

2023

NATIONAL GREENHOUSE AND ENERGY REPORTING ACT 2007

**NATIONAL GREENHOUSE AND ENERGY REPORTING (SAFEGUARD
MECHANISM) AMENDMENT (REFORMS) RULES 2023**

EXPLANATORY STATEMENT

(Circulated by authority of the Minister for Climate Change and Energy,
the Hon. Chris Bowen MP)

Purpose

The Amendment Rules amend the Safeguard Rules to implement reforms to the Safeguard Mechanism, a commitment in the Government’s Powering Australia Plan. The reformed Safeguard Mechanism requires Australia's largest industrial facilities to reduce their emissions, gradually and predictably in line with our national targets, and helps ensure Australian businesses remain competitive as the world decarbonises.

The Amendment Rules set out the technical detail of the reforms to the Safeguard Mechanism and specify the administrative detail of how the provisions are implemented and the administrative processes for demonstrating compliance with Safeguard obligations.

Key provisions include baseline setting arrangements for existing and new facilities, declining baselines over time so that Safeguard facilities contribute their proportional share of the national emissions reduction task, flexible compliance options including below-baseline crediting, interactions with Australian carbon credit unit (ACCU) projects and tailored treatment for trade-exposed facilities.

Glossary

| Abbreviation | Definition |
|-------------------------------|--|
| ACCU | Australian Carbon Credit Unit |
| ANREU Act | <i>Australian National Registry of Emissions Units Act 2011</i> |
| Baseline | The baseline emissions number for a facility, as specified in section 22XL of the NGER Act |
| Bill | Safeguard Mechanism (Crediting) Amendment Bill 2022, passed as the <i>Safeguard Mechanism (Crediting) Amendment Act 2023</i> on 30 March 2023. |
| Carbon dioxide equivalent | A way of quantifying greenhouse gases to reflect their contribution to climate change compared to a unit of carbon dioxide |
| Carbon Farming Initiative Act | <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> |
| CO ₂ -e | Abbreviation for carbon dioxide equivalent |
| Designated large facility | A facility covered by the Safeguard Mechanism, as defined in section 22XJ of the NGER Act |
| EBIT | Earnings Before Interest and Taxes |
| Facility | An activity or a series of activities that involve greenhouse gas emissions, the production of energy or the consumption of |

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| | energy, as defined in section 9 of the NGER Act |
| ICCPR | International Covenant on Civil and Political Rights |
| NDC | Nationally Determined Contribution |
| NGER Act | <i>National Greenhouse and Energy Reporting Act 2007</i> |
| NGER scheme | A reporting scheme for corporate greenhouse gas emissions and energy production and consumption established under the NGER Act |
| Paris Agreement | The Paris Agreement, made at Paris on 12 December 2015, as amended and in force for Australia from time to time. The Paris Agreement may be found in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) |
| Registry | Australian National Registry of Emissions Units established by the ANREU Act |
| Regulator | Clean Energy Regulator. The body responsible for administering the Renewable Energy Target, the National Greenhouse and Energy Reporting Scheme, the Carbon Farming Initiative and the Registry. |
| Safeguard Mechanism | A mechanism to ensure the net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility and ensure that aggregate net covered emissions from the operation of designated large facilities decline. The mechanism is established under Part 3H of the NGER Act. |
| Safeguard Mechanism Act | <i>Safeguard Mechanism (Crediting) Amendment Act 2023</i> |
| Safeguard Rules | A legislative instrument made under section 22XS of the NGER Act |
| Scope 1 emissions | Emissions released to the atmosphere as a direct result of an activity, or series of activities at a facility level (sometimes referred to as direct emissions) |
| SMCs | An abbreviation of safeguard mechanism credit units, which are established by the Safeguard Mechanism Act |

Legislative Authority

The legislative framework of the Safeguard Mechanism is set out in Part 3H of the *National Greenhouse and Energy Reporting Act 2007* (the NGER Act). Much of the detail of the Safeguard Mechanism is set out in legislative rules, primarily the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (the Safeguard Rules).

The Safeguard Rules are a legislative instrument made under section 22XS of the NGER Act. Section 22XS of the NGER Act empowers the Minister to make rules to implement the Safeguard Mechanism by legislative instrument. These rules may prescribe matters required or permitted by the NGER Act, and matters necessary or convenient to be prescribed for carrying out or giving effect to the Safeguard provisions in the NGER Act.

The measures set out in the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reform) Rules 2023* (the Amendment Rules), such as the creation of tradable credits, are provided for by the *Safeguard Mechanism (Crediting) Amendment Act 2023* (Safeguard Mechanism Act).

Subsection 22XS(1A) of the NGER Act provides that the Minister must not make safeguard rules unless the Minister is satisfied that they are: consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d); and take into account the safeguard outcomes in paragraphs 3(2)(e) and (f) of the NGER Act. The Minister was satisfied that these requirements were met.

A statement of reasons is provided at [Attachment A](#).

Background

The Safeguard Mechanism provides a legislated framework that limits the net emissions of around 215 large industrial facilities—those with more than 100,000 tonnes of scope 1 (direct) carbon dioxide equivalent (t CO₂-e) emissions each year.

Under the Paris Agreement, to which Australia is a Party, countries are required to communicate their Nationally Determined Contribution, or NDC, which sets out their emissions reduction ambitions. On 16 June 2022, Australia communicated its updated NDC under Article 4 of the Paris Agreement to the UN. This updated NDC included confirmation of Australia's commitment to achieve net zero emissions by 2050, and a new, increased, 2030 target of 43 per cent below 2005 levels by 2030. The *Climate Change Act 2022* prescribes these commitments in Australian law.

The Australian Government is reforming the Safeguard Mechanism to reduce emissions consistent with these legislated targets. The reforms will support industry to reduce emissions efficiently, helping them maintain competitiveness as the global economy decarbonises.

Many businesses that operate facilities covered by the Safeguard Mechanism have made long-term climate commitments. The reforms will provide a supportive policy framework for

industry to meet these commitments, with the right signals to drive investments in emissions reductions, and flexibility so that businesses find the lowest cost abatement, wherever it occurs.

The NGER Act establishes the NGER scheme, 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 NGER Act. Together with the reporting obligations under the NGER Act, the Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions.

The Safeguard Mechanism Act amended the NGER Act, the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Carbon Farming Initiative Act), and the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) to establish the framework for creating safeguard mechanism credit units (SMCs), covering how SMCs are issued, purchased and included in Australia's National Registry of Emissions Units. SMCs are credits that each correspond to a tonne carbon dioxide equivalent of emissions (or difference in emissions compared to a facility's baseline) and can be traded and surrendered by facilities covered by the Safeguard Mechanism to reduce their net emissions.

The NGER Act provides for Safeguard Rules on the detailed elements of the framework for issuing SMCs such as application processes, the number of units issued, how that number is worked out, conditions that may be imposed, and rights of review or reconsideration. This structure is necessary because the crediting framework is inextricably linked to the technical details of how Safeguard baselines are determined. As baseline determinations are set out in the Safeguard Rules, it is appropriate for the details of the crediting framework to also be set out in the Safeguard Rules.

Public consultation

The Department released a consultation paper on reforms to the Safeguard Mechanism on 18 August 2022 and submissions were open until 20 September 2022. Over 240 submissions were received and all non-confidential submissions were published on the Department's website.

An exposure draft of the *Safeguard Mechanism (Crediting) Amendment Bill* was open for public consultation from 10 October 2022 to 28 October 2022. Submissions from over 50 businesses, industry groups and individuals were received during the consultation period and all non-confidential submissions were published on the Department's website.

On 10 January 2023, the Department released for consultation a position paper setting out the Government's proposed design of reforms the Safeguard Mechanism, as well as draft subordinate legislation including the Amendment Rules, and received submissions until 24 February 2023. Over 280 submissions were received.

In response to submissions on draft of subordinate legislation and position paper, the Amendment Rules now include changes in three major areas.

Support for industry and the manufacturing sector

Different cost impact metrics and eligibility thresholds for manufacturers to qualify for a discount on their decline rate will apply, as well as a new minimum annual baseline decline rate for manufacturers at 1 per cent.

Complementing the Amendment Rules, at least \$1 billion in funding will be available for Safeguard facilities in the manufacturing sector and trade exposed industries through the Powering the Regions Fund (PRF) including a new targeted allocation of \$400m for industries providing critical inputs to clean energy industries (primary steel, cement, lime, aluminium, and alumina).

Arrangements for new entrants

New gas fields supplying existing liquefied natural gas facilities will be treated as new facilities, regardless of their ownership structure, so that they are given international best practice baselines for the carbon dioxide in their new fields. For these fields' reservoir carbon dioxide emissions, the best practice baseline is zero, given the existence of low carbon dioxide fields and opportunities for carbon capture and storage.

Additionally, facilities that engage in extraction of shale gas, such as projects in the Beetaloo Basin, will be required to have net-zero scope 1 emissions from entry. This is consistent with existing Commonwealth commitments to work with the Northern Territory to support its implementation of recommendation 9.8 of the *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory* using available technology and policies.

Accountability, transparency, and integrity

The policy intent of the reforms is to drive down emissions from Australia's large industrial sector. To make sure this is achieved, the objects of the NGER Act now include provisions provide further clarity. In aggregate, net emissions from Safeguard facilities should not exceed 100 million tonnes of carbon dioxide equivalent by 2029-30 and zero by 2050, and 1,233 million tonnes in total over the decade to 2030. Total gross emissions from Safeguard facilities should reduce over time, measured through a rolling 5-year average. Safeguard facilities have a material incentive to reduce their on-site emissions. The competitiveness of trade-exposed industries is appropriately supported as Australia and its regions seize the opportunities of the move to a global net zero economy.

Under the Climate Change Act, the Government provides an Annual Climate Change Statement to Parliament on progress against climate reforms. Changes to the Safeguard Mechanism will provide assurance that its emissions reduction targets will be met by introducing further specific reporting on progress against the scheme's emissions targets and a requirement for the Minister to take action, if necessary, in response. As part of its advice to the Annual Climate Change Statement, the Climate Change Authority (CCA) will report on

progress against the scheme's objectives as set out in the NGER Act, with specific reference to new entrants and expansions.

Information relating to the scope 1 emissions, from approvals of new projects under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) that are expected to enter the Safeguard Mechanism or increase the emissions of an existing Safeguard facility, will be provided to the CCA, the Minister for Climate Change and Secretary of the relevant Department.

The Minister will need to act where the Secretary of the Department, based upon this information or other information relating to direct emissions from a Safeguard facility from Commonwealth agencies or State and Territory governments, considers changes to the Rules may be needed.

If any of these tests find that Safeguard emissions have or will breach the objects, and that this is not due to temporary factors, the Minister is required to consult and amend the Rules or take other policy actions to ensure the objects are met.

To provide increased transparency and accountability, the Clean Energy Regulatory (CER) will publish a range of information on facilities' emissions and compliance activities. Facilities that surrender ACCUs equivalent to 30 per cent of their baselines will need to submit a statement to explain why they haven't undertaken more on-site abatement. Aspects of this will be published to allow scrutiny from investors and the public.

The Government will review Safeguard Mechanism policy settings in 2026-27, to ensure that they are appropriately calibrated. Matters to be considered in the 2026-27 Review are set out in [Attachment B](#).

Statement of Compatibility with Human Rights

This Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment C](#).

Regulatory impact

According to *The Australian Government Guide to Regulatory Impact Analysis*, a Regulatory Impact Analysis (RIA) is mandatory for decisions made by any Australian Government entity if that decision is likely to have a more than minor impact on businesses, community organisations, individuals, or any combination. To support transparency, an Impact Analysis must be included in any Explanatory Statement giving effect to the proposals in the RIA.

The Regulatory Impact Analysis is included in [Attachment D](#).

Commencement

The Amendment Rules is a legislative instrument within the meaning of the Legislation Act 2003. The whole of the Amendment Rules will commence on 1 July 2023.

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

Section 1 – Name

1. This section provides that the title of the Amendment Rules is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*.

Section 2 – Commencement

2. This section provides for these amendments to commence on 1 July 2023.

Section 3 – Authority

3. This section provides that the Amendment Rules are made under the under section 22XS of the NGER Act. The power to make rules in section 22XS includes the power to amend rules already made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.
4. Subsection 22XS(4) of the NGER Act allows the rules to incorporate documents as in force from time to time, which is necessary in some circumstances to ensure technical details related to the rules remain up to date with industry standards.

Section 4 – Schedules

5. This section states that each instrument that is specified in a Schedule to the Amendment Rules 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. The Amendment Rules consist of a single schedule (Schedule 1).

Schedule 1— Amendments

6. Schedule 1 amends the Safeguard Rules.

Item 1 – Section 4

7. Introduces the definitions of ‘amount’ to specify it can include a nil amount; ‘accelerating depreciation factor’ with reference to subsection 37(6) ‘assessed cost impact’ for a facility for a financial year with reference to section 36 for further meaning and formula; and ‘Australian accounting standards’ which refers to the accounting standards in force under section 334 of the *Corporations Act 2001*. In 2023, the Australian accounting standards were accessible at <http://www.aasb.gov.au>. These standards are incorporated as in force from time to time to ensure that the approach to financial data is up to date and consistent with company data under the *Corporations Act 2001*.

Item 2 – Section 4

8. Removes the definitions of ‘baseline determination’, ‘baseline intensity comparison year’, ‘benchmark-emissions baseline determination’, and ‘Benchmark Emissions-Intensity Index’ as these are no longer applicable under the reformed Safeguard Mechanism.

Item 3 – Section 4

9. Introduces definitions of ‘*best practice emissions intensity*’ for a production variable and a financial year; ‘*best practice emissions intensity number*’ which is a number that is equal to the best practice emissions intensity for a production variable for the financial year; ‘*borrowing adjustment*’ for a production variable has the meaning given by the formula provided in section 47; ‘*borrowing adjustment determination*’ is the determination given by section 50; and ‘*borrowing adjustment determination number*’ for a facility for a financial year as outlined in subsection 50(3).
10. Best practice emissions intensities correspond to the production variables that are specified in Schedule 1 of the Safeguard Rules (as amended by this instrument). They are applicable to new facilities and new outputs of existing facilities. New investments differ from existing production in that they can use the latest technology incorporating best practice emissions performance. As such, these emissions intensities will reflect international best practice, adapted for an Australian context.
11. Adapting international best practice for an Australian context means, for example, adjusting for energy sources, the types of metal ores that are processed in Australia compared to overseas, or other resources that are used overseas but are not available in Australia. It will take into account the effect of technologies implemented in Australia and overseas, including renewable energy, low emissions technologies and electrification.
12. To provide time for best practice emissions intensities to be developed, the definition states that if the financial year is the financial year beginning on 1 July 2023, the best practice emissions intensity is the value specified in Schedule 1 as in force at the end of the financial year. For later financial years, the best practice emissions intensity is the value specified in Schedule 1 as in force at the start of the financial year.

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

13. Removes the definition of ‘*calculated-emissions based determination*’ as this is no longer applicable under the reformed Safeguard Mechanism.

Item 5 – Section 4

14. Introduces definitions of ‘*comparative production variable*’ for a related production variable, which has the meaning given by paragraph 19(4)(b); ‘*decision date*’ for various applications provided in subsection 52(2); and ‘*default decline rate*’ for a financial year as specified in section 32.

Item 6 – Section 4 (definition of *default emissions intensity*)

15. Removes the definition of ‘*default emissions intensity*’, which is replaced by a definition in the next item.

Item 7 – Section 4

16. Introduces the definitions of ‘*default emissions intensity*’ for a production variable in Schedule 1 of the Safeguard Rules (as amended by this instrument) as in force at the start of that financial

year; ‘*default emissions intensity number*’ which means the number that is equal to the default emissions intensity of the production variable; ‘*default emissions reduction contribution*’ is the emissions reductions contribution for each financial year out to 2030 as outlined within the table in section 31; and ‘*designated historical information*’ about a historical production variable for a facility has the meaning given by subsection 14(5).

Item 8 – Section 4 (definition of *details*)

17. Removes the existing definition of ‘*details*’ which is replaced with a new definition.

Item 9 – Section 4

18. Introduces the definition of ‘*details*’ which provides for the required information for a declaration made under this instrument; ‘*due date*’ which has the meaning given by subsection 52(1) which outlines the due dates for the various applications; ‘*EBIT Guidelines*’ which has the meaning given by subsection 37(7); and ‘*eligible facility*’ for a financial year has the meaning given by section 58B.

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

19. Removes the definition of ‘*emissions-intensity calculation criteria*’ as this is term no longer applicable under the reformed Safeguard Mechanism.

Item 11 – Section 4

20. Introduces the definition of ‘*emissions intensity determination*’ which is a determination applicable to existing facilities and prescribed by section 19, or a successor determination. Emissions intensity determinations are important for setting baselines for existing facilities and are set out in Part 2, Division 2, Subdivision C of the amended Safeguard Rules.

Item 12 – Section 4 (definition of *emissions intensity test*)

21. Removes the definition of ‘*emissions intensity test*’ as this term is no longer applicable under the reformed Safeguard Mechanism.

Item 13 – Section 4

22. Introduces the definition of ‘*emissions reduction contribution*’ for a financial year, with the meaning given by section 33 for a regular facility and section 34 for a trade-exposed baseline-adjusted facility. Emissions reduction contributions implement the decline of Safeguard baselines, which ensure that Safeguard emissions decline and accordingly contribute to the achievement of Australia’s greenhouse gas emissions reduction targets, consistent with the second object of the NGER Act.

Item 14 – Section 4 (definition of *estimated emissions intensity*)

23. Removes the definition of ‘*estimated emissions intensity*’ as this term is no longer applicable under the reformed Safeguard Mechanism.

Item 15 – Section 4

24. Introduces the definitions of ‘*existing facility*’ as provided for in subsection 12(1); ‘*facility-specific emissions intensity number*’ of a historical production variable for a facility as given by subsection 20(1), a related production variable for a facility as given by subsection 20(5), and a transitional production variable for a facility as given by subsection 20(6); and ‘*first adjusted financial year*’ as provided by subsection 36(6).

Item 16 – Section 4 (definition of *fixed proportion*)

25. Removes the definition of ‘*fixed proportion*’ as this term is no longer applicable under the reformed Safeguard Mechanism.

Item 17 – Section 4

26. Introduces the definitions of ‘*historical financial year*’ as given by the subsection 12(3); ‘*historical production variable*’ for a facility as given by subsection 12(2); and ‘*hypothetical baseline*’ as given by subsection 36(7).

Item 18 – Section 4

27. Removes the following definitions ‘*inherent emissions variability criteria*’, ‘*initial calculated baseline criteria*’, ‘*inter-state transport facility*’, ‘*landfill baseline emissions formula*’, ‘*landfill baseline determination*’, and ‘*large new facility*’ as these terms are no longer applicable under the reformed Safeguard Mechanism.

