



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

I, Melissa Price, Minister for the Environment, make the following rule.

Dated 4 March 2019

Melissa Price
Minister for the Environment

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1 Name

This instrument is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	7 March 2019

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015

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

Omit “landfill-benchmark”, substitute “landfill”.

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

Omit “Part 4”, substitute “Division 2 of Part 3”.

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

Omit “benchmark”, substitute “prescribed”.

4 Section 4 (definition of *benchmark facility*)

Repeal the definition.

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

Add:

; and (c) contributes less than 10% of the facility’s revenue.

6 Section 4

Insert:

default emissions intensity, in relation to a prescribed (annually adjusted) production variable or prescribed (fixed) production variable, means the t CO₂-e of covered emissions per unit of the production variable set out in Schedule 2 or 3.

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

Repeal the paragraphs, substitute:

- (e) whether the new facility criteria, significant expansion criteria, inherent emissions variability criteria, initial calculated baseline criteria or transitional calculated baseline criteria were satisfied in relation to the making of the determination; and
- (f) if the determination specifies a baseline emission number—that number; and
- (fa) whether or not the baseline emissions number is dependent upon the production of a prescribed (annually adjusted) production variable in each financial year; and

8 Section 4

Insert:

estimated emissions intensity has the meaning given by subsection 27(4).

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

Omit “landfill-benchmark”, substitute “landfill”.

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

Repeal the definition, substitute:

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

11 Section 4

Insert:

prescribed (annually adjusted) production variable means a metric related to the production at a facility set out in Schedule 2 that is applicable to the facility in accordance with any requirements set out in that Schedule. It includes:

- (a) a production variable under paragraph (a) of the definition of that term that is a prescribed (annually adjusted) production variable chosen under subsection 5(1A); and
- (b) a production variable under paragraph (a) of the definition of that term that is identified under section 5, other than subsection 5(1A), that is:
 - (i) the same as a metric set out in Schedule 2; and
 - (ii) not approved by the Regulator under subsection 5(1B); and
- (c) a production variable under paragraph (b) of the definition of that term that is the same as a metric set out in Schedule 2.

prescribed (fixed) production variable means a metric related to the production at a facility set out in Schedule 3 that is applicable to the facility in accordance with any requirements set out in that Schedule.

prescribed production variable means a prescribed (annually adjusted) production variable or prescribed (fixed) production variable.

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

Repeal the definition, substitute:

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

- (a) if paragraph 40(1)(a) applies because of the expiry of a calculated-emissions baseline determination—the period covered by that baseline determination; or
- (b) if paragraph 40(1)(a) applies because of the expiry of a benchmark-emissions baseline determination—the production estimation period used in calculating the baseline emissions number for that baseline determination; or
- (c) if paragraph 40(1)(aa) applies—the period covered by the calculated-emissions baseline determination or benchmark-emissions baseline determination before the production-adjusted baseline determination is to commence; or
- (d) if paragraph 40(1)(ab) applies—the first three years of the production-adjusted baseline determination; or

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

13 Section 4 (definition of *production variable*)

Repeal the definition, substitute:

production variable, for a facility, means:

- (a) in relation to:
 - (i) a calculated-emissions baseline determination either commencing before 1 July 2020 or made on the basis of the inherent emissions variability criteria; or
 - (ii) a production-adjusted baseline determination to follow or replace a calculated-emissions baseline determination (that commenced before 1 July 2020 or was made on the basis of the inherent emissions variability criteria); or
 - (iii) a variation of a baseline determination under Subdivision 6 of Division 2 of Part 3;

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

- (b) in relation to:
 - (i) a benchmark-emissions baseline determination; or
 - (ii) a production-adjusted baseline determination to follow or replace a benchmark-emissions baseline determination; or
 - (iii) a production-adjusted baseline determination to which paragraph 40(1)(b) applies;

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

- (c) in relation to:
 - (i) a calculated-emissions baseline determination commencing on or after 1 July 2020 that is not made on the basis of the inherent emissions variability criteria; or
 - (ii) a production-adjusted baseline determination to follow or replace a calculated-emissions baseline determination that commenced on or after 1 July 2020 and was not made on the basis of the inherent emissions variability criteria;

a prescribed production variable at a facility that is applicable to the facility in accordance with any requirements set out in Schedule 2 or 3; and

- (d) in relation to a production-adjusted baseline determination to which paragraph 40(1)(ab) applies, a prescribed (annually adjusted) production variable at a facility that is applicable to the facility in accordance with any requirements set out in Schedule 2.

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

Before “per unit”, insert “of covered emissions”.

15 Section 4

Insert:

transitional calculated baseline criteria means the criteria in section 26A.

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

Repeal the subsections, substitute:

- (1) The identification of a production variable in relation to a facility must meet the requirements of this section.

Note: This section is only relevant to paragraph (a) of the definition of production variable in section 4.

