'prescribed'. Recognising that landfill baselines can be used by landfill facilities prior to 1 July 2020, item 3 uses the new terminology for the gas capture efficiency rate used to calculate these baselines.

4. Section 4 (definition of *benchmark facility*)

In the Principal Rule, the definition of benchmark facility applies when a benchmark-emissions baseline is adjusted using the emissions intensity test. Item 4 repeals the definition to reflect the expiration of the emissions intensity test prior to when benchmark-emissions baseline determinations begin. This definition is therefore redundant.

5. Section 4 (at the end of the definition of *by-product*)

This item clarifies the definition of *by-product* to remove any existing ambiguity with the definition. The amendments ensure that only minor outputs can be defined as a by-product, by clarifying that a by-product means a product that contributes less than 10 per cent to a facility's revenue.

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

Production variables and emissions intensity values are central to determining a baseline determination under a calculated-emissions baseline and a production-adjusted baseline approach. Emissions intensity values are expressed as emissions per unit of *production variable* (see **Figure 3**). Calculated baseline applications currently require facilities to identify one or more *production variables*, then forecast their production and emissions-intensity. The Amendment Rule gives facilities the option to use *default emissions intensity* values in place of *estimated emissions intensity* values (see Item 8) to help lower the cost of baseline applications.

This item inserts a definition for *default emissions intensity*. *Default emissions intensity* values will be calculated by the Government and set out in Schedules 2 and 3, alongside *prescribed production variables* (see Item 11).

7. Section 4 (paragraphs (e) and (f) of the definition of *details*)

The definition of *details* applies when the Clean Energy Regulator publishes *details* of baseline determinations on its website. Paragraph (e) and (f) of the definition of *details* are repealed and substituted, and a new paragraph (fa) is added, to include if the *transitional calculated baseline criteria* was met and if a baseline emissions number is dependent upon the production of a *prescribed (annually adjusted) production* variable in each financial year.

The purpose of paragraph (fa) is to publish whether a facility's baseline updates annually for production.

8. Section 4 (definition of *estimated emissions intensity*)

Section 4 is amended to define *estimated emissions intensity*. This term refers to an existing concept under the Principal Rule, but has been defined in the Amendment Rule to distinguish it from *default emissions intensity* values. An *estimated emissions intensity* value is a site-specific forecast of the emissions intensity of a production variable for the purpose of a calculated baseline application. As per the Principal Rule, the year for the forecast is selected in accordance with paragraph 27(1)(c).

9. Section 4 (definition of *landfill baseline emissions formula*)

This item removes the word 'benchmark' for the same reason identified in item 1.

10. Section 4 (definition of *landfill-benchmark baseline determination*)

This item is removes the word 'benchmark' for the same reason identified in item 1.

11. Section 4 (definition of *prescribed production variable*)

This item inserts a definition for *prescribed production variable* and the two sub-categories of this *prescribed production variable*: *prescribed (annually adjusted) production variable* and *prescribed (fixed) production variable*.

A *prescribed (annually adjusted) production variable* refers to a *production variable* that will be set out in Schedule 2. Facilities that use these *prescribed production variables* transition to a production-adjusted baseline that updates annually for actual production. The definition sets out the ways in which *prescribed (annually adjusted) production variables* can be determined, including:

- if it is for a calculated baseline commencing before 1 July 2020, or using the inherent emissions criteria, and the responsible emitter chooses a *prescribed (annually adjusted) production variable*;
- if it is for a calculated baseline commencing before 1 July 2020, or using the inherent emissions criteria, and the responsible emitter has selected a *production variable* for their facility that is materially the same as a *prescribed (annually adjusted) production variable* in Schedule 2 (without the Regulator approving this under new subsection 5(1B)); and
- if a responsible emitter has chosen a production variable in accordance with the requirements set out in the *Benchmark Emissions-Intensity Index* that is the same a *prescribed (annually adjusted) production variable* in Schedule 2.

The second category will be relevant for any facility currently on a calculated baseline that uses the same metrics as are ultimately prescribed in Schedule 2. Those facilities can move to a production adjusted baseline without needing to reapply for a calculated baseline. The third category ensures that baselines using benchmark *production variables* can also adjust annually for production.

A *prescribed (fixed) production variable* refers to a *production variable* that will be set out in Schedule 3. After the calculated baseline period, facilities that use these *production variables* can apply for a production-adjusted baseline, which updates the baseline once using actual production from the calculated baseline period, then remains fixed.

A *prescribed production variable* refers to *production variables* determined by the Government set out in Schedules 2 and 3.

12. Section 4 (definition of *production assessment period*)

The definition of *production assessment period* is repealed and substituted to support the inclusion of new paragraph 40(1)(aa), which allows production-adjusted baselines to commence before the end of a calculated baseline period. This item inserts new paragraph (c). The amended definition supports other amendments that allow facilities to apply for a production-adjusted baseline determination after the first year of a calculated-emissions baseline determination. This item also inserts new paragraph (d). This paragraph applies if a facility with an annually adjusted production-adjusted baseline, as per paragraph 40(1)(ab), applies for a calculated baseline using the inherent emissions variability criteria. In line with paragraph 25(11)(d), the facility's production assessment period would be the first three years of the production-adjusted baseline determination.

The intent of paragraphs (a), (b) and (e) remains the same as the Principal Rule.

13. Section 4 (definition of production variable)

The concept of a *production variable*, which is generally the quantity of an output, intermediate product or input, is central to the determination of a baseline emissions number under most baseline determinations, other than reported baselines. The definition of *production variable* is amended to allow the use of *prescribed production variables* for determining a baseline emissions number. The ways in which *production variables* are worked out is set out below.

- For calculated baselines commencing before 1 July 2020, or made using the inherent emissions criteria, responsible emitters may choose to work out their *production variables* in accordance with section 5 (see paragraph (a)(i) of the definition of *production variable*). The emissions intensity test is also performed using *production variables* worked out under section 5 (see paragraph (a)(iii) of the definition).

- For a production-adjusted baseline that follows a calculated baseline commencing before 1 July 2020, or made using the inherent emissions variability criteria, responsible emitters work out their *production variables* in accordance with section 5, through the calculated baseline process 5 (see paragraph (a)(ii) of the definition).

- For all other baseline determinations, responsible emitters must use Schedules 1, 2 or 3 in the rule as set out in the definition, with Schedule 1 relevant to benchmark baselines (see paragraph (b) of the definition), and Schedules 2 and 3 applicable for baselines that are not benchmark baselines (see paragraphs (c) and (d) of the definition).

14. Section 4 (definition of *relevant benchmark emissions intensity*)

This item amends the definition of *relevant benchmark emissions intensity* to provide clarification that tonnes of carbon dioxide equivalent relates to the tonnes of covered emissions per unit of *production variable*.

15. Section 4 (definition of *transitional calculated baseline criteria*)

The Amendment Rule allows all facilities to apply for a new calculated baseline from 1 July 2018. The criteria for this calculated baseline determination to be made is outlined in *section 26A, transitional calculated baseline criteria* (see item 35).

Production variables

Production variables are identified in accordance with the rules in section 5 when covered by paragraph (a) of the definition of *production variable*. Facilities will have the option to use *prescribed production variables* when applying for a calculated baseline commencing before 1 July 2020. From 1 July 2020 a facility must use the *prescribed production variables* and *default emissions intensity* values set out in Schedule 2 and 3, except for calculated baselines made using the *inherent emissions variability criteria*. Amendments to sections 5 and 6 enable these changes, and ensure there is no double counting between *prescribed production variables* and site specific *production variables* and their associated emissions.

16. Subsections 5(1), (2) and (3)

Subsections 5(1), (2) and (3) are replaced to allow facilities to use *prescribed production variables* in place of, or in conjunction with site specific *production variables*. All *production variables* must be identified in accordance with the rules in section 5. Subsections 5(2) to 5(10) relate to the identification of production variables that are not *prescribed production variables* (also called 'site specific' *production variables*). All *production variables* are to be identified for the purposes of determining a calculated-emissions baseline and a production-adjusted baseline.

In line with paragraph (a) of the amended definition of *production variable* (see item 13), section 5 continues to focus on identifying *production variables* used in making calculated baseline determinations, but is amended to specify that:

- site specific *production variables* can be used in calculated baselines prior to 1 July 2020, or on the basis of the *inherent emissions variability criteria*
- prior to 1 July 2020, a facility can also elect to use a *prescribed production variable*
- after 1 July 2020 a facility must define their *production variable(s)* in accordance with those listed in Schedule 2 or 3, or Schedule 1 if they are a new facility—but this requirement does not apply to facilities using the inherent emissions variability criteria.

New subsection 5(1A)(a) allows facilities to identify *prescribed production variables* in their calculated and production-adjusted baseline determinations, if all of their chosen *production variables* are prescribed.

If a facility wishes to calculate their baseline using a site specific *production variable* with a *prescribed production variable*, the site specific *production variable* must meet the requirements of paragraph 5(1A)(b):

- The site specific *production variable* is an output unrelated to any *prescribed production variables* produced at the facility, and the site specific *production variable* must only relate to that output and the associated emissions. This is to help ensure the site specific *production variable* is distinct from any *prescribed production variables* at the facility and the emissions are not allocated to multiple *production variables*.

- The covered emissions of this site specific *production variable* must exceed five per cent of a facility's total emissions to ensure practicality for a facility in defining their *production variables* and allocating emissions accordingly. This is to help ensure the site specific *production variable* contributes materially to the facility's emissions profile.

- The site specific *production variable* must meet the rest of *section 5* requirements. This retains the approach in the Principal Rule for identifying site specific *production variables*.

In conjunction with new subsection 6(8A) (see item 18), new subsection 5(1A) helps prevent double counting between the emissions allocated to each *production variable*.

New subsection 5(1B) ensures that a site-specific *production variable* cannot be materially the same as a *prescribed production variable*, unless it is approved by the Clean Energy Regulator. The Clean Energy Regulator would be expected to consider why an exception to the rule is appropriate before granting such an approval. Approvals might also be sought for clarity if there is any doubt about whether two variables are materially the same. Decisions in relation to making baseline determinations are reviewable under section 56 of the *National Greenhouse and Energy Reporting Act 2007* and this would include any such approvals.

The intent of subsection 5(2*)* remains the same as in the Principal Rule. If a facility has only one output variable, then that output variable is the *production variable* for the facility. It is amended to clarify the rules for determining *production variables* for situations where *prescribed production variables* are used and where facilities are undertaking emissions-intensive trade exposed activities. If a facility has only one output variable, then that output variable is the *production variable* for the facility. However, under the Amendment Rule, if the facility is carrying out one or more emissions-intensive trade-exposed activities (as per subsection 5(10) of the Rule and as defined in the *Renewable Energy (Electricity) Act 2001*), then these activities can be the facility's *production variable(s)*. This item also amends subsection 5(2) to include new subsection 5(1A) as one of the exceptions. This allows facilities to use *prescribed production variables* where the requirements in subsection 5(1A) are met. For example, an output could be listed as a *prescribed production variable* with particular measurement requirements. The same output could not be identified as a site specific *production variable* with different measurement requirements without the approval of the Clean Energy Regulator (see 5(1B)). The Clean Energy Regulator could decide to provide an approval if the alternative measurement requirements were robust and there were

significant costs for the project proponent in applying the prescribed measurement requirements.

The intent of subsection 5(3) remains the same as in the Principal Rule. If a facility has more than one *output variable*, then each of those variables is a *production variable* unless an exception applies. An amendment to subsection 5(3) removes references to subsection 5(9). If the facility has no discernible outputs (as defined by subsection 5(9)), then subsection 5(3) could never apply. Subsection 5(3) is also amended to include reference to new subsection 5(1A). This would allow a facility to use a single *prescribed production variable* where it represents the outputs from multiple *output variables*.

17. Paragraph 6(1)(a)

Under the Amendment Rule, facilities can use a combination of site specific and *prescribed production variables* when applying for a calculated baseline. This item is amended to ensure the calculation of an emissions intensity value also meets the requirements of new subsection 6(8A), which relates to facilities using both types of *production variables*.

18. After subsection 6(8)

New subsection 6(8A) is intended to avoid double counting of emissions when identifying emissions intensity values for *production variables*, where a mix of default and site specific values are used. It ensures the emissions included in a site specific *emissions intensity* value are not also included in a *default emissions intensity* value. The Government will publish information on what kinds of emissions are included in the calculation of each *default emissions intensity* value.

19. Paragraph 6(9)(b)

Under the Amendment Rule, applications for the emissions intensity test are limited to 2017-18 and 2018-19. As benchmark baselines only exist from 1 July 2020, there will be no overlap in the timing of these policies. In line with this, and recognising the definition for benchmark facility has been repealed (see item 4), paragraph 6(9)(b*)* is amended to remove the phrase ‘and the facility is not a benchmark facility’ as it is no longer relevant.

20. Subsection 6(10)

This item removes subsection 6(10). This subsection has been repealed recognising that the Amendment Rule allows, and in some instances requires, facilities to adjust the method used to calculate emissions intensity (see new paragraph 27(1)(j)). In the Principal Rule, this subsection was intended to ensure that the emissions intensity calculation captures actual changes in emissions intensity rather than changes in the method used to calculate emissions intensity. As the emissions intensity test expires from financial year beginning 1 July 2019 this subsection is no longer required, as this subsection will no longer be in use.

21. Paragraph 6(11)(b)

This item is amended to remove references to a benchmark facility, as per the intent in item 4 and item 19.

Expiring reported-emissions baseline determinations

Reported-emissions baseline determinations expire on 30 June 2020 for all facilities that are not grid-connected electricity generators. By then, reported baselines could be more than a decade out of date. The Amendment Rule ensures the updated policy also works for landfill facilities and does not impact on grid-connected electricity generators.

22. Paragraph 13(b)

The Safeguard Mechanism treats emissions from landfills differently to emissions from other sources due to the unique circumstances of how these emissions are generated. Emissions from waste deposited in a landfill before 1 July 2016 are termed *legacy emissions*. *Legacy emissions* are not covered emissions for the purposes the Safeguard Mechanism (as per 7(1)(b) and 7(2) of the Principal Rule). Under the Principal Rule, *legacy emissions* are ignored when determining if the annual emissions from a landfill exceed the *designated large facility* threshold specified in section 8 of the Principal Rule.

Reported-emissions baseline determinations for landfill facilities make no distinction on when the waste was deposited—these baselines therefore include both *legacy emissions* and non-legacy emissions. This is consistent with the policy intent of reported baselines as they are based on historic data. This item amends paragraph 13(b) to retain this policy intent while ensuring that only non-legacy emissions are included in other baseline types, including calculated baselines. This approach will ensure that the net emissions number for landfill facilities includes emissions that are consistent with the emissions used to determine baselines for landfill facilities, once reported baselines expire.

While landfill facilities may choose to transition from a reported to a calculated baseline, due to the unique way emissions are generated, it is anticipated most landfill facilities will transition to a baseline using gas capture rates (see item 1).

23. Paragraph 14(2)(a)

Recognising reported baselines expire on 1 July 2020, this item amends paragraph 14(2)(a) to clarify that the Clean Energy Regulator can only make a reported-emissions baseline determination for an inter-state transport facility using the national facility definition, before 1 July 2020. After this date, reported baselines no longer exist, including for an inter-state transport facility using the national facility definition.

24. Paragraph 18(3)(b)

Paragraph 18(3)(b) is repealed and substituted to expire reported-emissions baseline determinations on 30 June 2020 for all facilities that are not grid-connected electricity generators (paragraph 18(3)(c)). This enables the transition of facilities from reported baselines to calculated baselines (and ultimately, production-adjusted baselines).

This item also allows for electricity generators to transition to calculated baselines should they cease to be a grid-connected generator or in the unlikely event the sectoral baseline is exceeded.

- New paragraph 18(3)(d) expires an electricity generator's reported baseline if it ceases to be grid-connected after 1 July 2020.
- New paragraph 18(3)(b) expires reported baselines for all grid-connected electricity generators if the sectoral baseline is exceeded.

This means the policy for grid-connected electricity generators has not changed—individual grid-connected generators will not have facility-level obligations unless the aggregate annual emissions from the sector exceeds the sectoral baseline of 198 million tonnes of carbon dioxide equivalent. This is unlikely to occur in the near term, noting the Department's 2018 projections indicate that electricity sector emissions are expected to consistently remain well below the sectoral baseline to 2030. The Government will consult well in advance, for instance on potential *prescribed production variables* and *default emissions intensity* values for these facilities, should circumstances change and projections indicate that the sectoral baseline could be exceeded.

25. Section 20 (heading)

Under the Principal Rule, after 1 July 2020, new facility baselines, and baseline increases for significant expansions, are calculated using an emissions intensity value calculated by the Government, known as a benchmark. As per item 24, reported-emissions baseline determinations expire on 30 June 2020. Since reported baselines will expire before benchmark baselines come into effect, it will not be possible for a transport reported-emissions baselines determination to be varied to incorporate a benchmark-emissions baseline determination. As such, the heading of section 20 is amended to omit "or benchmark-emissions baseline determination".

26. Subsections 20(1) and (2)

Subsections 20(1) and (2) are amended as per the intent in item 25.

Transitioning to calculated-emissions baseline determinations

The Amendment Rule allows all *designated large facilities* to apply for a calculated baseline by introducing the *transitional calculated baseline criteria*. This includes facilities currently on a calculated baseline. The approach of transitioning facilities to calculated baselines provides for baselines to be set in a more consistent way, using up-to-date data.

27. At the end of the subsection 22(1)

New paragraph 22(1)(e) is added so a responsible emitter can apply for a calculated-emissions baseline determination using the *transitional calculated baseline criteria*.

28. At the end of the subsection 23(4)

A note is added to provide clarity to the existing term 'reasonably expected to exceed', which is used throughout the Principal Rule. This term is used in the context of meeting criteria for a baseline determination. The criteria are applied at the time of the decision. This means reasonably expected to exceed, in respect of emissions for a financial year, does not include the circumstances when actual emissions for a financial year are known and do not exceed the relevant amount. This is reflected in an amendment to paragraph 30(2)(c) which now references 'at the time of the decision' (see item 43).

29. Subsection 23(5)

Subsection 23(5) is amended to provide clarity to the existing paragraph. It is amended to ensure the 'has not' is read in respect of 'has not changed' and 'has not caused' only. The intent of the subsection remains the same. Facilities must not deliberately increase or intend to increase their covered emissions reported under the Act for the purpose of meeting this criteria.

30. At the end of subsection 24(8)

This item inserts a note to provide clarity to the existing term 'reasonably expected to exceed', as per the intent in item 28.