Item 19 – Section 4

28. Introduces the definitions of ‘*manufacturing facility*’, ‘*manufacturing production variable*’ and ‘*new facility*’.
29. A facility is a manufacturing facility in a financial year if the primary production variable for the facility in the financial year is a manufacturing production variable. A manufacturing production variable means a production variable that is listed in the table in section 1 of Schedule 2 of the Safeguard Rules.
30. A ‘*new facility*’ has the meaning given in subsection 29(2).

Item 20 – Section 4 (definition of *new facility criteria*)

31. Removes the definition ‘*new facility criteria*’ as this term is no longer applicable under the reformed Safeguard Mechanism.

Item 21 – Section 4

32. Introduces the definition ‘*non-commercial production variable*’ as given in subsection 12(5).

Item 22 – Section 4

33. Removes the following definitions: ‘*output variable*’, ‘*prescribed (annually adjusted) production variable*’, ‘*prescribed (fixed) production variable*’, ‘*prescribed production variable*’ as these terms are no longer applicable under the reformed Safeguard Mechanism.

Item 23 – Section 4 (definition of *primary production variable*)

34. Repeals the definition of '*primary production variable*' and introduces a new definition for the term. The new definition of '*primary production variable*' for a facility with a single production variable is that production variable. The new definition of '*primary production variable*' for a facility with multiple production variables is the production variable that is most significant for the operation of the facility, having primary regard to the share of revenue and covered emissions directly or indirectly attributable to that production variable.

Item 24 – Section 4

35. Removes the following definitions: '*production assessment period*', '*product-adjusted baseline determination*', '*production estimation period*', as these terms are no longer applicable under the reformed Safeguard Mechanism.
36. The definition of '*production variable*' is also repealed, and new definitions are provided in Item 23.

Item 25 – Section 4

37. Item 23 introduces the definitions of '*production variable*', '*quantity*', '*ratio of cost impacts*', '*regular facility*', and '*related production variable*'.
38. Production variables are important for setting baselines. Item 25 states that a '*production variable*' is a metric that is set out in a Part of Schedule 1 of the amended Safeguard Rules; and for a facility, '*production variable*' means a production variable that is applicable to the facility in accordance with Schedule 1 of the amended Safeguard Rules. The '*quantity*' of a production variable for a facility for a financial year, means the number of units of the production variable for the facility for that financial year.
39. Item 25 states that '*ratio of cost impacts*' has the meaning given by section 29; and '*regular facility*' is a facility that is not a trade-exposed baseline-adjusted facility in a financial year. A '*related production variable*', for a facility, has the meaning given by paragraph 19(4)(a).

Item 26 – Section 4

40. Removes the definitions of '*relevant benchmark emissions intensity*' and '*relevant earlier estimates*', as these terms are no longer applicable under the reformed Safeguard Mechanism.

Item 27 – Section 4

41. Introduces the following definitions '*relevant historical financial year*' for a production variable as given by subsection 20(3); and '*relevantly associated with*' as given by section 16.

Item 28 – Section 4 (definition of *reported-emissions baseline determination*)

42. Removes the definition of '*reported-emissions baseline determination*' as this is no longer applicable under the reformed Safeguard Mechanism.

Item 29 – Section 4

43. Introduces the definitions of ‘*responsible financial officer*’ of a responsible emitter of a facility; ‘*Safeguard Mechanism default prescribed unit price*’ for a financial year is given by section 31; ‘*shale gas extraction facility*’, and ‘*significant cost impact threshold*’.
44. The definition of ‘*responsible financial officer*’ is relevant for applications for the Regulator to declare that a specified period is a declared multi-year period for a facility. The responsible financial officer for a facility depends on the organisational arrangements of a facility. It may mean a person who holds, or performs duties of, the chief executive officer, chief operating officer or chief operating officer for the person with operational control of the facility or a person who holds or performs duties similar or equivalent to the positions described. Responsible financial officer may also mean an individual employed by the person with operational control of the facility who makes or participates in decisions that affect a substantial part of the business or who has the capacity to significantly affect the person’s financial standing. If the person with operational control of the facility is an individual, then the responsible financial officer may mean that person.
45. The ‘*Safeguard Mechanism default prescribed unit price*’ for a financial year is given by section 38. The ‘*significant cost impact threshold*’, for a facility, has the meaning given by subsection 35(4). These definitions are relevant for trade-exposed baseline-adjusted facilities.
46. The definition of a ‘*shale gas extraction facility*’ is given by section 54.

Item 30 – Section 4 (definition of *significant expansion criteria*)

47. Removes the definition of ‘*significant expansion criteria*’ as this is no longer applicable under the reformed Safeguard Mechanism.

Item 31 – Section 4

48. Introduces the definitions of ‘*successor determination*’ by which a determination is made under section 24; ‘*trade-exposed baseline-adjusted facility*’ which is determined to be a trade-exposed baseline-adjusted facility in a financial year as provided by section 42; and ‘*trade-exposed production variable*’ which means a production variable that is listed in Schedule 2.

Item 32 – Section 4 (definition of *transitional calculated baseline criteria*)

49. Removes the definition of ‘*transitional calculated baseline criteria*’ as this is no longer applicable under the reformed Safeguard Mechanism.

Item 33 – Section 4

50. Introduces the definitions of ‘*transitional production variable*’ as given by subsection 12(4); and ‘*transition proportion*’ as given by section 13.

Item 34 – Sections 5 and 6

51. Removes sections 5 and 6 as these are no longer applicable.

Item 35 – At the end of section 7

52. Existing section 7 of the Safeguard Rules relates to covered emissions and is provided for by section 22XI of the NGER Act, which states that covered emissions of greenhouse gases means scope 1 emissions of one or more greenhouse gases, other than emissions of a kind specified in the Safeguard Rules. Paragraph 7(1)(c) states that emissions from grid-connected electricity generators are not covered emissions.
53. Introduces new subsection 7(3), which provides what emissions are not included as emissions from grid-connected electricity generators. For the purposes of paragraph 7(1)(c), emissions from one or more greenhouse gases from the operation of a grid-connected electricity generator in respect of a sectoral-baseline financial year do not include: fugitive emissions from coal mining (with the meaning of the NGER (Measurement) Determination); emissions from fuel combustion for the purposes of coal mining; emissions covered by Chapter 2 (fuel combustion) of the NGER (Measurement) Determination that are not for electricity generation or cogeneration.
54. Subsection 7(3) means that if a facility declares that a coal mine is part of a grid-connected electricity generator, it would still be a designated large facility (i.e. covered by the Safeguard Mechanism) in a financial year if the scope 1 emissions of the coal mine are more than 100,000 t CO₂-e.

Item 36 – Part 3

55. Repeals the former Part 3 and introduces a new Part 3 that details provisions for setting baseline emissions numbers. Baseline emissions numbers are important because the NGER Act requires facilities covered by the Safeguard Mechanism to ensure that their net emissions are below their baseline.

Division 1 – General

56. Section 9 states that the provisions of Part 3 are made for the purposes of subsection 22XL(1) of the NGER Act, which states that the baseline emissions number for a facility for a financial year is the number ascertained in relation to the facility in accordance with the Safeguard Rules. Subsection 22XQ of the NGER Act is also relevant, and applies to determinations made by the Regulator under the Safeguard Rules that relate to the ascertainment of the baseline emissions number for a facility for a financial year.
57. Section 9 also states that the baseline emissions number for a facility for a financial year is ascertained in relation to the facility in accordance with this Part.
58. Section 10 states that if the baseline emissions number for a facility for a financial year determined in accordance with Divisions 2 to 7 of Part 3 is a number less than 100,000, the baseline emissions number for the facility for the financial year is 100,000. However, this is not the case if the number is less than 100,000 merely because of a borrowing adjustment for the facility for the financial year.
59. In addition, the baseline emissions number for a shale gas extraction facility for a financial year is zero.

60. Aligned with Australia’s commitment of net zero by 2050, the baseline emissions number for a facility for a financial year that begins after 30 June 2049 is zero.

Division 2 – Existing facilities

Subdivision A – Baseline emissions number for existing facility

61. Section 11 provides the formula for determining a baseline emissions number, in t CO₂-e, for an existing facility, other than a landfill facility, for a financial year, rounded to the nearest whole number.
62. Baselines will be set using a production adjusted framework. This will encourage covered facilities to reduce the emissions intensity of their production. For each production variable for a facility and a financial year, a component of its baseline will be set by the multiplying the quantity of the production variable for the facility by an emissions intensity and by the ‘emissions reduction contribution’ for the financial year. Production variables are specified in Schedule 1 of the amended Safeguard Rules and have been developed in consultation with industry using the principles that they should be effective, consistent, practical and robust. The emissions reduction contribution is a multiplier that implements baseline decline.
63. Subsection 22XL(1) of the NGER Act provides for the Safeguard Rules to specify the baseline emissions number for a facility for a financial year, and the NGER Act provides for other periods. If a facility changes operational control during a financial year, the production quantities in this formula will be based on the total production (from all responsible emitters) for the financial year, and the formula will provide the baseline emissions number for a facility for a financial year. For each responsible emitter, their baseline emissions number will reflect the number of days they have operational control, as per subsection 22XL(2) of the NGER Act.
64. Emissions intensities are set using a hybrid model initially weighted towards the use of site-specific emissions intensity values and transitioning to industry average emissions intensity values by 2030. In August 2022 the Government sought feedback on two options for setting emissions intensities for existing facilities, noting that hybrid approaches could also be considered. Option 1 was based on all baselines being set using industry-average benchmark values and Option 2 was based on all baselines set using facility-specific emissions-intensity values. The hybrid approach balances the diverse views that were revealed in this consultation process. It ensures long term policy settings are efficient—making use of all available abatement opportunities—while introducing obligations in manageable increments, giving businesses sufficient time to plan and implement emissions reduction projects.
65. The transition is implemented in this formula using a number called the transition proportion, h , for the financial year, with the value for this number specified in a table in new section 13. The transition proportion h starts at 0.1 for the financial year beginning on 1 July 2023 and steadily increases to 1 for the financial year beginning on 1 July 2029. The emissions intensity that is multiplied by the quantity of the production variable for the facility and emissions reduction contribution is calculated by multiplying h by the default emissions intensity number of the production variable and adding the result to $(1 - h)$ multiplied by the facility-specific emissions intensity number for the production variable. Default emissions intensity numbers for production variables correspond to industry averages and are specified in Schedule 1 of the amended Safeguard Rules.

66. The facility-specific emissions intensity number is specified in an emissions intensity determination. Emissions intensity determinations are provided for in Subdivision C. The due date for emissions intensity determination applications relevant to the financial year beginning on 1 July 2023 is 30 April 2024. Facility-specific emissions intensity numbers are calculated using the facility's emissions and production over the 5-year period that corresponds to 'historical financial years'. This period starts on 1 July 2017 and ends on 30 June 2022. As is set out in subsections 12(4) and 20(5), if a facility undertakes commercial production of a production variable in the financial year beginning on 1 July 2022 but not during any historical production years, that production variable is a transitional production variable for the facility, and the facility-specific emissions intensity number is set to be equal to the default emissions intensity number for that production variable.
67. If an emissions intensity determination that applies in relation to the facility for the financial year does not specify a facility-specific emissions intensity number of the production variable, the emissions intensity used to calculate the component of the facility is the best practice emissions intensity number for the production variable for the financial year, instead of the number calculated using the hybrid model. This could occur if there was no commercial production for that production variable that took place for the facility before 1 July 2023, or if the facility did not submit an emissions intensity determination application by the due date.
68. Reservoir carbon dioxide from new gas fields has a new production variable that is separate to the existing reservoir carbon dioxide production variable and is added by the Amendment Rules (see item 67). This production variable has a best practice emissions intensity of zero. A consequence of the definition at item 67 is that it would not be possible for an emissions intensity determination to specify a facility-specific emissions intensity for this production variable. As such, the best practice emissions intensity number would be applicable to this production variable, rather than the emissions intensity calculated using the hybrid model.
69. The formula also increases the facility's baseline emissions number by the borrowing adjustment for the facility for the financial year. The borrowing adjustment (if applicable) is specified in section 47.
70. The formula in subsection 11(1) for the baseline emissions number for an existing facility (other than a landfill facility) for a financial year is:

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

where:

ERC is the emissions reduction contribution for the facility for the financial year;

p is a production variable for the facility for the financial year;

h is the transition proportion for the financial year;

EI_p is the default emissions intensity number of the production variable p for the financial year;

$EI_{F,p}$ is the facility-specific emissions intensity number of the production variable p if an emissions intensity determination is in place for the facility for p , and zero otherwise;

Q_p is the quantity of the production variable p for the facility for the financial year if an emissions intensity determination is in place for the facility for p , and zero otherwise;

$EI_{B,p}$ is the best practice emissions intensity number for the production variable p for the financial year, and is the default emissions intensity number if a best practice emissions intensity number is not in place;

$Q_{B,p}$ is zero if an emissions intensity determination is in place for the production variable p for the facility, and is the quantity of p for the facility for the financial year otherwise; and

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

71. The term $(h EI_p + (1 - h) EI_{F,p})$ can be thought of as a ‘hybrid emissions intensity’ that is then multiplied by a quantity of a production variable and an emissions reduction contribution to form a component of a facility’s baseline, as described in paragraph 64.
72. The way that Q_p and $Q_{B,p}$ are defined means that for each production variable p for the facility, either the term $(h EI_p + (1 - h) EI_{F,p}) \times Q_p$ is zero or the term $EI_{B,p} \times Q_{B,p}$ is zero, depending on whether an emissions intensity determination is in place for the production variable p for the facility.
73. In many cases, an emissions intensity determination will be in place for all of a facility’s production variables. In this situation the formula in subsection 11(1) simplifies to:

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

74. Section 12 outlines the meaning of an ‘existing facility’. It also sets out a number of relevant definitions including ‘historical production variable’ (subsection 12(2)); ‘historical financial year’ (subsection 12(3)); ‘transitional production variable’ (subsection 12(4)); and ‘non-commercial production variable’ (subsection 12(5)).
75. A historical production variable for a facility is a production variable specified in Schedule 1 of the amended Safeguard Rules, for which the facility engaged in commercial production in one or more historical financial years, which are the years corresponding to the period between 1 July 2017 and 30 June 2022. A transitional production variable for a facility is a production variable specified in Schedule 1 of the amended Safeguard Rules, which was not a historical production variable, but where the facility engaged on commercial production in the financial year beginning on 1 July 2022.
76. An existing facility is one for which there are at least one or more historical or transitional production variables. This definition differentiates existing facilities from new facilities and

determines which section of the amended Safeguard Rules is used to calculate the facility's baseline.

Subdivision B – Transition proportions

77. Baselines for existing facilities will be set using a hybrid model initially weighted towards the use of site-specific emissions intensity values and transitioning to industry average emissions intensity values by 2030. The transitional proportions for each financial year are specified in column 2 of the table in section 13 and correspond to the term h used to calculate the baseline emissions number in the formula in section 11. They correspond to the relative significance of the default emissions intensity compared to the facility-specific emissions intensity and increase over time to 1 by the financial year beginning on 1 July 2029. This delivers the long-term benefits of industry average baselines, while giving businesses time to adjust to the changes.

Subdivision C – Emissions intensity determination

78. Subdivision C concerns emissions intensity determinations, which specify the emissions intensity of each production variable for a facility based on recent past data. The relevant period for calculating a facility's emissions intensity consists of the historical financial years, which were defined in subsection 12(3).
79. Emissions intensity determinations relate to the ascertainment of the baseline emissions number for a facility for a financial year and are determinations that are provided for by section 22XQ of the NGER Act.
80. Section 14 details the requirements for an application for an emissions intensity determination for an existing facility. Subsections (1) – (7) detail what the application must specify including designated historical information on the production variables and covered emissions of greenhouse gasses for the facility during the historical financial year, and any transitional production variables. Applications must specify the first financial year in relation to which the determination would apply, with applications for the 2023-24 financial year due by 30 April 2024.
81. Applications must specify the historical production variables (if any) for the facility. For each historical production variable and historical financial year, applications should set out the emissions relevantly associated with that production variable in that financial year, and the quantity of that production variable in that financial year. This information is known as 'designated historical information'. If designated historical information is not included, the application must include an explanation of why that information has not been included.
82. Applications must also specify the covered emissions for each historical financial year, relevant estimates and assumptions, and emissions relevantly associated with each historical production variable that are from greenhouse gases other than carbon dioxide, if the greenhouse gas comprises more than 1 per cent (in t CO₂-e) of those emissions.
83. Sometimes a facility may start producing a new production variable that is substantially similar to an existing historical production variable. For example, a facility may have ethanol—95 (i.e. 95% ethanol) as a historical production variable and start producing beverage grade ethanol, which was not a historical production variable. It would not make sense for the facility to be required to use the best practice emissions intensity for the new production variable, as this could

discourage production of the new production variable, which may be a higher quality product. The concept of ‘related production variable’ addresses this and enables the related production variable to use the same facility-specific emissions intensity as the historical production variable. In this example, beverage grade ethanol is a related production variable, and ethanol—95 is known as a comparative production variable.

84. Subsection 14(8) states that an application may include a request for the determination to specify that a production variable is a related production variable that corresponds to a comparative production variable.
85. Section 15 specifies requirements for calculating an amount of covered emissions of greenhouse gases from the operation of a facility during a historical financial year. Covered emissions are broadly defined as scope 1 emissions, including direct emissions from fugitive emissions, fuel combustion, waste disposal and other industrial processes such as cement and steel making. The calculations must measure and apportion covered emissions in a manner that is consistent with the latest version of the NGER (Measurement) Determination, use the Global Warming Potentials specified in Regulation 2.02 of the latest version of the NGER Regulations and use the same method (most recent method) that was used in the most recent NGER report provided to the Regulator. This means that the emissions intensity determinations are calculated on the same basis as which covered emissions are reported.
86. Subsection 15(3) states that when the method that was used to report emissions in a historical financial year differs from the method that is currently used by a facility to report its emissions, estimates and assumptions may be made for the purposes of using the most recent method to calculate the emissions in the historical financial year.
87. Section 16 sets out how covered emissions of greenhouse gases from the operation of a facility during a particular historical financial year are relevantly associated with historical production variables. In other words, it sets out how to apportion emissions between different production variables in each historical financial year. This is relevant to how designated historical information is included in emissions intensity determination applications.
88. The approach taken in Section 16 is based on the premise that emissions should be apportioned between production variables consistently with how emissions were apportioned between production variables when default emissions intensities were calculated. This was set out in a document known as the Safeguard Mechanism document. It is the document entitled “Safeguard Mechanism: Prescribed production variables and default emissions intensities” published by the Department and as in force on the commencement of the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Default Emissions Intensities) Rules 2022*. It is available on the website of the Department of Climate Change, Energy, the Environment and Water at <https://www.dcceew.gov.au/climate-change/publications/safeguard-mechanism-document>. This reference is already in the definition of ‘Safeguard Mechanism Document’ in the Safeguard Rules which has not been changed by this instrument.
89. Subsection 16(2) states that covered emissions should be attributed to a production variable if, having regard to the Safeguard Mechanism document, covered emissions of that kind are relevant to the default emissions intensity of that production variable for that financial year; and those emissions are not attributed to another production variable.