- (1A) The responsible emitter for a facility may choose any applicable prescribed production variable if the result is that:
- (a) all the production variables chosen are prescribed production variables; or
 - (b) all of the following apply:
 - (i) the facility produces outputs unrelated to the prescribed production variables and the covered emissions considered in developing those production variables;
 - (ii) the production variables that are not prescribed relate only to those outputs and covered emissions;
 - (iii) the covered emissions attributable to each production variable that is not prescribed exceed 5% of the covered emissions of the facility;
 - (iv) the production variables that are not prescribed are otherwise identified in accordance with this section.
- (1B) If a production variable is identified under subsection (2) to (10) that is the same, in all material respects, as a prescribed production variable, the prescribed production variable must be chosen under subsection (1A) unless the Regulator approves otherwise in writing.
- (2) If the facility has only one output that has an output variable, that output variable must be the production variable unless subsections (10) or (1A) apply.
- (3) If the facility has more than one output that has an output variable, each of those output variables must be a production variable unless subsections (1A), (4), (5), (6), (7) or (10) apply.

17 Paragraph 6(1)(a)

Omit “(8)”, substitute “(8A)”.

18 After subsection 6(8)

Insert:

- (8A) If the application uses both default emissions-intensities set out in Schedule 2 or 3 and estimated emissions-intensities—the estimated emissions-intensities must not include emissions of a kind considered in developing the default emissions-intensities set out in Schedule 2 or 3.

19 Paragraph 6(9)(b)

Omit “and the facility is not a benchmark facility”.

20 Subsection 6(10)

Repeal the subsection.

21 Paragraph 6(11)(b)

Omit “and the facility is not a benchmark facility”.

22 Paragraph 13(b)

Omit “other than in subdivision 7”, substitute “if used in relation to a reported-emissions baseline determination”.

23 Paragraph 14(2)(a)

After “a financial year”, insert “before the financial year beginning 1 July 2020”.

24 Paragraph 18(3)(b)

Repeal the paragraph, substitute:

- (b) if the facility is a grid-connected electricity generator—ceases to be in force at the end of the last sectoral-baseline financial year; and
- (c) if the facility is not a grid-connected electricity generator—ceases to be in force on 1 July 2020; and
- (d) if the facility was a grid-connected electricity generator on 1 July 2020 but ceases to be a grid-connected electricity generator after 1 July 2020—ceases to be in force at the start of the financial year during which it ceased to be a grid-connected electricity generator.

25 Section 20 (heading)

Omit “or benchmark emissions baseline determination”.

26 Subsections 20(1) and (2)

Omit “or benchmark emissions baseline determination” (wherever occurring).

27 At the end of the subsection 22(1)

Add:

; (e) the transitional calculated baseline criteria.

28 At the end of subsection 23(4)

Add:

Note: As the criteria in this section need to be met at the time the Regulator makes a decision on the application, expectations of exceedance are not relevant where information on actual emissions for a financial year is available.

29 Subsection 23(5)

Repeal the subsection, substitute:

- (5) The responsible emitter for the facility:

-
- (a) has not changed, and is not expected to change, the manner in which scope 1 emissions are reported or calculated under the Act; or
 - (b) has not caused, and is not expected to cause, scope 1 emissions of greenhouse gases;

for the primary purpose of meeting the threshold in subsection (4).

30 At the end of subsection 24(8)

Add:

Note: As the criteria in this section need to be met at the time the Regulator makes a decision on the application, expectations of exceedance are not relevant where information on actual emissions for a financial year is available.

31 Subsection 24(10)

Omit “a 1 July 2016, 1 July 2017, 1 July 2018 or 1 July 2019”, substitute “1 July 2016 or 1 July 2017”.

32 Subsection 25(4)

Repeal the subsection, substitute:

- (4) The facility’s covered emissions in respect of the first financial year to be covered by the calculated-emissions baseline determination have exceeded, or are reasonably expected to exceed, the baseline emissions number which would otherwise apply to the facility in that financial year.

Note: As the criteria in this section need to be met at the time the Regulator makes a decision on the application, expectations of exceedance are not relevant where information on actual emissions for a financial year is available.

33 Subsection 25(5)

After “in subsection (4)”, insert “having regard to the differences, or expected differences, in covered emissions between the first financial year to be covered by the calculated-emissions baseline determination and the covered emissions reported under the Act for the most recent baseline comparison year”.

34 At the end of section 25

Add:

(11) In this section:

baseline comparison year means any of the following financial years:

- (a) if a reported-emissions baseline determination has been made in relation to the facility—the financial year used to determine the baseline emissions number under subsection 17(1); and
- (b) if a calculated-emissions baseline determination has been made in relation to the facility and a report under the Act has been provided in relation to the financial year determined under paragraph 27(1)(c) for that determination—that financial year; and
- (c) if a calculated-emissions baseline determination has been made in relation to the facility and a report under the Act has not been provided in relation to the financial year determined under paragraph 27(1)(c) for that determination—the first financial year of the calculated-emissions baseline determination; and

- (d) if a production-adjusted baseline determination has been made in relation to the facility—the financial year with the highest actual production level of the primary production variable over the production assessment period.