31. Subsection 24(10)

Amendments to subsection 24(10) limit the availability of the significant expansion criteria for calculated baselines commencing 2016-17 and 2017-18. The criteria is no longer needed in 2018-19 and 2019-20, as all facilities will have the opportunity to apply for a calculated-emissions baseline using the *transitional calculated baseline criteria* (see item 35).

32. Subsection 25(4)

Subsection 25(4) is amended to insert a comma to correct a grammatical error. The intent of the subsection remains the same as in the Principal Rule. In the first year of the period to be

covered by the proposed calculated baseline determination the facility must exceed, or be reasonably expected to exceed, the baseline that currently applies to the facility.

This item also inserts a note after subsection 25(4) to provide clarity to the existing term 'reasonably expected to exceed', as per the intent in item 28.

33. Subsection 25(5)

Under the Principal Rule, facilities in the resource sectors have up to two opportunities to apply for a calculated baseline, provided that the final application relates to a forecast period beginning before 1 July 2025. These facilities must meet the *inherent emissions variability criteria* to access these baseline adjustments. The operation of the *inherent emissions variability criteria* remains unchanged.

This item makes minor amendments to subsection 25(5) to clarify how a facility can demonstrate that the properties of the natural resource are the primary reason for exceeding its baseline. For the purposes of demonstrating eligibility, this item clarifies the first financial year to be covered by the calculated baseline should be compared against the most recent *baseline comparison year* (see item 34). This provides a consistent basis for facilities to demonstrate that an exceedance identified under 25(4) is primarily due to the properties of the natural resource or natural gas reserve.

34. At the end of section 25

Subsection 25(11) is inserted to explain the term baseline comparison year used in subsection 25(5) (see item 33).

The *baseline comparison year* depends on which baseline determination is the most recent for the facility. If the most recent baseline determination is:

- a reported-emissions baseline, the *baseline comparison year* is the financial year with the highest emissions in the period 2009-10 to 2013-14;
- a calculated-emissions baseline, and a responsible emitter has reported against the financial year determined under paragraph 27(1)(c) for that determination, the *baseline comparison year* is that financial year;
- a calculated-emissions baseline, and a responsible emitter has not reported against the financial year determined under paragraph 27(1)(c) for that determination, the *baseline comparison year* is the first financial year of that determination. This ensures the baseline comparison year is always historical and avoids the need to compare against a forecast;
- a production-adjusted baseline, the *baseline comparison year* is the financial year used to determine the baseline emissions number for that baseline.

This is similar to the approach used to define a 'baseline intensity comparison year' for the emissions intensity test in the Principal Rule.

Section 25 examples

Facility A applies for a calculated baseline using the *inherent emissions variability criteria* covering the period 1 July 2018 to 30 June 2021. In accordance with the requirements in paragraph 27(1)(c), the baseline setting year for Facility A is the financial year with the highest expected production of the primary production variable. In this case, the baseline setting year is 2020-21. Facility A applies for a second calculated baseline using the *inherent emissions variability criteria* to commence 2022-23. As a calculated baseline has been made and Facility A has already submitted its report under the National Greenhouse and Energy Reporting Scheme for 2020-21—as per paragraph 25(11)(b)—the *baseline comparison year* is the baseline setting year of the first calculated baseline (i.e. 2020-21).

Facility B applies for a calculated baseline using the *inherent emissions variability criteria* covering the period 1 July 2018 to 30 June 2021. Facility B's baseline setting year is 2020-21. Facility B applies for a second calculated baseline using the *inherent emissions variability criteria* to commence 2019-20. As a calculated baseline has been made, but Facility B has not yet reported its emissions for 2020-21—as per paragraph 25(11)(c)—the baseline comparison year is the first financial year of the first calculated baseline (i.e. 2018-19).

35. After section 26

This item inserts section 26A to give Safeguard facilities access to new criteria for making a calculated-emissions baseline determination. This operates in conjunction with expiring reported baselines (see item 24).

Section 26A sets out the criteria for a transitional calculated baseline, which gives all facilities at least one opportunity to apply for a calculated baseline from 1 July 2018 (subsection 26A(7)). See **Table 2** for an overview of calculated baseline criteria availability.

Table 2: Calculated baseline criteria availability

Baseline commencement	Standard calculated baseline period	Application deadline	Calculated baseline criteria availability
1 July 2017	2017-18 to 2019-20	31 October 2018	New facility (s. 23), significant expansion (s. 24), inherent emissions variability (s. 25)
1 July 2018	2018-19 to 2020-21	31 October 2019	New facility (s. 23), inherent emissions variability (s. 25), transitional calculated baseline (s. 26A)
1 July 2019	2019-20 to 2021-22	31 October 2020	New facility (s. 23), inherent emissions variability (s. 25), transitional calculated baseline (s. 26A)

A facility must meet all the criteria in section 26A to be eligible under the *transitional calculated baseline criteria* (subsection 26A(1)). The facility must have emitted, or be reasonably expected to emit, more than 100,000 tonnes of covered emissions in any of the first three financial years to be covered by the proposed calculated-emissions baseline determination (subsection 26A(3)). This ensures that baseline determinations are only made for facilities above the *designated large facility* threshold. Facilities must not deliberately increase or intend to increase their covered emissions reported or calculated under the Act for the purpose of meeting this criteria (subsection 26A(4)).

Each facility can only apply using the *transitional calculated baseline criteria* once (subsection 26A(2)) and it does not apply to new facilities covered by the Safeguard Mechanism after 1 July 2020, as new facilities after 1 July 2020 must use benchmark baselines (subsection 26A(6)).

Applications made under section 26A for baselines during the transition period (commencing on either 1 July 2018 or 1 July 2019) may choose to use site-specific *production variables* and *estimated emissions intensity* values, as per the current arrangements for calculated baselines.

Alternatively, applications made under section 26A may nominate *prescribed production variables*. During the transition period (2018-19 and 2019-20), facilities using a *prescribed production variable* can choose to use either an *estimated emissions intensity* value or a *default emissions intensity* value from new Schedules 2 or 3.

After the transition period (from 1 July 2020), facilities making an application under section 26A must use *prescribed production variables* and *default emissions intensity* values (refer subsection 26A(5), and paragraphs 27(1)(d) and 30(2)(e)).

In line with item 43, facilities making a calculated baseline application using the *inherent emissions variability criteria* under section 25 can continue to use *estimated emissions intensity* values after the transition period.

In line with item 24, grid-connected electricity generators can only apply for a *transitional calculated baseline* in the event that the sectoral electricity baseline is exceeded (subsection

26A(8)). If this occurs after 2020, grid-connected generators, like all other facilities, must use *prescribed production variables* and *default emissions intensity* values.

Table 3 (under the explanation for item 105) provides an overview of compliance dates.

Section 26A examples

Facility A currently has a calculated baseline covering the three year period 2017-18 to 2019-20. Facility A chooses to retain its existing calculated baseline for the full three year period—it does not have to apply for a *transitional calculated baseline*. In 2020-21 Facility A transitions to a production-adjusted baseline, using the estimated emissions intensity value used in its application for the calculated baseline that commenced on 1 July 2017.

Facility B emits over 100,000 tonnes of carbon dioxide equivalent emissions per year. It reasonably expects to exceed its reported baseline in 2019-20 but would not have been eligible for a baseline increase using the existing calculated baseline criteria (e.g. significant expansion or inherent emissions variability criteria). Facility B applies using the *transitional calculated baseline criteria* (under new section 26A) by 31 October 2020 for the calculated baseline to commence on 1 July 2019. Facility B elects to use a site-specific *production variable* and an *estimated emissions intensity* values in its application.

Facility C has a calculated baseline covering the three year period 2016-17 to 2018-19. It expects both its production and emissions to peak in 2020-21. Following the calculated-emissions baseline period, instead of applying for a production-adjusted baseline, the facility applies for a calculated baseline using the *transitional calculated baseline criteria* (under new section 26A) covering the three year period 2019-20 to 2021-22. At the end of the new calculated baseline period, Facility C transitions to a production-adjusted baseline.

Facility D currently has no obligations under the Safeguard Mechanism as it does not emit over 100,000 tonnes of carbon dioxide equivalent emissions a year. In 2022-23, this facility emits 110,000 tonnes of scope 1 emissions. Because Facility D has been reporting its emissions under the National Greenhouse and Energy Reporting Scheme it does not meet the new facility criteria set out in section 33. Under the new section 26A, Facility D can apply for a *transitional calculated baseline* using *prescribed production variables* and *default emissions intensity* values (set out in Schedules 2 and 3).

36. At the end of the paragraph 27(1)(a)

This item adds new subparagraph 27(1)(a)(v) to allow a facility to apply under the *transitional calculated baseline criteria* and provide supporting evidence to demonstrate they meet the criteria.

37. Paragraphs 27(1)(d), (e), (f) and (g)

Applications for calculated baselines must include the information specified in section 27. This item amends paragraphs 27(1)(d), (e), (f) and (g) to clarify the respective requirements of facilities nominating to use either an *estimated emissions intensity* value or a *default emissions intensity* value.

A calculated baseline application must either use an *estimated emissions intensity* or a *default emissions intensity* for each *production variable* identified under paragraph 27(1)(c) (paragraph 27(1)(d) and (e)). This item streamlines the information required in applications nominating defaults. If a facility nominates to use a *default emissions intensity* value for a *production variable*, evidence supporting the emissions intensity of that *production variable* is no longer required. This makes applications simpler and less costly. Supporting evidence is still required for *estimated emissions intensity* values (subparagraphs 27(1)(f) and (g)).

38. Paragraph 27(1)(i)

This item replaces paragraph 27(1)(i) with paragraphs 27(1)(i), (j) and (k). In line with item 37, this item identifies the different information to be provided by facilities using *default* or *estimated emissions intensity* values in an application.

Revised paragraph 27(1)(i) clarifies that only facilities using *estimated emissions intensity* values are required to provide historical emissions data that supports the estimation of its *estimated emissions intensity* values. In this way these facility must demonstrate the connection between historical data and estimates. This is consistent with the requirements under the Principal Rule. However, historical production data is necessary for all applicants to ensure that the future production forecasts used to set the *baseline emissions number* are reasonable.

New paragraph 27(1)(j) requires a statement that the methods used to calculate an *estimated emissions intensity* value are based on the methods that will be used to report emissions under the National Greenhouse and Energy Reporting Scheme for the facility. This recognises the need for consistency. For example, if a 'method 1' approach from the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* is used to report a facility's emissions under the National Greenhouse and Energy Reporting Scheme, the same method should also be used to estimate the facility's baseline emissions number. Any differences should be explained in the statement to the Clean Energy Regulator. There are serious consequences under the Criminal Code for providing false or misleading information in any such statements and the provision of false or misleading information could result in a remaking of a baseline determination under section 57 of the Principal Rule.

New paragraph 27(1)(k) requires an explanation of why the chosen *production variables* relate to the activities of the facility. This is to assist the Clean Energy Regulator to understand the activities undertaken at the facility and help ensure *production variables* have been correctly identified.

39. Subsection 27(3)

This item amends subsection 27(3) so it also applies to *prescribed production variables*. The intent of the subsection remains the same for site specific *production variables*: the quantity of the *production variable* must be estimated on the 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 (paragraph 27(3)(a)). This requirement does not apply to production variables that are service units or *prescribed production variables*. If a *prescribed production variable* is used, new paragraph 27(3)(b) requires facilities to use the measurement requirements or procedures set out for that *production variable* in Schedule 2 or 3.

This item also includes new subsection 27(4), which provides a definition for *estimated emissions intensity*. This is an existing concept in the Principal Rule, but is defined in the Amendment Rule to ensure it is distinct from *default emissions intensity* values. An *estimated emissions intensity* value is estimated using site-specific production and emissions data for the year determined under paragraph 27(1)(c). Data from the year where the primary *production variable* has the highest expected production (as per paragraph 27(1)(c)) is used to set the *estimated emissions intensity* value.

40. Subsection 28(2)

In the Principal Rule, each application for a calculated baseline is accompanied by an audit report. This item amends subsection 28(2) to ensure the auditing framework covers applications using the *transitional calculated baseline criteria.* The audits must be conducted in accordance with the relevant requirements for limited and reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

In relation to reasonable assurance matters, the audit report must make a conclusion as to whether the relevant calculated baseline criteria (that is, the *new facility criteria*, *significant expansion criteria*, *inherent emissions variability criteria*, *initial calculated baseline criteria* or *transitional calculated baseline criteria*) have been met in all material respects (paragraph 28(2)(a)). The intent of subsection 28(2)(a) is unchanged but has been amended to include reference to the *transitional calculated baseline criteria*. This assumes the auditor will have access to the applicant's explanation of how the criteria has been met. Consistent with the Principal Rule, the audit report must contain a conclusion as to whether the application has met the application requirements (subparagraph 28(2)(b)(i)) and a conclusion as to whether the application has been presented fairly (subparagraph 28(2)(b)(ii)). A fairly presented application is, among other things, comprehensive, does not withhold important information and presents data in a consistent and transparent manner.

This item adds new paragraph 28(2)(ba) to ensure a reasonable assurance matter includes whether each *production variable*, either site specific or *prescribed*, has been correctly identified.

The limited assurance matters focus on those items for which only a limited assurance can be made because the matters involve estimates and projections. There are no restrictions around the matters the audit report must address. However, the report must have regard to whether the applicant's assumptions provide a reasonable basis for the estimates, whether the estimates are reasonable and whether the estimates are supported by any relevant historical data that is fairly stated (paragraph 28(2)(c)). Audits do not need to provide assurances for emissions intensity estimates where *default emissions intensity* values are used. This reduces the scope and therefore the associated costs of these audits, while retaining the integrity of the process.

41. Subsection 28(3)

This item amends subsection 28(3) to ensure the audit report makes a conclusion regarding paragraph 28(2)(ba) (see item 40).

42. Paragraph 30(2)(a)

Through subsection 30(2) in the Principal Rule, the Clean Energy Regulator makes or refuses to make calculated baselines based upon its assessment of the application, audit report and other relevant material. This item amends paragraph 30(2)(a) so the Clean Energy Regulator

can make an assessment in relation to new paragraph 28(2)(ba), as well as existing paragraphs 28(2)(a) and (b) (see item 40).

43. Paragraphs 30(2)(c) and (d)

This item amends paragraphs 30(2)(c) and (d). Amendments to paragraph 30(2)(c) allow the Clean Energy Regulator to make a calculated baseline determination for a facility that has met the *transitional calculated baseline criteria*. This item also amends paragraph 30(2)(c) to specify that the facility must meet the *transitional calculated baseline criteria* at the time the Clean Energy Regulator makes the decision.

This item also inserts new paragraph 30(2)(e). Paragraph 30(2)(e) (in conjunction with amended paragraph 27(1)(d) and new subsection 26A(5)) require calculated baseline determinations commencing after 1 July 2020 to use *prescribed production variables* and *default emissions intensity* values. This recognises that 2018-19 and 2019-20 is a transition period. This does not apply to calculated baseline determinations made on the basis of the *inherent emissions variability criteria*. These applications would be able to continue to use site-specific *estimated emissions intensity* values after 1 July 2020, as per the current arrangements.

44. Subsection 30(3)

This item amends subsection 30(3) to allow the Clean Energy Regulator to make a *baseline emissions number* for a calculated baseline determination using the *default emissions intensity* value of a *prescribed production variable*.

45. At the end of subsection 30(3)

This item inserts a note after subsection 30(3) to refer to paragraph 27(1)(d). This is intended to assist applicants, and others, to understand that when establishing a *baseline emissions number* under subsection 30(3), there are restrictions on when *estimated emissions intensities* values may be used.

46. Subsection 31(4)

Under the Amendment Rule, facilities can apply for a calculated baseline from 1 July 2018, using the *transitional calculated baseline criteria*. This includes those facilities already with calculated baselines. Amendments to subsection 31(4) allow a new calculated-emissions baseline determination to replace an existing calculated-emissions baseline determination. The replaced baseline determination ceases to be in effect from when the new calculated baseline commences.

Existing paragraph 18(3)(a) in the Principal Rule allows for a reported-emissions baseline determination to be replaced by a calculated baseline. This includes a calculated baseline made using the *transitional calculated baseline criteria*.

Benchmark-emissions baseline determinations

Benchmark-emissions baselines are for new facilities and significant expansions from 1 July 2020. Amendments to subdivision 4 allow annually-updated production-adjusted baselines to operate in conjunction with a benchmark-emissions baseline. This ensures the amendments operate alongside the existing policy.

47. Paragraph 34(2)(a)

Section 34 of the Principal Rule sets out the criteria for demonstrating that a facility has undergone a significant expansion and therefore qualifies for a benchmark-emissions baseline determination. Under the Amendment Rule, baselines update annually for actual production where facilities use *prescribed (annually adjusted) production variables*. Amendments to section 34 limit the availability of the *significant expansion criteria* for benchmark-emissions baselines to components of baselines that are fixed (that is, those *production variables* that are not included in Schedule 2). Access to the *significant expansion criteria* is not needed where baselines adjust annually with production, as the baseline will automatically accommodate any increase to production.

48. Subparagraphs 34(2)(b)(i) and (ii)

This item is amended as per the intent in item 47.

49. At the end of subsection 34(7)

This item inserts a note after subsection 34(7), as per the explanation in item 28.

50. At the end of subsection 34

This item inserts paragraph 34(10) to allow a benchmark-emissions baseline for a grid-connected electricity generator to be made in the unlikely event the sectoral baseline is exceeded. This recognises that these electricity generators do not have obligations under the Safeguard Mechanism as long as the sectoral baseline is in place. In line with this, reported baselines for grid-connected electricity generators can continue beyond 1 July 2020 (see item 24).

This approach ensures the Safeguard Mechanism does not place unnecessary administrative burden on electricity generators or the Clean Energy Regulator. The new paragraph means benchmark-emissions baselines do not commence for grid-connected electricity generators until the start of the first financial year which is not a sectoral baseline financial year.

51. At the end of subsection 35(1)

Section 35 sets out the information that must be included in an application for a benchmark-emissions baseline. This item inserts new paragraph 35(1)(g). As with new paragraph 27(1)(k), it requires an explanation as to why the chosen *production variable(s)* relate to the activities of the facility. This is to assist the Clean Energy Regulator to understand the

activities undertaken at the facility and help ensure *production variable(s)* have been correctly identified.