90. Subsections 16(3) and 16(4) relate to minor emissions sources, which are, for a facility and a financial year, emissions sources that add up to less than 10 percent of the facilities total covered emissions in that financial year. Emissions from minor emissions sources are attributed to a production variable in a financial year if they fairly represent the actual emissions from the production of the production variable, are apportioned consistently with the NGER (Measurement) Determination, and not apportioned to another production variable.
91. Section 17 requires that an audit report must accompany an emissions intensity determination application.
92. Subsection 22XQ(3) of the NGER Act states that the Safeguard Rules may provide that an application for a determination that relates to the ascertainment of the baseline emissions number for a facility for a financial year is to be accompanied by an audit report that is prescribed by the Safeguard Rules and prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose. Under subsection 75(1) of the NGER Act, the Minister may determine requirements to be met by registered greenhouse and energy auditors in preparing for and carrying out Safeguard audits.
93. Subsection 17(3) sets out reasonable assurance matters. As specified in subparagraph 19(2)(a), the audit report must include a reasonable assurance conclusion or a qualified reasonable assurance conclusion about each of these matters in order for the Regulator to make an emissions intensity determination. These matters include whether, in all material respects, the application correctly specifies: any historical production variables for the facility; the quantity of the historical production variable for any historical financial years for which the application has designated historical information; the covered emissions in each historical financial year; and any transitional production variables for the facility.
94. Subsection 17(4) sets out limited assurance matters. As specified in paragraph 19(2)(b), the audit report must include a limited assurance conclusion or a qualified limited assurance conclusion about each of these matters in order for the Regulator to make an emissions intensity determination. These matters include whether, in all material respects, the application correctly specifies: the amount of covered emissions of greenhouse gases from the operation of the facility that are relevantly associated with each production variable; and the calculations of covered emissions that are included in the application meet the requirements specified in section 15. Limited assurance matters also include that any estimates and assumptions set out under subsection 15(3) are reasonable.
95. Subsection 17(5) provides that despite subsections (3) and (4), the audit report does not need to include a conclusion about a matter in subsection (3) if the responsible emitter has previously given the Regulator and audit report that includes a reasonable assurance conclusion in relation to the matter; or about a matter in subsection (4) if the responsible emitter has previously given the Regulator an audit report that includes a limited assurance conclusion in relation to the matter.
96. The *National Greenhouse and Energy Reporting (Audit) Determination 2009* sets out the meaning of ‘reasonable assurance conclusion’, ‘qualified reasonable assurance conclusion’, ‘limited assurance conclusion’, and ‘qualified limited assurance conclusion’. Under section 18, the Regulator must take all reasonable steps to decide, under section 19, the application for an

emissions intensity determination before the end of the decision date, which is specified in section 52.

97. The Regulator may through written notice require the applicant to provide further information related to the application within a specified time period. If no further information is provided within this period, the Regulator is not required to consider the application, and may cease consideration of the application.
98. Section 19 details the requirements for the Regulator when considering an emissions intensity determination application. Subsection 19(2)(a) specifies that the Regulator cannot make an emissions intensity determination unless the audit report accompanying the application for an emissions intensity determination includes a reasonable or qualified reasonable assurance conclusion for the matters specified in subsection 17(3). Accordingly, these conclusions should confirm the correctness of information provided in the application on historical production variables, transitional production variables, quantity of production and covered emissions for the facility.
99. Paragraph 19(2)(a) also specifies that the Regulator cannot make an emissions intensity determination unless the audit report accompanying the application includes a limited assurance conclusion or qualified limited assurance conclusion for the matters specified in subsection 17(4). Accordingly, these conclusions should confirm the correctness of the apportioning of emissions between production variables, the reasonableness of any estimates and assumptions underpinning the calculation of covered emissions, and that the calculation of covered emissions meets the requirements laid out in section 14.
100. Paragraph 19(2)(b) sets out matters of which the Regulator must be reasonably satisfied before making an emissions intensity determination, and states that the Regulator may have regard to any matter that they consider to be relevant. Subparagraph 19(2)(b)(i) provides that the Regulator must be reasonably satisfied that the information provided in the application for an emissions intensity determination is correct. Subparagraph 19(2)(b)(ii) specifies that, if relevant historical information about a production variable has not been included in the application the Regulator must be satisfied that the explanation provided for not including the information is reasonable. Subparagraphs 19(2)(b)(iii) and (iv) specify that the Regulator must be satisfied that the calculations for the amount of covered emissions for the facility included in the application meet the requirements set out in section 15 and that any assumptions and estimates made under subsection 15(3) are reasonable.
101. Subsection 19(1) specifies that once an application for an emissions intensity determination in accordance with section 19 has been made to the Regulator the Regulator must either make the determination or refuse to make the determination. If the Regulator decides to refuse to make the determination they must notify the applicant of their decision in writing and include written reasons for their decision, as provided for by subsection 19(6). If the Regulator decides to make the determination they must notify the applicant and publish the determination on the Regulators website.
102. Subsection 19(3) requires that an emissions intensity determination must be in writing and specify the first financial year for which the determination applies, as well as the facility-specific emissions intensity numbers for all production variables in the application (including historical, related or transitional production variables). In addition, subsection 19(4) provides for the

determination to specify that a particular production variable is a ‘related production variable’ and that another production variable is the ‘comparative production variable’ for the related production variable. The requirements for related and comparative production variables to be included in an emissions intensity determination are set out in sections 21, 22 and 23.

103. Subsection 19(4) specifies that an emissions intensity determination commences on the first day of the financial year stated in the determination (as per subsection 19(3)) and applies to the relevant facility for that financial year and each following year. The power to designate commencement date is provided for by subsection 22XQ(2) of the NGER Act.
104. Section 20 outlines the method for determining the facility-specific emissions intensity number of a historical production variable, a related production variable, or a transitional production variable.
105. Subsection 20(1) specifies how to determine the facility-specific emissions intensity number for a historical production variable. The facility-specific emissions intensity for a historical production variable is ascertained by dividing the total number of t CO₂-e of covered emissions that are associated with the production variable for the relevant historical financial years by the total quantity of the production variable for the relevant historical financial years. This calculation results in a number which is the production-weighted average emissions intensity for making the production variable at the specified facility over the relevant time period.
106. Subsection 20(2) provides for the Regulator to round a facility-specific emissions intensity number for a historical production variable to 4 or more significant figures if they consider it appropriate.
107. Subsection 20(3) provides for the meaning of ‘relevant historical financial year’ for a single production variable. The meaning changes depending on how many years of relevant historical data are available for the production variable. This is relevant to the calculation of facility-specific emissions intensities because the selection of relevant historical financial years supports the development of facility-specific emissions intensity numbers that are representative of a production-weighted average emissions intensity for the production variable at the facility. Where sufficient historical information is available potential outliers that may skew the calculation are excluded. For example, where 2 or more years of historical information are available, the year with the highest emissions intensity is removed. Where there are 4 or more years of historical information available, the years with the highest and lowest emissions intensities are removed.
108. The table provided in this subsection informs which years are relevant historical financial years. Column 1 describes the number of years of historical information available, and column 2 defines which of those years should be considered the relevant historical financial year or years for the purpose of calculating the facility-specific emissions intensity number.
109. Subsection 20(4) provides that for the purposes of items 1, 2, 3 and 4 of the table in subsection (3), the emissions intensity of a historical production variable for a historical financial year is determined by dividing the emissions relevantly associated with the production variable in the historical financial year by the quantity of the production variable in that financial year.

110. Subsection 20(2) provides for the Regulator to round a facility-specific emissions intensity number for a historical production variable to 4 or more significant figures if they consider it appropriate.
111. Subsection 20(5) defines the facility-specific emissions intensity number for a related production variable. Paragraph 20(5)(a) specifies the facility specific emissions intensity number for a related production variable that is tonnes of reservoir carbon dioxide from a new gas field is zero. Paragraph 20(5)(b) states that if the related production variable is anything other than tonnes of reservoir carbon dioxide for a new gas field, then the facility-specific emissions intensity number is the same as for the relevant comparative production variable. For further information on related and comparative production variables see sections 21, 22 and 23.
112. Subsection 18(6) specifies the facility-specific emissions intensity number of a transitional production variable is the same as the default emissions intensity number for that production variable. If the production variable is not in the historical information for a facility, the default emissions intensity number as in force at the start of the financial year beginning 1 July 2022 should be used. If the production variable was applicable to the facility during a historical financial year, then the default emissions intensity number as in force at the start of that year should be used.

Subdivision D – Related production variables

113. Section 21 applies when the Regulator makes an emissions intensity determination for which there is a request for a determination to state that a particular production variable for a facility is a related production variable for the facility, or where another specified production variable for the facility is the comparative production variable for that related production variable. The Regulator in deciding whether to include a statement in the determination must be satisfied the particular production variable and the other production variable meet the requirements in section 23.
114. Section 22 provides that where a facilities emissions intensity determination is already in force, the responsible emitter of the facility may request the Regulator to vary the determination. A statement is to include that a particular production variable for the facility is a related production variable, and another specified production variable for the facility is the comparative production variable for the related production variable. The Regulator will decide whether or not to make the variation, and in doing so, must be satisfied the particular production variable and the other production variable meet the requirement of section 23. Where the Regulator makes the variation, they must notify the applicant of the variation and publish the varied emissions intensity determination on the Regulator’s website. Where the Regulator does not make the variation, a written of notice decision including the reasons will be provided to the applicant. A variation under this section applies to the financial year in which the application for the variation was made and each subsequent financial year.
115. Section 23 sets out requirements for which the Regulator must be satisfied for it to state that a production variable is a related production variable for a comparative production variable. These include that the two production variables must be substantially similar, measured using the same units or mutually convertible units, and that the facility’s production of the related production variable does not involve the installation of new equipment that is likely to increase the facility’s

capacity to increase the total quantity of the particular production variable and the other production variable by more than 20 per cent.

116. The requirement that the two production variables are substantially similar is important for how this provision works. This is intended to be a strong test. An example of where this provision would likely apply would be the ‘ethanol—95’ and ‘beverage grade ethanol’ production variables that were discussed in paragraph 83 above. Both of these production variables consist of a concentrated ethanol solution, but one has a higher concentration and is produced to a standard for use in beverages and other forms of human consumption.
117. An example of two production variables that are not substantially similar would be ‘iron ore’ and ‘manganese ore’. These production variables have some similarities, for example they both are applicable to facilities that conduct an activity through the physical extraction of mineral ores that contain a metal; they both are measured in tonnes; and they both must be of a saleable quality. But they are not substantially similar because they consist of different elements.

Subdivision E – Successor determination

118. This instrument provides for ‘successor determinations’ to manage situations where a change in the structure of a facility occurs. This could occur due to a change in ownership, a facility being split apart, or two facilities joining together. Providing for successor determinations means that an emissions intensity can apply to a new facility, with the emissions intensities being calculated in an appropriate way.
119. Section 24 details successor determination for restructured facility, which applies if an activity, or series of activities, that constitute the original facility in which the original determination is in force ceases to represent the original facility anymore, or starts to constitute one or more other facilities, or becomes included in an activity (or activities) that is reflective of another facility and is deemed a successor facility. The Regulator may make a determination in relation to a successor facility having regard to any matter the Regulator sees fit. A successor determination must specify any historical, transitional, or related production variables for the successor facility that were also historical, transitional, or related production variables for the original facility. The determination is in force the first day of the financial year to which the successor facility determination applies and every subsequent financial year.
120. Section 25 outlines the process for making a successor determination by the Regulator. Before making a successor determination the Regulator must notify the responsible emitter for the facility of the proposed determination in writing. The notice must specify the facility-specific emissions intensity number of any production variables that would appear in the determination and the first financial year that the determination would apply. The notice must invite the responsible emitter to provide a written response to the proposed determination within the period specified in the notice. The notice may request the responsible emitter provide specific information that the Regulator considers relevant to the proposed determination. The Regulator must decide whether to make the determination within 30 days after the end of the period specified in the notice, even if a response from the responsible emitter has not been received. If the Regulator makes the successor determination, they must notify the responsible emitter and publish the determination on the Regulator’s website.

Subdivision F – Variation of emissions intensity determination

121. Section 26 provides for the Regulator to, in certain circumstances, vary a facility-specific emissions intensity number in an emissions intensity determination that is in force. This provision is intended to ensure alignment between the measurement of a facility's covered emissions and the emissions intensity number used to calculate their baseline. To make this variation the Regulator must be satisfied that the conditions set out in paragraphs 26(1)(a) and (b) are met. There must have been a change of 1 per cent or greater in the amount of covered emissions specified in the application for an emissions intensity determination. The difference must be due to one of the following events occurring after the emissions intensity determination was made – a regulatory change, the use of a different method under the NGER (Measurement) Determination to report the facility's emissions, or a change in activities at the facility. The variation takes effect from the beginning of the first financial year in which the event necessitating the variation occurred. The variation is subject to the process set out in Section 28. If the Regulator makes the determination, they must notify the relevant responsible emitter and publish the determination on the Regulator's website.
122. Subsection 26(5) states that this section does not limit subsection 33(3) of the *Acts Interpretation Act 1901*. Subsection 33(3) of the *Acts Interpretation Act 1901* states that “where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.”. Subsection 33(3) of the *Acts Interpretation Act 1901* is applicable to emissions intensity determinations, and provides, for example, that the Regulator could amend or vary an emissions intensity determination if there was an error when it first made the emissions intensity determination. Subsection 21(4) clarifies that despite section 21 being more specific than subsection 33(3) of the *Acts Interpretation Act 1901* (in that it relates to varying an instrument of an administrative nature), section 21 should not be interpreted as limiting how subsection 33(3) of the *Acts Interpretation Act 1901* relates to emissions intensity determinations.
123. Section 27 provides for the Regulator to request specific information from the responsible emitter when it is considering whether to vary an in-force facility-specific emissions intensity number. The request for information should be in written form and the Regulator must consider the information requested relevant to the variation.
124. Section 28 sets out the process for the Regulator to make a variation to an emissions intensity determination that is in force. Before varying an emissions intensity determination, the Regulator must notify the responsible emitter for the facility of the proposed variation in writing. The notice must specify the facility-specific emissions intensity number of any production variable that would appear in the varied determination. The notice may request the responsible emitter provide specific information that the Regulator considers relevant to the proposed variation. The Regulator must consider any response from the responsible emitter and make a decision in relation to the variation of the determination within 30 days after the end of the period specified in the notice. If the Regulator makes the variation, they must notify the responsible emitter and publish the emissions intensity determination, as varied, on the Regulator's website. The variation must be made before the end of January after the first financial year in relation to which the variation is to apply.

Division 3 – New facilities

125. Section 29 provides the formula for determining a baseline emissions number, in t CO₂-e, for a new facility, other than a landfill facility, for a financial year, rounded to the nearest whole number. A new facility is a facility if there are no historical production variables or transitional production variables for the facility.
126. By definition, a facility that did not undertake commercial production between 1 July 2017 and 30 June 2023 (i.e. during a historical or transitional financial year) will not have any historical or transitional production variables, and will therefore be a new facility.
127. The Amendment Rules do not provide for emissions intensity determinations to apply to new facilities. The formula in section 29 is consistent with the formula in section 11 and can be thought of as a special case of the formula in section 11 that corresponds to the situation where no emissions intensity determinations are in place for the facility.
128. The formula in subsection 29(1) for the baseline emissions number for an existing facility (other than a landfill facility) for a financial year is:

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

where:

ERC is the emissions reduction contribution for the facility for the financial year;

p is a production variable for the facility for the financial year;

EI_{B,p} is the best practice emissions intensity number for the production variable *p* for the financial year, and is the default emissions intensity number if a best practice emissions intensity number is not in place;

Q_p is the quantity of the production variable *p* for the facility for the financial year; and

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

129. The number worked out using the formula in subsection (1) is to be rounded to the nearest whole number.

Division 4 – Landfill facilities

130. Section 30 provides the formula for determining a baseline emissions number, in t CO₂-e, for a landfill facility, for a financial year, rounded to the nearest whole number.
131. 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 paragraph 7(1)(b) and subsection 7(2) of the Safeguard Rules). Under the Safeguard

Rules, 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 Safeguard Rules.

132. Landfills also have different baseline setting arrangements to other facilities—calculated from a default capture efficiency rate of 37.2 per cent. This is because landfills provide a service, rather than produce an output, and emissions are generated from waste deposited in the past. Many landfills have established emissions fund reduction projects.
133. These differences make landfills unsuitable for SMC generation under the proposed settings. It is proposed that landfills are not eligible to generate SMCs from 2023-24 to 2025-26, but long-term arrangements for landfills covered by the Safeguard Mechanism will be considered during the period 2023-24 to 2025-26, prior to the 2026-27 Safeguard Mechanism review.
134. The formula provided at section 30 to calculate a baseline emissions number for a landfill is:
- $$ERC \times NLCH_4 \times (1 - CER) \times (1 - OF) + BA$$

where:

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

NLCH₄ is the number of tonnes of carbon dioxide equivalence of scope 1 greenhouse gases that would be emitted by the facility if emissions were not captured, and oxidation did not occur, at the facility during the financial year.

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

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

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

Division 5 – Emissions reduction contribution

135. The emissions reduction contribution represents the baseline decline rate and is a key input for the baseline emissions number calculation. For each facility for the financial year, a component of its baseline will be set by multiplying the quantity of the production variable for the facility by an emissions intensity and by the ‘emissions reduction contribution’ for the financial year. The emissions reduction contribution is a multiplier that implements baseline decline.

Subdivision A – Default values

136. The table in Section 31 specifies the default emissions reduction contribution number for a financial year. The default emissions reduction contribution number is a key input to baseline calculations. It translates the default decline rate to a form suitable for use in baseline calculations. For the year beginning 1 July 2023 it equates to 1 minus the default decline rate of 0.049. For each year, an additional 0.049 is subtracted from the default emissions reduction contribution of the previous year up until 1 July 2030. For a year beginning on or later than 1 July 2030, it equates to the greater of the default emissions reduction contribution for the previous financial year minus 0.03285, and 0. Column 1 of the table indicates the first day of the

financial year in which the corresponding default emissions reduction contribution in column 2 applies. Column 2 of the table specifies the default emissions reduction contribution.