35 After section 26

Insert:

26A Transitional calculated baseline criteria

- (1) The transitional calculated baseline criteria are satisfied in relation to a facility if all of the criteria in this section are met.
- (2) No previous calculated-emissions baseline determination has been made in relation to the facility on the basis of the transitional calculated baseline criteria.
- (3) The facility's covered emissions in respect of any of the first three financial years to be covered by the calculated-emissions baseline determination have exceeded, or are reasonably expected to exceed, 100,000 t CO₂-e.
Note: As the criteria in this section need to be met at the time the Regulator makes a decision on the application, expectations of exceedance are not relevant where information on actual emissions for a financial year is available.
- (4) The responsible emitter for the facility:
 - (a) has not changed, and is not expected to change, the manner in which scope 1 emissions are reported or calculated under the Act; or
 - (b) has not caused, and is not expected to cause, scope 1 emissions of greenhouse gases;for the primary purpose of meeting the requirements in subsection (3).
- (5) If the calculated-emissions baseline determination is to commence on or after 1 July 2020—one or more prescribed production variables are applicable to the facility in accordance with any requirements in Schedule 2 or 3.
- (6) If the calculated-emissions baseline determination is to commence on or after 1 July 2020—the facility:
 - (a) does not, and is not expected to, meet the new facility criteria in section 33 in respect of any of the first three financial years to be covered by the calculated-emissions baseline determination; and
 - (b) is not eligible for a production-adjusted baseline determination under paragraph 40(1)(b).
- (7) The calculated-emissions baseline determination to which the application relates is to commence on 1 July 2018 or a later financial year.
- (8) If the facility is a grid-connected electricity generator—the calculated-emissions baseline determination is to commence at the start of a financial year which is not a sectoral-baseline financial year.

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

Add:

- (v) the transitional calculated baseline criteria;

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

Repeal the paragraphs, substitute:

- (d) for each production variable outlined under paragraph (c) either:
 - (i) if the proposed calculated-emissions baseline determination is to commence before 1 July 2020 or is to be made on the basis of the inherent emissions variability criteria—either:
 - (A) the estimated emissions intensity consistent with the emissions-intensity calculation criteria; or
 - (B) a nomination that the default emissions intensity should apply; or
 - (ii) otherwise—the default emissions intensity;
- (e) the expected covered emissions from the facility calculated by multiplying the quantity of each of the production variables under paragraph (c) by the estimated or default emissions intensity of that variable under paragraph (d), and summing the results;
- (f) if estimated emissions intensities are calculated under subparagraph (d)(i)—copies of the most recent environmental impact assessments (if any) relating to activities at the facility which result in significant emissions of greenhouse gases;
- (g) any relevant earlier estimates of the information required by:
 - (i) paragraph (c); and
 - (ii) if estimated emissions intensities are calculated under subparagraph (d)(i)—paragraph (d) and (e);

38 Paragraph 27(1)(i)

Repeal the paragraph, substitute:

- (i) historical emissions and production data that supports the estimates in:
 - (i) paragraph (c); and
 - (ii) if estimated emissions intensities are calculated under subparagraph (d)(i)—paragraph (d); and
- (j) if estimated emissions intensities are calculated under subparagraph (d)(i)—a statement that the estimates are based on reporting methods that will be used to report covered emissions under the Act and an explanation of any differences in the reporting methods from those previously used for the facility;
- (k) the basis upon which each production variable to be used in making the determination applies to the facility.

39 Subsection 27(3)

Repeal the subsection, substitute:

- (3) For the purposes of paragraph (1)(c) the quantity of a production variable must:
 - (a) if the variable is not a service unit or prescribed production variable—be calculated 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; and
 - (b) if the variable is a prescribed production variable:
 - (i) be measured using the units specified in Schedule 2 or 3; and

- (ii) meet any measurement requirements or procedures specified in Schedule 2 or 3.

- (4) In this section:

estimated emissions intensity means the covered emissions per unit of the production variable to be produced in the financial year identified under paragraph 27(1)(c).

40 Subsection 28(2)

Repeal the subsection, substitute:

- (2) The matters to be audited and covered by the audit report are whether, in all material respects:

Reasonable assurance matters

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

Limited assurance matters

- (c) the estimates of the quantity of each production variable under paragraph 27(1)(c) and any estimated emissions intensities of each production variable under sub-subparagraph 27(1)(d)(i)(A) are:
 - (i) based on the applicant's assumptions which provide a reasonable basis for the estimates; and
 - (ii) calculated on the basis of the applicant's assumptions and any historical data that is:
 - (A) fairly stated; and
 - (B) if related to emissions intensity—reasonably expected to reflect the emissions intensity of the facility in the financial year determined under paragraph 27(1)(c); and
 - (iii) reasonable.