52. Paragraphs 35(2)(b) and (c)

This item amends paragraphs 35(2)(b) and (c) to limit the availability of the *significant expansion criteria* for benchmark-emissions baselines to facilities using fixed *production variables*. These amendments recognise that access to the *significant expansion criteria* is not needed where baselines adjust annually with production, as the baseline will automatically accommodate any increase to production, as per item 47. A facility with a baseline that was set using a combination of fixed and annually adjusted *production variables* can only apply for a baseline increase using use the benchmark significant expansion criteria for the component using the fixed production variable.

53. Paragraphs 35(2)(d) and (e)

This item makes amendments as per the intent in item 52 and corrects a typographical error in paragraph 35(2)(e) by inserting the word 'with' after consistent.

54. At the end of subsection 35(2)

This item makes amendments as per the intent in item 51.

55. After paragraph 36(2)(b)

Under the Principal Rule, each application for a benchmark-emissions baseline must be accompanied by an audit report. The matters to be identified in the audit report are distinguished as reasonable assurance matters or limited assurance matters. As with item 40 (new paragraph 28(2)(ba)), this item inserts new paragraph 36(2)(ba) to ensure reasonable assurance matters include whether each *production variable*, site specific or *prescribed*, has been correctly identified.

56. Subsection 36(3)

This item amends subsection 36(3) to ensure the audit report makes a conclusion regarding paragraph 36(2)(ba).

57. Paragraph 38(2)(a), (b) and (c)

As with other baseline determinations, under the Principal Rule, the Regulator may make a benchmark-emissions baseline determination provided it is satisfied with a number of matters. These matters include that the audit report accompanying the application contains the relevant reasonable and limited assurance conclusions required under paragraphs 36(2)(a) and (b). Paragraph 38(2)(a) is amended so it also applies to new paragraph 36(2)(ba). This item also amends paragraph 38(2)(c) to make it clear that the facility must meet the benchmark-emissions baseline criteria at the time the Clean Energy Regulator makes the decision. Paragraph 38(2)(b) remains the same as in the Principal Rule.

58. Subsection 38(3)

This item amends subsection 38(3) to allow benchmark-emissions baselines to operate in conjunction with *prescribed (annually adjusted) production variables*. These amendments recognise that access to the *significant expansion criteria* is not needed where baselines adjust annually with production, as the baseline will automatically accommodate any increase to production (refer item 52).

As per the Principal Rule, under paragraph 38(3)(a), if the *new facility criteria* have been met in the application, the *baseline emissions number* is calculated by multiplying the quantity of a *production variable* with its relevant benchmark emissions intensity and summing the result. The intent of paragraph 38(3)(a) remains the same as under the Principal Rule. Baselines using the *new facility criteria* would be fixed for the benchmark-emissions baseline period.

In line with the Principal Rule, under paragraph 38(3)(b), if the *significant expansion criteria* have been met in the application, the *baseline emissions number* is the tonnes of carbon dioxide equivalence calculated by summing:

- the quantity of change in production of a *production variable* (other than a *prescribed (annually adjusted) production variable*) multiplied with its relevant benchmark emissions intensity and summing the results if there is more than one *production variable*;

  and either

- the *baseline emissions number* in a production-adjusted baseline determination that would otherwise apply in the first year of the benchmark-emissions baseline determination (this could be a fixed amount or an amount that varies with production);

  or

- if a baseline applies because of paragraph 10(b)—the lesser of 100,000 tonnes of carbon dioxide equivalent emissions and the covered emissions of the facility in the financial year used in paragraph 35(2)(c).

Subparagraph 38(3)(b)(ii) is also amended to remove the term reported-emissions baseline determination, as there will be no overlap between benchmark-emissions baseline and reported baselines so it is redundant in this subparagraph.

59. Paragraph 39(3)(d)

Under the Principal Rule, paragraph 39(3)(d) allows a significant expansion benchmark-emissions baseline to be replaced by another significant expansion benchmark-emissions baseline, if a facility met this criteria again. This paragraph is amended so a facility with a significant expansion benchmark-emissions baseline could replace this with another baseline determination, such as a calculated baseline using the *transitional calculated baseline* or

inherent emissions variability criteria. Although this is unlikely to occur, the amendment caters for this scenario since the Amendment Rule allows facilities to apply for calculated baselines after 2020.

Updating production-adjusted baseline determinations

The Amendment Rule introduces baselines that automatically update for changes in annual production to help prevent baselines becoming out-of-date in the future. This is achieved through changes to how production-adjusted baselines are calculated—production-adjusted baselines update annually for production where facilities use eligible *production variables*—that is, *prescribed (annually-adjusted) production variables* specified in Schedule 2. However, if a previously approved production variable in a calculated-emissions baseline is the same, in all material respects, as a *prescribed (annually adjusted) production variable* unless the Clean Energy Regulator provides an approval for it to be fixed under subsection 5(1B), it is considered a *prescribed (annually adjusted) production variable* that varies with annual production (see paragraph (b) of the definition of *prescribed (annually adjusted) production variable*).

Existing arrangements will continue in cases where facilities do not use *prescribed (annually adjusted) production variables* in their production-adjusted baseline application. That is, the baseline that was determined under the calculated-emissions or benchmark-emissions baseline is updated once for actual production, and then remains fixed.

60. Subsection 40(1)

Under the Principal Rule, a facility may apply to the Clean Energy Regulator for a production-adjusted baseline determination if it meets the circumstances outlined in subsection 40(1).

This item amends the chapeau in subsection 40(1) to remove the word 'either', so it applies to four circumstances rather than just two (see item 61 for an explanation of the two new circumstances).

61. After paragraph 40(1)(a)

This item amends subsection 40(1) to allow facilities to move to a production-adjusted baseline earlier than the current framework. This means facilities do not have to wait until the end of their three (or five) year calculated baseline period to apply for a production-adjusted baseline.

Unless paragraph 40(1)(ab) applies, a facility can only apply for a production-adjusted baseline if it already has a calculated baseline (or benchmark-emissions baseline). The calculated baseline process is necessary to establish an *estimated emissions intensity* value based on site-specific characteristics.

This item inserts new paragraph 40(1)(aa), which allows a production-adjusted baselines to commence before the end of a calculated baseline (or benchmark-emissions baseline) period. At least one year of the calculated (or benchmark-emissions) baseline period must have been completed. The calculated baseline application process establishes an audited *estimated emissions intensity* value used to set a production-adjusted baseline determination.

This item also inserts new paragraph 40(1)(ab), which allows a facility to move directly to an annually-updated production-adjusted baseline, without first completing a calculated baseline application. It also allows a facility on an existing calculated baseline or production-adjusted baseline to move to an annually-updated production adjusted baseline any time from 1 July 2018. This is only for facilities solely using *prescribed (annually adjusted) production variables* with their relevant *default emissions intensity* values. These facilities do not need to establish an emissions intensity value through a calculated baseline application process. This paragraph does not apply to new facilities which should otherwise apply for a benchmark-emissions baseline.

62. Section 41

In the Principal Rule, the application for a production-adjusted baseline determination updates the production estimates from the application for the previous determination (i.e. calculated-emissions or benchmark-emissions baseline) with actual production data. Section 41 is repealed and substituted to allow applications to include *prescribed production variables* and *default emissions intensity* values. While the intent of section 41 is unchanged, this item makes amendments to update the information required in applications.

In line with the Principal Rule, the Amendment Rule requires all facilities (other than those whose previous determination was made on the *significant expansion criteria* for a benchmark-emissions baseline determination) to include the information in subsection 41(1), including:

- The quantity of all *production variables*, other than *prescribed (annually adjusted) production variables* (paragraph 41(1)(a)), produced in the financial year with the highest actual production level of the primary *production variable* over the production assessment period (subparagraph 41(1)(a)(i)). Paragraph 41(1)(a) does not apply to production-adjusted baseline determinations made using *prescribed (annually adjusted) production variables* as these baseline determinations will update annually with production, which is reported separately under the National Greenhouse and Energy Reporting Scheme.

- If a facility's previous baseline determination was a calculated-emissions baseline determination then the type of *production variables* used in the production-adjusted baseline application must match those used in the previous calculated-emissions baseline application. This also applies to facilities moving to a production-adjusted baseline before the end of the calculated baseline period (subparagraph 41(1)(a)(ii)). The production quantities must be measured as close as possible to when the production variable enters, or leaves the production or processing process (paragraph 41(3)(a)). Otherwise, the *production variables* are those relevant to the facility consistent with the *Benchmark Emissions-Intensity Index* in Schedule 1 (subparagraph 41(1)(a)(iii) and paragraph 41(3)(b)) or the *prescribed (fixed) production variables* in Schedule 3 (paragraph 41(3)(c)).

- The emissions intensities that correspond to each *production variable* identified in the application (paragraph 41(1)(b)). A facility whose previous baseline determination was a calculated-emissions baseline determination must either use the same emissions intensities used in the application for that determination (subparagraph 41(1)(b)(i)) or use a *default emissions intensity* value (subparagraph 41(1)(b)(i)) elected under new paragraph 41(1)(d). Otherwise, the emissions intensities are sourced from the *Benchmark Emissions-Intensity Index* in Schedule 1 (subparagraph 41(1)(b)(ii)).

- The total covered emissions from the facility, calculated as the sum of: the quantity of each *production variable* identified in paragraph 41(1)(a) multiplied by the corresponding emissions intensity identified in paragraph 41(1)(b) (paragraph 41(1)(c)).

- The basis upon which each production variable is applicable to the facility (paragraph 41(1)(f), and the details of any *prescribed (annually adjusted) production variables* (paragraph 41(1)(e)). Paragraphs 41(1)(e) and 41(1)(f) together allow facilities to nominate to use *prescribed (annually adjusted) production variables*.

Applications where the previous baseline determination was made based on meeting the *significant expansion criteria* for a benchmark-emissions baseline determination must include the information outlined in subsection 41(2). This remains largely unchanged from the Principal Rule, but is updated recognising some elements of the application are not required where the production variable is a *prescribed (annually adjusted) production variable*. The main requirements in the application include:

- The quantity of all *production variables* that were produced by the facility in the financial year with the highest production level of the primary *production variable* over the period that was covered by the previous determination (paragraph 41(2)(a) and subsection 41(3)).

- The change in production for each *production variable* (other than a *prescribed (annually adjusted) production variable*) before and after the significant expansion. This is calculated by subtracting the quantity of the *production variable* produced prior to the significant expansion, identified under paragraph 35(2)(c) from the quantity of each *production variable* produced after the significant expansion, identified under paragraph 41(2)(b). This does not apply to *prescribed (annually adjusted) production variables* as baseline determinations made using these *production variables* will update annually with production.

- The benchmark emissions intensities that correspond to each *production variable* identified in the application. These are sourced from the *Benchmark Emissions-Intensity Index* in Schedule 1 (paragraph 35(2)(e)).

- The expected additional covered emissions from the facility. This is the sum of: the change in production for each *production variable* (other than *prescribed (annually adjusted) production variables*) under paragraph 41(2)(b) multiplied by the corresponding benchmark emissions intensity under paragraph 41(2)(c) (paragraph 41(2)(d)).

- An application must describe the basis upon which each *production variable* is applicable to the facility (paragraph 41(2)(f)). It must also include details of any prescribed *production variable* applicable to the facility (paragraph 41(2)(e)). Paragraphs 41(2)(e) and 41(2)(f) together allow facilities to nominate to use *prescribed (annually adjusted) production variables*.

63. At the end of paragraph 42(2)(a)

Under the Principal Rule, each application for a production-adjusted baseline determination must be accompanied by an audit report. All matters to be audited are reasonable assurance matters.

This item adds new subparagraph 42(2)(a)(iii) to ensure the audit assesses whether any *prescribed production variable* used at the facility are applicable and in line with any requirements in Schedules 2 or 3.

Section 40, 41 and 42 examples

Facility A chooses to apply for a calculated baseline (under new section 26A) to commence in 2018-19. In its application, Facility A chooses a *prescribed (annually adjusted) production variable* with an *estimated emissions intensity* value. The calculated baseline application establishes the emissions intensity for the *prescribed production variable* (that is, the *estimated emissions intensity* in the year with the highest forecast production).

Facility A chooses to apply for a production-adjusted baseline to commence in 2019-20 under new paragraph 40(1)(aa). The application uses the *estimated emissions intensity* value established through the calculated baseline application. From 2019-20, Facility A's baseline will be annually adjusted to reflect actual production.

Facility B has two *production variables*: both are *prescribed (annually adjusted) production variables* listed in Schedule 2. It nominates to use the *default emissions intensity* values listed in Schedule 2 for both *production variables*. Facility B chooses to apply for a production-adjusted baseline to commence in 2019-20 under the new paragraph 40(1)(ab). There is no requirement for Facility B to first apply for a calculated baseline (e.g. using the *transitional calculated baseline criteria*) to move to an annually updating production-adjusted baseline. Facility B will need to report production from 2019-20.

Facility B must include in its production-adjusted baseline application the details of its *prescribed (annually adjusted) production variables* (see paragraph 41(1)(e)). The amendments simplify the auditing requirements. Facility B's audit report accompanying the application needs to assess that the nominated *production variables* apply to the facility in accordance with requirements specified in Schedule 2 (see subparagraph 42(2)(a)(iii)), and that the required information specified in Section 41 is provided and presented fairly (see paragraph 42(2)(b)).

In this example, Facility B moved directly from a reported baseline to a production-adjusted baseline and did not have to prepare and submit a calculated baseline application. As a result, Facility B has avoided any requirement to provide audited forecasts of production and emissions-intensity values (refer sections 27 and 28).

64. Paragraph 42(2)(c)

This item amends paragraph 42(2)(c) to streamline audits for those facilities using *prescribed (annually adjusted) production variables*. Audits must assess whether the quantities of each *production variable:*

- meet the requirements of section 41(3), and
- is supported by historical data, except for *prescribed (annually adjusted) production variables*.

Paragraph 42(2)(c) is amended so it does not apply to *prescribed (annually adjusted) production variables*.

65. After paragraph 44(2)(a)

This item inserts new paragraph 44(2)(aa) to allow the Clean Energy Regulator to make a production-adjusted baseline determination if the requirements in paragraph 40(1)(ab) are met (see item 61).

66. Paragraph 44(2)(b)

This item amends paragraph 44(2)(b) to correct a typographical error as there was an unnecessary space between 40 and (1).

67. Subparagraph 44(2)(c)(i)

Under the Amendment Rule, facilities can move directly from a reported-emissions baseline to an annually updated production-adjusted baseline, without first completing a calculated baseline application. Generally, the *production variables* used for the purpose of a production-adjusted baseline must be the same as those used in the preceding calculated baseline. This item amends paragraph 44(2)(c)(i) to ensure any facility moving directly to an annually-updated production-adjusted baseline does not need to demonstrate the *production variables* used in their production-adjusted application are consistent with a previous calculated baseline, which does not exist. This item also inserts the phrase "or during" to subparagraph 44(2)(c)(i) to reflect that facilities may choose to move to a production-adjusted baseline before the end of a calculated baseline (see item 61).

68. Subparagraph 44(2)(c)(ii)

This item inserts the phrase "or during" to subparagraph 44(2)(c)(ii) to reflect that facilities may choose to move to a production-adjusted baseline before the end of a calculated baseline (see item 61).

69. Subsection 44(3)

This item repeals and substitutes subsection 44(3) to allow baselines to be updated annually for changes in production where facilities use *prescribed (annually adjusted) production variables* specified in Schedule 2.

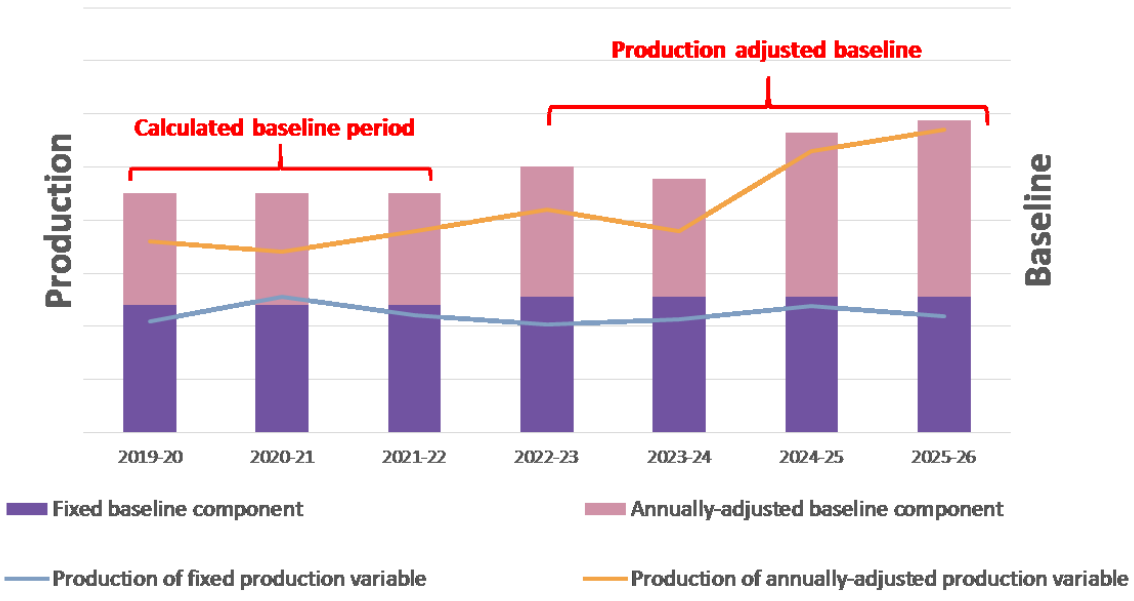
Amended subsection 44(3) specifies that *baseline emissions numbers* are expressed as either a number or a formula. *Baseline emissions numbers* are expressed as a fixed number where a facility does not use *prescribed (annually adjusted) production variables* and/or does not use an emissions intensity value listed in a Schedule. *Baseline emissions numbers* are expressed as a formula where a facility uses at least one *prescribed (annually adjusted) production variable*) or where a facility uses an emissions intensity value listed in a Schedule. The Clean Energy Regulator annually recalculates baselines expressed as a formula in line with certain updates (see subsections 44(3) and 44(3B)).

A facility producing multiple outputs could use a combination of fixed and annually adjusted *production variables* and in these cases the *baseline emissions number* would be expressed as a formula that includes both fixed and annually updating components.

Section 44 example

Figure 5 illustrates a facility with two production variables—one fixed and one annually adjusted. During the calculated baseline period, the facility's *baseline emissions number* is fixed, based on fixed emissions intensities and fixed production estimates for each production variable. This is the same as the arrangements under the Principal Rule. However, **Figure 5** illustrates that once the facility moves to a production adjusted baseline, the baseline component using the *prescribed (annually adjusted) production variable* is updated annually in line with actual production. This results in an overall production adjusted baseline for the facility that changes each year.