137. The table in Section 32 specifies the default decline rate for a financial year. The default decline rate is a percentage representation of the amount that baselines, and therefore the cap on aggregate net emissions, are reduced in each financial year, subject to changes in production. The default decline rate is translated for use in baseline calculations in the default emissions reduction contribution number.
138. For each financial year in the period that ends on 30 June 2030, the default decline rate is 0.049, or 4.9 per cent. For each financial year in the period that begins on 1 July 2030, the default decline rate is 0.03285, or 3.285 per cent.
139. The default decline rate to 30 June 2030 is based on analysis by the Department of Climate Change, Energy, the Environment and Water and that is consistent with total net Safeguard emissions not exceeding a total of 1,233 million tonnes of carbon dioxide equivalence (Mt CO₂-e) between 1 July 2020 and 30 June 2030. It is also consistent with net Safeguard emissions declining to no more than 100 Mt CO₂-e by the financial year beginning on 1 July 2029 and zero by the financial year beginning 30 June 2049.
140. The default decline rate to 30 June 2030 is based on projected Safeguard emissions from *Australia's emissions projections 2022* and projected baselines from analysis completed by the Department. The emissions projections suggested that an estimated 418 Mt CO₂-e could be emitted from Safeguard facilities over the period 2020-21 to 2022-23, prior to the commencement of the reforms. The emissions outcomes for 2021-22 were 3 Mt lower than expected and so this would leave 815 Mt CO₂-e from the 1,233 Mt CO₂-e Safeguard emissions budget for the period 2023-24 to 2029-30.
141. The default decline rate has been calibrated to deliver these outcomes reflecting expectations of new entrants into the Safeguard Mechanism consistent with the assumptions and inputs to *Australia's emissions projections 2022* and the baseline setting arrangements for new entrants into the Safeguard Mechanism. The emissions reserve is designed to manage upside risk of higher aggregate emissions from Safeguard facilities to help ensure the Safeguard emissions target is achieved. The default decline rate reflects assumptions regarding the level of trade-exposed baseline-adjustments that will be made to 2030. An additional buffer of 15 Mt CO₂-e of the Safeguard emissions budget is set aside for an emissions reserve, to provide additional assurance against the possibility that emissions from Safeguard facilities (both new and existing) are higher than originally projected and against the event that Safeguard facilities require the trade-exposed baseline-adjustments more than originally projected. The Department's decline rate analysis calculates the default decline rate from projected Safeguard baselines to deliver within the remaining Safeguard budget of 800 Mt CO₂-e over the financial years 2023-24 to 2029-30. The emissions reserve helps to ensure that the Amendment Rules are consistent with the second object of the NGER Act.
142. For the period that begins on 1 July 2030, the default decline rate has been calibrated to transition the Safeguard Mechanism to net zero in 2049-50. Subsection 10(3) specifies that all baselines will be zero from the 2049-50 financial year.

Subdivision B – Regular facilities

143. Section 33 specifies how to determine the emissions reduction contribution number for a regular facility, including for a regular facility that was previously a trade-exposed baseline-adjusted facility. A regular facility is a facility that is not a trade-exposed baseline-adjusted facility. If a regular facility has never been a trade-exposed baseline-adjusted facility, then their emissions reduction contribution is the default emissions reduction contribution for that financial year, as set out in section 31.
144. Subsection 33(2) specifies the calculation for determining the emissions reduction contribution of a regular facility that has previously been a trade-exposed baseline-adjusted facility. If a regular facility has previously been a trade-exposed baseline-adjusted facility, then their emissions reduction contribution is equal to their emissions reduction contribution of the previous year minus the default decline rate for the current financial year, as specified in section 32.

Subdivision C – Trade-exposed baseline-adjusted facilities

145. Section 34 provides the formula for determining the emissions reduction contribution of a trade-exposed baseline-adjusted facility for a financial year. The calculation for the ratio of cost impacts (RCI) is given in section 35. The minimum decline rate (DR_m) is 0.01, or 1 per cent, for manufacturing facilities and 0.02, or 2 per cent, for non-manufacturing facilities. The lower minimum decline rate for manufacturing facilities reflects differences to non-manufacturing facilities in terms of structural margins. The result of this formula is rounded to 5 decimal places.
146. Section 35 specifies the formula and inputs for determining the ratio of cost impacts for a facility for a financial year, which is the same for each of the three years in a trade-exposed baseline-adjusted determination and is used to calculate the emissions reduction contribution for a trade-exposed baseline-adjusted facility for each of those years.
147. Subsection 35(2) states that when a facility reaches the significant cost impact threshold, the ratio of cost impacts is equal to 1 and the maximum level of benefits has been reached.
148. Subsection 35(3) defines the formula for the ratio of cost impacts as the assessed cost impact less the material cost impact threshold, divided by the significant cost impact threshold less the material cost impact threshold.
149. Facilities in the manufacturing sector have a different test to access trade-exposed baseline-adjusted status to facilities in non-manufacturing sectors. This is due to the structurally lower margins and greater capital intensity of manufacturing facilities. Facilities are manufacturing facilities in a financial year if the primary production variable is listed in the table in section 1 of Schedule 2 as a trade-exposed production variable that is also a manufacturing production variable.
150. For manufacturing facilities, the material cost impact threshold is 0.03 and the significant cost impact threshold is 0.10, and is based on scheme costs relative to Earnings Before Interest and Taxes (EBIT). For non-manufacturing facilities, the material cost impact threshold is 0.03 and the significant cost impact threshold is 0.08, and is based on scheme costs relative to revenue. This is further explained in the calculation of assessed cost impact in Section 30.

151. Section 36 defines the assessed cost impact for a facility for a financial year for the purposes of access to the trade-exposed baseline-adjusted status.
152. Subsections 36(1) and 36(4) set out the assessed cost impact formulas, which are equal to scheme cost as a proportion of the EBIT or revenue of the facility (for manufacturing and non-manufacturing facilities respectively).
153. Scheme cost for a facility will be determined by multiplying a baseline exceedance in a particular year by the default prescribed unit price. A baseline exceedance is the amount of covered emissions above the baseline for the facility in the relevant financial year. The default prescribed unit price is described further in section 31. The trade-exposed baseline-adjusted designation should only apply to facilities where the covered emissions exceed their pre-application baseline (the hypothetical baseline). This is required for the Regulator to make the determination in paragraph 42(2)(vii).
154. Subsection 36(2) specifies that for the purpose of calculating the assessed cost impact, revenue from the Powering the Regions Fund is disregarded. This helps incentivise taking up such assistance to reduce emissions.
155. Subsections 36(3) and 36(5) specify that if the revenue or EBIT used to calculate the assessed cost impact in Subsections 36(1) and 36(4) are less than or equal to zero, the assessed cost impact for the facility is equal to the significant cost impact threshold for the facility. The intention of this is to ensure the consistent treatment for facilities that have calculated zero, or negative, EBIT or revenue compared to facilities with a relatively small EBIT or revenue (whichever is relevant to the facility for the purposes of calculating the assessed cost impact).
156. Subsection 36(6) defines the first adjusted financial year for a trade-exposed baseline-adjusted determination to apply which is used to assess the conditions under which a facility is designated as trade-exposed baseline-adjusted and the emissions reduction contribution is calculated with the reduced decline rate for the three year trade-exposed baseline-adjusted period. A new trade-exposed baseline-adjusted determination will have a new first financial year, which may be a financial year during a trade-exposed baseline-adjusted determination in place or the financial year following an earlier trade-exposed baseline-adjusted determination.
157. Subsection 36(7) defines the hypothetical baseline used to calculate the scheme cost for a facility, required for an application for a trade-exposed baseline-adjusted determination. The hypothetical baseline is the pre-application baseline, i.e. the baseline number that would apply to the facility in the absence of the trade-exposed baseline-adjusted determination being applied for. If the application relates to a determination to commence during another trade-exposed baseline-adjusted determination that commenced in an earlier financial year, recalculation of the scheme cost (and therefore the decline rate) is based on the baseline resulting from the trade-exposed baseline-adjusted determination already in place, and not the baseline that would apply without any trade-exposed baseline-adjusted determination in place. In this way, the hypothetical baseline allows for a counterfactual assessed cost impact to be calculated that can be used by a responsible emitter to determine if it is appropriate to update a trade-exposed baseline-adjusted determination part-way through an earlier determination.
158. Section 37 has provisions regarding how EBIT should be calculated for the purpose of calculating the assessed cost impact. Revenue and all component parts of EBIT should be

calculated in line with the relevant Australian accounting standards, for example the Australian revenue standard – AASB 15¹. Where no relevant Australian standard exists, the relevant international standards should be used. Where there are differences between the two standards, the Australian standards will take precedence. Similarly, Australian accounting standards should be used in preference to taxation standards where there is a difference.

159. The facility boundary for consideration of the production measure should in most cases align to the facility boundary reported under NGER, however in some instances it may exclude third parties that are not under the operational control of the responsible emitter. This is expected to be the case where the third parties are not directly involved in the production or activities associated with quantities of production variables. For example, this may exclude the revenue or EBIT of third party contractors which may be reported within the facility under NGER. Where this is the case, it should be clearly documented and consistently applied over time.
160. For the purposes of this mechanism, EBIT is the facility's profit plus interest and taxation in a financial year. If EBIT cannot be ordinarily calculated in this manner, an application for trade-exposed baseline-adjusted determination for a manufacturing facility may estimate EBIT from a 'fair value' concept. This concept is specified in the Australian revenue standard – AASB 152 (the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction). An example of where this might be relevant is if the facility operates on a tolling basis as a service provider for the facility's joint venture partners. Another example is where the products of one facility are transferred rather than sold within a company to another of its facilities for further processing, so the income and expenses of the facilities do not represent a key output/input.
161. Subsection 37(4) specifies that when assessing EBIT for the purpose of calculating the assessed cost impact, revenue from the Powering the Regions Fund is disregarded. This helps incentivise taking up such assistance to reduce emissions.
162. Subsection 37(5) provides for use of depreciation factors of 1.0, 1.1 or 1.2 to be applied against the total depreciation that would otherwise apply to the capital expenses of the facility. This is an exception to the use of established standards. The use of an accelerated depreciation factor (1.1 or 1.2) has the effect of setting up an alternate depreciation schedule for the purposes of enabling the facility to be eligible to apply for a trade-exposed baseline-adjusted determination earlier than would otherwise be the case. This has the additional effect of exhausting usable depreciation within a shorter period than that used for accounting or taxation purposes and should not be taken as an indication that the depreciation schedule for other purposes should be shortened. For the purposes of calculating the alternate depreciation schedule, the same factor for accelerated depreciation should be used for the period for which the relevant baseline adjustment applies. A different depreciation factor may be applied in any further applications for trade-exposed baseline-adjusted determination.

¹ In 2023 this standard could be accessed at:

https://aasb.gov.au/admin/file/content105/c9/AASB15_12-14_COMPmay22_07-22.pdf

² In 2023 AASB 15 could be found at https://aasb.gov.au/admin/file/content105/c9/AASB15_12-14_COMPmay22_07-22.pdf

163. The intention of this measure is to recognise that equipment may have a shorter effective life as industry transitions to net zero by 2050. It also reflects the capital-intensive nature of manufacturing facilities and provides an additional incentive for capital investment in these facilities, which is particularly important for activities to decarbonise production and replace existing assets with more efficient or lower emissions alternatives.
164. Subsections 37(7) and 37(8) provide that the Secretary may make written guidelines (the *EBIT Guidelines*) that relate to working out the earnings before interest and tax of a facility for a financial year. They are to be published on the Department’s website. These Guidelines are intended to be administrative in nature and not a legislative instrument but the Regulator has regard to them when assessing applications for a facility to be trade-exposed baseline-adjusted. The Department’s website is <http://www.dceew.gov.au>.
165. If a new trade-exposed baseline-adjusted application is subsequently made during or following the previous three-year trade-exposed baseline-adjusted determination period, then the facility may nominate a new factor, which will then apply for the period of that application. The new trade-exposed baseline-adjusted depreciation schedule should account for any previous accelerated depreciation, in particular the value of the asset in the financial year corresponding to the last depreciable year which should be reduced by the value that the accelerated depreciation increased value of the asset by. If the last depreciable year is reduced to zero, the second last depreciable year should be reduced by any further value that remained to be adjusted. The intention of this approach is to avoid accounting for an asset’s value twice.
166. Section 38 requires the Secretary to publish a Safeguard Mechanism default prescribed unit price on the Department’s website before the end of that financial year. The Safeguard Mechanism default prescribed unit price will be an estimate of the average price of a prescribed carbon unit for a financial year. It is used as an input for the assessed cost impact calculations which are part of the criteria for deciding that a facility is a trade-exposed baseline-adjusted facility. Detail on making a determination that a facility is a trade-exposed baseline-adjusted facility is in section 42 and the assessed cost impact calculations are detailed in section 36.

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

167. Section 39 details the requirements for an application to be made by a responsible emitter for a trade-exposed baseline-adjusted determination. A trade-exposed baseline-adjusted determination is made for a total of 3 years. An application may be made for any new determination even if the facility is already a trade-exposed baseline-adjusted facility.
168. Subsection 39(3) details what the application must specify including revenue or EBIT (if the facility is not manufacturing or is a manufacturing facility respectively), assessed cost impact (detailed in section 36), information on assumptions, the amount of covered emissions, the hypothetical baseline (detailed in subsection 30(3)), the emissions reduction contributions for all three years and the baseline emissions number in the first financial year if the determination were made. Information on assumptions made for manufacturing facilities should also include the depreciation factor used for the calculation of the EBIT of the facility and an explanation for why an accelerated depreciation factor is used (if applicable).
169. Subsections 39(4) - (5) detail the requirement for a trade-exposed baseline-adjusted determination to include a declaration that the facility’s covered emissions were not artificially

increased for the sole or substantial purpose of favourably influencing the outcome of this determination. The declaration and the application must be signed by the chief financial officer, or equivalent, of the responsible emitter.

170. Subsection 39(6) states that trade-exposed baseline-adjusted designated facilities may make a further application for a trade-exposed baseline-adjusted determination.
171. Section 40 specifies that an application for a determination that a facility is a trade-exposed baseline-adjusted facility must be accompanied by a safeguard audit report, which must meet the requirements laid out in this section. Subsection 40(3) specifies the accompanying audit must provide a reasonable assurance conclusion or a qualified reasonable assurance conclusion on the material correctness of the information provided in the application as well as on whether the facility satisfies the criteria specified in subsections 42(2)(a)(iii) and (iv). The specified criteria are that the primary production variable of the facility for the first financial year is trade-exposed and that the assessed cost impact for the facility for the first financial year is greater than the material cost impact threshold of 0.03.
172. Subsection 40(3) includes the relevant information required in the audit report, including the reasonable assurance matters.
173. Section 41 outlines considerations by the Regulator when considering a facility's application for determination that it is a trade-exposed baseline-adjusted facility.
174. Subsection 41(2) specifies that the Regulator must take all reasonable steps to decide an outcome for an application before the end of the decision date. The relevant decision date for an application is specified in item 3 of the table found in Section 52. The Regulator receiving appropriate information from the responsible emitter. The Regulator may request the responsible emitter provide further information relevant to the application. This request should be made in writing and specify a notice period by which the requested information should be provided. If the requested information is not provided in the time period specified then the Regulator does not have to consider, or may cease considering, the application.
175. Section 42 provides for the Regulator to make a determination that a facility is a trade-exposed baseline-adjusted facility.
176. The Regulator must only make a determination if it is reasonably satisfied that the conditions laid out in paragraph 42(2)(a) are met, including that the information provided in the application is correct, the first financial year is not subject to a borrowing adjustment or included in a multi-year monitoring period, the covered emissions in the first financial year are greater than the hypothetical baseline, the facility's covered emissions were not artificially increased for the sole or substantial purpose of favourably influencing the outcome of the determination, the primary production variable is trade-exposed, the cost impact is greater than the material cost impact threshold, and the accompanying audit report includes a reasonable or qualified reasonable assurance conclusion for each of the matters specified in subsection 40(3).
177. Paragraph 42(2)(a) also requires the Regulator to have regard to any EBIT Guidelines in force at the end of the first financial year. It is appropriate for the version of the EBIT Guidelines in force at the end of the first financial year to be considered because such an approach can be consistent with accounting standards and take account of feedback from relevant stakeholders.

178. Subsections 42(3) and 42(4) set out further requirements for a trade-exposed baseline-adjusted determination including that it must be made in writing, start on the first day of the first financial year, and specify the emissions reduction contribution numbers for the three years of the trade-exposed baseline-adjusted determination.
179. Subsection 42(5) provides that the Regulator must notify the applicant if it makes a determination, and publish the determination.
180. Subsection 42(6) provides that if the Regulator decides to refuse to make a trade-exposed baseline-adjusted determination, the Regulator must give written notice of the decision and include reasons for the decision to the applicant.
181. Subsection 42(7) ensures that this section has effect subject to a revocation of trade-exposed baseline-adjusted determination at the request of a responsible emitter, as given in section 46.
182. Section 43 provides for the Regulator to make a trade-exposed baseline-adjusted determination that commences while another determination is in force, requiring the Regulator to revoke the superseded determination.
183. Section 44 provides for the Regulator to vary a current trade-exposed baseline-adjusted determination in certain circumstances, on the initiative of the Regulator. The Regulator may vary the determination if it is satisfied that the assessed cost impact was incorrectly calculated or information provided to the Regulator in relation to the determination application was false or misleading in a way that is significant or has material consequence. This measure ensures there is recourse should it be found that a determination that a facility is trade-exposed baseline-adjusted should not have been given, and gives certainty that the Regulator can only vary a determination of this type in specific circumstances. The Regulator must notify the responsible emitter in writing if they propose to vary the determination that a facility is a trade-exposed baseline-adjusted facility. The notice must invite a written response within a specified time period and include the proposed new emissions reduction contribution for the facility for the 3 years of the determination. Within 30 days after the period specified in the notice the Regulator must consider any response from the responsible emitter and make a decision in relation to the proposed variation of the determination, even if no response is received. The Regulator must notify the relevant responsible emitter of their decision in relation to the variation in writing. If the Regulator makes the variation, they must include reasons for their decision in their notification and publish the varied determination on the Regulator's website.
184. Section 45 provides for the Regulator to revoke a current trade-exposed baseline-adjusted determination at the request of the responsible emitter. This provision allows a trade-exposed baseline-adjusted determination to be revoked if the responsible emitter intends that the facility should be considered a regular facility and therefore have an emissions reduction contribution calculated using the default decline rate from the previous year in accordance with subsection 27(2), rather than continue with a reduced decline rate.
185. Subsections 45(3)-(5) set out that the request for trade-exposed baseline-adjusted determination revocation must be submitted before the end of the first October following a financial year included in that trade-exposed baseline-adjusted determination, that the Regulator must revoke the determination and notify the responsible emitter of this, and that the revocation takes effect at the start of the financial year in which the request was made.

186. Section 46 sets out the requirement for a facility to be a regular facility for at least one financial year following a revocation of trade-exposed baseline-adjusted determination at the request of the responsible emitter. This would prevent a new trade-exposed baseline-adjusted determination from being made if it were proposed to start in the same financial year in which a revocation of trade-exposed baseline-adjusted determination was made for the facility.
187. Sections 43, 44 and 45 have provisions stating that they do not limit subsection 33(3) of the *Acts Interpretation Act 1901*. Subsection 33(3) of the *Acts Interpretation Act 1901* states that “where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.”
188. Subsection 33(3) of the *Acts Interpretation Act 1901* is applicable to trade-exposed baseline-adjusted determinations, and provides, for example, that the Regulator could amend or vary an emissions intensity determination if there was an error when it first made the emissions intensity determination. These provisions clarify that despite sections 43, 44 and 45 being more specific that subsection 33(3) of the *Acts Interpretation Act 1901* (in that they relate to varying an instrument of an administrative nature), these sections should not be interpreted as limiting how subsection 33(3) of the *Acts Interpretation Act 1901* relates to determinations that a facility is a trade-exposed baseline-adjusted facility.