41 Subsection 28(3)

Omit “and (b)”, substitute “, (b) and (ba)”.

42 Paragraph 30(2)(a)

Omit “and (b)”, substitute “, (b) and (ba)”.

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

Repeal the paragraphs, substitute:

- (c) the relevant new facility criteria, significant expansion criteria, inherent emissions variability criteria, initial calculated baseline criteria or

transitional calculated baseline criteria are met at the time of the decision;
and

- (d) if an explanation is included under paragraph 27(1)(h)—that explanation is reasonable; and
- (e) if the calculated-emissions baseline determination is to commence on or after 1 July 2020 and is not made on the basis of the inherent emissions variability criteria—only prescribed production variables and default emissions-intensities are used to calculate the baseline emissions number.

44 Subsection 30(3)

Omit “expected”, substitute “estimated or default”.

45 At the end of subsection 30(3)

Add:

Note: Paragraph 27(1)(d) includes requirements for when estimated emissions intensity calculations may be used, default emission intensities must be used and when applicants can choose to use default emissions intensities.

46 Subsection 31(4)

Repeal the subsection, substitute:

- (4) If:
 - (a) a baseline determination was made in relation to a facility (the *first determination*); and
 - (b) a calculated-emissions baseline determination is made to cover the facility in one or more years of the first determination (the *second determination*);the first determination expires immediately before the commencement of the second determination.

47 Paragraph 34(2)(a)

After “production variable”, insert “(other than a prescribed (annually adjusted) production variable)”.

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

After “production variables”, insert “(other than prescribed (annually adjusted) production variables)”.

49 At the end of subsection 34(7)

Add:

Note: As the criteria in this section need to be met at the time the Regulator makes a decision on the application, expectations of exceedance are not relevant where information on actual emissions for a financial year is available.

50 At the end of section 34

Add:

- (10) If the facility is a grid-connected electricity generator—the benchmark-emissions baseline determination is to commence at the start of a financial year which is not a sectoral-baseline financial year.

51 At the end of subsection 35(1)

Add:

- ; (g) the basis upon which each production variable to be used in making the determination applies to the facility.

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

After “production variables”, insert “(other than prescribed (annually adjusted) production variables)”.

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

Repeal the paragraphs, substitute:

- (d) the change in production for each production variable (other than a prescribed (annually adjusted) production variable) calculated by subtracting the quantity of each production variable identified under paragraph (b) from the quantity of that production variable under paragraph (c);
- (e) the emissions intensity per unit of production for each production variable outlined under paragraph (b) consistent with its relevant benchmark emissions intensity;

54 At the end of subsection 35(2)

Add:

- ; (l) the basis upon which each production variable to be used in making the determination applies to the facility.

55 After paragraph 36(2)(b)

Insert:

- (ba) each production variable has been correctly identified; and

56 Subsection 36(3)

Omit “and (b)”, substitute “, (b) and (ba)”.

57 Paragraphs 38(2)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) the audit report accompanying an application contains a reasonable assurance conclusion or qualified reasonable assurance conclusion for the matters in paragraphs 36(2)(a), (b) and (ba); and
- (b) the audit report accompanying an application contains a limited assurance conclusion or qualified limited assurance conclusion for the matters in paragraph 36(2)(c); and
- (c) the relevant new facility criteria or significant expansion criteria are met at the time of the decision; and

58 Subsection 38(3)

Repeal the subsection, substitute:

Baseline emissions number

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

59 Paragraph 39(3)(d)

Repeal the paragraph, substitute:

- (d) if replaced by a new baseline determination—immediately before the commencement of that new determination.

60 Subsection 40(1)

Omit “either”.

61 After paragraph 40(1)(a)

Insert:

- (aa) at the start of the second or a later year of a calculated-emissions baseline determination or benchmark-emissions baseline determination; or
- (ab) if:
 - (i) the facility does not, and is not expected to, meet the new facility criteria in section 33 in respect of any of the first three financial years to be covered by the production-adjusted baseline determination; and
 - (ii) paragraph (b) does not apply; and
 - (iii) all production variables are prescribed (annually adjusted) production variables for which only default emissions-intensities are applied—at the start of the financial year starting on 1 July 2018 or a later financial year; or

62 Section 41

Repeal the section, substitute:

41 Information required in applications

- (1) Unless subsection (2) applies, an application for a production-adjusted baseline determination must include the following information:
 - (a) in accordance with subsection (3), the quantity of all production variables (other than a prescribed (annually adjusted) production variable) that:
 - (i) were produced by the facility in the financial year with the highest actual production level of the primary production variable over the production assessment period; and
 - (ii) if the determination is to commence after or during a calculated-emissions baseline determination—were used in making that determination; and
 - (iii) if the determination is to commence after or during a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—are applicable to the facility in accordance with any requirements set out in the Benchmark Emissions-Intensity Index;
 - (b) the emissions intensity per unit of production for each production variable outlined under paragraph (a):
 - (i) if the determination is to commence after or during a calculated-emissions baseline determination—consistent with the emissions intensity per unit of production used in making that determination or the default emissions intensity (if elected under paragraph (d)); or
 - (ii) if the determination is to commence after or during a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—consistent with its relevant benchmark emissions intensity;
 - (c) the adjusted total covered emissions from the facility calculated by multiplying the quantity of each of the production variables under paragraph (a) by the emissions intensity of that variable under paragraph (b), and summing the results;
 - (d) if the determination is to commence after or during a calculated-emissions baseline determination for which the emissions intensity of one or more prescribed production variables was estimated—an election for whether the production-adjusted baseline determination should use the estimated emissions intensity or the default emissions intensity;
 - (e) the details of any prescribed (annually adjusted) production variables applicable to the facility;
 - (f) the basis upon which each production variable to be used in making the determination applies to the facility.
- (2) If the significant expansion criteria were met in relation to the previous benchmark-emissions baseline determination, the application for a production-adjusted baseline determination must include the following information or documents:
 - (a) in accordance with subsection (3), the quantity of all production variables that were produced by the facility in the financial year with the highest actual production level of the primary production variable over the period covered by the previous benchmark-emissions baseline determination;

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- (b) the change in production for each production variable (other than a prescribed (annually adjusted) production variable) calculated by subtracting the quantity of each production variable identified under paragraph (a) from the amount of that production variable previously provided under paragraph 35(2)(c);
 - (c) the emissions intensity per unit of production for each production variable outlined under paragraph (b) consistent with its relevant benchmark emissions intensity;
 - (d) the adjusted additional covered emissions from the facility calculated by multiplying the change in production for each production variable (other than a prescribed (annually adjusted) production variable) under paragraph (b) by the emissions intensity of that variable under paragraph (c), and summing the results;
 - (e) the details of any prescribed (annually adjusted) production variables applicable to the facility;
 - (f) the basis upon which each production variable to be used in making the determination applies to the facility.
- (3) The quantity of a production variable must:
- (a) if the determination is to commence after or during a calculated-emissions baseline determination and the production variable is not a service unit or prescribed production variable—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; and
 - (b) if the determination is to commence after or during a benchmark-emissions baseline determination or paragraph 40(1)(b) applies—both:
 - (i) be measured using the units specified in the Benchmark Emissions-Intensity Index; and
 - (ii) meet any measurement requirements or procedures specified in the Benchmark Emissions-Intensity Index; and
 - (c) if the variable is a prescribed (fixed) production variable:
 - (i) be measured using the units specified in Schedule 3; and
 - (ii) meet any measurement requirements or procedures specified in Schedule 3.

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

Add:

- (iii) if the production variable is a prescribed production variable—is applicable to the facility in accordance with any requirements in Schedule 2 or 3; and

64 Paragraph 42(2)(c)

Repeal the paragraph, substitute:

- (c) the quantities of each production variable (other than a prescribed (annually adjusted) production variable) under paragraph 41(1)(a) or (2)(a):
 - (i) meet the requirements in subsection 41(3); and
 - (ii) are supported by historical data that is fairly stated.

65 After paragraph 44(2)(a)

Insert:

- (aa) if paragraph 40(1)(ab) applies—the requirements in that paragraph are met; and

66 Paragraph 44(2)(b)

Omit “40 (1)(b)”, substitute “40(1)(b)”

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

Repeal the subparagraph, substitute:

- (i) if the determination is to commence after or during a calculated-emissions baseline determination and paragraph 40(1)(ab) does not apply—were used in making that determination; and

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

Before “a benchmark-emissions baseline determination”, insert “or during”.

69 Subsection 44(3)

Repeal the subsection, substitute:

Baseline emissions number

- (3) The determination made under subsection (2) must specify the baseline emissions number or describe the calculation of the baseline emissions number for each financial year so that:
 - (a) if the determination is to commence after or during a calculated-emissions baseline determination and paragraph 40(1)(ab) does not apply—the baseline emissions number is the sum of:
 - (i) the total amount of t CO₂-e of covered emissions calculated by multiplying the quantity of each production variable (other than a prescribed (annually adjusted) production variable) in the financial year determined under subparagraph 41(1)(a)(i) by the emissions intensity of that variable determined under subsection (3C); and
 - (ii) the total amount of t CO₂-e of covered emissions calculated by multiplying the quantity of each prescribed (annually adjusted) production variable reported under the Act for the financial year to which the baseline emissions number is to apply by the emissions intensity of that variable determined under subsection (3C); or
 - (aa) if paragraph 40(1)(ab) applies—the baseline emissions number is the total amount of t CO₂-e of covered emissions calculated by multiplying the quantity of each prescribed (annually adjusted) production variable reported under the Act for the financial year to which the baseline emissions number is to apply by its default emissions intensity and summing the results; or
 - (b) if the determination is to commence after or during a benchmark-emissions baseline determination made on the basis of the new facility criteria or paragraph 40(1)(b) applies—the baseline emissions number is the sum of:
 - (i) the total amount of t CO₂-e of covered emissions calculated by multiplying the quantity of each production variable (other than a

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

Note: When making a baseline determination for a facility the Regulator will either specify a number as the baseline emissions number or describe a formula for the annual calculation of the baseline emissions number. A determination that is a formula will allow the Regulator to annually recalculate the baseline in line with updates. Elements of formulas that may update over time include default emissions intensity values, benchmark emissions intensity values, and a facility's reported production figures for prescribed (annually adjusted) production variables. The annual calculation of a baseline emissions number is not a new baseline determination, but the Regulator can inform the responsible emitter of the new calculation under section 71.