Figure 5: Production-adjusted baseline with fixed and annually-adjusted components



Amended paragraph 44(3)(a) sets out the method for making a baseline where not all *production variables* are *prescribed (annually adjusted) production variables* to which *default emissions intensity* values are applied. In these cases, a *baseline emissions number* is the sum of:

- a fixed component: for all *production variables* that are not *prescribed (annually adjusted) production variables* this component is calculated by summing the contribution of each *production variable.* The contribution from each *production variable* is calculated once by multiplying the amount of production in the relevant historical year by the nominated emissions intensity value (subparagraph 44(3)(a)(i)); and

- an annually-adjusted component: for all *production variables* that are *prescribed (annually adjusted) production variables* this component is calculated by summing the contribution of each *production variable*. The contribution from each *prescribed annually adjusted production variable* is calculated every year by multiplying production in the current year by the nominated emissions intensity value (subparagraph 44(3)(a)(ii)).

New paragraph 44(3)(aa) sets out the formula for calculating a baseline where all *production variables* are *prescribed (annually adjusted) production variables* to which *default emissions intensity* values are applied. In this case, the baseline is calculated each year as the sum of the production of each *production variable* in the current year multiplied by the corresponding *default emissions intensity* value for each production variable, as specified in Schedule 2.

Section 44 examples

Facility A applied for a calculated baseline using the *initial calculated baseline criteria* covering a three-year period 2016-17 to 2018-19. It subsequently applies for a production-adjusted baseline starting 1 July 2019 using in its application the same site-specific production variable and *estimated emissions intensity* value used in the initial calculated baseline application (see subsection 41(1)). Facility A's *production variable* is not the same as any listed in Schedule 2. This means facility A's production-adjusted baseline is a fixed number, set in accordance with subparagraph 44(3)(a)(i). This is the same as the arrangements under the Principal Rule.

Facility B produces one type of production variable, which is specified in Schedule 2 (that is, a *prescribed (annually-adjusted) production variable*). Facility B uses an *estimated emissions intensity* value in its calculated baseline application, covering a three year period 2016-17 to 2018-19.

Following the calculated baseline period, Facility B applies for a production-adjusted baseline starting 1 July 2019. The production-adjusted baseline emissions number for Facility B is a formula, set in accordance with subparagraph 44(3)(a)(ii), i.e.:

- the quantity of the *production variable* produced in a financial year multiplied by the *estimated emissions intensity* value established through the calculated baseline application.

Facility B's baseline emissions number is calculated on this basis every year so its baseline reflects annual changes in the quantity of the *production variable* produced.

Section 44 examples continued

Facility C produces staticum and varyum. Facility C has a *transitional calculated baseline* (under section 26A) for the three year period 2019-20 to 2021-22. In its audited calculated baseline application, Facility C had two *production variables*, with the following details:

- for staticum—a *prescribed (fixed) production variable* with an *estimated emissions intensity* value of **0.5** tonnes CO_2-e per tonne of staticum.
- for varyum—a *prescribed (annually adjusted) production variable* with an *estimated emissions intensity* value of **1.0** tonnes CO_2-e per tonne of varyum.

Production of staticum was constant over the calculated baseline period – Facility C produced **210,000** tonnes in each of the three years.

Facility C transitions to a production-adjusted baseline from 2022-23. In 2022-23, Facility C produces **150,000** tonnes of staticum and **180,000** tonnes of varyum.

In 2022-23, Facility C's baseline emissions number for its production-adjusted baseline is a formula based on two components (as per paragraph 44(3)(a)):

- A fixed component for staticum, which is based on the emissions intensity of staticum in Facility C's calculated baseline application (**0.5** tonnes CO2-e per tonne staticum) multiplied by the high-point of ***historical production*** for staticum over the three year calculated baseline period (**210,000** tonnes staticum). This component is fixed for the duration of the production-adjusted baseline; and
- An annually-adjusted component for varyum, which is based on the emissions-intensity of varyum in Facility C's calculated baseline application (**1.0** tonnes CO_2-e per tonne varyum) multiplied by the ***actual production*** of varyum for the financial year (**180,000** tonnes varyum).

The production-adjusted baseline in 2022-23 is:
(**210,000** × **0.5**) + (**180,000** x **1.0**) = 285,000 tonnes CO_2-e.

Amended paragraph 44(3)(b) sets out the formula for making a production-adjusted baseline where not all *production variables* are annually adjusted and where it is to commence after or during a benchmark-emissions baseline determination on the basis of the *new facility criteria* or paragraph 40(1)(b) applies. A *baseline emissions number* is the sum of:

- a fixed component: for all *production variables* that are not *prescribed (annually adjusted) production variables* this component is calculated by summing the contribution of each *production variable*. The contribution for each *production variable* is calculated once by multiplying the amount of production in the relevant historical year by the relevant benchmark emissions intensity value (subparagraph 44(3)(b)(i)); and

- an annually-adjusted component: for all *production variables* that are *prescribed (annually adjusted) production variables* this component is calculated by summing the contribution of each *production variable*. The contribution for each *production variable* is calculated every year by multiplying production in the current year by the relevant benchmark emissions intensity value (subparagraph 44(3)(b)(ii)).

Amended paragraph 44(3)(c) sets out the method for making a production-adjusted baseline for an application submitted following the expiry of a benchmark-emissions baseline determination that was made based on the facility meeting the *significant expansion criteria*, and where not all *production variables* are eligible to be annually adjusted. A *baseline emissions number* is the sum of:

- the change in production for each *production variable (other than a prescribed (annually adjusted) production variable)* multiplied by its relevant benchmark emissions intensity; and

- if a production-adjusted baseline determination would otherwise apply after the expiry of the benchmark-emissions baseline determination—that *baseline emissions number*; and

- if a baseline emissions number applies because of paragraph 10(b)—the lesser of 100,000 tonnes of carbon dioxide equivalent emissions and the covered emissions of the facility in the financial year used in paragraph 35(2)(c), which is a financial year in the three years before the new equipment associated with the significant expansion is installed.

To enable automatic annual baseline adjustments, businesses need to report production each year. New subsection 44(3A) requires production amounts for each *prescribed (annually adjusted) production variable* to be reported each year in accordance with any requirements of Schedule 2. If production is not reported for a *prescribed (annually adjusted) production variable* there would be no baseline allocation for that *production variable*.

New subsection 44(3B) requires any updates to default or benchmark emissions intensity values to be reflected in the baseline emissions number for the following financial year. This ensures that baselines and emissions are calculated on a consistent basis by the Government.

New subsection 44(3C) clarifies that the emissions intensity of the *production variable* is the *estimated emissions intensity* determined through an audited calculated baseline application process, unless a facility elects to use a *default emissions intensity* value.

New subsection 44(3D) allows a facility to switch to a *default emissions intensity* value for any financial year, so long as the nomination is made before the end of that financial year. This applies to both *prescribed (fixed) production variables* and *prescribed (annually adjusted) production variables*.

New subsection 44(3E) ensures a facility that nominates to use a *default emissions intensity* value cannot switch back to an *estimated emissions intensity* value for that *production variable*.

Expiring the emissions intensity test

The Amendment Rule allows facilities to apply for a baseline variation using the emissions intensity test in 2017-18 and 2018-19. It is not available from 1 July 2019, since facilities can access baselines that automatically adjust for changes to production from this time.

70. Subsection 46(1)

This item amends subsection 46(1) to limit any applications for the emissions intensity test to 2017-18 and 2018-19.

71. Paragraph 46(2)(c)

This item removes the word 'benchmark' for the same reasons as those identified in item 1.

72. Subsection 47(1)

This item amends subsection 47(1) to remove reference to benchmark facilities since the emissions intensity test expires before benchmark-emissions baseline determinations begins.

73. Subsection 47(2)

This item repeals subsection 47(2) for the same reason as identified in item 72.

74. Paragraph 47(4)(a)

This item amends paragraph 47(4)(a) to ensure emissions intensity figures are consistent between application types. It clarifies that if a business applies for an emissions intensity test to apply in the same year a calculated baseline is to commence, it must use for its 'baseline intensity comparison year' the same emissions intensity used to determine the baseline in the calculated baseline determination.

75. Subparagraph 47(4)(b)(iv)

This item repeals subparagraph 47(4)(b)(iv) for the same reason as identified in item 72.

76. Subsection 48(1)

This item amends subsection 48(1) for the same reason as identified in item 72.

77. Subsection 48(3)

This item repeals subsection 48(3) for the same reason as identified in item 72.

78. Subparagraph 49(2)(c)(i)

This item amends subparagraph 49(2)(c)(i) for the same reason as identified in item 72.

79. Paragraph 51(2)(c)

This item amends paragraph 51(2)(c) for the same reason as identified in item 72.

A consistent approach for landfills

The Amendment Rule allows landfill facilities to transition from reported baselines using a different approach to non-landfill facilities. This recognises that landfill facilities have no discernible output, and due to organic decay, emissions occur over a long timeframe and are influenced by climatic conditions. As a result, transitioning to a baseline focused on production would unlikely accurately reflect emissions at the facility. Instead, the Amendment Rule allows for landfill facilities to transition to a baseline derived from a Government-determined gas capture rate. This approach for setting baselines uses the baseline setting approach for "landfill-benchmark baseline determinations" set out in the Principal Rule.

80. Subdivision 7 of Division 2 of Part 3 (heading)

This item removes the word 'benchmark' for the same reasons as those identified item 1.

81. Subsection 52(1)

Under the Principal Rule, the Clean Energy Regulator may make a landfill baseline determination in response to an application made under section 52 of the Amendment Rule. This item amends subsection 52(1) to remove the word 'benchmark', so that landfill facilities may apply for a landfill baseline determination before the 'benchmark' baseline framework commences. This amendment is in line with item 1.

82. Paragraph 52(1)(b)

This item removes the word 'benchmark' for the same reasons as those identified in item 1.

83. Paragraph 52(2)(b)

This item amends paragraph 52(2)(b) to allow an application for a landfill baseline determination to be made for any financial year. This ensures there is one consistent approach for landfill facilities. This item removes the word 'benchmark' for the same reasons as those identified in item 1.

84. Subsection 52(3)

This item removes the word 'benchmark' for the same reasons as those identified in item 1.

85. Section 54 (heading)

This item removes the word 'benchmark' for the same reasons as those identified in item 1.

86. Subsection 54(1)

This item removes the word 'benchmark' for the same reasons as those identified in item 1.

87. Subsection 54(2)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

88. Paragraph 54(2)(b)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

89. Subsection 54(3)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

90. Subsection 54(3) (definition of BC_t)

This item amends subsection 54(3) to remove the word ‘benchmark’ and replaces it with ‘prescribed’. This amendment ensures a gas capture rate baseline is available to all landfill facilities and that these baselines can commence before 1 July 2020, i.e. before the ‘benchmark’ baseline framework commences. For this reason, and for the reasons identified in item 1, this item removes the word ‘benchmark’.

91. Subsection 54(5)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

92. Subsection 54(6)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

93. Section 55 (heading)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

94. Subsection 55(1)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

95. Subsection 55(2)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

96. Subsection 55(3)

This item removes the word ‘benchmark’ for the same reasons as those identified in item 1.

Variations to baseline determinations

The Amendment Rule allows the Clean Energy Regulator to vary calculated and production-adjusted baselines, for example where a new *prescribed (annually adjusted) production variable* applies to a facility (section 56A). This replicates the Clean Energy Regulator's existing powers for adjusting reported baselines, and recognises calculated and production-adjusted baselines are more common as a result of these amendments (section 56A and 56B). The Amendment Rule also allows the Clean Energy Regulator to make new baselines where a facility is split into multiple facilities or where multiple facilities are combined into a single facility. This recognises not all facilities will have access to annually-updated production-adjusted baselines (section 56(C)).

In line with current arrangements, the Clean Energy Regulator's decision to vary, remake or revoke a baseline determination under the new sections is a reviewable decision under section 56 of the Act (subsection 56A(5), 56B(5) and 56C(5)).

97. After section 56

This item inserts new section 56A to allow the Clean Energy Regulator to vary a baseline determination for a facility where a new *prescribed (annually adjusted) production variable* is applicable to a facility (subsection 56A(1)). The purpose of this amendment is to ensure baseline determinations stay up-to-date and continue to reflect facility circumstances. It is intended section 56A would enable the Clean Energy Regulator to add a new baseline component in respect of annual production of the *prescribed (annually adjusted) production variable*, on top of a facility's existing baseline component/s so that the baseline properly reflects emissions from all production variables at a facility.

To trigger section 56A, it is necessary for the responsible emitter to provide evidence to the Clean Energy Regulator that the new variable relates to activities and emissions not already included (explicitly or implicitly) in the baseline and the variable relates to over 5 per cent of emissions. A form will be developed by the Regulator to receive this evidence.

A responsible emitter for a facility will be informed in writing that the Clean Energy Regulator intends to vary its baseline determination because of a new *prescribed (annually adjusted production variable*. The notice will include what the *baseline emissions number* formula would be under this variation and will invite comments by a specified date (subsection 56A(2)). The Clean Energy Regulator must consider any comments made by the specified date and then vary the baseline determination within 30 days of this date (unless further information is requested) (subsection 56A(3)). In many circumstances, this process will be a formality to check the correct incorporation of the variable into the determination formula.

Similar to all other baseline determinations, as soon as practicable after varying the baseline determination, the Clean Energy Regulator must notify the applicant in writing of the determination and publish *details* of the remade determination on its website

(subsection 56A(4)). The type of *details* are listed in section 4 of the Amendment Rule, and include the relevant facility and the start and end date of the remade determination.

This item also inserts new section 56B to allow the Clean Energy Regulator to vary a baseline determination for a facility due to changes in activities at a facility (subsection 56B(1)). The purpose of this amendment is to ensure calculated baseline determinations and production-adjusted baseline determinations remain appropriate for facilities. This is similar to the existing section 19 under the Principal Rule, which allows the Clean Energy Regulator to vary a facility's reported baseline. Section 56B allows for the Clean Energy Regulator to vary a baseline where a facility no longer conducts an activity or where the quantity of a production variable being produced is less than half of that used in establishing the baseline emissions number for the facility. For example, this could be applied where a facility has shut down the activity of onsite generation or after a furnace is permanently closed.

A responsible emitter for a facility will be informed in writing that the Clean Energy Regulator intends to vary its baseline determination because of a changes in activities. The notice will include what the baseline emissions number or baseline emissions formula would be under this variation and will invite comments by a specified date (subsection 56B(2)). The Clean Energy Regulator must consider any comments made by the specified date and then vary the baseline determination within 30 days of this date (unless further information is requested) (subsection 56B(3)).

Similar to all other baseline determinations, as soon as practicable after varying the baseline determination the Clean Energy Regulator must notify the applicant in writing of the determination and publish *details* of the remade determination on its website (subsection 56B(4)). The type of *details* are listed in section 4 of the Amendment Rule, and include the start and end date of the remade determination and the relevant facility.

Should a facility meet the criteria in both subsection 56A(1) and subsection 56B(1), it is at the Clean Energy Regulator's discretion whether they exercise their powers to vary a baseline determination concurrently or sequentially.

This item also inserts new section 56C to allow the Clean Energy Regulator to revoke existing baseline determinations and make replacement baseline determinations for facilities that are restructured (subsection 56C(1)). This amendment is to simplify administrative complexity of reporting arrangements for both the Clean Energy Regulator and the responsible emitter.

A responsible emitter for a facility will be informed in writing that the Clean Energy Regulator intends to vary its baseline determination if facilities restructure. The notice will include what the *baseline emissions number* or baseline emissions formula would be under this variation and will invite comments by a specified date (subsection 56C(2)). The Clean Energy Regulator must consider any comments made by the specified date and then vary the baseline determination within 30 days of this date (unless further information is requested) (subsection 56C(3)).

Similar to all other baseline determinations, as soon as practicable after varying the baseline determination the Clean Energy Regulator must notify the applicant in writing of the determination and publish *details* of the remade determination on its website (subsection 56C(4)). The type of *details* are listed in section 4 of the Amendment Rule, and include the start and end date of the remade determination and the relevant facility.

Subsections 56A(5), 56B(5) and 56C(5) clarify that these decisions are reviewable under section 56 of the *National Greenhouse and Energy Reporting Act 2007*.

98. Subsection 58(1)

Under the Principal Rule, subsection 58(1) allows the Clean Energy Regulator to require the responsible emitter to provide further information in connection with the variation or remaking of a baseline determination. This item amends subsection 58(1) so it also applies to new sections 56A, 56B and 56C, as well as existing sections 56 and 57.

99. Paragraph 58(2)(a)

Under the Principal Rule, subsection 58(2) allows the Clean Energy Regulator to refuse to take any action in relation to varying or remaking the baseline determination until certain information is provided. This item amends Paragraph 58(2)(a) to remove the phrase ‘varying the baseline determination’ and replaces it with ‘the relevant decision’ so it applies to more broadly to variations or revocation of baselines, in line with new sections 56A, 56B and 56C, as well as existing sections 56 and 57.

Improved access to multi-year monitoring periods and publication

The Amendment Rule simplifies and improves access to multi-year monitoring periods. By streamlining the application process and extending the application deadline, all facilities are able to use multi-year monitoring, so long as the Clean Energy Regulator is satisfied there are no significant compliance risks. These changes help facilities manage variations in their emissions, for example due to production cycles or maintenance requirements.

The intent of the publication requirements has not changed. Under the Amendment Rule, additional aggregate information is published to improve transparency while ensuring commercially sensitive information is not publicly disclosed. The Amendment Rule allows the Clean Energy Regulator to publish aggregated information about the future demand for Australian carbon credit units, including accounting for units surrendered through a 'deemed surrender'.[1] When combined with all multi-year monitoring applications, the Clean Energy Regulator will have a detailed understanding of the potential future demand for Australian carbon credit units from the Safeguard Mechanism.

100. Subsection 65(2)

This item repeals paragraphs 65(2)(a) and (b) to remove restrictions for facilities with an emissions intensity variation. These subsections are no longer required because applications for the emissions-intensity test under the Amendment Rule are not possible from 1 July 2019. As a result, this overlap is not an ongoing concern.

101. Paragraph 65(3)(d)

This item removes subparagraph 65(3)(d) as it is no longer necessary with the streamlined approach to multi-year monitoring periods. This item inserts new provisions to provide the Clean Energy Regulator with information to assess possible future compliance risks.