Division 6 – Borrowing adjustment

189. Division 6 outlines the mechanism for a facility to ‘borrow’ from its future baseline. This measure is part of the suite of flexibility measures provided to help facilities manage their compliance obligations where it might otherwise be costly or difficult. Borrowing provides a facility with flexibility regarding the timing of when emissions reductions occur. Under this Division, a responsible emitter can apply to the Regulator to have a facility’s baseline increased in a particular year. The facility’s baseline would then decrease by a corresponding amount (plus interest) the following year. Borrowing of up to 10 per cent of a facility’s baseline each year will be allowed to 2030, with a 10 per cent interest rate applied in the year after borrowing occurs. However, for the first two years until 1 July 2026, the interest rate will be only 2 per cent to provide covered businesses time to adjust to the new arrangements and provide an additional incentive for early onsite abatement. Borrowing arrangements will be reviewed as part of the 2026-27 review of the Safeguard Mechanism.
190. Section 47 provides the formula for calculating the borrowing adjustment for a facility for a financial year. The borrowing adjustment for a facility for a financial year that ends before 1 July 2026 has an interest rate of 2 per cent applied and is provided by the formula: $BD - 1.02 \times BDP$, where BD is the borrowing adjustment determination number for the financial year, otherwise 0; and BDP is the borrowing adjustment determination for the facility for the previous financial year, or otherwise 0. The borrowing adjustment for a facility for a financial year that begins after 1 July 2026 has an interest rate of 10 per cent and is therefore given by the formula: $BD - 1.1 \times BDP$.
191. Section 48 specifies that a responsible emitter may apply to the Regulator for a borrowing adjustment determination the facility for a financial year. The application must be made in a manner and form approved, in writing by the Regulator; and be made before the end of the due

date for the application as specified in section 41, unless the Regulator agrees to accept the application after that date. Withdrawal of an application is provided in section 53. The application must specify a number no greater than 10 per cent of the baseline emissions number as the proposed borrowing adjustment number for the facility for the financial year.

192. Section 49 applies if the responsible emitter for an existing facility applies for a borrowing adjustment determination under section 48. Subsection 49(2) requires the Regulator to take all reasonable steps to decide an outcome for an application for a borrowing adjustment determination before the end of the decision date. The relevant decision date for an application is specified in Section 52. Subsection 49(2) is subject to the Regulator receiving appropriate information from the responsible emitter. The Regulator may request the responsible emitter provide further information relevant to the application. This request should be made in writing and specify a notice period by which the requested information should be provided. If the requested information is not provided in the time period specified then the Regulator does not have to consider, or may cease considering, the application.
193. Section 50 requires the Regulator to make a decision in relation to an application for a borrowing adjustment determination and the conditions under which a determination can be made. Subsection 50(2) specifies that, to make a borrowing adjustment determination, the Regulator must be satisfied that the facility is likely to be a designated large facility in the financial year after the financial year mentioned in subsection (1) and that the borrowing adjustment number proposed in the application is less than 10% of the facility's unadjusted baseline for that financial year. The meaning of unadjusted baseline for the purpose of this section is specified in subsection 50(4). If the Regulator makes the determination, they must notify the responsible emitter and publish the emissions intensity determination, as varied, on the Regulator's website. If the Regulator refuses to make the determination, they must notify the applicant in writing and include reasons for their decision in their notification.
194. A borrowing adjustment may not apply to a financial year that is included in a multi-year monitoring period. Section 51 requires the Regulator to revoke a borrowing adjustment determination if the year specified in the determination becomes part of a declared multi-year monitoring period for the facility.
195. Facilities may apply for borrowing adjustments in a row, as illustrated in the following example. Suppose that RobesterWorks is a designated large facility that has a baseline emissions number of 200,000 (without a borrowing adjustment) in 2026-27. RobesterWorks' responsible emitter could increase its baseline emissions number to up to 220,000 in 2026-27 by applying for a borrowing adjustment determination. Suppose that it applied for the full borrowing adjustment that it is eligible for, and its baseline emissions number would otherwise be 190,000 in 2027-28. The borrowing adjustment would result in its baseline emissions number being reduced by 22,000, which is $1.1 \times 20,000$, to 168,000 in 2027-28. Its responsible emitter can apply for a borrowing adjustment in 2027-28 by up to 16,800 (which is 10 per cent of its unadjusted baseline number – 168,000). Suppose that it did so, increasing its baseline emissions number to 184,800 in 2027-28, and suppose that its baseline emissions number would for 2028-29 would be 200,000 if there was no borrowing adjustment. The baseline emissions number would be reduced by 18,480 to 181,520 for 2028-29. Because of the 'interest rate' applied to the borrowing adjustment, the total of the baseline emissions numbers over the period between 2026-27 and

2028-29 would be lower than otherwise by 3,680 (2,000 + 1,680) due to the borrowing adjustment.

Division 7 – Miscellaneous

Subdivision A – Applications under this Part

196. Section 52 sets out due dates and decision dates for various applications in the Rules. Column 1 of the table specifies the type of determination or variation and the relevant section in the rules. The date an application is due to the Regulator is specified in Column 2. The date by which a decision in regard to an application is due by the Regulator is specified in Column 3.
197. Section 53 provides that at any time before the Regulator makes a decision on an application mentioned in column 1 of the table in section 52, the applicant may withdraw the application in writing.

Subdivision B – Shale gas extraction facilities

198. Section 54 states that a facility is a ‘*shale gas extraction facility*’ if the activity, or the series of activities, that constitutes the facility is or includes the extraction of gas from a geological formation by means of processes that include hydraulic fracturing; more than 90% of the extracted gas is shale gas; and emissions from the extraction and use of the gas from the geological formation are likely to exceed more than 100 million tonnes of carbon dioxide equivalence in total if the formation were fully exploited. A facility that is primarily engaged in exploration for shale gas from such a formation would also be included. Subsection 10(2) provides that facilities that meet this definition will have a baseline of zero, implying that their obligation to avoid an excess emissions situation will require them to offset all of their scope 1 emissions.
199. Shale is a fine-grained sedimentary rock that is less porous and less permeable than the rock formations that hold conventional gas. Because of this, artificial stimulation, such as hydraulic fracturing, must be used to extract the gas. Shale gas typically occurs in rock formations over 1,500 meters deep and differs from coal seam gas, which is stored in a different type of rock.
200. The intent of the condition that “emissions from the extraction and use of the gas from the geological formation are likely to exceed more than 100 million tonnes of carbon dioxide equivalence in total if the formation were fully exploited” relates to the significance, in terms of climate change, of the geological formation, and is also related to the quantity of resources in the geological formation. As such, it is not intended for it to matter whether emissions from the use of the gas would be likely to occur within or outside Australia.
201. Shale gas has previously been extracted in the Cooper Basin in 2013, in quantities significantly smaller than the conventional gas operations in the Cooper Basin. It is not intended for this definition to capture circumstances such as this, because that would lead to business decisions not directly related to climate change being affected by this decision. As such, this definition requires that more than 90% of the extracted gas is shale gas. This threshold reflects the understanding that large geological formations with shale gas that are being explored almost entirely consist of shale gas.

202. On 3 December 2016 the Northern Territory Government announced an independent Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs in the Northern Territory. The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory released its final report on 27 March 2018. On 17 April 2018, the Northern Territory Government accepted all of the Inquiry’s recommendations and lifted the moratorium on unconventional shale gas developments in the Northern Territory.
203. The Inquiry’s recommendations included recommendation 9.8 that “the NT and Australian governments seek to ensure that there is no net increase in the life cycle GHG emissions emitted in Australia from any onshore shale gas produced in the NT”. In April 2022, the Australian Government committed to work with the Northern Territory to support its implementation of recommendation 9.8 of the Inquiry using available technology and policies.
204. The definition of ‘*shale gas extraction facility*’, along with subsection 10(2), implements recommendation 9.8 with respect to scope 1 emissions. The geological formation within the Northern Territory that is most likely to first achieve commercial production is the Beetaloo sub-basin. Facilities that extract or explore for shale gas from the Beetaloo sub-basin would be covered by this definition and be required to offset their scope 1 emissions. This definition applies nationally and accordingly would apply to other facilities that meet the conditions spelt out in this definition.

Part 3A – Safeguard mechanism credit units

205. Part 3A sets out the rules relating to SMCs, the type of credit that is provided for by the Safeguard Mechanism Act. A designated large facility will be issued SMCs on application, if in a particular financial year, their emissions are below their baseline. Those credits can be sold, surrendered to meet compliance obligations, or banked for future use. The ability for designated large facility that perform highly (meaning they have a lower emissions intensity compared to other facilities making the same product) to generate credits is a key policy element because it creates a financial incentive for all facilities to reduce the emissions intensity of their product, not just those facilities above their baseline.

Division 1 – General

206. Subsection 55(1) specifies that the provisions in Part 3A, unless otherwise specified, are made for the purposes of subsection 22XNA(3) of the NGER Act, which provides for the issuance of SMCs. Subsection 55(2) specifies that Part 3A applies in relation to financial years and multi-year monitoring period that begin after 30 June 2023.

Division 2 – Issuing safeguard mechanism credit units

207. Section 56 sets out matters relating to SMCs including application, issuance, and calculation of the number of credits. Subsection 56(1) provides for a responsible emitter to apply to the Regulator to issue SMCs to the responsible emitter in relation to the facility for a particular financial year. The Regulator, as provided by subsection 56(2), must consider the application as soon as reasonably practicable after receiving the application. Where the Regulator is satisfied of the matters specified in subsection 56(3), and has no evidence that the quantity of the production variable or the covered emissions of greenhouse gases from the operation of the facility in the financial year have been inaccurately reported, they must determine the number of units to be

issued as provided by paragraph 56(2)(c); and decide to issue that number of units to the responsible emitter.

208. Section 56(3) provides the matters for which the Regulator must be satisfied before issuing SMCs. These include that no borrowing adjustment determination specifies a borrowing adjustment number for the facility for the financial year. A borrowing adjustment determination increases the baseline emissions number for a financial year and decreases it in the subsequent financial year. This provision means that a facility cannot get SMCs in relation to the financial year that the baseline increases but does not prevent the facility from getting SMCs in the subsequent financial year.
209. Section 56(3) also requires the baseline emissions number for the facility for the financial year to be greater than the sum of the number of tonnes of covered emissions and the number of ACCUs (if any) by which the net emissions number for the facility for the financial year is increased under subsection 22XK(4) of the NGER Act. It requires the facility to not be landfill facility; and requires the facility to be a designated large facility or an eligible facility for the financial year.
210. Section 56(3) requires the financial year to not be included in a declared multi-year period for the facility. If the financial year is included in a declared multi-year period, they must apply for SMCs to be issued under section 57 instead.
211. Section 56(4) provides the method for determining the number of SMCs to be issued. For facilities without an emissions reduction fund project, the number equates to their baseline emissions number minus their covered emissions for a financial year. Where sub-paragraph 2(c)(ii) does not apply, the number of units to be issued is worked out using the following formula:

$$BEN - E - Increase$$

Where:

BEN is the baseline emissions number for the facility for the financial year that is determined in accordance with Part 3 if the minimum baseline provision in subsection 10(1) did not apply.

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

Increase is the number of ACCUs (if any) by which the net emissions number for the facility for the financial year is increased under subsection 22XK(4) of the NGER Act.

212. Section 56(5) provides the method for calculating the number of units to be issued where a facility was a responsible emitter for less than 365 days in the financial year. The formula is given by:

$$SMC \times \frac{RN}{365}$$

where:

SMC means the number worked out using the formula in subsection (4); and

RN means the relevant number.

213. Section 57 details the process for issuing SMCs for a declared multi-year period. The approach taken by this section mirrors the approach in section 56, but uses a formula that reflects the baseline for each financial year in the period. Accordingly, subsection 57(1) provides that the responsible emitter for a facility may apply to the Regulator to issue SMCs to the responsible emitter in relation to the facility for a particular multi-year period for the facility. Subsection 57(2) provides that the Regulator must consider the application as soon as reasonably practicable after receiving it. Where the Regulator is satisfied the matters specified in subsection 57(3), and has no evidence to suggest that the quantity of production variable for the facility for a financial year included in the declared multi-year period, or the covered emissions of greenhouse gases from the operation of the facility in the declared multi-year period have been inaccurately reported, then the Regulator must determine in accordance with subsection 57(4) the number of units to be issued; and decide to issue that number of units to the responsible emitter.
214. Section 57(3) provides for the matters the Regulator must be satisfied before issuing any SMCs. These matters include: no borrowing adjustment determination specifies a borrowing adjustment number for the facility for a financial year included in the declared multi-year period; the baseline emissions number for the facility for the declared multi-year period is greater than the sum of the number of tonnes of covered emissions from the operation of the facility during each financial year included in the declared multi-year period, and the number of ACCUs (if any) by which the net emissions number for the facility for the declared multi-year period is increased under subsection 22XK(4) of the NGER Act; the facility is not a landfill facility; and the facility is a designated large facility, or an eligible facility for each of the financial years included in the declared multi-year period.
215. Section 57(4) provides the method for calculating the number of SMCs to be issued using the following formula:

$$\sum_t BEN_t - E_t - Increase_t$$

where:

t is a financial year included in the declared multi-year period.

BEN_t, in relation to a financial year included in the declared multi-year period, is the baseline emissions number for the facility for the financial year that would be ascertained in accordance with Part 3 if the minimum baseline provision in subsection 10(1) did not apply.

E_t, in relation to a financial year included in the declared multi-year period, is the number of tonnes of carbon dioxide equivalence of covered emissions of greenhouse gases from the operation of the facility during the financial year.

Increase_t, in relation to a financial year included in the declared multi-year period, is the number of Australian carbon credit units (if any) by which the net emissions number for the facility for the financial year is increased under subsection 22XK(4) of the NGER Act.

216. Section 58 sets out requirements for applications for SMCs that are made under subsection 56(1) or subsection 57(1). The application must be in writing and specify the Registry account kept by the responsible emitter in which the Regulator is to make an entry of the units; and include an acknowledgement that the Regulator may require the relinquishment of SMC units issued on false or misleading information or as a result of fraudulent conduct. Subsection 58(2) includes that at any time before the Regulator decides the application, the responsible emitter may, in writing, withdraw the application. See sections 22XNE and 22XNF of the NGER Act for the requirement to relinquish SMCs in certain circumstances.

Division 3 – Timing etc. of issue of safeguard mechanism credit units

217. Subsection 58A(1) requires that each SMC issued should be identified with the relevant financial year used to calculate how many are issued. This allows SMCs to be traced to the year in which they were generated. Because the number of SMCs issued for a financial year depends on information that must be reported after the financial year, SMCs for a financial year are issued in the following financial year. It is the relevant reporting period that will be identified with an SMC, not the year of issuance.

218. If there was a declared multi-year period for the facility that includes the financial year before the financial year in which the SMCs are issued, the SMCs are identified with the last financial year in that period.

219. Subsection 58A(2) requires the Regulator to issue SMCs as soon as reasonably practicable after 31 January of the financial year following the relevant reporting period. For this requirement to apply, the application must have been made before 31 January and the Regulator must decide to issue SMCs in relation to the facility for the financial year.

220. If a responsible emitter has applied under subsection 57 (1) to be issued SMCs in relation to a declared multi-year monitoring period, subsection @58A(3) requires the Regulator to issue SMCs as soon as reasonably practicable after 31 January of the financial year following the end of the multi-monitoring year period. For this requirement to apply, the application must have been made before 31 January and the Regulator must decide to issue SMCs in relation to the facility for the multi-year monitoring period.

Division 4 – Eligible facilities

221. Subsection 58B(1) allows – but does not require – facilities whose emissions drop below the coverage threshold to access aspects of the scheme, primarily the issuance of SMCs, if they meet the criteria laid out in paragraphs 58B(3)(a)-(e). This is intended to ensure the incentive to decarbonise is not removed after a facility reduces its emissions below 100,000 t CO₂-e. For a facility to be considered an eligible facility under subsection 58B(1) it must have been a designated large facility for a financial year within the previous 10 years (not including the current financial year). It must have been a designated large facility in at least 3 historical years or 2 of the 4 financial years immediately preceding the last financial year that it was a designated large facility. It must also either have a current emissions intensity determination or be a new facility. It must not have had ACCUs issued in relation to covered emissions at the facility for the current financial year.

222. Subsection 58B(2) provides for a facility to be considered an eligible facility after the financial year ending on 30 June 2028 if it was a designated large facility for at least 3 of the 5 years immediately preceding the current financial year. It must also either have a current emissions intensity determination or be a new facility. It must not have had ACCUs issued in relation to covered emissions at the facility for the current financial year.

Item 37 – Subsection 65(3)

223. Removes the existing subsection 65(3) and introduces a new subsection 65(3) detailing the requirements for an application for a multi-year period declaration. Section 65 is related to applications for a declaration that a specified period is a declared multi-year period for a facility. Declared multi-year periods are also known as multi-year monitoring periods. Section 22XG of the NGER Act provides for multi-year monitoring periods, which mean that the duty to avoid an excess emissions situation (i.e. to avoid having a net emissions number that is greater than a baseline emissions number) applies to a period that consists of more than one financial year.

224. Extended multi-year monitoring periods will be made available, on application, to give facilities flexibility while they invest in new projects that reduce their emissions. The application must be given in a manner and form approved in writing by the Regulator; specify the multi-year period for which the declaration is sought; specify the amount of covered carbon dioxide equivalent of emissions emitted, or reasonably likely to be emitted for the proposed first financial year of the declared multi-year period; include a declaration that the facility will conduct one or more activities to reduce the emissions intensity of the facility's production variables and that as a result of those activities, will be reasonably likely to avoid an excess emissions situation at the end of the declared multi-year monitoring period; include a credible plan for how those activities will be reasonably likely to reduce the facility's emissions number and a summary of the plan for publication; provide an explanation of any known risks that may breach section 22XF of the NGER Act (the duty to avoid an excess emissions situation by 1 April in the following financial year); and be signed by a responsible financial officer for the responsible emitter of a facility; or a person authorised by the responsible officer.

Item 38 – Subsection 65(4)

225. Updates the date for an application for a multi-year monitoring period declaration which is due to the Regulator on 15 November. As such, facilities must submit a declaration application within two weeks after 31 October when they must have reported their emissions and production.

Item 39 – Subsection 67(1)

226. Provides that section 67 applies if an application under section 65 has been made for a multi-year monitoring period declaration for a facility. Section 67 enables the Regulator to make such a declaration.

Item 40 – Subsection 67(2)

227. Removes the wording "reasonably likely to be". The Regulator must be satisfied that a facility's covered emissions are greater than its baseline for the first year of the multi-year monitoring period before it makes a multi-year monitoring period declaration. This tightens one of the requirements that must be met in order to make such a declaration.