- (3A) The quantities of each prescribed (annually adjusted) production variable reported each financial year for the purposes of subparagraph (3)(a)(ii), paragraph (3)(aa) and subparagraph (3)(b)(ii) must:
- (a) be measured using the units specified in Schedule 2; and
- (b) meet any measurement requirements or procedures specified in Schedule 2.
- (3B) If a default emissions intensity or relevant benchmark emissions intensity for a production variable changes after a production-adjusted baseline determination is made, the calculation of the baseline emissions number for a financial year under subsection (3) must use the value of the default emissions intensity or relevant benchmark emissions intensity in force at the start of the financial year to which the baseline emissions number is to apply.

Emissions intensity to apply

- (3C) The emissions intensity of a production variable under subparagraph (3)(a)(i) or (ii) is:
- (a) if a nomination is made under subsection (3D) or the use of the default emissions-intensities is elected in the application under paragraph 41(1)(d)—the default emissions intensity for the production variable; and
 - (b) otherwise—the emissions intensity of the production variable used in making the previous calculated-emissions baseline determination.
- (3D) At any point before the end of a financial year a responsible emitter for a facility may nominate that a default emissions intensity apply instead of an estimated emissions intensity used in making the previous calculated-emissions baseline determination.
- (3E) Once made, a nomination under subsection (3D) cannot be withdrawn and applies to the facility regardless of any change to the responsible emitter.

70 Subsection 46(1)

Repeal the subsection, substitute:

- (1) The responsible emitter for a facility may apply to the Regulator for a variation of a baseline determination which applies to the facility in respect of the financial year beginning on 1 July 2017 or 1 July 2018 if the facility meets the emissions intensity test in respect of that financial year.

71 Paragraph 46(2)(c)

Omit “landfill-benchmark”, substitute “landfill”.

72 Subsection 47(1)

Omit “or benchmark facility”.

73 Subsection 47(2)

Repeal the subsection.

74 Paragraph 47(4)(a)

Repeal the paragraph, substitute:

- (a) if a calculated-emissions baseline determination commenced in relation to the facility in the same year as the proposed variation and the emissions intensity is being calculated for the baseline intensity comparison year—deemed to be the emissions intensity of the production variable used to determine the baseline emissions number in the calculated-emissions baseline determination; and

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

Repeal the subparagraph.

76 Subsection 48(1)

Omit “or benchmark facility”.

77 Subsection 48(3)

Repeal the subsection.

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

Omit “or paragraph 48(3)(a)”.

79 Paragraph 51(2)(c)

Omit “or paragraph 48(3)(a)”.

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

Omit “Landfill-benchmark”, substitute “Landfill”.

81 Subsection 52(1)

Omit “landfill-benchmark”, substitute “landfill”.

82 Paragraph 52(1)(b)

Omit “landfill-benchmark”, substitute “landfill”.

83 Paragraph 52(2)(b)

Repeal the paragraph, substitute:

- (b) specify the desired start date for the landfill baseline determination as 1 July of a particular year; and

84 Subsection 52(3)

Omit “landfill-benchmark”, substitute “landfill”.

85 Section 54 (heading)

Omit “landfill-benchmark”, substitute “landfill”.

86 Subsection 54(1)

Omit “landfill-benchmark”, substitute “landfill”.

87 Subsection 54(2)

Omit “landfill-benchmark”, substitute “landfill”.

88 Paragraph 54(2)(b)

Omit “landfill-benchmark”, substitute “landfill”.

89 Subsection 54(3)

Omit “landfill-benchmark”, substitute “landfill”.

90 Subsection 54(3) (definition of *BC_i*)

Omit “benchmark”, substitute “prescribed”.

91 Subsection 54(5)

Omit “landfill-benchmark”, substitute “landfill”.

92 Subsection 54(6)

Omit “landfill-benchmark”, substitute “landfill”.

93 Section 55 (heading)

Omit “landfill-benchmark”, substitute “landfill”.

94 Subsection 55(1)

Omit “landfill-benchmark”, substitute “landfill”.

95 Subsection 55(2)

Omit “landfill-benchmark”, substitute “landfill”.

96 Subsection 55(3)

Omit “landfill-benchmark”, substitute “landfill”.