This item inserts new paragraph 65(3)(d) to require applications to provide an estimate of the number of Australian carbon credit units likely to be used to comply with the Act for the multi-year monitoring period. This would provide the Clean Energy Regulator with more information on the quantities of offsets likely to be used to meet the facility's obligations. This information is an important input for the new publication requirements set out in paragraphs 72(1)(d) and (e) (see item 112).

To assist the Clean Energy Regulator's assessment, new paragraphs 65(3)(e) and 65(3)(f) are added to require applications to provide information regarding the potential risk of future non-compliance.

[1] Responsible emitters can meet their compliance obligations through a 'deemed surrender' of Australian carbon credit units (as per subsection 22XN(6) of the *National Greenhouse and Energy Reporting Act 2007*).

102. Subsection 65(4)

This item amends subsection 65(4) to extend the deadline for applications until 1 February after the end of the first year of the proposed multi-year monitoring period.

103. Subsection 65(6)

This item repeals subparagraph 65(6) as it is no longer necessary with the extension of the application deadline (see item 102). See **Table 3** for an overview of compliance dates, relating to the 2018-19 compliance year.

104. Paragraphs 67(2)(a), (b) and (c)

Amendments to section 67 operate in parallel with the amendments to section 65. While the Amendment Rule provides for improved access to multi-year monitoring periods, this is only where the Clean Energy Regulator does not consider there to be significant risks that the facility will comply with its obligations under the Act.

This item amends paragraph 67(2)(a) and replaces paragraphs 67(2)(b) and 67(2)(c) to allow the Clean Energy Regulator to appropriately assess the future risk of non-compliance, particularly if the responsible emitter is likely to experience financial stress in the short term.

105. Subsection 67(4)

This item amends paragraph 67(4)(a) to provide clarity around the timing of the Clean Energy Regulator's decision regarding multi-year monitoring periods. This timing has been amended in light of the extension to the deadline for multi-year monitoring periods. These amendments mean that the Clean Energy Regulator has a maximum of 60 days to make a decision. The timeframe will be shorter where an application is submitted immediately before the application deadline of 1 February, noting the Clean Energy Regulator must make a decision before 28 February.

Table 3: Compliance dates

Complete by	Activity	Legislative reference
31 October 2019	Deadline for 2018-19 calculated baseline applications	Current – s. 22(3)
1 February 2020	Deadline for applications for a multi-year monitoring period commencing on 1 July 2018	New – s. 65(4)
1 March 2020	A facility's 2018-19 emissions must not exceed its baseline from this date	NGER Act s. 22XF
30 June 2020	Existing reported baselines expire (for facilities other than grid-connected electricity generators)	New – s. 18(3)(c)
31 October 2020	Deadline for 2019-20 calculated baseline application	Current – s. 22(3)

106. Subsection 71(1)

This item amends subsection 71(1) to clarify that advisory notices are only required to be sent to facilities covered by the Safeguard Mechanism, and not any facility reporting under the National Greenhouse and Energy Reporting Scheme.

107. Subparagraph 71(3)(c)(ii)

This item removes the word 'benchmark' for the same reasons as those identified in item 1.

108. At the end of paragraph 71(3)(c)

Amendments to section 71 update notification requirements. This item inserts new subparagraph 71(3)(c)(iii) to allow the Clean Energy Regulator to notify responsible emitters where a *baseline emissions number* has been automatically updated. These updates could occur to reflect annually reported production data, or changes to a relevant *default emissions intensity* or *benchmark emissions intensity* value. This is to help ensure responsible emitters and the Clean Energy Regulator have a common understanding of the baseline emission number in a given year.

109. Subparagraph 72(1)(a)(viii)

This item corrects a typographical error. It was referring to a section, instead of a subsection.

110. At the end of paragraph 72(1)(a)

This item inserts new paragraph 72(1)(xi) to allow the Clean Energy Regulator to publish information about the use of any 'deemed surrenders' at a facility. This new paragraph has been included to increase the transparency of the total number of Australian carbon credit units used for compliance and whether they were generated at the Safeguard facility or externally.

111. Paragraph 72(1)(b)

This item amends paragraph 72(1)(b) to clarify the Clean Energy Regulator's publication requirements to make it consistent with the original intent. This amendment clarifies that the Clean Energy Regulator only has to publish details of an excess emissions situation where it has resulted in a breach of legislation, namely the excess emissions situation exists after 1 March of the following financial year.

112. At the end of subsection 72(1) (before the note)

This item inserts new paragraphs 72(1)(d) and 72(1)(e) to require the Clean Energy Regulator to publish information about the future demand for Australian carbon credit units. This includes publishing an aggregated total of the Australian carbon credit units likely to be surrendered by all facilities with a multi-year monitoring period (new paragraph 72(1)(d)). This information is aggregated across all facilities and will not disclose any commercially sensitive information (new paragraph 72(1)(e)). Publishing this information will provide

buyers and sellers of Australian carbon credit units with additional insights into the potential short-term demand for Australian carbon credit units.

113. After section 78

Part 6 – Application and transitional provisions have been inserted in recognition that applications for the 2018-19 compliance year, which occurs during the transitional period, could be made before the Amendment Rule has commenced. If an application for a calculated baseline determination (new section 79) and/or multi-year period (new section 80) is made before the Amendment Rule has commenced, they will be assessed in line with the Principal Rule unless the applicant elects otherwise.

Schedules 1, 2 and 3

This item amends Schedule 1 to enable changes to landfill determinations to take effect. Schedules 2 and 3 are introduced to simplify calculated baseline applications and reduce auditing costs.

114. Clause 1 of Schedule 1

Benchmark Emissions-Intensity Index means the index of emissions intensity per unit of production variable (including the prescribed capture rate efficiency rate for non-legacy greenhouse gas emissions) set out in Schedule 1. This item amends the schedule in line with item 3 to remove the word 'benchmark' and replace it with 'prescribed'. This amendment allows a gas capture rate to be applied to all landfill facilities, independent from the 'benchmark' baseline framework.

115. After Schedule 1

Production variables and emissions intensity values are used to set facility baselines using a calculated baseline approach. They have been part of the Safeguard Mechanism since its inception in 2016. The published *prescribed production variables* and *default emissions intensity* values in Schedules 2 and 3 will help to simplify calculated baseline applications and reduce auditing costs by providing the option for facilities to use established defaults. They will be made by the Government, in consultation with businesses and supported by independent technical advice.

Prescribed (annually adjusted) production variables will be set out in Schedule 2. The schedule is intended to provide details of the *production variable*, including metric and measurement requirements. It will provide the details necessary to determine whether a facility is able to use the *production variable* set out in the Schedule 2. *Prescribed (annually adjusted) production variables* from Schedule 2 apply to production-adjusted baselines that update annually with production.

Prescribed (fixed) production variables will be set out in Schedule 3. Like Schedule 2, it is intended to provide details of the *production variable*, including metric, measurement requirements, and applicability. *Prescribed (fixed) production variables* from Schedule 3 apply to production-adjusted baselines that are updated once for production, and then remain fixed.

Attachment A: Final Assessment Regulation Impact Statement

Australian Government

Department of the Environment and Energy

Amendments to the Emissions Reduction Fund Safeguard Mechanism

Final Assessment
Regulation Impact Statement

November 2018

Introduction

This Regulation Impact Statement (RIS) for final assessment seeks to analyse options for refining the Safeguard Mechanism to make it fairer and simpler. Drawing on public consultation conducted in 2018, it has been prepared to inform consideration of the final design for refining the Safeguard Mechanism. In accordance with the *Australian Government Guide to Regulation* (2014), it addresses each of the seven RIS elements and includes a quantification of regulatory costs.

A RIS for early assessment was submitted to the Office of Best Practice Regulation in November 2017. It was approved ahead of the Government's agreement to consult on changes to the Safeguard Mechanism.

This RIS for final assessment builds on the original RIS prepared in 2015 for establishing the Safeguard Mechanism—drawing on the same approach and assumptions.[1] Since the 2015 RIS was developed, new data has become available, including data from the Safeguard Mechanism's first year of operation (2016-17). This has been an important input for completing this RIS for final assessment.

Policy context

The Safeguard Mechanism was established as part of the Emissions Reduction Fund (ERF) — the centrepiece of the Government's Direct Action Plan. The ERF is securing emissions reductions that will count towards meeting Australia's international climate commitments. The Safeguard Mechanism complements the emissions reduction elements of the ERF by sending a signal to businesses to avoid large unconstrained increases in emissions beyond business-as-usual levels. The Safeguard Mechanism is intended to accommodate economic growth and allow businesses to continue normal operations.

The Safeguard Mechanism is part of the *National Greenhouse and Energy Reporting Act 2007*.[2] Together with the emissions reporting obligations under the Act, the Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions. The Safeguard Mechanism places a legislated obligation on Australia's largest greenhouse gas emitters to keep net emissions below their emissions limit (or baseline). This obligation implements the second object of the Act (subsection 3(2)):

[1] Certified RIS available at OBPR's website: https://ris.pmc.gov.au/2016/01/15/safeguard-mechanism-emissions-reduction-fund

[2] The Safeguard Mechanism was established through amendments to the *National Greenhouse and Energy Reporting Act 2007*. The detailed design is set out in the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015*. The design and operation of the Safeguard Mechanism was developed through extensive consultation with affected businesses. Its operation was outlined in the Emissions Reduction Fund White Paper released in April 2014 and refined through a consultation paper released in March 2015. It was legislated in November 2014, with the Rule released in September 2015. The Safeguard Mechanism commenced on 1 July 2016.

The second object of this Act is to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.

This legislated obligation ensures that each facility's net emissions remain at or below its individual baseline level. As a result, the total of all net emissions covered by the Safeguard Mechanism will not exceed the aggregate emissions limit, reflected as the sum of all baselines.

Without this framework, there would be inadequate policy signals in the industrial sector for businesses to manage their emissions. This could lead to a higher cost investment environment, limiting incentives for efficiency improvements, and locking-in a higher emissions pathway making it harder for Australia to meet future climate change commitments.

The Safeguard Mechanism applies to facilities with more than 100,000 tonnes of carbon dioxide equivalent emissions each year, and includes facilities in the electricity, mining, oil and gas, manufacturing, transport and waste sectors. In the first compliance year (2016-17), 203 facilities were covered by the Safeguard Mechanism across the industrial sector. Additionally, a single electricity sectoral baseline applies to grid-connected electricity generators. Individual electricity generators do not have an obligation to keep their emissions below their own individual baselines unless emissions from the sector exceeds this sectoral baseline. This is unlikely to occur.

Current policy settings

Baselines are initially set with reference to historical emissions (the high point of emissions between 2009-10 and 2013-14). Historical baselines (known as 'reported' baselines) recognise past business circumstances but can quickly become out-of-date. Given that the Safeguard Mechanism is intended to allow businesses to continue normal operations, (including normal operations that may lead to business-as-usual emissions growth), options are available for a facility to increase its baseline under certain circumstances.

Facilities can apply for a baseline increase (known as a 'calculated' baseline) if the following criteria are met:

- Initial calculated: emissions exceeded the baseline in 2016-17; or
- Significant expansion: production capacity expands by more than 20 per cent within three years, causing increased emissions; or
- Inherent emissions variability: natural variability in resource grades at mining, oil and gas facilities occurs, causing increased emissions.

Applications for calculated baselines require audited forecasts of:

- annual production (e.g. tonnes of alumina); and
- emissions intensity of that production (e.g. tonnes of emissions per tonne of alumina).

Following the calculated baseline period of three or five years, facilities must apply for a 'production adjusted baseline' to avoid returning to the historical baseline. The production adjusted baseline updates the calculated baseline according to actual production levels during the calculated baseline period. Once made, this baseline update is permanent.

Businesses are also able to access a temporary baseline increase using the emissions intensity test. This option allows a facility experiencing business-as-usual emissions growth to have its baseline adjusted for one year, so long as it can demonstrate improved emissions-intensity.

In addition to the above options for baseline adjustments, facilities can access flexible compliance arrangements, including multi-year monitoring which allows a facility to average its net emissions over an extended two or three year multi-year period. The facility must demonstrate its averaged emissions will be lower than emissions from the first year. Alternatively, a facility can use Australian Carbon Credit Units (ACCUs) to reduce net emissions (that is, offsetting emissions above its baseline).

A summary of application requirements for the various baseline adjustment options is provided in

Table 1.

Table 1. Summary of current application requirements for baseline increase options

Baseline increase option	Number of times available	Application requirements
Permanent increase options[3]		
Calculated baseline: 1. Initial calculated 2. Significant expansion 3. Inherent emissions variability	1. Once for 2016-17 2. Unlimited 3. Up to two opportunities before 2025.	All calculated baseline applications require audited forecasts of: • production; and • emissions intensity
Production adjusted baseline	Following a calculated baseline (typically once)	Audited historical production data
Temporary increase option (single-year duration)		
Emissions intensity test	Unlimited	The facility must demonstrate emissions intensity has continuously improved. Audited historical: • production data; and • emissions intensity data[4]

Question 1: What is the policy problem?

The Government reviewed Australia's climate change policies—including the Emissions Reduction Fund and the Safeguard Mechanism—in 2017 to ensure they remain effective in achieving Australia's emissions reduction targets.

Following the release of the Climate Change Policy Review consultation paper in March 2017, the Department received more than 350 submissions and met with around 270 stakeholders, including more than 40 businesses and industry groups directly affected by the Safeguard Mechanism.

[3] A calculated baseline applies for three years (or five years for large facilities). While a calculated baseline is temporary, it can be subsequently replaced by a permanent production adjusted baseline.
[4] This is only required in the case a facility reports the production of more than one type of output. Otherwise non-audited reported emissions data for the whole facility can be used.

Businesses told Government through the Climate Change Policy Review that they support the Safeguard Mechanism, but there are opportunities to improve it. The focus of suggested improvements was on making the Safeguard Mechanism fairer and simpler:

- fairer, to more evenly apply the incentive to manage emissions within and across sectors and avoid arbitrarily placing costs on business growth; and
- simpler to lower administrative costs by reducing the number of baseline applications and the cost of those applications.

Fairness

The Safeguard Mechanism is intended to send a signal to businesses to avoid large unconstrained increases in emissions beyond business-as-usual levels. It is intended to encourage businesses to manage their emissions, while also accommodating economic growth and allowing businesses to continue normal operations.

Feedback suggests current baseline settings are providing an uneven incentive on businesses to manage emissions. This is a result of:

- inequities in eligibility for baseline adjustments—they are available to many, but not all facilities; and
- baselines becoming out-of-date—recalibrating them to bring them closer to actual emissions would encourage all facilities to manage their emissions.

Baselines are initially set with reference to historical emissions. These baselines reflect the operations of a facility at a point in time and are not updated to reflect changes to the operating environment. Current arrangements allow baselines to be increased under certain circumstances. These baseline increases are available to many, but not all, facilities. Some facilities without access to a baseline adjustment (typically growing facilities) are expected to exceed their baselines in coming years.

Feedback suggests that growing businesses are the most likely to face costs.

> *With the exception of one area, the Safeguard Mechanism is working well. Some facilities are currently running close to their allocated baselines due to incremental growth in output. Ongoing consultation is required to provide sufficient flexibility in baseline determination.*[5]
>
> — Minerals Council of Australia, 2017

> *[Safeguard Mechanism] historical baselines will eventually see more and more growing businesses face a penalty, somewhat randomly and arbitrarily.*[6]
>
> — Australian Industry Group, 2017

[5] Minerals Council of Australia, *Submission to the Climate Change Policy Review discussion paper*, 2017.
[6] Australian Industry Group, *Submission to the Climate Change Policy Review discussion paper, 2017*.

…AIGN urges the Government to consider the cases of entities whose requirements to remain competitive and meet demand may include incremental increases in production that will result in commensurate increases in emissions growth. This would impose significant costs on businesses making rational decisions – and therefore conflict with the intention of the policy not to impose costs or negatively impact productive economic activity.[7]

— Australian Industry Greenhouse Network, 2017

Data from the first year of the Safeguard Mechanism supports this. In 2016-17, all facilities whose emissions exceeded their baseline could apply for a baseline increase. Around a third of the 203 covered facilities received a calculated baseline increase. The majority of these facilities used the 'initial calculated' baseline criteria. Most of those would not have been eligible for a baseline increase using other criteria,[8] and indicated that increasing production was the primary cause of their baseline exceedance.

During consultations, a number of facilities provided empirical and anecdotal evidence demonstrating that they will face costs—now or in future—as a result of increasing production, including to meet global demand. Some are among Australia's best performers from an emissions-intensity perspective. Many high-performing facilities have already implemented emissions reduction projects, so have limited scope for further improvements.

Accordingly, growing facilities that may be among the best performers could face higher compliance costs than their competitors[9]. While the objective of the policy is to allow for business-as-usual growth, current settings could result in best performers facing additional costs on growth, even when their emissions-intensity is being maintained. An illustrative example is provided in Box 1.

[7] Australian Industry Greenhouse Network, *Submission to the Climate Change Policy Review discussion paper, 2017*.

[8] Namely, the 'significant expansion' or 'inherent emissions variability' criteria.

[9] Costs include sourcing and purchasing Australian Carbon Credit Units and costs associated with continually applying for flexible arrangements, such as the emissions-intensity test and multi-year monitoring periods.

Box 1: Illustrative example

OzWidgets is Australia's cleanest manufacturer of widgets. It is also among the world's best performers. It emits less than 0.5 tonnes of emissions for each tonne of widgets produced. This compares with an Australian average of around 1.3 tonnes per widget.

Widget demand is forecast to grow by up to 7 per cent each year. The best emissions outcome would see additional widget production occur at OzWidgets.

OzWidgets plans to increase production by a total of 10 per cent over the next three years. If output growth meets expectations, OzWidgets's emissions will exceed its fixed baseline this year. Under current arrangements, OzWidgets can apply for a temporary baseline increase in years where its emissions intensity continuously improves. However, OzWidgets is already a top performer, having undertaken a number of projects to improve its efficiency, so has limited capacity to further improve its emissions intensity.

OzWidgets plans to purchases ACCUs to bring its net emissions in line with its baseline. OzWidgets will incur a cost for increasing its production despite having the best efficiency performance in the sector. It may need to purchase ACCUs on an ongoing basis to remain compliant.

At the same time, using historical emissions to initially set baselines means that many facilities have baselines that are significantly higher than their current emissions. Data from the Safeguard Mechanism's first year of operation (2016-17) shows that around a third of safeguard facilities have emissions that are more than 20 per cent below their baseline. These facilities have little incentive to actively manage emissions.

Simplicity

During the Climate Change Policy Review, businesses suggested the administration of the Safeguard Mechanism should be simplified.