Item 41 – After paragraph 67(2)(c)

228. Introduces new provision (ca) after paragraph 67(2)(c) and details the requirement for the Regulator to consider whether a facility’s plan to reduce emissions is likely to be effective in reducing emissions below their baseline when deciding whether to make a multi-year monitoring period declaration. This helps to ensure multi-year monitoring periods provide flexibility for facilities with decarbonisation projects with long lead times, as intended. Along with section 69B, which allows the Regulator to reduce the length of a multi-year monitoring period where emissions are not being reduced, this provision reduces the potential that multi-year monitoring periods can be used to delay the implementation of onsite abatement projects or delay liability without the intention of conducting onsite abatement. Borrowing adjustments are also available to provide flexibility to facilities to manage their obligation to avoid an excess emissions situation.

Item 42 – Subsection 67(3)

229. Repeals the subsection and replaces with a new subsection 67(3) requiring the Regulator to specify the length of a multi-year monitoring period when a declaration is made. Multi-year monitoring periods may be granted for 2, 3, 4 or 5 financial years. Defining the length of a multi-year monitoring period at the point the declaration is made provides certainty for facilities in implementing their plan to ensure they do not exceed their baseline.

Item 43 – After subsection 67(3)

230. Introduces subsection 67(3A) which prevents the Regulator from making a multi-year monitoring period declaration which has an end date later than 30 June 2030. This provision helps ensure Australia will meet its 2030 emissions reduction targets. It prevents a situation where a facility with a multi-year monitoring period declaration has been in exceedance on an annual basis but has not yet ‘trued up’ its net emissions (for example through implementation of low emissions technology which will bring its emissions below its baseline). In this scenario the excess emissions would not be accounted for in the year 2030 and may pose a risk to Australia meeting its national targets. The 2026-27 review of the Safeguard Mechanism will consider the treatment of flexibility mechanisms beyond 2030, such as banking and borrowing and multi-year monitoring periods.

Item 44 – Subsection 67(4)

231. Repeals the subsection and replaces it with a new subsection 67(4). It specifies that the Regulator is to take all reasonable steps to ensure a decision on an application for a multi-year monitoring period is made no later than 31 January after the end of the proposed first financial year of the declared multi-year period; and allows the Regulator to request further information up to 60 days after the applicant gave the Regulator the information. This provision aligns these decisions with the date that most SMCs will be issued.

Item 45 – Subsection 68(1)

232. Repeals the subsection and replaces with a new subsection 68(1). The responsible emitter may apply to the Regulator to reduce the length of the declared multi-year period in a multi-year period declaration by one or more years, down to a minimum of two years. Similarly, a facility may apply to the Regulator to extend the length of a declared multi-year period in a multi-year

period declaration by one or more years, up to a maximum of five years. Further, a facility may apply to the Regulator to revoke the multi-year period declaration. This provision gives greater flexibility to a facility where an activity to reduce emissions intensity becomes available sooner, or later than expected in a declared multi-year period.

Item 46 – At the end of subsection 68(3)

233. Adds a note referring to section 90, which is added by this instrument and prevents the Regulator from extending multi-year monitoring periods in force before 1 July 2023.

Item 47 – At the end of Division 2 of Part 4

234. Introduces new section 69A which requires a facility at the end of a multi-year monitoring period to submit a report to the Regulator describing how the facility performed against its plan to reduce emissions to be below its baseline for the purposes of paragraph 65(3)(e). This report is due by 31 October after the last year of the multi-year monitoring declaration.
235. Introduces new section 69B which allows the Regulator to reduce the length of a multi-year monitoring period where emissions are not being reduced. Subsection 69B(1) specifies that, to make a variation to reduce the length of a multi-year monitoring period declaration, the Regulator must be satisfied that the facility is not implementing or is unable to implement their plan for reducing emissions as submitted with their application for a multi-year monitoring period under subsection 65(3)(e); and that the covered emissions over the period is likely to exceed the baseline over for the period for the facility. This situation could arise if the plan was subject to approvals that were not granted.
236. Subsection 69B(3) provides for the Regulator to request specific information from the facility if the Regulator is considering making a variation under this section. The request for information must be given to the responsible emitter in writing and the Regulator must consider the information requested relevant to the variation. If the Regulator decides to vary the declaration, subsection 69B(3) provides for the Regulator to vary the declaration so that it ends at the end of the financial year in which the Regulator becomes satisfied of the relevant criteria as specified in subsection 69B(1).
237. Section 69B is not intended to limit subsection 33(3) of the *Acts Interpretation Act 1901*, which is applicable to multi-year period declarations.

Item 48 – Paragraph 71(3)(c)

238. Paragraph 71(3)(c) is repealed as it is no longer applicable.

Item 49 – Paragraph 72(1)(a)

239. Section 72 provides for information to be published that is related to the Safeguard Mechanism. Paragraph 72(1)(a) details what the Regulator must publish on its website for each facility that is a designated large facility or an eligible facility, for a financial year. This provision provides for it to apply to eligible facilities.
240. Publication of information related to the Safeguard Mechanism supports the transparency and integrity of these arrangements and is necessary or convenient to give effect to the Safeguard

provisions in the NGER Act. Section 25 of the NGER Act enables NGER reporters to apply to the Regulator requesting information not be published if the information is commercially sensitive.

Item 50 – Subparagraphs 72(1)(a)(iv) and (v)

241. Sub-paragraphs 72(1)(a)(iv) and (v) are updated to reflect the Regulator is to publish information relating to baseline emissions number and covered emissions of a facility for each financial year that the facility is a designated large facility or an eligible facility (as the case may be).

Item 51 – At the end of paragraph 72(1)(a)

242. New subparagraphs (xii)–(xiv) are introduced at the end of paragraph 72(1)(a). They specify the Regulator is to publish whether there is a facility specific emissions reduction contribution, borrowing adjustment number, and the number of safeguard mechanism credits issued to the responsible emitter for that financial year.

Item 52 – Paragraphs 72(1)(d) and (e)

243. Paragraphs 72(1)(d) and (e) are removed and replaced with new paragraphs 72(1)(d) and (e). They provide the Regulator is to publish on their website the summary of the plan to reduce the facility's covered emissions as mentioned in section 65(3)(f), and each report submitted to the Regulator under subsection 69A(2).

Item 53 – Subsection 72(3)

244. Substitutes the date with 1 April, moving the publishing date later by 1 month to reflect changes to application dates as set out in section 52.

Item 54 – Division 4 of Part 4 (heading)

245. Removes the heading 'Excess surrender situations' and introduces the heading 'Net emissions number' for which Division 4 now relates.

Item 55 – Section 72A

246. Repeals the section and introduces 72A 'Excess surrender situation' and 72B which details circumstance in which subsection 22XK(4) of the NGER Act does not apply.
247. The new section 72A sets out how an 'Excess surrender situation' applies where a person has surrendered a number of prescribed carbon units for the purpose of reducing the net emissions number for a facility for a period, also defined as the '*relevant period*'. An excess surrender situation is taken to be where the person in relation to the facility for the relevant period surrendered some or all of those units because of an error on the part of the Regulator, or error on part of the person or another person; the error concerned the amount of covered emissions of greenhouse gases from the operation of the facility, or quantity of a production variable for the facility, during the first period; the Regulator required a report under the NGER Act to be re-submitted because of the error; and the Regulator is satisfied the error was made in good faith. The units surrendered because of the error in subsection 72A(2) in the relevant period, defined as excess units, are taken to be covered by the excess surrender situation. The person may by written notice to the Regulator request that the excess units be surrendered for the purpose of

reducing the net emissions number for the facility in the next financial year, a period starting immediately after the relevant period and ending before 1 July 2030.

248. For the purpose of subsection 22XK(3) of the NGER Act, section 22XK of the NGER Act has effect as if the person has not surrendered the excess units for the purpose of reducing the net emissions number for the facility for the relevant period; and the person had surrendered those units for the next financial year for the purpose of reducing the net emissions number, and had done so on the later of the first day of the next financial year and the day the notice was given to the Regulator under section 72A.
249. New section 72B is introduced which describes circumstances in which subsection 22XK(4) of the NGER Act, known as the double counting add-back of ACCUs, does not apply. Section 22XK(4) of the NGER Act can increase the net emissions number of a designated large facility if ACCUs were issued under in respect of an eligible offsets project and some or all of those ACCUs are attributable to carbon abatement at the facility. Subsection 22XK(5) of the NGER Act provides for the Safeguard Rules to specify circumstances in which subsection 22XK(4) does not apply. Section 72B ensures that the net emissions number is only adjusted if the carbon abatement involves carbon abatement of covered emissions at the facility.
250. An example of a project where ACCUs are attributable to carbon abatement at a designated large facility could be a project that reduces covered emissions of the facility by substituting a less emissions intensive fuel for a more emissions intensive fuel as a source of heat.
251. Another example of a project where ACCUs are attributable to carbon abatement at a designated large facility could be a project that captures landfill gas or waste coal mine gas from the facility (whether or not the project takes place at the facility) and combusts it to generate electricity, resulting in ACCUs being issued for reducing the methane emissions of the facility. These ACCUs would be attributable to carbon abatement at the facility because they reduce the emissions of the facility. If the project also generated ACCUs for providing electricity to a grid, those ACCUs would not be attributable to carbon abatement at the facility, because they do not reduce the emissions of the facility.
252. An example of a project where ACCUs are attributable to carbon abatement at a designated large facility, but do not involve carbon abatement of covered emissions at the facility, could be a project that generates ACCUs by installing efficient lighting, reducing electricity usage. This project would only reduce scope 2 emissions, which are not covered by the Safeguard Mechanism.
253. For the purposes of subsection 22XK(5) of the NGER Act, if the facility is a designated large facility, the net emissions number for the facility for a period is not increased under subsection 22XK(4) of the NGER Act by a number of ACCUs if those units are not attributable to the avoidance of covered emissions of greenhouse gasses from the operation of the facility during the period. Put another way, if ACCUs are issued for carbon abatement at the facility of emissions not covered by the Safeguard Mechanism (e.g., scope 2 emissions) the add-back doesn't occur.
254. New section 72B is not intended to prevent the application of subsection 22XK(4) to emissions that are covered by the Safeguard Mechanism. Only scope 1 emissions are covered by the Safeguard Mechanism, and covered emissions also do not include emissions from legacy waste

(that is, waste deposited before 1 July 2016) deposited in a landfill. Emissions from waste deposited after 1 July 2016 are covered by the Safeguard Mechanism. Where some or all of the ACCUs issued are attributable to carbon abatement of covered emissions at a designated large facility, then 22XK(4) should continue to apply and the double counting add-back mechanism should occur for the ACCUs attributable to carbon abatement of covered emissions.

Item 56 – At the end of Part 4

255. Introduces a new Division 5 – Surrender of prescribed carbon units, to Part 4 of the Rules concerning the period that responsible emitters are able to surrender carbon units.
256. New section 72C provides requirements for surrender of prescribed carbon units. These requirements are intended to provide an additional incentive for onsite abatement and require the responsible emitter to consider why onsite emissions are not being reduced. The identification of barriers to such abatement will also assist governments prioritise actions to address these limitations.
257. If none of the prescribed carbon units are ACCUs, or the total number of ACCUs surrendered for a facility and period are less than 30 per cent of the facility's baseline emissions number, the surrender meets the requirements of this section.
258. If the total number of ACCUs surrendered for a facility and period exceed 30 per cent of the facility's baseline emissions number, the responsible emitter must have provided a written explanation of why more carbon abatement was not undertaken at a facility during a period to the Regulator that meets the requirements of subsection 72C(5).
259. Subsection 72C(5) requires the explanation to address whether limitations in available technologies affected the level of carbon abatement undertaken at the facility during the period and whether there are barriers, including regulatory barriers, to undertaking carbon abatement at the facility. It must include information about future opportunities for undertaking carbon abatement at the facility. It must also identify any information included in the explanation that is commercially sensitive and be given to the Regulator in the form approved, in writing, by the Regulator.
260. The Regulator must publish the explanation as soon as practicable on its website after receiving it, except for any commercially sensitive information identified in explanation by the responsible emitter. This allows for public scrutiny, including by investors, of the facility's pathway to net zero by 2050.
261. New section 72D provides requirements for a period for which the net emissions number is reduced by surrendering units. For the purposes of paragraph 22XN(1)(c) of the NGER Act, a registered holder of prescribed carbon credits may surrender any or all of these units for the purposes of reducing the facilities net emissions number for a period, so long as the period is a monitoring period for the facility in relation to the responsible emitter for the facility; and the period commenced before the surrender was made.
262. New section 72E provides circumstances in which subsection 22XN(6) of the NGER Act does not apply. This section is provided for by subsection 22XN(7) of the NGER Act. Subsection 22XN(6) of the NGER states that if some ACCUs were issued in relation to an eligible offsets project (within the meaning of the Carbon Farming Initiative Act), are attributable to carbon

abatement at the facility, and were purchased by the Commonwealth under a carbon abatement contract, they should be treated as if they are ‘deemed surrenders’ and accordingly reduce the net emissions number of the facility for the period within which the ACCUs were issued.

263. Under section 72E, subsection 22XN(6) of the NGER Act does not apply in relation to a carbon abatement contract entered into after 30 March 2023 (otherwise than by way of novation). For the purpose of 22XN(6) of the NGER Act, ACCUs are not taken to have been surrendered for the purpose of reducing the net emissions number for a facility for a period if those units are not attributable to the avoidance of covered emissions of greenhouse gases from the operation of the facility during the period. Further, 22XN(6) of the NGER Act does not apply if the ACCUs are purchased under a carbon abatement contract that does not refer to the project for which the ACCUs were issued.

Item 57 – Before Division 1 of Part 5

264. Inserts new Division 1A – Voluntary registration.
265. New section 72D provides for registration of eligible facilities. For the purposes of paragraph 15B(3A)(a) of the NGER Act, a person who has operational control of an eligible facility for a financial year may apply, in accordance with section 15B of the NGER Act, to be registered under the NGER Act.

Item 58 – Division 1 of Part 5 (at the end of the heading)

266. Updates the heading of Division 1 of Part 5 to ‘Registration applications’.

Item 59 – Section 76

267. Updates the formatting by inserting subsection (1) before ‘A report’ so now that it is section 76(1). This subsection details what information is required by the report under section 22XB of the NGER Act.

Item 60 – At the end of section 76

268. New subsection 76(2) provides the information requirements for reporting quantities of production variables used to calculate baseline emissions number for reporters who report under section 22XB of the NGER Act. It states that they must report the same information that they would report under regulation 4.23C of the NGER Regulations if they were a corporation for which Division 4.4A of those regulations applied.

Item 61 – After Part 5

269. Introduces, at the end of Part 5, new Division 4 – Other information about the Safeguard mechanism.
270. New section 78A requires designated large facilities to submit an audit report when they provide a report under section 19, 22G, 22X or 22XB of the NGER Act, if their covered emissions exceed 1 Mt CO₂-e in a financial year. This report must include a reasonable assurance conclusion or a qualified reasonable assurance conclusion as to whether, in all material respects,

the quantities specified in the regulatory report that relate to covered emissions and quantities of production variables are correct.

Item 62 – At the end of Part 6

271. Introduces a new division to Part 6 of the Rules specifying when different aspects of the updated Rules begin to apply.

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

272. Section 87 provides for the application of certain provisions within the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*.

273. The amendment to section 7 and new Part 3 of the Safeguard Rules would apply to financial years that begin after 30 June 2023.

274. Section 72B, which relates to the double counting add-back of ACCUs, section 72D, which relates to requirements for the period that a surrender relates to, and subsection 72E(3), which relates to deemed surrender, apply to periods that begin after 30 June 2022.

275. Section 72C, regarding an explanation if the number of ACCUs surrendered exceeds a threshold, applies on and after 1 July 2023.

276. Section 88 includes saving provisions of certain elements amended by the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023* relating to Part 3 baseline emissions number. Part 3 of the Safeguard Rules as in force before this instrument commences continues to apply for the 2022-23 financial year. Determinations made under that part continue to apply in relation to determining baselines for the 2022-23 financial year.

277. However, in order for facilities to apply for baselines for the 2022-23 financial year, it applies as if the following provisions were omitted: subsection 26A(6) (criteria for a transitional calculated baseline); subparagraphs 40(1)(ab)(i) and (ii) (criteria for a production adjusted baseline determination); and paragraph 40(1)(b) (criteria for a production adjusted baseline determination).

278. Section 89 applies to a declared multi-year monitoring period in a multi-year period declaration in force immediately before this section commences. If the end date of the declared multi-year period is a date later than 30 June 2024, the end date is taken to be 30 June 2024.

Item 63 – Schedule 1

279. Repeals Schedule 1 – ‘Benchmark Emission Intensity Index’ as it is no longer applicable.

Item 64 – Schedule 2 (heading)

280. Repeals the heading of Schedule 2 and introduces a new Schedule 1:

Schedule 1 – Production Variables

Item 65 – Section 35 of Schedule 2 (at the end of the heading)

281. Updates the heading of section 42 to now be ‘Reservoir carbon dioxide from existing gas fields’.

Item 66 – Paragraphs 35(1)(a) of Schedule 2

282. Updates the definition of reservoir carbon dioxide from existing gas fields by removing “(from natural gas, crude oil mixtures or products produced from extracted hydrocarbons)”, and replacing it with “from natural gas, crude oil mixtures or products produced from extracted hydrocarbons that are not covered extracted hydrocarbons”. This is because such covered extracted hydrocarbons are dealt with by section 35A of Schedule 2.

Item 67 – After section 35 of Schedule 2

283. Introduces new section 35A which defines reservoir carbon dioxide from new gas fields. It reflects the particular characteristics of new fields for liquefied natural gas facilities which are similar to new entrant facilities in other industries. The reservoir carbon dioxide allocation is zero due to the existence of very low reservoir carbon dioxide fields, the application of carbon capture and storage and regulatory practice in Australia.

284. It relates to tonnes of reservoir carbon dioxide that were separated in an acid gas removal unit from natural gas, crude oil mixtures or products produced from extracted hydrocarbons from activities that mirror the definition of reservoir carbon dioxide from existing gas fields; when separated consist of a mixture that is overwhelmingly carbon dioxide; have not previously been included as a tonne of reservoir carbon dioxide under this section; and were not imported as a carbon dioxide stream from another facility.

285. The metric in 35(1) is applicable to a facility that separates reservoir carbon dioxide from natural gas, crude oil mixtures or products produced from extracted hydrocarbons as part of one of the following activities: oil and gas extraction; integrated crude oil extraction and stabilisation; natural gas processing; integrated natural gas extraction and processing; processed natural gas liquefaction; and unprocessed natural gas liquefaction.