97 After section 56

Insert:

56A Variation of production-adjusted baseline determinations because of new prescribed (annually adjusted) production variable

- (1) If all of the following apply:
 - (a) a production-adjusted baseline determination applies to a facility;
 - (b) a prescribed (annually adjusted) production variable;
 - (i) is applicable to the facility; and
 - (ii) relates to activities and covered emissions not taken into account in determining the baseline emissions number under the production-adjusted baseline determination; and
 - (iii) the covered emissions relating to the prescribed (annually adjusted) production variable are at least 5% of the baseline emissions number applicable to the facility;
 - (c) the responsible emitter for the facility has provided evidence of paragraph (b) in a form approved by the Regulator;

the Regulator must vary the production-adjusted baseline determination to include the new prescribed (annually adjusted) production variable and its default emissions intensity with effect from the start of the financial year in which the decision to vary the determination is made.

- (2) Before the Regulator varies a baseline determination for a facility under this section, the Regulator must provide a written notice to the responsible emitter for the facility:
 - (a) stating that it intends to vary the baseline determination in relation to the facility under this section; and
 - (b) describing how to calculate the baseline emissions number for a financial year under the proposed determination; and
 - (c) seeking any comments by a date specified in the notice.

-
- (3) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to vary the baseline determination by the later of:
 - (a) if the Regulator requires the responsible emitter to give further information under subsection 58(1) in connection with the variation of the baseline determination—30 days after the responsible emitter gave the Regulator the information; and
 - (b) 30 days after the date specified in paragraph (2)(c).
 - (4) As soon as practicable after varying a baseline determination, the Regulator must:
 - (a) provide written notice of the varied determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the varied determination on its website.
 - (5) To avoid doubt, a decision to vary a baseline determination under this section is a reviewable decision under section 56 of the Act.

56B Variation of certain calculated-emissions baseline determinations and production-adjusted baseline determinations because of changes in activities

- (1) If all of the following apply:
 - (a) covered emissions attributable to one or more activities (the *original activities*) relate to the emissions intensity of a production variable (other than a prescribed (annually adjusted) production variable) used in making a calculated-emissions baseline determination or a production-adjusted baseline determination;
 - (b) the covered emissions attributable to the original activities were responsible for at least 5% of the baseline emissions number applicable to the facility;
 - (c) the Regulator is satisfied that either:
 - (i) activities of the same kind as the original activities were not, or will not be, conducted at the facility during a financial year; or
 - (ii) the quantity of the production variable produced at the facility during a financial year is, or will be, less than half of the quantity used in establishing the baseline emissions number in the baseline determination;
 - (d) the Regulator has reasonable evidence to consider that either:
 - (i) activities of the same kind as the original activities are unlikely to be conducted during the next financial year; or
 - (ii) the quantity of the production variable produced at the facility is likely to be less than half of the quantity used in establishing the baseline emissions number in the baseline determination during the next financial year;

the Regulator may vary the baseline determination to remove some or all of the emissions associated with the original activities with effect from the start of the financial year in which the decision to vary the determination is made.

- (2) Before the Regulator varies a baseline determination for a facility under this section, the Regulator must provide a written notice to the responsible emitter for the facility:
 - (a) stating that it intends to vary the baseline determination in relation to the facility under this section; and
 - (b) specifying the baseline emissions number, or describing how to calculate the baseline emissions number for a financial year, under the proposed varied baseline determination; and
 - (c) seeking any comments by a date specified in the notice.
- (3) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to vary, or decide not to vary, the baseline determination by the later of:
 - (a) if the Regulator requires the responsible emitter to give further information under subsection 58(1) in connection with the variation of the baseline determination—30 days after the responsible emitter gave the Regulator the information; and
 - (b) 30 days after the date specified in paragraph (2)(c).
- (4) As soon as practicable after varying a baseline determination, the Regulator must:
 - (a) provide written notice of the varied determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the varied determination on its website.
- (5) To avoid doubt, a decision to vary a baseline determination under this section is a reviewable decision under section 56 of the Act.

56C Making of replacement baseline determinations if facilities restructured

- (1) If any of the following apply:
 - (a) activities included in a facility to which a baseline determination applies are now included in 2 or more facilities;
 - (b) activities included in 2 or more facilities to which baseline determinations apply are now included in a single facility;the Regulator may revoke the existing baseline determinations and make replacement baseline determinations for the facilities which now include the activities with effect no earlier than the start of the financial year in which the decision to act under this section is made.
- (2) Before the Regulator revokes an existing baseline determination and makes a replacement baseline determination for a facility under this section, the Regulator must provide a written notice to the responsible emitter for the facility:
 - (a) stating that it intends to revoke the existing baseline determination and make one or more replacement baseline determinations under this section; and
 - (b) specifying the baseline emissions number, or describing how to calculate the baseline emissions number for a financial year, under the proposed replacement baseline determinations; and
 - (c) seeking any comments by a date specified in the notice.