Under current policy settings, businesses who meet the eligibility criteria must repeatedly apply for baseline increases to ensure they keep pace with business growth. Some baseline increases are temporary, so businesses must reapply as required.

> *The Cement Industry Federation would welcome the opportunity to investigate potential framework changes and address further simplification around baseline adjustments….*[10]
>
> — Cement Industry Federation, 2017

Baseline applications typically require audited forecasts of emissions-intensity and production. Auditing these forecasts can be costly.

[10] Cement Industry Federation, *Submission to the Climate Change Policy Review discussion paper, 2017*.

While the process for establishing reported baselines was straightforward, the process of obtaining a calculated baseline is more complex and bureaucratic requiring firms to invest significant resource[s] in preparing applications, having the application audited and then reviewed by the Clean Energy Regulator.[11]

— Chevron, 2017

The Safeguard Mechanism baseline application process can be simplified to reduce these administrative costs.

Question 2: Why is Government action necessary?

Government action is needed to better align the Safeguard Mechanism with the objective to incentivise businesses to avoid large unconstrained increases in emissions beyond business-as-usual levels, while allowing businesses to continue normal operations and accommodate business growth. Addressing this misalignment will be important to improve the operation of the Safeguard Mechanism, helping it to remain a credible and enduring policy.

The identified problems cannot be self-corrected. The legislative framework underpinning the Safeguard Mechanism must be amended to avoid arbitrarily placing costs on growing businesses and to reduce the ongoing costs of baseline applications.

Question 3: What are the policy options?

The proposal explores options to make the Safeguard Mechanism simpler and fairer. This RIS considers three options:

- Option 1: Maintain the status quo
- Option 2: Bring baselines up-to-date
- Option 3: Bring baselines up-to-date and allow for automatic updates

Option 1: Maintain the status quo

Under Option 1, no changes would be made to the legislative framework underpinning the Safeguard Mechanism.

[11] Chevron, *Submission to the Climate Change Policy Review discussion paper, 2017*.

Option 2: Bring baselines up-to-date

Option 2 would build on current arrangements to bring baselines up-to-date with current circumstances and reduce the cost of baseline applications.

This option has two main elements:

1. Bring baselines up-to-date by transitioning all facilities to new baselines in 2018-19 and 2019-20.

    a. Allow all facilities to apply for a new baseline starting from the 2018-19 compliance year.

    b. Expire historically-derived 'reported' baselines on 30 June 2020.[12] Reported baselines would be up to a decade out-of-date by the time they expire.

2. Simplify baseline applications by giving businesses the option to use Government-determined production variables and default emissions intensity values for calculating baselines.

    a. The default emissions-intensity values would be set at a level that is representative of the median performance in a sector.[13] This means the best performing facilities are the most likely to use the default emissions-intensity values. Further information on the framework for developing defaults can be found in Appendix A of the Explanatory Document for exposure draft amendments to the Rule.[14]

    b. Using default values would reduce the cost of making a baseline application, particularly by avoiding auditing costs associated with forecasting emissions intensity.

Option 2 also includes improved access to multi-year monitoring periods so that all facilities will be able to use multi-year averaging.

Option 3: Bring baselines up-to-date and allow for automatic updates

Option 3 builds on Option 2—it includes the two elements from Option 2 (bringing baselines up-to-date and simplifying baseline applications) and includes a third element, which allows baselines to automatically update.

Option 3 would prevent baselines from becoming out-of-date in the future by enabling baselines to update annually with production. This means a facility's baseline would automatically increase when production grows and decrease when production falls. This

[12] All reported baselines expire except for those facilities covered by the electricity sectoral baseline. Grid-connected electricity generators are covered by a sectoral baseline. The sectoral baseline is based on the historical high point of the aggregate of generator emissions. The sectoral baseline would expire if exceeded, but this is unlikely to occur.

[13] The approach for calculating the default emissions intensity value will protect data confidentiality and will produce values that fairly represent the performance of businesses in the sector.

[14] The Department will continue to consult on default production variables and emissions-intensity values. Priority production variables are intended to be published in the Safeguard Mechanism Rule in 2019, for use from the 2018-19 reporting and compliance year.

approach would support business growth and provide a continuous signal to manage emissions.

With this approach, most baselines would update annually.[15] Annual updates would start once a facility moves to a production adjusted baseline.[16] This approach will reduce the need for ongoing baseline applications.

The introduction of automatically updated baselines would make other baseline increase provisions largely redundant. Under this option, facilities will have limited access to the emissions-intensity-test and the significant expansion criteria. They are not needed when baselines automatically update for changes in production.

While automatically updated baselines avoid these application costs, they require facilities to report production figures every year. This reporting would occur as part of broader reporting requirements under the *National Greenhouse and Energy Reporting Act 2007,* using the existing Emissions and Energy Reporting System administered by the Clean Energy Regulator. Around 60 per cent of facilities covered by the Safeguard Mechanism already have experience reporting their production under legislated schemes—either through the National Greenhouse and Energy Reporting Scheme or through the Renewable Energy Target exemption applications. For the remaining facilities, this new reporting requirement would generate some additional regulatory costs. It is anticipated that these costs will be small as the production data required would already be collected for existing business reporting or contractual arrangements.

Question 4: What is the likely net benefit of each option?

Summary

This RIS presents three options. Option 1 would result in no change. Option 2 is fairer because all facilities could access an updated baseline before 2020. The number of baseline applications would increase in the short term, but applications would be simpler and less costly as facilities have the option to use Government-published default values in place of site-specific forecasts.

Under Option 3, baselines automatically adjust to keep pace with business growth. This would 'future-proof' the baseline setting process, giving all facilities an ongoing incentive to manage their emissions.

Table 2 below summarises the net benefits of Options 1, 2, and 3.

[15] Under Option 3, it is intended that most (if not all) facilities would have baselines that update with production. Consultation revealed that annually updated baselines may not be suitable for all industries. In these cases, it may be necessary for facilities in these industries to retain a 'fixed' baseline, which would be in line with the existing regulatory framework (and the framework outlined for Option 2).

[16] As with the current approach, the baseline would be fixed during the calculated baseline period. But once a facility moves to a production adjusted baseline, instead of remaining fixed, the baseline would be updated annually for production.

Table 2. Expected outcomes against policy refinement objectives

	Policy refinements	Option 1	Option 2	Option 3
Fairness	**Even incentive to manage emissions within and across sectors**	No change	Incentive to manage emissions more evenly dispersed	Incentive to manage emissions more evenly dispersed. Clear incentive to manage emissions intensity regardless of changing production
	Avoid arbitrary costs	No change	Reduces arbitrary costs on growing businesses in short term	Removes arbitrary costs on growing businesses on ongoing basis
Simplicity	**Reduce number of applications**	No change	Short term increase in applications	Short term increase in applications but the need for future applications is reduced. Fewer applications than Option 2
	Reduce cost of applications	No change	Reduced cost (internal and audit)	Reduced cost (internal and audit). Further reduced from Option 2
Emissions	**Reduce aggregate emissions limit**	No change— current levels of exceedance expected to continue. Many facilities have baselines that are well above their emissions, giving them little incentive to actively manage their emissions.	Aggregate emissions limits expected to be lower than Option 1. The level of exceedance is expected to be similar to Option 1, but more evenly distributed as baselines move closer to emissions. Some baselines will be higher and some will be lower.	Similar to Option 2, but facility baselines rise and fall *each year with production*, so more facilities encouraged to actively manage their emissions. Exceedance shifts away from growing facilities to the most emissions-intensive facilities.

Option 1: Maintain the status quo

Under Option 1, baseline updates would continue to only be available to some facilities experiencing business-as-usual emissions growth. These facilities would need to continue to apply on an ongoing basis to ensure their baseline reflects current

circumstances. Growing facilities that are not eligible for baseline updates or other flexibility arrangements would face higher compliance costs.

Likely emissions outcomes

Under all options, the Safeguard Mechanism would continue to provide a framework for Australia's largest emitters to measure, report and manage their emissions. All covered emissions would remain at or below the emissions limit of the total of all baselines.

Under Option 1, baselines would not consistently reflect business-as-usual circumstances, so the scale of the incentive to manage emissions would differ arbitrarily among facilities. In any given year, some businesses would be incentivised to actively manage emissions, some businesses would have little incentive to actively manage emissions, and some businesses that may be among the best performers would be penalised for business-as-usual emissions growth. In order to actively manage their emissions, businesses would need to assess whether they undertake emissions reduction activities on-site, make use of Safeguard Mechanism compliance options, or purchase ACCUs to offset any baseline exceedance.

Regulatory costs

Average net regulatory costs under current policy arrangements (business-as-usual) are **$0** a year over ten years.

Option 2: Bring baselines up-to-date

Option 2 makes the Safeguard Mechanism fairer by recalibrating all baselines. By bringing baselines up-to-date, Option 2 would rebalance all baselines in line with the current operating environment. It is expected that this will generally minimise the gap between facility emissions and facility baselines—the total aggregate of baselines for 2020-21 (after all facilities have transitioned) is expected to be lower than the aggregate baselines for 2016-17 under this option.

This recalibration better distributes the incentive between and within industries to actively manage emissions. It does this by removing excessively high baselines and preventing arbitrary baseline exceedances in the short term. However, because Option 2 continues to have fixed baselines, it does not resolve these issues on an ongoing basis. The gap between baselines and business-as-usual emissions levels would be expected to re-emerge over time.

As with the business-as-usual option, growing facilities could arbitrarily face higher compliance costs than other facilities, even if they are among the least emissions-intensive performers in their sector. While the objective of the policy is to allow for business-as-usual growth, Option 2 could result in best performers being penalised for growth, even when their efficiency has been maintained.

Option 2 would make the Safeguard Mechanism simpler by reducing the number of ongoing applications for baseline adjustments and other flexible compliance provisions. However, Option 2 would still require facilities that meet the eligibility criteria to re-apply in the future in order for baselines to reflect up-to-date circumstances.

Option 2 would make the Safeguard simpler by giving businesses the option to select default production variables and emissions intensity values. This would reduce the cost of applications and, importantly, reduce the need for, and cost of, audits.

Likely emissions outcomes

Bringing baselines up-to-date would minimise the gap between facility emissions and baselines. At an aggregate level, the total of all baselines is expected to be lower relative to 2016-17. This is because a third of safeguard facilities have emissions that are more than 20 per cent below their baseline. Total covered emissions would remain at or below the total emissions limit of all baselines.

By introducing default emissions intensity values into the Rule, Option 2 would provide Safeguard businesses with information on the average emissions intensity for their industry. This would allow them to compare their emissions intensity with the industry average, potentially encouraging efficiency improvements that deliver improved emissions outcomes.

Under Option 2, the number of facilities exceeding their baseline would be expected to reduce in the short term.

Regulatory Costs

The average net **regulatory savings for Option 2 are estimated to be approximately $19,000** a year over ten years, compared with the business-as-usual scenario. This is based on:

- An increase in application costs for facilities that would not have otherwise needed to apply for a calculated baseline. Under Option 2, reported baselines expire on 1 July 2020. This means covered facilities wishing to avoid a default baseline of 100,000 must apply for a calculated baseline.
- A lower compliance cost for those facilities that would have otherwise exceeded their baseline.
- Fewer baseline applications after the transition period.
- Reduced applications costs (particularly audit costs) for those facilities using the default production variables and emissions intensity values.[17]
- Reducing the number and cost of applications for other flexible compliance arrangements, including the emissions-intensity test and multi-year monitoring periods.[18]

[17] Preliminary estimates of emissions intensities at a facility level suggest around a third of all Safeguard facilities applying for calculated baselines could be expected to use the default values and benefit from a less costly application process.

[18] By streamlining and simplifying the multi-year monitoring period application process, applications would be less costly. Further, by allowing all facilities to use multi-year averaging, facilities would also be better able to manage the cost of compliance.

Option 3: Bring baselines up-to-date and allow for automatic updates

Option 3 includes the same elements as Option 2 but also allows baselines to automatically update with actual production.

As a result, Option 3 shares some of the benefits with Option 2:

- Option 3 would make the Safeguard Mechanism fairer by recalibrating all baselines with up-to-date data, which better distributes the incentive to actively manage emissions between and within industries.
- Option 3 would make the Safeguard Mechanism simpler by reducing the cost of application by giving businesses the option to use default production variables and emissions-intensity values.

By introducing baselines that automatically update for production, Option 3 changes the incentive framework to focus on emissions-intensity. Under this option, baseline exceedance would no longer occur as a result of increasing production. Rather, exceedance would indicate a deterioration in emissions-intensity. Therefore, growing businesses would no longer face costs arbitrarily. As a result, Option 3 provides a framework to encourage businesses to maintain and improve efficiency while supporting business growth. This provides a more equitable incentive to manage emissions on an ongoing basis, and is consistent with the policy objective of allowing business-as-usual emissions.

Like Option 2, Option 3 brings baselines up-to-date, but by allowing baselines to adjust with production, Option 3 ensures baselines continue to reflect current operating circumstances. This would prevent the problem of under- and over-allocation of emissions limits from re-emerging. By aligning baselines with production, all businesses would be continually encouraged to actively monitor and manage their emissions, and to maintain their efficiency. This option would continue to provide an even incentive to manage emissions across facilities over the long term, regardless of changes in production.

In line with the policy objective, Option 3 would incentivise businesses to manage their emissions on an ongoing basis, while also accommodating economic growth and allowing businesses to continue normal operations.

Option 3 further simplifies the Safeguard Mechanism, compared to Option 2. Because baselines automatically update with production, facilities would no longer have to re-apply to ensure baselines reflect current operating circumstances. As a result, there would be few ongoing baseline applications under Option 3, compared to Option 2.

Likely emissions outcomes

As with Option 2, by transitioning facilities to up-to-date baselines, Option 3 would minimise the gap between facility emissions and baselines. At an aggregate level, the total of all baselines is expected to be lower (than Option 1) and total covered emissions would not exceed this aggregated emissions limit.

The automatic baseline updates for production under Option 3 would mean that baselines both increase *and* decrease in any given year based on individual facility circumstances. For this reason, the overall outcome on aggregate baselines is expected to be similar to Option 2.

Although baselines are expected to be similar to Option 2 on an aggregate level, on an individual facility basis, baselines would more closely track business-as-usual emissions levels over the long term. This would provide a more even incentive on facilities to manage their emissions. Additionally, compared to Options 1 or 2, Option 3 specifically sends a signal to businesses to avoid more emissions intensive production. Allowing baselines to update each year for production changes would shift the incentive to managing emissions intensity performance, rather than absolute emissions. This contrasts with Option 2 where production growth could cause a facility to exceed its baseline. By allowing baselines to increase in response to increasing production so long as efficiency does not worsen, Option 3 better supports business growth while incentivising efficient operations.

Similar to Option 2, Option 3 would introduce default emissions intensity values reflecting average industry performance. This would be expected to have a similar outcome to Option 2 in helping businesses understand how their emissions intensity relates to the rest of their industry.

Under Option 3, some baseline exceedances would continue to occur in any given year, requiring some facilities to use ACCUs to manage net emissions. However it is expected that those exceedances would generally be smaller than exceedances under Option 2 because baselines would remain up-to-date, and exceedances would occur only as a result of worsening emissions intensity.

Regulatory costs

The average net **regulatory savings for Option 3 are estimated to be approximately $117,000** a year over ten years, compared with the business-as-usual scenario. This is based on similar elements to Option 2, including:

- An increase in application costs for facilities that would not have otherwise needed to apply for a calculated baseline.
- A lower compliance cost for those facilities that would have otherwise exceeded their baseline.
- Fewer baseline applications after the transition period.
- Reduced applications costs (particularly audit costs) for those facilities using default production variables and emissions intensity values.

However, compared to Option 2, the regulatory costs of Option 3 include:

- Fewer applications for calculated baselines under the inherent emissions variability criteria, and fewer applications for multi-year monitoring periods.

- Zero applications for a temporary baseline increase using the emissions intensity test (this provision would no longer be required).
- Reduced need for businesses to supply audited historical production data for production-adjusted baseline applications. This requirement has been reduced because facilities can move to baselines that automatically update with actual production, which is not audited.
- Higher ongoing reporting costs because all facilities with baselines that automatically update with production would be required to report production data. This would be a new regulatory cost for many facilities.

Question 5: Consultation

Consultation to date

The Department of the Environment and Energy has undertaken extensive consultation on the best approach to improve the Safeguard Mechanism. Consultation efforts have particularly focused on the most affected stakeholders, including facilities in the resources, manufacturing, transport and waste sectors.

An outline of consultation efforts follows. Figure 1 provides a summary of the key consultation activities undertaken.

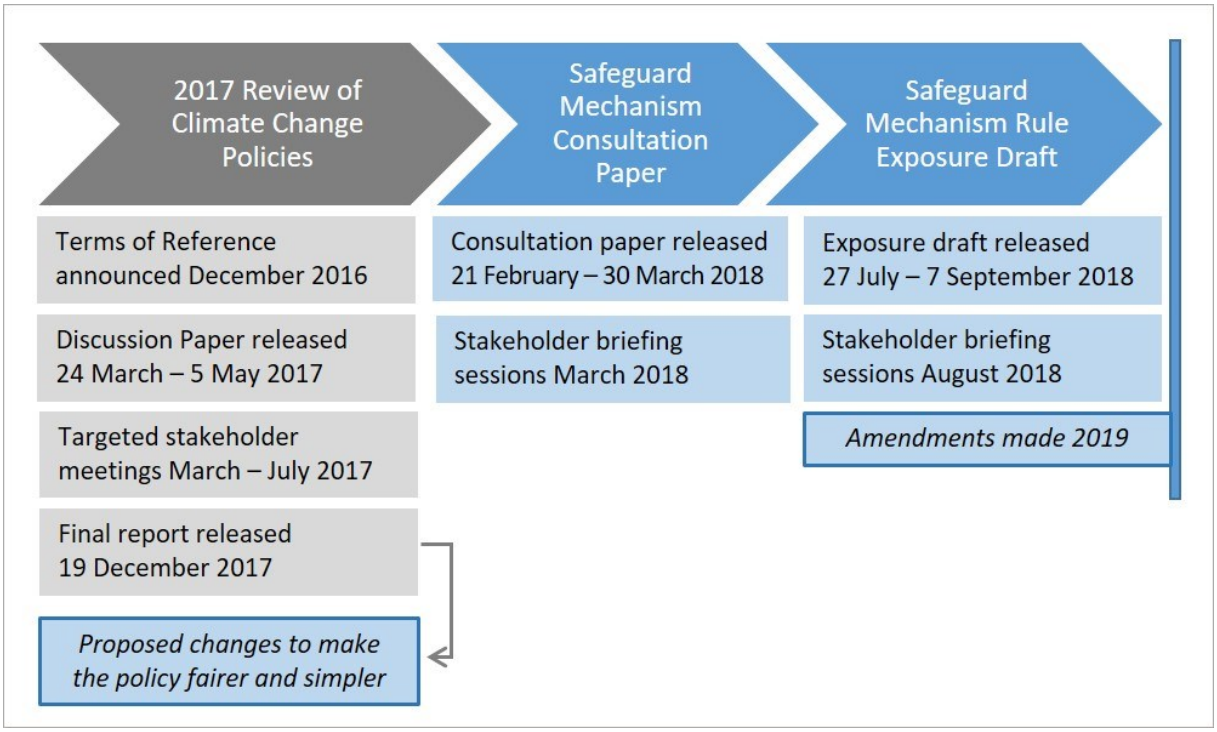


Figure 1: Summary of key consultation activities

Climate Change Policy Review

Stakeholders were initially invited to comment on the effectiveness of the Safeguard Mechanism—along with the Government's other climate change policies—upon the release of the Government's 2017 Review of Climate Change Policies discussion paper in March 2017.