286. Extracted hydrocarbons meet the condition if they, originate from a gas field in respect of which commercial production was not undertaken before 1 July 2023; are used as an input in the unprocessed natural gas liquefaction activity or the processed natural gas liquefaction activity (whether or not they are processed at a natural gas processing facility to produce pipeline gas beforehand); and are not purchased from the domestic wholesale gas market. The concept of a gas field is intended to be understood according to its industry meaning and is not intended to be interpreted narrowly. However, a gas field is not the same as a basin which may include a number of fields. The reference to the domestic wholesale gas market reflects arrangements on the east coast where gas is traded and cannot be traced in the same manner as bilaterally traded gas.

287. Extracted hydrocarbons are not included in this definition if they are from fields for which before 1 July 2023, the field, or part of the field, was included in an area in which the commercial extraction of hydrocarbons was occurring in accordance with a licence (however described) granted under a law of the Commonwealth, a State or a Territory.

288. The Society of Petroleum Engineers defines a ‘field’ to be: “An area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature and/or stratigraphic condition. There may be two or more reservoirs in a field that are separated vertically by intervening impermeable rock, laterally by local geologic barriers, or both. It could be defined differently by regulatory authorities.”³
289. Where there is the possibility of multiple gas streams being processed by a liquefaction facility it is intended that practical accounting approaches would be put in place to apply the definitions over the course of a year.
290. For reservoir carbon dioxide from new gas fields, the default emissions intensity is zero t CO₂-e per tonnes of reservoir carbon dioxide; and the best practice emissions intensity is zero t CO₂-e per tonnes of reservoir carbon dioxide.

Item 68 – At the end of Schedule 2

291. Introduces Part 46 which specifies the meaning of petroleum refining activities and related feedstock material. This part was previously in a different Schedule of the Safeguard Rules and moved to the end of Schedule 2.
292. The previous production variable for petroleum refining activities was non-output based and facilities using it were limited to a fixed-baseline rather than production-adjusted. The reforms to the Safeguard Mechanism are based on a production-adjusted baseline setting framework. To align with this, the petroleum refining production variable has been adjusted to be suitable for use in a production-adjusted framework and moved to Schedule 2 of the Safeguard Rules. An output-based production variable is unsuitable for petroleum refining activities so the updated petroleum refining production variable will remain input based. Allowing an input-based production variable to annually adjust carries the risk that a facility may consume more inputs to increase its baseline. However, in the case of oil refining in Australia, this risk is limited and manageable. The nature of the oil refining activities means that there are commercial incentives to use input materials efficiently and only two facilities use this production variable.
293. As with the existing definition, the petroleum refining activity refers to the ATO interpretative decision about stabilised crude petroleum oil available from <http://www.ato.gov.au>.

Item 69 – Schedule 3

294. Repeals the schedule and replaces it with:

Schedule 2 – Trade-exposed production variables and manufacturing variables

295. Trade-exposed production variable and manufacturing production variable are defined in section 4 of this Rule.

³ In 2023 this definition was available on the Society of Petroleum Engineers glossary at <https://www.spe.org/en/industry/terms-used-petroleum-reserves-resource-definitions/>

296. Section 1 of this Schedule provides a table which lists trade-exposed production variables that are also manufacturing sector facilities. Section 2 of this Schedule provides another table that lists production variables that are non-manufacturing production variables.

Item 70 – Amendments of listed provisions – prescribed (annually adjusted) production variables

297. Removes the terminology of prescribed (annually adjusted) production variables across varying provisions of Schedule 2 as it is no longer applicable.

Item 71 – Amendments of listed provisions—Schedule 2

298. Removes wording of ‘Schedule 2’, and substitutes ‘this Schedule’ across varying provisions in referring to the correct Schedule.

ATTACHMENT A – Statement of Reasons

Statement of reasons under s 22XS(1B) of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) – How the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* as amended delivers the legislated safeguard outcomes

1. In accordance with section 22XS(1A) and (1B) of the NGER Act, this statement sets out my reasons for being satisfied that the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 (Safeguard Rules)* as amended by the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023 (Amendment Rules)* are consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d), and that they take into account the safeguard outcomes in paragraphs 3(2)(e) and (f), of the NGER Act.

Summary

2. Collectively, the Safeguard Rules and related instruments and policies, put net emissions limits on Australia's largest industrial emitters and reduce those limits consistent with a proportional share of Australia's targets. The scheme established by the Safeguard Rules delivers the required emissions reductions while providing a strong incentive to reduce onsite emissions at each designated large facility, and supporting the competitiveness of trade-exposed industries. In particular, the Safeguard Rules as amended ensure that:
 - Enforceable baselines are set for the net emissions of each designated large facility (relevant to safeguard outcome (a) – but noting that this safeguard outcome is not engaged by the requirement in section 22XS(1A) of the NGER Act)
 - Baselines will decline and are reasonably expected to achieve the 1,233 million tonne 10-year limit on total net safeguard emissions (referred to as the 'net emissions budget'), including with an appropriate reserve for uncertainty about future emissions (relevant to safeguard outcome (b))
 - The baseline decline is reasonably expected to result in less than 100 million tonnes of net safeguard emissions in 2030, and baselines will be set at zero from 30 June 2049 (relevant to safeguard outcome (c))
 - The incentives created are reasonably expected to result in emissions declining consistent with the 5-year rolling average for each financial year that begins after 30 June 2024 (relevant to safeguard outcome (d))
 - Strong incentives from baseline decline and Safeguard Mechanism Credits provide a material incentive for onsite abatement (relevant to safeguard outcome (e))
 - Competitiveness of trade-exposed industries is supported, including through trade-exposed baseline adjusted provisions (relevant to safeguard outcome (f)).
3. Overall, the amendments to the Safeguard Rules provide investment certainty for Australia's industrial sector to reduce their emissions and remain competitive in a global net zero economy.

Definitions

| Abbreviation | Definition |
|--|---|
| ACCU | Australian Carbon Credit Unit, which has the same meaning as in the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> . |
| Amendment Rules | <i>National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023</i> . |
| Baseline | The baseline emissions number for a facility, as specified in section 22XL of the NGER Act. |
| CO ₂ -e | Abbreviation for carbon dioxide equivalent, a way of quantifying greenhouse gases to reflect their contribution to climate change compared to a unit of carbon dioxide equivalent. In the NGER Act, the carbon dioxide equivalence of an amount of greenhouse gas, means the amount of the gas multiplied by a value specified in the regulations in relation to that kind of greenhouse gas. |
| Covered emissions | Has the meaning given by section 22XI of the NGER Act i.e. scope 1 emissions of one or more greenhouse gases, other than emissions of a kind specified in the Safeguard Rules. |
| Department | Department of Climate Change, Energy, the Environment and Water |
| Default emissions reduction contribution | For a financial year, has the meaning given by section 31 of the Amendment Rules. |
| Designated large facility | A facility covered by the Safeguard Mechanism, as defined in section 22XJ of the NGER Act. |
| EBIT | Refers to the number of dollars that is equal to the earnings before interest and tax of the facility in the first adjusted financial year for the facility. |
| Facility | An activity or a series of activities that involve greenhouse gas emissions, the production of energy or the consumption of energy, as defined in section 9 of the NGER Act. |
| Mt | Million tonnes |
| NDC | Nationally Determined Contribution under the Paris Agreement |
| Net covered emissions | Means the total amount, in tonnes of carbon dioxide equivalence, of covered emissions for a particular designated large facility adjusted for the total amount of ACCUs or SMCs surrendered. The NGER Act established the Safeguard Mechanism 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. |
| Net | The 1,233 million tonne limit on net safeguard emissions for all of the financial years |

| | |
|-------------------------|---|
| emissions budget | between 1 July 2020 and 30 June 2030 referred to in safeguard outcome (b). |
| Net emissions number | Has the meaning given by section 22XD of the NGER Act, i.e., the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period: <ul style="list-style-type: none"> (a) reduced by surrendered prescribed carbon units; and (b) increased by Australian carbon credit units that were issued in relation to the facility. |
| Net safeguard emissions | For a financial year, means the total amount, in tonnes of carbon dioxide equivalence, of net covered emissions from the operation, during the financial year, of all designated large facilities in the financial year. |
| NGER Act | <i>National Greenhouse and Energy Reporting Act 2007</i> |
| Prescribed carbon unit | Has the meaning given by section 22XM of the NGER Act, namely ACCUs and SMCs. |
| Regulator | Clean Energy Regulator |
| Responsible emitter | The person with operational control of a facility (see further section 22XH of the NGER Act). |
| Safeguard Mechanism | A mechanism to ensure the net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility and ensure that aggregate net covered emissions from the operation of designated large facilities decline. The mechanism is established under Part 3H of the NGER Act. |
| Safeguard Mechanism Act | <i>Safeguard Mechanism (Crediting) Amendment Act 2023</i> |
| Safeguard Rules | <i>National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015</i> |
| Safeguard emissions | For a financial year, means the total amount in tonnes of carbon dioxide equivalence, of covered emissions from the operation, during the financial year, of all designated large facilities for the financial year. |
| Scope 1 emissions | Emissions released to the atmosphere as a direct result of an activity, or series of activities at a facility level (sometimes referred to as direct emissions). |
| SMCs | Safeguard Mechanism Credit units, which are units issued under section 22XNA of the NGER Act |
| TEBA facilities | Trade-exposed baseline-adjusted facilities |
| Trade exposed | Designated large facilities for which the primary production variable is listed in Schedule 2 of the Safeguard Rules, as amended. The primary production variable for |

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| facilities | a facility is the production variable that is most significant for its operation, having primary regard to the share of revenue and covered emissions attributable to that production variable. |
|------------|---|

Key legislative provisions

4. Section 22XS of the NGER Act relevantly provides:

(1A) The Minister must not make safeguard rules unless the Minister is satisfied that those rules:

- (a) are consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d); and
- (b) take into account the safeguard outcomes in paragraphs 3(2)(e) and (f).

(1B) If the Minister makes safeguard rules, the Minister must publish on the Department's website the Minister's reasons for being satisfied that the safeguard rules:

- (c) are consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d); and
- (d) take into account the safeguard outcomes in paragraphs 3(2)(e) and (f).

5. Section 3(2) of the NGER Act sets out the safeguard outcomes as follows:

(2) The second object of this Act is to contribute to the achievement of Australia's greenhouse gas emissions reduction targets by ensuring that each of the following outcomes (the **safeguard outcomes**) are achieved:

- (a) net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility;
- (b) total net safeguard emissions for all of the financial years between 1 July 2020 and 30 June 2030 do not exceed a total of 1,233 million tonnes of carbon dioxide equivalence;
- (c) net safeguard emissions decline to:
 - (i) no more than 100 million tonnes of carbon dioxide equivalence for the financial year beginning on 1 July 2029; and
 - (ii) zero for any financial year to begin after 30 June 2049;
- (d) the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 are lower than the past 5-year rolling average safeguard emissions for that financial year;
- (e) the responsible emitter for each designated large facility has a material incentive to invest in reducing covered emissions from the operation of the facility;
- (f) the competitiveness of trade-exposed industries is appropriately supported as Australia and its regions seize the opportunities of the move to a global net zero economy.

Background

The Safeguard Mechanism and Australia's Nationally Determined Contribution

6. The NGER 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 established under Part 3H of the Act. Together with the reporting obligations under the Act, the Safeguard Mechanism provides a framework for Australia's largest industrial emitters to measure, report and manage their emissions.

7. The Safeguard Mechanism provides a legislated framework that limits the net emissions of around 215 large industrial facilities—those with more than 100,000 tonnes of scope 1 (direct) carbon dioxide equivalent (CO₂-e) emissions each year ('designated large facilities' under s 22XJ of the NGER Act). Each year, every designated large facility needs to prove that their net emissions for that year are equal to or below their baseline. Each designated large facility reports their emissions to the Regulator, which publishes the results on its website.
8. Since it commenced on 1 July 2016, reported covered emissions from designated large facilities have grown over 4 per cent from 131.3 Mt CO₂-e in 2016-17 to 136.9 Mt CO₂-e in 2020-21.⁴ Under existing policy settings, these aggregate emissions are projected to reach 146 Mt CO₂-e in 2029-30.⁵
9. Under the Paris Agreement, to which Australia is a Party, Parties are required to communicate their Nationally Determined Contribution (NDC) which sets out their emissions reduction commitments. On 16 June 2022, Australia communicated its updated NDC under Article 4 of the Paris Agreement to the United Nations⁶. This updated NDC included confirmation of Australia's commitment to achieve net zero emissions by 2050, and a new, increased, 2030 target of 43 per cent below 2005 levels by 2030. The *Climate Change Act 2022* prescribes these commitments into Australian law.
10. The Australian Government is reforming the Safeguard Mechanism to reduce emissions consistent with these legislated targets. The reforms will support industry to reduce emissions efficiently, helping them maintain competitiveness as the global economy decarbonises.

Amendments to the Safeguard Rules

11. Section 22XS of the NGER Act empowers me to make rules to implement the Safeguard Mechanism by legislative instrument. These rules may prescribe matters required or permitted by the NGER Act and matters necessary or convenient to be prescribed for carrying out or giving effect to the Safeguard provisions in the NGER Act. The Safeguard Rules are a legislative instrument made under section 22XS(1) of the NGER Act. The measures set out in the Amendment Rules, such as the creation of SMCs, are consistent with *the Safeguard Mechanism (Crediting) Amendment Act 2023* (Safeguard Mechanism Act).
12. The Amendment Rules amend the Safeguard Rules to implement reforms to the Safeguard Mechanism, a commitment in the Government's Powering Australia Plan. The reformed Safeguard Mechanism will require Australia's largest industrial facilities to reduce their emissions, gradually and predictably in line with our national targets, and will ensure that Australian businesses remain competitive as the world decarbonises.

⁴ Safeguard facility emissions are published by the Clean Energy Regulator at: <https://www.cleanenergyregulator.gov.au/NGER/The-safeguard-mechanism/safeguard-data/safeguard-facility-reported-emissions> .

⁵ Department of Climate Change, Energy, the Environment and Water, December 2022, Australia's emissions projections 2022, available at: <https://www.dcccew.gov.au/climate-change/publications/australias-emissions-projections-2022#:~:text=In%20June%202022%20Australia%20updated,emissions%20budget%20from%202021%2D2030> .

⁶ Australia's Nationally Determined Contribution, available at: [https://unfccc.int/sites/default/files/NDC/2022-06/Australias NDC June 2022 Update %283%29.pdf](https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%283%29.pdf)

13. The amendments to the Safeguard Rules are intended to arrest and reverse the growth in covered emissions, position designated large facilities to do a proportionate share of the emissions reduction task to 2030 and achieve net zero by 2050. Without a contribution from designated large facilities, other sectors of the economy would face a disproportionately high burden for Australia to meet its legislated 2030 emissions reduction target.
14. Key provisions in the Amendment Rules which facilitate emissions reduction, consistent with the safeguard outcomes in subparagraphs 3(2)(b) – (d) of the NGER Act, and taking account of the outcomes in subparagraphs 3(2)(e) and (f) include:
- a. baseline setting arrangements for existing and new facilities,
 - b. declining baselines over time so that designated large facilities contribute their proportional share of the national emissions reduction task,
 - c. the detail of how SMCs can be created and used by facilities, which will provide an incentive for facilities to reduce emissions below their baselines,
 - d. flexible compliance options including below-baseline crediting,
 - e. tailored treatment for trade-exposed facilities, and
 - f. confirming interactions with ACCU projects.
15. I note that the Government has committed to review the Safeguard Mechanism in 2026-27, which will provide an opportunity for the Government to consider if any risks have emerged that may affect achievement of the relevant safeguard outcomes. This provides an opportunity to amend the Safeguard Rules to address any such risks, including to the required 2030 outcomes. Additionally, under the *Climate Change Act 2022*, the Climate Change Authority will provide independent advice to Government about the effectiveness of the Safeguard Mechanism as part of the Annual Climate Change Statement. This process could also result in changes to the rules under subsection 22XS(1C) of the NGER Act. The Secretary of the Department may also raise similar concerns in accordance with subsection 22XS(1D) of the NGER Act.

Consultations

16. The Department has consulted extensively on the best approach to reform the Safeguard Mechanism which has informed the development of the Amendment Rules. Consultation has been undertaken broadly with affected facilities, industry bodies, government agencies, non-Safeguard industrial businesses, carbon market participants, environmental groups and other interested parties.
17. This extensive consultation process has included:
- a *Consultation Paper* (August-September 2022), factsheets, webinar, and 5 roundtables
 - exposure draft legislation (October 2022)
 - draft *Safeguard Mechanism Reforms (Crediting) Amendment Bill 2022*,
 - draft *Carbon Credits (Carbon Farming Initiative) Amendment (Safeguard Facility Eligibility Requirements) Rules 2022*
 - a *Position Paper* (January – February 2023), factsheets, webinar, and 3 roundtables
 - exposure draft legislation (January – February 2023)

- draft *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*,
- draft *Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) 2023*,
- draft *Australian National Registry of Emissions Units Rules 2023*,
- draft *Safeguard Mechanism Legislation Amendment (2023 Measures No 1) Regulations 2023*
- Over 170 meetings held between June 2022 to April 2023
- Over 570 submissions have been received on the consultation paper, exposure draft legislation and position paper
- A summary of the consultation is included in the Regulatory Impact Analysis referred to in paragraph 18(i) below.

Material on which my decision was based

18. My decision that I was satisfied that the Safeguard Rules as amended are consistent with each of the outcomes in paragraphs 3(2)(b), (c) and (d), and take into account the safeguard outcomes in paragraphs 3(2)(e) and (f) was made after considering a brief from the Department (MS23-900672), which contained the following attachments relevant to this decision:

- a. National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023
- b. Carbon Credits (Carbon Farming Initiative) Amendment (No.2) Rules 2023
- c. Australian National Registry of Emissions Units Rules 2023
- d. Explanatory Statement: National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023
- e. Explanatory Statement: Carbon Credits (Carbon Farming Initiative) Amendment (No.2) 2023
- f. Explanatory Statement: Australian National Registry of Emissions Units Rules 2023
- g. Draft Statement of Reasons
- h. Other analysis relating to Statement of Reasons – including calculations that contain Cabinet-in-Confidence information
 - i. Decline rate analysis – Calculations from the Department relating to projected emissions without reforms and specific default decline rate required to achieve net emissions outcomes.
 - ii. Gross emissions analysis – Calculations from the Department relating to projected emissions without reforms, potential uptake of on-site abatement and historical emissions data, relating to 5 year rolling average emissions outcomes. The data underlying these calculations is classified Cabinet in Confidence and in addition, the information could be market sensitive. It has consequently been covered by public interest immunity claims tabled to the Senate Environment and Communications Legislation Committee (1 March 2023) and provided to the Senate on 9 March 2023 under a Senate Order of 7 March 2023.