-
- (3) The Regulator must consider any comments received by the date specified in the notice and use all reasonable endeavours to make a decision under subsection (1) by the later of:
 - (a) if the Regulator requires the responsible emitter to give further information under subsection 58(1) in connection with the decision—30 days after the responsible emitter gave the Regulator the information; and
 - (b) 30 days after the date specified in paragraph (2)(c).
 - (4) As soon as practicable after revoking an existing baseline determination and making replacement baseline determinations, the Regulator must:
 - (a) provide written notice of the replacement baseline determination to the responsible emitter for the facility covered by the determination; and
 - (b) publish the details of the replacement baseline determination on its website.
 - (5) To avoid doubt, a decision to act under this section is a reviewable decision under section 56 of the Act.

98 Subsection 58(1)

After “section 56”, insert “, 56A or 56B, a decision under section 56C”.

99 Paragraph 58(2)(a)

Omit “varying the baseline determination”, substitute “the relevant decision”.

100 Subsection 65(2)

Repeal the subsection, substitute:

- (2) However, an application may not be made if the proposed declared multi-year period would overlap with an existing declared multi-year period for the facility.

101 Paragraph 65(3)(d)

Repeal the paragraph, substitute:

- (d) if the responsible emitter considers that Australian carbon credit units are likely to be used in respect of the declared multi-year period to reduce the net emissions number for the facility—set out an estimate of the number of Australian carbon credit units likely to be used; and
- (e) provide an explanation of why the responsible emitter considers that they are unlikely to breach section 22XF of the Act after the end of the declared multi-year period; and
- (f) if the responsible emitter is aware of any risks they will breach section 22XF of the Act at the end of the declared multi-year period—provide an explanation of those risks.

102 Subsection 65(4)

Repeal the subsection, substitute:

- (4) An application under subsection (1) must be given to the Regulator no later than the first 1 February after the end of the proposed first financial year of the declared multi-year period.

103 Subsection 65(6)

Repeal the subsection.

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

Repeal the paragraphs, substitute:

- (a) whether the responsible emitter has previously breached section 22XF of the Act; and
- (b) whether the Regulator considers that there is a significant risk the responsible emitter will breach section 22XF of the Act after the end of the declared multi-year period; and
- (c) whether the Regulator considers that the responsible emitter is likely to experience financial stress in, or immediately after, the declared multi-year period; and

105 Subsection 67(4)

Repeal the subsection, substitute:

Timing

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) before 28 February after the end of the proposed first financial year of the declared multi-year period; and
 - (a) either:
 - (i) if the Regulator requires the applicant to give further information under subsection 65(1) in relation to the application—within 60 days after the applicant gave the Regulator the information; or
 - (ii) otherwise—within 60 days after the application was made.

106 Subsection 71(1)

Before “facility”, insert “designated large”.

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

Omit “landfill-benchmark”, substitute “landfill”.

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

Add:

- or (iii) because the baseline determination does not specify a baseline emissions number but describes its calculation for a year;

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

Omit “section”, substitute “subsection”.

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

Add:

- and (xi) any increase in the net emissions number under subsection 22XK(4) of the Act or deemed surrender under subsection 22XN(6);

111 Paragraph 72(1)(b)

After “excess emissions situations”, insert “resulting in a breach of section 22XF of the Act”.

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

Add:

- ; (d) an estimate of the total number of Australian carbon credit units likely to be surrendered under subsection 22XN(1) of the Act during the next three years in relation to all facilities with a declared multi-year period;
- (e) such other aggregated information related to the future surrender of Australian carbon credit units under subsection 22XN(1) of the Act that the Regulator considers appropriate.

113 After section 78

Insert:

Part 6—Application and transitional provisions**Division 1—Application and transitional provisions relating to the
*National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019*****79 Applications for calculated-emissions baseline determination before commencement**

Unless the applicant elects otherwise in writing, an application under section 22 received before the commencement of the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019* (the **amendment rule**) must be determined as if the amendment rule had not commenced.

80 Applications for declared multi-year period before commencement

Unless the applicant elects otherwise in writing, an application under section 65 received before the commencement of the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment Rule (No. 1) 2019* (the **amendment rule**) must be determined as if the amendment rule had not commenced.

114 Clause 1 of Schedule 1

Omit “benchmark capture efficiency rate”, substitute “prescribed capture efficiency rate”.

115 After Schedule 1

Insert:

Schedule 2—Prescribed (Annually Adjusted) Production Variables

Note: See the definition of *prescribed (annually adjusted) production variable* in section 4.

1 Prescribed (Annually Adjusted) Production Variables

This Schedule will set out the prescribed (annually adjusted) production variables and their default emissions intensities.

Schedule 3—Prescribed (Fixed) Production Variables

Note: See the definition of *prescribed (fixed) production variable* in section 4.

1 Prescribed (Fixed) Production Variables

This Schedule will set out the prescribed (fixed) production variables and their default emissions intensities.