Over the course of 2017, the Department consulted widely with businesses across all sectors of the economy and with the community. The discussion paper generated over 350 public submissions (105 from individuals and 252 from organisations). The Department met with more than 270 stakeholders and the then Minister for the Environment and Energy hosted two roundtables, attended by representatives from 42 business, community, environmental and Indigenous organisations.

During review consultations, businesses told the Government they support the Safeguard Mechanism framework, but identified opportunities to improve its operation.

On 19 December 2017, the Government released the final report for the 2017 Review of Climate Change Policies. In the final report, the Government committed to consult with businesses and work with the Clean Energy Regulator on ways to bring baselines up-to-date with current circumstances, and make the Safeguard Mechanism fairer and simpler, with the view to have any changes take effect for the 2018–19 compliance year.

Safeguard Mechanism consultation paper

In line with its December 2017 commitment, on 21 February 2018, the Government released a consultation paper on proposed options to improve the Safeguard Mechanism. Comments closed five weeks later on 30 March 2018. By this time the Safeguard Mechanism had been in operation for more than a year and covered businesses had completed their first compliance period cycle.

The consultation paper outlined a proposed approach with three main elements:

1. Bring baselines up-to-date by transitioning all facilities to calculated baselines over 2018-19 and 2019-20.

2. Simplify applications by giving businesses the option to use Government-determined 'production variables' and default emissions-intensity values for calculating baselines.

3. Update baselines annually for actual production, so they continue to reflect facility circumstances and enable growth. This would require businesses to report production.

In March 2018, the Department met with over 60 organisations through a series of group briefing sessions. Attendees included businesses with facilities covered by the Safeguard Mechanism, their industry bodies, and industry consultants including auditors and lawyers. Officers from the Clean Energy Regulator and Department of Industry, Innovation and Science also attended the sessions.

The Department also met bilaterally with 11 Safeguard businesses and three industry groups and their members. The bilateral meetings with businesses enabled the

Department to test the practical implications of policy options and allow representatives to speak in confidence.

The Department received 57 submissions from individuals, businesses, local councils and peak bodies in response to the consultation paper. Submissions were generally supportive of the approach proposed in the consultation paper.

> *Our industry supports the Government's intent to bring baselines under the Safeguard Mechanism up-to-date and to make it fairer and simpler.*[19]
>
> – Australian Aluminium Council

> *[The Business Council] welcomes the government's proposal to bring Safeguard Mechanism baselines 'up-to-date' to reflect current circumstances, account for business growth and reduce administrative burdens by making it a simpler and fairer process.*[20]
>
> – The Business Council of Australia

Safeguard Mechanism draft legislative amendments

On 27 July 2018, the Government released exposure draft amendments to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015*. Comments closed six weeks later on 7 September 2018. Accompanying documents were also released:

- an explanatory document to support understanding of the draft amendments
- a consultation outcomes paper explaining how stakeholder comments on the preceding consultation paper had been considered (included at Attachment A).

The Department again met with over 60 organisations through a series of group briefing sessions, and met bilaterally with four Safeguard businesses and three industry groups and their members. 26 submissions were received from the public consultation process.

A number of stakeholders provided overarching comments on the proposed amendments and these were generally positive. Businesses generally agreed with the approach for bringing baselines up-to-date (Option 2 and Option 3 relates).

Businesses were supportive of the introduction of default production variables and emissions intensity values. Support was often given on the understanding that defaults would be optional rather than mandatory, and developed in consultation with industry.

[19] Australian Aluminium Council, *Submission to the Emissions Reduction Fund Safeguard Mechanism Consultation Paper*, 2018.
[20] The Business Council of Australia, *Submission to the Emissions Reduction Fund Safeguard Mechanism Consultation Paper*, 2018.

Most businesses communicated strong support for the introduction of annually-updating baselines (Option 3 relates).

Some businesses, while noting support for annually-updating baselines, also suggested that updating baselines annually may not be suitable for certain industries.

These points will be further explored through targeted consultation with specific industries, and drawing on independent expertise, during the development of default production variables and emissions intensity values.

A summary of stakeholder comments on the exposure draft amendments is provided at Attachment B. A summary of changes to be incorporated in the final Rule amendment as a result of stakeholder feedback is provided at Attachment C.

A list of stakeholders that submitted non-confidential submissions on the Safeguard Mechanism consultation paper and the exposure draft amendments to the Rule is provided at Attachment D.

The Department consulted with relevant Commonwealth agencies, including the Clean Energy Regulator and Department of Industry, Innovation and Science, on the development of the policy details and this RIS.

Future consultation

Further consultation will be required to finalise outstanding details of the proposed amendments, summarised below.

Defining defaults

The proposed approach includes the addition of two new schedules to the Rule. The schedules will define the default production variables and their corresponding emissions intensity values in the Rule. The proposed framework for developing the default production variables and emissions intensity values was publicly released for comment during the most recent consultation round (refer to Appendix A of the Explanatory Document for exposure draft amendments to the Rule).

The Government will develop the default production variables and emissions intensity values in consultation with businesses and supported by independent technical advice. Targeted consultation with businesses has begun. During the August 2018 briefing sessions, the Department invited businesses to engage in this consultation process. A number of businesses have since advised the Department that they wish to be involved in the development of defaults. The Government will release draft production variables for public comment, with the aim of publishing priority production variables in 2019, for use in the 2018-19 reporting and compliance year.

Reporting production data

The exposure draft amendment Rule requires some facilities to report additional production data under the National Greenhouse and Energy Reporting Scheme. The new reporting requirement will be established through amendments to the *National*

Greenhouse and Energy Reporting Regulations 2008. The Government will release an exposure draft of the proposed regulation amendments in 2019.

Question 6: Recommended option

Option 3—bring baselines up-to-date and allow automatic updates—is the preferred option. Refer to Table 3 below for a summary of the net benefits.

Table 3. Summary of net benefits

Option	Regulatory impact summary	Net Benefits	Estimated annual average regulatory costs (compared to BAU)
Option 1 Maintain the status quo	• Ongoing applications for eligible facilities • Emissions more likely to exceed baselines for those not eligible for a baseline update • High number of facilities applying for other flexibility provisions. • Baseline exceedance can result from an increase in production, regardless of efficiency or emissions performance • The incentive to manage emissions in not applied equitably across all facilities	N/A	$0
Option 2 Bring baselines up-to-date	• All facilities must apply for new baselines • Options to reduce cost of baseline applications	• Incentive to manage emissions more evenly dispersed • Reduces arbitrary costs, including on growing businesses • Short term increase in applications • Reduced cost (internal and audit) • Aggregate of baselines likely to be lower than Option 1	-$19,000

Option	Regulatory impact summary	Net Benefits	Estimated annual average regulatory costs (compared to BAU)
Option 3 Bring baselines up-to-date and allow for automatic updates	• All facilities must apply for new baselines • Options to reduce cost of baseline applications • Baselines automatically adjust with production to better reflect business-as-usual. • Additional reporting for those not already reporting production. • Baseline exceedance reflects degrading emissions-intensity, rather than an increase in production.	• Incentive to manage emissions more evenly dispersed. Clear incentive to manage emissions intensity regardless of changing production. But requires reporting of production. • Removes arbitrary costs on growing businesses • Short term increase in applications but less need for future applications. Fewer applications than Option 2 • Reduced cost (internal and audit). Further reduced from Option 2 • Similar aggregate baselines to Option 2	-$117,000

Option 1—maintain the status quo—would result in continued arbitrary costs on growing businesses and continual administrative costs. These costs would continue to be unevenly dispersed.

Option 2—bring baselines up-to-date—would address the objectives of refining the Safeguard Mechanism but may only provide a short term solution. It would make the policy fairer by bringing all baselines to up-to-date. It includes an element of simplification by allowing the use of Government determined defaults. The introduction of default emissions intensity values could help businesses and shareholders assess their emissions performance relative to competitors, potentially encouraging performance improvements.

Option 3 retains and builds on the benefits of Option 2. It is the preferred option for improving the Safeguard Mechanism by bringing baselines up-to-date and making the Safeguard Mechanism fairer and simpler.

Option 3 would result in reduced administrative costs compared with Option 1 and Option 2 (refer Table 4 below).

Table 4. Summary of available options for reducing application costs

RIS option:	Option to avoid costs of identifying production variables?	Option to avoid costs of providing audited emissions intensity data?	Option to avoid costs of providing audited production data?
Option 1	✗	✗	✗
Option 2	✓	✓	✗
Option 3	✓	✓	✓

Option 3 allows baselines to be set in a way that reflects business-as-usual emissions levels on an ongoing basis, while also supporting business growth and encouraging businesses to maintain their efficiency. Unlike Option 2, it prevents the identified problems from re-emerging. Option 3 applies a more equitable incentive for facilities to manage emissions on an ongoing basis. Option 3 would most effectively achieve the objective of sending a signal to businesses to avoid large unconstrained increases in emissions beyond business-as-usual levels, while allowing for business growth.

Option 3 would not penalise business growth, and is expected to result in smaller individual exceedances than with Option 1 and 2. Businesses that manage their efficiency would be better supported to grow, potentially leading to improved economic returns for these businesses compared to Option 1 or 2, while encouraging efficient operations.

Importantly, the three elements underpinning Option 3 are broadly supported by businesses with facilities covered by the Safeguard Mechanism.

Question 7: Implementation and evaluation

Implementation approach

The Clean Energy Regulator administers the *National Greenhouse and Energy Reporting Act 2007* and the Safeguard Mechanism, which is legislated through this Act. The proposed changes to the Safeguard Mechanism would be delivered through amendments to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015*. The changes are intended to be in place in 2019, for use from the 2018-19 reporting and compliance year, noting the baseline application deadline for the 2018-19 compliance year is by the end of October 2019.

The Department and Clean Energy Regulator will work together to ensure the existing compliance systems and frameworks are updated in line with the amendments to the Rule to facilitate a successful transition. This includes:

- updating online guidance resources on the operation of the Safeguard Mechanism, including providing new guidance material on changed aspects of the policy;
- updating the online Emissions and Energy Reporting System; and
- ensuring affected businesses understand the additional production reporting requirements, additional data collection and reporting requirements and deadlines

The Clean Energy Regulator will undertake an outreach program for affected businesses, including face-to-face information sessions on the practical implications of the changes.

The Department will continue to work with businesses on developing default production variables and emissions intensity values, prioritising industries requiring access to default values for the 2018-19 compliance year.

Implementation risks

Default production variables and emissions intensity values delayed: Undue delay to the development of default production variables and emissions intensity values would mean all businesses applying for a calculated baseline for the 2018-19 compliance year would need to use a site-specific production variable and emissions intensity value. This delay would mean that businesses intending to use the simpler application process of using default production variables and emissions intensity values would instead incur higher costs.

To mitigate this risk, the Department is working with industry to prioritise the sectors requiring defaults for 2018-19. The Department is also prioritising production variables that may be applicable across multiple industry groups.

Introduction of annually updating baselines increases complexity: The introduction of annually updating baselines may increase the difficulty of interpreting the legislation. As indicated above, new guidance material will be provided to help affected businesses understand the policy changes, including the introduction of annually updating baselines. The

proposed outreach program will further help businesses understand this new element and explore how it relates to their facilities.

Delay to new reporting requirements: Amendments to the *National Greenhouse and Energy Reporting Act Regulations 2008* will clarify production data reporting requirements. Delay to making the amendments could result in some confusion among businesses of their new production data reporting requirements. The Regulations are intended to be amended several months before 2018-19 reports are due (the due date is 31 October 2019).

To mitigate this risk, the Department will work with the Clean Energy Regulator to ensure existing systems (such as the Emissions and Energy Reporting System) can be updated quickly and/or short-term alternatives be put in place to ensure the necessary production data can be reported in the required format.

Evaluation

The final report of the 2017 Review of Climate Change Policies established that an evaluation of the operation of the Safeguard Mechanism will be undertaken by 2020. This review will consider any updates to the Rule and Regulations in the context of progress toward Australia's 2030 emissions reduction target. The terms of reference and other details of this next review are yet to be announced.

This review could provide an opportunity to consider the impact of the changes proposed in Option 3 of this RIS, drawing on data from the first two or three years of the operation of the Safeguard Mechanism.

Attachments

Attachment A - Consultation Outcomes Paper

Australian Government

Department of the Environment and Energy

Emissions Reduction Fund: Safeguard Mechanism

Consultation outcomes

July 2018

1. INTRODUCTION

As an outcome of the 2017 review of climate change policies, the Government committed to consult with businesses on ways to bring Safeguard Mechanism baselines up-to-date with current circumstances and make the Safeguard Mechanism fairer and simpler. A consultation paper was released for public comment on 21 February 2018, outlining a proposed approach with three main elements:

2. Bring baselines up-to-date by transitioning all facilities to calculated baselines over 2018-19 and 2019-20.

4. Simplify applications by giving businesses the option to use Government-determined 'production variables' and default emissions-intensity values for calculating baselines.

5. Update baselines annually for actual production, so they continue to reflect facility circumstances and enable growth. This would require businesses to report production.

The consultation paper can be found on the Department of the Environment and Energy's website at: https://www.environment.gov.au/climate-change/government/emissions-reduction-fund/consultation/safeguard-mechanism

The Department met with over 60 organisations through a series of workshops and meetings and received 57 submissions from individuals, businesses, local councils and peak bodies in response to the consultation paper. The submissions were generally supportive of the approach proposed in the consultation paper.

> *Our industry supports the Government's intent to bring baselines under the Safeguard Mechanism up-to-date and to make it fairer and simpler.*
>
> – Australian Aluminium Council

> *The Business Council…welcomes the government's proposal to bring Safeguard Mechanism baselines 'up-to-date' to reflect current circumstances, account for business growth and reduce administrative burdens by making it a simpler and fairer process.*
>
> – Business Council of Australia

1.1 This paper

This paper sets out the approach for updating the Safeguard Mechanism, taking into account the views expressed in submissions in response to the consultation paper. It should be read in conjunction with the exposure draft amendments to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* which has been released for public comment, and the accompanying explanatory document: http://www.environment.gov.au/climate-change/government/emissions-reduction-fund/consultation/safeguard-mechanism-legislative-amendments-2018

2. FEEDBACK AND FORWARD APPROACH

2.1 Transitioning to calculated baselines

The consultation paper outlined an approach to transition all facilities to calculated baselines, which use more up-to-date data, noting that existing baselines use data that

could be a decade out of date. The paper proposed all facilities on a reported (historical) baseline could apply for a calculated baseline in 2018-19 or 2019-20, and reported baselines would expire on 1 July 2020. Facilities that already have a calculated baseline could not reapply.

2.1.1 Feedback from submissions

The majority of submissions were in favour of the proposal to transition to calculated baselines. Many stated that facilities already on a calculated baseline should be permitted to apply.

> *The MCA specifically welcomes the Consultation Paper's proposed transition to calculated baselines as a means of ensuring all business have baselines which reflect recent activity.*
>
> – Minerals Council of Australia

> *For facilities that have applied for a calculated baseline in 2016-17, Origin believes that all corporations should have the ability to review and assess at the same time as all other entities…This will provide an equal opportunity for all participants under the Safeguard Mechanism and establish a fair baseline standard.*
>
> – Origin Energy

2.1.2 Approach for transitioning to calculated baselines

The Government will allow all facilities to apply for a new calculated baseline in 2018-19 or 2019-20, including those already with calculated baselines. This promotes consistency in how baselines are set and ensures all facilities can access baselines that are set using up-to-date data. Existing reported baselines will expire on 30 June 2020, except for those facilities covered by the electricity sectoral baseline.

The Government will publish default production variables and emissions-intensity values to help lower the cost of baseline applications (see section 2.2 below).

In line with the approach outlined in the consultation paper, landfill facilities will transition to baselines using gas capture rates similar to the current baseline setting approach for new landfills. As with production variables, a default capture rate will be set following targeted consultation.

2.2 Simplifying calculated baselines

In the consultation paper, the Government sought views on introducing an option to use Government determined default production variables and emissions-intensity values for calculated baseline applications in order to simplify application and audit processes and help lower administrative costs for businesses.

2.2.1 Feedback from submissions

There was broad support for giving businesses the option to use default production variables and emissions intensity values.

AIP welcomes the approach to allow the use of default production variable and default emissions intensity values while also allowing for the use of site specific factors should a facility prefer that approach. Default values have the capacity to significantly simplify and streamline the administrative process, including audit the requirements.

– Australian Institute of Petroleum

Many submissions highlighted the importance of further consultation.

…our industry is looking forward to further, industry-specific consultations to discuss the development of the emissions intensity value, including discussions around appropriate production metrics.

– Cement Industry Federation

AIGN and its members look forward to ongoing consultation and detailed workshops on the development of production variables and associated emissions-intensity factors.

– Australian Industry Greenhouse Network

2.2.2 Approach for simplifying calculated baselines

The Government will give facilities the option to use default production variables and emissions-intensity values in place of site-specific forecasts. These will be developed by the Department, in consultation with businesses and supported by independent technical advice.

To allow sufficient time for consultation, default values will be published by the Government in the first half of 2019. The published values will be available in time to be used for 2018-19 baseline applications.

A facility with a calculated baseline will be able to choose to move to default emissions-intensity values at any time, but once it is using the default value it would not be able to move back to a site-specific value.

2.3 Annually updating baselines for actual production

The consultation paper outlined an approach to allow baselines to be updated annually for production in order to help prevent baselines becoming out-of-date in the future. This approach would require businesses to report production data.

The consultation paper sought views on whether baselines that are updated annually for production should apply to emissions-intensive trade exposed facilities only, or more broadly. The consultation paper also sought views on whether there is a need to standardise the basis for determining annually-updated production adjusted baselines, for example through the use of commonly-defined production variables.

2.3.1 Feedback from submissions

The majority of submissions supported the concept of annually-updated baselines, generally for all facilities or a broader set of facilities.

Some submissions suggested that updating baselines annually may not be suitable for certain industries.

The Department needs to address the varying impact of this proposed approach on different entities and the specific industries/sectors in which they operate.

– Australian Industry Group

Businesses that supported annually-updated baselines were generally comfortable with reporting new production data under the National Greenhouse and Energy Reporting Scheme. The majority also support updating baselines based on actual production, so the baseline would be updated after the compliance year.

Rio Tinto supports the proposed approach for annually updated production-adjusted baselines to be made available to all facilities. Additionally, we support the proposal for updating baselines to be based on actual production data for the compliance year.

– Rio Tinto

Some businesses highlighted the benefits of using commonly-defined production variables, while others said it would depend on how they are defined.

There needs to be transparency around what production variables are being defined by each applicant. The use of commonly defined 'production variables' would be one way to achieve this.

– Peabody Australia

Some businesses recognised the approach in the consultation paper would make some existing provisions for baseline adjustments redundant (for example, the significant expansion criteria and the emissions-intensity test). However, businesses supported retaining multi-year monitoring periods.

There will be a continued need for some flexibility mechanisms to deal with natural background variations in emissions-intensity. The multi-year averaging mechanism is particularly relevant for this purpose. The current emissions-intensity test, however, would be redundant once all facilities had transitioned to calculated baselines.

– Australian Aluminium Council

2.3.2 Approach for annually updating baselines for actual production

Baselines will be updated annually for changes in production for facilities using eligible, commonly-defined production variables. Using commonly-defined production variables will promote transparency and consistency among facilities.

The Department will work with businesses to define production variables eligible for annually-adjusted baselines. However, the existing calculated baseline arrangements will be used in cases where facilities do not use an eligible production variable. That is, for these facilities baselines will be updated once for actual production at the end of the calculated baseline period, then remain fixed.

The Government will identify which default production variables will be used for annually-adjusted baselines, in consultation with businesses and supported by independent technical advice. Eligible production variables will be as closely aligned to outputs as possible.

Following consultation, the Government will publish two schedules in the first half of 2019 with:

Prescribed (fixed) production variables that facilities can use for baselines that update ***once*** for actual production (the current approach); and

Prescribed (annually adjusted) production variables that facilities can use for baselines that update ***annually*** with actual production.

To assist the transition to the new approach, facilities will be able to move to a production-adjusted baseline following the first, second or third year of a calculated baseline period. This allows a facility to transition to production-adjusted baselines earlier than the current framework, where a facility must wait until the end of the calculated baseline period (i.e. following the third year). In addition, those facilities electing to use only default emissions intensity values can move directly to annually-adjusted baselines. This means that no calculated baseline application is required in these cases.

Aligning reporting for businesses

Facilities with annually-updated production-adjusted baselines will report production through the National Greenhouse and Energy Reporting Scheme in the same way they currently report greenhouse gas emissions and energy information.

Baselines will be set based on actual annual production reported by 31 October each year, to coincide with emissions reporting.

Existing baseline adjustments

In response to industry feedback, the Government will improve access to multi-year monitoring periods. By streamlining the application process, all facilities will be able to use multi-year averaging, so long as the Clean Energy Regulator is satisfied there are no compliance risks. The deadline for applications has also been extended until 1 February in the year following the first year of the multi-year monitoring period. These changes will allow facilities exceeding their baseline to manage variations in their emissions, for example due to production cycles or maintenance requirements.

The Government will remove the emissions-intensity-test and the significant expansion criteria for calculated baselines, as these flexibility mechanisms are not necessary where facilities can access calculated baselines and/or annually-updated production-adjusted baselines. The inherent emissions variability provision will be retained.

3. NEXT STEPS

The exposure draft amendments to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* has been released for public comment. Amendments to the *National Energy and Greenhouse Reporting Regulations 2008* will also be required to enable annually-adjusted baselines. These amendments will be drafted following the current consultation on the draft amendments to the Safeguard Mechanism Rule.

Consultation on the exposure draft amendments closes on 7 September 2018.

The Government is working towards making amendments to the Safeguard Mechanism Rule by the end of 2018 to allow the changes to be in place for baseline applications for the 2018-19 compliance year, which are due by the end of October 2019.

The Government will continue to consult over coming months on default production variables and emissions-intensity values. These will be published in the Safeguard Mechanism Rule in the first half of 2019.

Attachment B - Summary of stakeholder responses to exposure draft amendments, 2018

Feedback	Example quotes from non-confidential submissions
Transition from reported to calculated baselines (Option 2 and 3 relates)	
Businesses generally agreed with the approach for bringing baselines up-to-date.	*Rio Tinto supports the Government's efforts to improve the existing Safeguard Mechanism Rule design to "…accommodate business growth and allow business to continue normal operations"…. Building on the current baseline setting framework to provide policy certainty and stability will in turn help to better support business planning and investment.* -Rio Tinto *Origin is pleased with the Government's intention for all facilities access to calculated baselines, including those already on a calculated baseline. We believe this is important to establish a fair baseline standard and provide equal opportunity for all participants under the scheme.* - Origin *BHP supports the concept of transitioning all large designated facilities to calculated baselines in the interests of placing facilities on an even footing.* - BHP *APPEA welcomes the addition of the transitional calculated baseline criteria in the amendments. This will allow all project proponents to apply for adjustments to the baselines that better reflect the business conditions prevailing during the period between 2017-18 and 2019-2020.* - Australian Petroleum Production and Exploration Association
Introduction of default values (Option 2 and 3 relates)	
Businesses were	*Given the complexity involved in determining these*

Feedback	Example quotes from non-confidential submissions
supportive of the introduction of default production variables and emissions intensity values. Support was often given on the understanding that defaults would be optional rather than mandatory, and developed in consultation with industry.	*values for LNG facilities due to the bespoke nature of their construction and multiple variables, COPA supports in concept the development of default emissions-intensities, provided it remains an optional approach for facilities to set site-specific emissions intensities and adequate consultation with industry is undertaken.* - ConocoPhillips Australia *It… may be problematic to determine production variables and defaults for standalone or small numbers of like-for-like facilities. AIGN appreciates the Department's consultative approach to date and notes that this will be essential in the implementation of the proposed amendments.* - Australian Industry Greenhouse Network *We welcome the Department's consultation approach to date and recognition that further engagement with business and industry will be required before these changes are implemented.* *Close consultation with business is particularly important in relation to defining the government determined default production variables and emissions intensity values.* - Business Council of Australia *The CIF remains supportive of any options that lead to a simplification of the application process and avoids the need to audit site-specific emissions intensity forecasts, provided caution is exercised to ensure that the chosen data sources are a true representation of the sector in question.* -Cement Industry Foundation
Introduction of annually-updated baselines (Option 3 relates)	
Most businesses communicated strong support for the introduction of annually-updating	*…the Business Council welcomes the government's proposal to move to annually updated production-adjusted baselines as a flexible, workable approach to business growth.*

Feedback	Example quotes from non-confidential submissions
baselines.	- Business Council of Australia *AIP supports a revision of the methodology for determining Safeguard Baselines in a manner that takes account of changes in annual production to better reflect actual business activity while also delivering administrative simplicity.* - Australian Institute of Petroleum *APPEA supports the amendments to allow baselines to be updated to reflect actual production growth and change within an industry and allow for future growth in production.* - Australian Petroleum Production and Exploration Association *Annually updated production-adjusted baselines are likely to provide flexibility and accommodate business growth for trade exposed industries such as cement manufacturing.* -Cement Industry Foundation
Some submissions suggested annually-updating baselines would not prevent baseline exceedances entirely because emissions variability will not always correlate with production.	*The proposed amendment of updating baselines to reflect actual production variables is supported conceptually, however it should be highlighted that there may still be emissions variability that does not correlate with production. In instances of outages or shut-downs, a gas facility may be required to increase safety flaring and therefore cause a higher than expected emissions level.* - Origin Energy
Some facilities were concerned that emissions can occur at their facility even without production.	*Unlike other covered facilities, fugitive emissions from coal mines are not always linked to production… As such, flexibility in setting and adjusting baselines is critical.* - The Minerals Council of Australia

Feedback	Example quotes from non-confidential submissions
Some businesses suggested industry specific characteristics could make it difficult to identify a common production variable or appropriate default emissions intensity value across like facilities in a sector without disadvantaging some facilities.	*It is important to recognise using default emissions intensity values may be difficult for certain facilities, businesses and industries. For instance, in the rail freight industry emissions intensity will vary for train operators due to a wide range of factors including rail network constraints and customer requirements.* - Pacific National

Attachment C - Summary of revisions to the amendments to the Safeguard Mechanism Rule following comments on the Exposure Draft Amendments

Description	Legislative Reference	Revision
Minor issues raised in relation to amended definitions: • The definition of baseline intensity comparison year incorrectly refers to part 3 not part 2. • Production assessment period should refer to 'period' in definition not 'years.' • Reasonably expected to exceed is an unnecessary definition.	s.4	Minor changes made to definitions to address comments raised.
Existing subsection 6(10) may limit ability to change production variables for the purposes of calculated baseline applications.	s. 6(10)	Subsection 6(10) deleted. This subsection relates to facilities continuing to access the emissions intensity test. From 2019-20 the emissions intensity test is no longer an ongoing flexibility option and the provision can be removed. This ensures facilities can select production variables suitable for their calculated baseline applications at the time of application.

Description	Legislative Reference	Revision
Landfill facilities have indicated a possibility of applying for a calculated baseline, which could include incorporating both covered and uncovered emissions from a landfill.	s. 13	The policy intent has been clear that landfill facilities will transition to baselines based on landfill gas capture rates. This type of baseline recognises the unique circumstances of how emissions from waste are generated. Landfill facilities will be eligible to apply for either a calculated baseline or a baseline using a landfill gas capture rate. However, revisions have been made to ensure only 'covered' emissions can be included when calculating a baseline. This is consistent with any obligations, which only relate to 'covered' emissions. This approach has been communicated with waste industry associations.
The heading of s. 20 ('Variation of transport reported-emissions baseline determination where calculated-emissions baseline determination incorporated') in the Exposure Draft is not consistent with the amended text of the section.	s. 20	Typographical error corrected: 'Benchmark-emissions baseline determination' is removed from the heading to reflect its removal throughout section 20.

Description	Legislative Reference	Revision
The 'baseline comparison year' for those with a calculated baseline should be defined as the baseline-setting year as per paragraph 27(1)(c) (i.e. the year of highest forecasted production).	s. 25(5), s. 25(11)	Revisions have been made to promote consistency with other calculated baseline eligibility criteria. Where a calculated-emissions baseline determination applies, the baseline comparison year is taken to be the same year used to set the baseline (as per s. 27(1)(c)). But if that year has not yet occurred, the baseline comparison year is taken to be the first year of the calculated baseline. This approach ensures the baseline comparison year is not a year in the future, meaning a facility does not have to compare forecast data with actual data to demonstrate a change in properties of the natural resource.
Allow facilities that may have applied for a calculated baseline before amendments are made to apply for a 'transitional' calculated baseline.	s. 26A	All facilities are able to apply for a calculated baseline using the transitional calculated baseline criteria once.
Concern that drafting will not provide the Clean Energy Regulator with sufficient information to assess a production-adjusted baseline application.	41(1)(a) , 41(1)(e), 41(2)(b), 41(2)(e), 42(2)(c)	An application must include the details of the production variable applicable to the facility and the basis upon which it is applicable to the facility. This revision ensures the Clean Energy Regulator has sufficient information to assess a production-adjusted baseline application.
Allow the emissions intensity test to remain until 2018-19 to assist with transition.	s. 46(1)	Revisions allow facilities to apply for an emissions intensity variation for 2018-19. This allows for adjustments reflecting emissions intensity improvements to be available as a transitional arrangement ahead of access to baselines that automatically adjust with changes to production.

Description	Legislative Reference	Revision
		The emissions intensity test will not be available for 2019-20 or future years.
The Clean Energy Regulator should make a decision on multi-year monitoring applications before the compliance deadline.	s. 67(4)	Revisions require the Clean Energy Regulator make a decision before 28 February.
Concern that the provisions may intentionally (or unintentionally) disclose commercial information about ACCU holdings.	s.72(1)(d)	Minor revisions make it clear that only aggregate details are published. No facility-level detail of ACCU demand or holding will be published.

Attachment D - List of non-confidential submissions to 2018 public consultation

Emissions Reduction Safeguard Mechanism Consultation Paper

56 submissions were received in total, 38 non-confidential and 18 confidential.

Australian Aluminium Council
AGL Energy
AusNet Services
Australian Forest Products Association
Australian Gas Infrastructure Group
Australian Industry Greenhouse Network
Australian Industry Group
Australian Institute of Petroleum
Australian Landfill Owners Association
Australian Petroleum Production and Exploration Association
Australian Pipeline and Gas Association
BHP
Brisbane City Council
Business Council of Australia
Carbon Market Institute
Cement Industry Federation
ConocoPhillips
Corporate Carbon Advisory
Derek Bolton
Eastern Alliance for Greenhouse Action
Energy Networks Australia
Gary Ellett
Glencore
Investor Group on Climate Change
Mackay Sugar
Minerals Council of Australia
National Waste and Recycling Industry Council
Northern Alliance for Greenhouse Action
Origin Energy
Peabody Australia
Qenos
Rio Tinto
Thiess and Jellinbah
Virgin Australia
Waste Management Associated of Australia
Western Alliance for Greenhouse Action
Western Australia Local Government Association
Woodside

Exposure draft amendments to the National Greenhouse and Energy Report (Safeguard Mechanism) Rule 2015.

26 submissions were received in total, 19 non-confidential and 7 confidential.

Australian Industry Greenhouse Network
Australian Landfill Owners Association
Australian Petroleum Production and Exploration Association
AusNet
Australian Aluminium Council
Australian Institute of Petroleum
BHP
Business Council of Australia
Carbon Market Institute
Cement Industry Federation
ConocoPhillips
Energy Queensland
Greenbase
Minerals Council of Australia
National Waste and Recycling Industry Council
Origin Energy
Pacific National
Rio Tinto
Virgin Australia

Attachment B: Statement of Compatibility with Human Rights

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

National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019

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

Overview of the Disallowable Legislative Instrument

The Safeguard Mechanism is part of the *National Greenhouse and Energy Reporting Act 2007*. Together with the emissions reporting obligations under the Act, the Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions. The Safeguard Mechanism was established through the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* and commenced on 1 July 2016.

The Safeguard Mechanism establishes emissions baselines for Australia's largest greenhouse gas emitters. It covers facilities with more than 100,000 tonnes of carbon dioxide equivalent emissions each year, and applies to around 200 facilities in the mining, oil and gas, manufacturing, transport, and waste sectors. Businesses must manage emissions at their facilities and have a legislated obligation to keep to their baseline. Baselines are intended to accommodate business growth and allow businesses to continue normal operations.

In 2017, the Government reviewed Australia's climate change policies—including the Emissions Reduction Fund and its Safeguard Mechanism. As an outcome of the review, the Government committed to consult with businesses on ways to bring Safeguard Mechanism baselines up-to-date with current circumstances and make it fairer and simpler.

The *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019* gives effect to this commitment to bring baselines up-to-date and make the Safeguard Mechanism fairer and simpler. The Amendment Rule gives effect to three main policy changes:

1. Bring baselines up-to-date by transitioning all facilities to calculated baselines over 2018-19 and 2019-20.
2. Simplify calculated baseline applications by giving businesses the option to use Government-determined *prescribed production variables* and *default emissions intensity* values for calculating baselines.

3. Update baselines annually for actual production where facilities use eligible *production variables*, so they continue to reflect facility circumstances. This requires business to report production.

Human rights implications

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

There is no likely impact on the human rights engaged, because the Amendment Rule applies to large facilities whose responsible emitters are only likely to be very large businesses, not individuals. Currently, there are no individuals who are covered by the Safeguard Mechanism.

In the unlikely event that an individual did have operational control of a covered facility, this Disallowable Legislative Instrument has the potential to engage Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR). Article 17(1) of the ICCPR provides the right of every individual to be protected against arbitrary or unlawful interference with the individual's privacy. The Amendment Rule has the potential to engage the right to privacy because:

- *Prescribed production variables* and *default emissions intensity values* will be developed using production and emissions data from facilities operating in Australia. A guiding principle for their development is protecting the confidentiality of sensitive industry data through the use of high quality and robust data. To preserve confidentiality, an average of multiple data points (over multiple facilities and multiple years) will be taken rather than using a single data point.

- Amended *section 72* of the Principal Rule requires the Clean Energy Regulator to publish information about the future demand for Australian carbon credit units. This includes publishing an aggregated total of the Australian carbon credit units likely to be surrendered by all facilities with a multi-year monitoring period. Aggregating this information across all facilities mitigates against the disclosure of any commercially sensitive information.

An interference with an individual's privacy will not be considered 'unlawful' if it is authorised by a law that complies with the provisions, aims and objective of the ICCPR and specifies in detail the precise circumstances in which such interferences may be permitted. An interference with an individual's privacy will not be considered 'arbitrary' if it is reasonable in the particular circumstances and the law is in accordance with the provisions, aims and objectives of the ICCPR.

The Amendment Rule does not authorise an unlawful interference with an individual's privacy because the Amendment Rule adequately specifies the circumstances in which information may be collected. Information provided to the Clean Energy Regulator is protected by strict secrecy provisions in the *Clean Energy Regulator Act 2011* as well as the *Privacy Act 1988.* The information that is published about the Safeguard Mechanism is often

publicly available from other sources, not of a personal nature and relates to the integrity of the Safeguard Mechanism.

The requirements in the Amendment Rule are reasonable because they are based on self-reporting under existing legislation (the *National Greenhouse and Energy Reporting Act 2007*) and the information is aggregated to de-identify individual information. The Amendment Rule introduces options for facilities to use either site-specific, or *prescribed production variables* for baseline determinations. The Amendment Rule is therefore not 'arbitrary' within the meaning of Article 17(1) of the ICCPR.

The Amendment Rule is therefore compatible with Article 17(1) of the ICCPR because it does not unlawfully or arbitrarily interfere with an individual's privacy.

Conclusion

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