- i. Regulatory Impact Analysis (which includes a summary of the stakeholder consultations)
- j. Department's certification letter
- k. Office of Impact Analysis assessment letter

Reasons

I am satisfied that the Safeguard Rules as amended are consistent with safeguard outcome (b): that total net safeguard emissions for all of the financial years between 1 July 2020 and 30 June 2030 do not exceed a total of 1,233 million tonnes of carbon dioxide equivalence

19. Part 3 of the Safeguard Rules as amended specifies the default decline rate for a financial year. The default decline rate is a percentage representation of the amount that baselines, and therefore the cap on aggregate net emissions, are reduced in each financial year, subject to changes in production. The default decline rate is translated for use in baseline calculations in the default emissions reduction contribution number.
 - a. For each financial year in the period that ends on 30 June 2030, the default decline rate is 0.049, or 4.9 per cent.
 - b. For each financial year in the period that begins on 1 July 2030, the default decline rate is 0.03285, or 3.285 per cent.
20. The default emissions reduction contribution number is a key input to baseline calculations. It translates the default decline rate to a form suitable for use in baseline calculations. For the year beginning 1 July 2023 it equates to 1 minus the default decline rate of 0.049. For each year, an additional 0.049 is subtracted from the default emissions reduction contribution of the previous year up until 1 July 2030.
21. The default decline rate as provided for within Part 3 of the Safeguard Rules as amended was specifically calculated by the Department to ensure net safeguard emissions do not exceed a total of 1,233 million tonnes of carbon dioxide equivalence between 1 July 2020 and 30 June 2030, as outlined in following paragraphs.
22. The default decline rate to 30 June 2030 was formulated on the basis of analysis completed by the Department, which was informed by projected safeguard emissions from *Australia's emissions projections 2022*⁷, Australia's 2030 targets expressed in Australia's NDC and data contained in the National Greenhouse Gas Inventory Quarterly Update: June 2022⁸.
23. *Australia's emissions projections 2022* suggested that an estimated 421 Mt CO₂-e could be emitted from designated large facilities over the period 2020-21 to 2022-23. This would have left 812 Mt CO₂-e from the 1,233 Mt CO₂-e safeguard net emissions budget for the period 2023-24 to 2029-30. Based on the outcomes from the 2021-22 compliance year, net safeguard emissions were 3 Mt CO₂-e lower than projected, and so the remaining portion of the net emissions budget for 2023-24 to 2029-30 is 815 Mt CO₂-e.
24. The Department's decline rate analysis, which I relied on, calculates the projected declining baselines for designated large facilities over 2023-24 to 2029-30 on the basis of a facility specific consideration of the

⁷ Department of Climate Change, Energy, the Environment and Water, December 2022, Australia's emissions projections 2022, available at: <https://www.dcceew.gov.au/climate-change/publications/australias-emissions-projections-2022#:~:text=In%20June%202022%20Australia%20updated,emissions%20budget%20from%202021%2D2030.>

⁸ [https://www.dcceew.gov.au/climate-change/publications/national-greenhouse-gas-inventory-quarterly-update-june-2022#:~:text=The%20trend%20result%20for%20the,electricity\)%20and%20fugitive%20emissions%20sectors.](https://www.dcceew.gov.au/climate-change/publications/national-greenhouse-gas-inventory-quarterly-update-june-2022#:~:text=The%20trend%20result%20for%20the,electricity)%20and%20fugitive%20emissions%20sectors.)

baseline emissions numbers in accordance with Part 3 of the Safeguard Rules as amended. In undertaking consideration on a facility by facility basis, the decline rate analysis took into account the likely numbers of facilities subject to each of the following provisions in paragraph 25 below. Since international best practice emissions intensities have not yet been determined apart from reservoir carbon dioxide feeding existing liquefied natural gas, the decline rate analysis applied Australian best practice as a proxy for international best practice, adapted for Australian circumstances. This is a conservative approach to the analysis since there will be times when Australian best practice is the lowest emissions intensity and other times when best practice occurs in another country or countries. Consequently, the overall outcome is expected to be lower using international best practice, adapted for Australian circumstances, than Australian best practice.

25. The decline rate analysis took into account the following provisions in Part 3 of the Safeguard Rules as amended:
- a. Division 1 of Part 3 – General – which establishes that the minimum baseline emissions number is 100,000 (unless a borrowing adjustment applies); the baseline emissions for a shale gas facility (as defined in Division 7 of Part 3) for a financial year is zero; and the baseline emissions number for a facility for a financial year that begins after 30 June 2049 is to be zero.
 - b. Division 2 of Part 3 – Existing facilities – which establishes the hybrid model initially weighted towards the use of site-specific emissions intensity values, transitioning to industry average emissions intensity values by 2030. Reservoir carbon dioxide from new gas fields supplying existing liquefied natural gas has a production variable at best practice emission intensity of zero.
 - c. Division 3 of Part 3 – New facilities – which establishes that baselines will be set at international best practice, adapted for Australian circumstances.
 - d. Division 4 of Part 3 – Landfill facilities – which provides the baseline arrangement of landfill facilities. I note that landfill facilities have different coverage and baseline setting arrangements to other facilities—calculated from a default capture efficiency rate of 37.2 per cent.
 - e. Division 5 of Part 3 – Emissions reduction contribution – which establishes the emissions contribution for both facilities which are not TEBA (ie ‘regular facilities’) and those that are TEBA.
26. The Department’s decline rate analysis allows for a 15 Mt CO₂-e emissions reserve, to protect against the event that emissions from designated large facilities are higher than originally projected. The reserve has been established to:
- a. Manage uncertainty in the production and emissions from new projects that may enter the Safeguard Mechanism, as well as uncertainty in the future production and emissions from existing designated large facilities.
 - i. The level of production uncertainty included in the reserve is benchmarked to the interannual variability of historical reported emissions from designated large facilities of around 1 per cent. Without the Safeguard reforms, emissions are projected by *Australia’s emissions projections 2022* to grow at an annual average of 0.7 per cent a year between 2020-21 and 2029-30. The production uncertainty component allows for annual average growth in emissions of over 0.9 per cent a year between 2020-21 and 2029-30.

- ii. Expectations of new facilities estimated to enter the Safeguard Mechanism were aligned with Australia's emissions projections 2022 and the Office of Chief Economist's Resources and Energy Major Projects List: 2022⁹ where those projects have a high likelihood of proceeding.
 - iii. The approach to setting baselines for new entrants under the Safeguard Rules, as amended, at international best practice (as outlined in Part 3, Division 3, Section 29) leads to net emissions from new entrants being estimated at 15 Mt to 2030, compared to estimated emissions of 38 Mt to 2030 without reforms.
- b. Account for the event that designated large facilities access trade-exposed baseline-adjustments to a greater extent than estimated in the decline rate analysis.
27. Through its components as described above, the reserve accounts for greater than anticipated emissions from existing facilities and new facilities and higher than anticipated access to trade-exposed baseline adjustments.
28. The Department's decline rate analysis calculates the default decline rate from projected baselines to limit emissions to the remaining net emissions budget of 800 Mt CO₂-e (i.e., 815 Mt CO₂-e – 15 Mt CO₂-e) over the financial years 2023-24 to 2029-30. This decline rate analysis, together with the expectation that net safeguard emissions would total 418 Mt CO₂e over 2020-21 to 2022-23, is consistent with net emissions from designated large facilities not exceeding 1,233 Mt CO₂-e over the 10 years 2020-21 to 2029-30 (ie 418 Mt CO₂-e + 815 Mt CO₂-e).
29. I note there are several flexibility measures in the Safeguard Rules as amended that would not directly affect the total amount of net safeguard emissions to 30 June 2030, however, establish certain frameworks for designated large facilities in meeting their baselines. These include:
- a. SMCs – Part 3A of the Safeguard Rules as amended provides for the application for, and calculation and issuance of, SMCs where the emissions of a designated large facility or eligible facility (as defined under subsection 58B) are below the facility's baseline in a given year. Part 4, Division 5 of the Safeguard Rules as amended provides that facilities can surrender SMCs to meet their compliance obligations for a given financial year.
 - b. ACCUs – Part 4, Division 5 of the Safeguard Rules as amended provides that designated large facilities can surrender ACCUs to meet their obligations. An ACCU represents one tonne of emissions avoided or sequestered. Each ACCU surrendered by a facility reduces its net emissions by one tonne.
 - c. Borrowing arrangements – Part 3, Division 6 of the Safeguard Rules as amended provides for borrowing adjustments for facilities' baselines. Up to 10 percent of a facility's baseline will be allowed to be borrowed each year up to 30 June 2030, with a 2 per cent interest applied in the

⁹ Department of Industry, Science and Resources, December 2022, Resources and energy major projects: 2022, available at: <https://www.industry.gov.au/publications/resources-and-energy-major-projects-2022>

year after the borrowing occurs for the first 2 years, and a 10 per cent interest applied in the year after borrowing occurs in subsequent years. This means facilities will be allowed to have a higher number of net safeguard emissions in one financial year by up to 10 per cent, provided their net safeguard emissions in the next financial year are reduced by that amount plus the relevant interest rate.

- d. Declared multi-year periods – Part 4, Division 2 provides for five-year declared multi-year periods. This will allow facilities to smooth out abatement trajectories by allowing facilities to average out an exceedance in an initial year (or years) with below-baseline emissions in later years, after a facility has implemented a project.

30. These measures do not allow for increases in net emissions over the period to 2030, rather they provide flexibility for when and how facilities meet their compliance obligations up until 2030.

31. I am satisfied that these measures are consistent with safeguard outcome (b), for the following reasons:

- a. Each SMC is equivalent to one tonne of carbon dioxide equivalent. SMCs are issued within the overall carbon constraint of the declining baselines as described above. Any use of SMCs for the purposes of compliance to 30 June 2030 would not add to the overall net safeguard emissions from designated large facilities since they represent a reduction in emissions from another facility or from that facility in a previous financial year in the period up to 30 June 2030.
- b. Each ACCU represents one tonne of emissions avoided or sequestered. Each ACCU surrendered by a designated large facility reduces its net covered emissions by one tonne. I note the *Carbon Credits (Carbon Farming Initiative) Act 2011* has arrangements to ensure the integrity of ACCUs and further work is underway to enhance this framework¹⁰.
- c. Neither borrowing arrangements nor declared multi-year periods extend beyond 30 June 2030, ensuring that they are consistent with safeguard outcome (b) by requiring on-site emissions reduction or the surrender of ACCUs or SMCs to occur by 30 June 2030.

32. I am aware that the treatment of TEBA facilities as provided by Part 3, Division 5 of the Safeguard Rules as amended will not contribute the same emissions reductions relative to other designated large facilities. I am satisfied that this is consistent with both safeguard outcomes (2)(b) and (2)(c)(i) because:

- a. The Department's decline rate analysis used to set the decline rate took into account the number of facilities that are expected to qualify as TEBA based on the considerations below.
 - i. Using activity forecasts consistent with *Australia's emissions projections 2022*, declining hybrid baselines were projected at a facility level for trade exposed facilities.
 - ii. Cost impacts were estimated based on projected facility exceedances multiplied by central ACCU price forecasts. Estimated revenue was based on five year historical

¹⁰ <https://www.dceew.gov.au/climate-change/emissions-reduction/independent-review-accus>

commodity data or publicly available revenue data. Estimated EBIT was based on publicly available data.

- iii. Where cost impact was estimated to exceed the ratio of cost impacts given by section 29 of the Safeguard Rules as amended, facility baselines were adjusted according to section 28. The classification of manufacturing and non-manufacturing facilities was undertaken according to Schedule 2 in the Safeguard Rules as amended.
- iv. The total amount of baseline-adjustments estimated over 2023-24 to 2029-30 for trade-exposed facilities was incorporated into the baseline decline calculation.

- b. As outlined in paragraph 26 above, the baseline decline rate was calculated factoring in a reserve, which provides a buffer if more facilities than expected qualify for TEBA status.

33. The provisions in Part 4, Division 4 help ensure there are necessary checks and balances to ensure that the correct net emissions information is reported.

- a. Section 72A in Part 4, Division 4 provides for excess surrender situations in circumstances where a person has surrendered a number of prescribed carbon units for the purposes of reducing the net emissions number for a facility in error.
- b. Subsection 22XK(4) of the NGER Act provides that if ACCUs attributable to carbon abatement at a designated large facility are issued for a particular period, the net emissions number for that period is increased by the quantum of ACCUs. Section 72B details circumstances in which subsection 22XK(4) of the Act does not apply, whereby if ACCUs are issued for carbon abatement at a facility for emissions not covered by the Safeguard Mechanism (e.g., scope 2 emissions) the increase to the net emissions number does not occur.

34. Section 22XN(6) of the NGER Act provides that, if ACCUs attributable to carbon abatement at a designated large facility are purchased by the Commonwealth under a carbon abatement contract, they are treated as though they had been surrendered for the purpose of reducing the net emissions number for the facility for the relevant period. Subsection 22XN(7) of the NGER Act states that subsection 22XN(6) does not apply in circumstances prescribed in the Safeguard Rules. Under section 72E of the Safeguard Rules as amended, subsection 22XN(6) of the Act does not apply in relation to a carbon abatement contract entered into after 30 March 2023 (otherwise than by way of novation). Further, section 22XN(6) of the Act does not apply if ACCUs are purchased under a carbon abatement contract that does not refer to the project for which the ACCUs were issued. These provisions grandfather the access to 'deemed surrender' arrangements. These arrangements do not change the quantum of ACCUs required to meet a facility's baseline. The quantity of ACCUs potentially affected by these arrangements is capped because new carbon abatement contracts will not be able to access these arrangements. Overall, I am satisfied that the access to 'deemed surrender' arrangements in the Safeguard Rules as amended, is consistent with meeting the net emissions budget to 30 June 2030, since under 'deemed surrender' arrangements the same quantum of ACCUs required to meet a particular facility's baseline are still surrendered to the Australian Government.

35. I also note that the NGER Act has a robust penalty regime for the enforcement of the obligations under the Safeguard Mechanism, addressing any risks that non-compliance could increase net emissions. This includes

civil penalties, infringement notices and injunctions to require a non-compliant entity to surrender ACCUs or SMCs to bring their net emissions down to their baseline.

I am satisfied that the Safeguard Rules as amended are consistent with safeguard outcome (c): that net safeguard emissions decline to (i) no more than 100 million tonnes of carbon dioxide equivalence for the financial year beginning on 1 July 2029; and (ii) zero for any financial year to begin after 30 June 2049

36. The default decline rate that is established through the default emissions reduction contribution in Part 3, Division 5 of the Safeguard Rules as amended corresponds to a baseline trajectory that is estimated to finish at 96.0 Mt CO₂-e of net safeguard emissions in financial year 2029-30. This is shown in Figure 1 from the Department’s decline rate analysis, which shows the different components of the net emissions budget and reductions, and the baseline trajectory with the decline rate. The end point in 2029-30 is below the 100 Mt CO₂-e required in safeguard outcome (c) and is therefore consistent with safeguard outcome (c)(i).

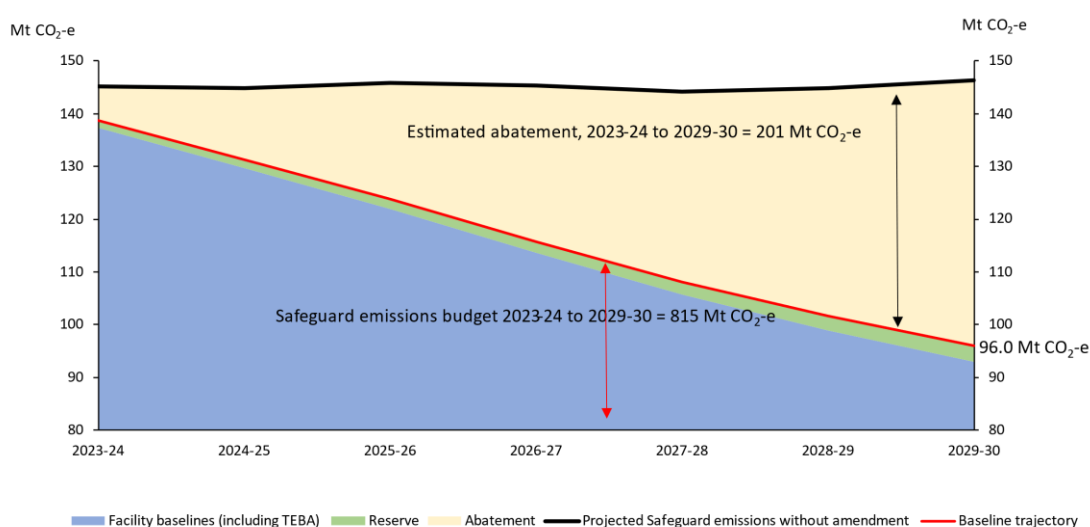


Figure 1. Safeguard baseline trajectory, 2023-24 to 2029-30

37. The default decline rate detailed within Part 3, Division 5 of the Safeguard Rules as amended for a financial year beginning 1 July 2030 or later is a rate that reduces to zero over the 20 years 2030-31 to 2049-50, ensuring that aggregate baselines for designated large facilities reach net zero by 2049-50 (referred to here as the emissions target), which is consistent with safeguard outcome (c)(ii).
38. Part 3, Division 1 of the Safeguard Rules as amended provides a direct obligation that emissions baselines for a facility for a financial year that begins after 30 June 2049 are zero.
39. I am aware that baselines adjusting based on production levels as provided for in Part 3 need mechanisms to address risks that total emissions may exceed the emissions target if production increases more than expected. For the reasons outlined in paragraph 26 above, I am satisfied that this risk has been managed.
40. The default decline rate has also been specifically calculated to take account of the risk that new entrants will lead to an exceedance of the overall budget as it has been calculated to include all expected new entrants, as well as a buffer for unexpected production increases from new and existing facilities, as outlined in paragraph 26 above.

I am satisfied that the Safeguard Rules as amended are consistent with safeguard outcome (d): that the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 are lower than the past 5-year rolling average safeguard emissions for that financial year.

41. Safeguard outcome (d) requires the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 to be lower than the past 5-year rolling average safeguard emissions for that financial year, where the past 5-year rolling average Safeguard emissions is defined as one fifth of the total amount of safeguard emissions for the 5 financial years previous to the financial year that ended 3 years before the start of the current financial year (for financial years that begin before 1 July 2027), and from the 2027-28 financial year onwards, for the 5 financial years that ended 2 years before the start of the current financial year.
42. The Department, alongside the Department of Treasury, undertook modelling of the abatement and carbon market opportunities and the resulting safeguard emissions under policy elements, including borrowing, reflected in Safeguard Rules as amended, to inform Cabinet deliberations. A summary of this analysis, on which I relied, was included in the Department's gross emissions analysis.
43. The Department's gross emissions analysis indicates the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 are estimated to be lower than the past 5-year rolling average safeguard emissions for that financial year, which is consistent with outcome (d).
44. The decline rate analysis I have received provides that the default baseline decline rates as outlined by Part 3, Division 5, which were used in formulating the default emissions reduction contribution have taken into consideration new entrants into the Safeguard Mechanism consistent with the assumptions and inputs to Australia's emissions projections 2022, as well as the level of TEBA facilities that will be made to 2030. The default emissions reduction contribution provided in Part 3, Division 5 has been calculated to ensure that emissions will steadily decline to zero by 2050, accounting for any greater than expected increases in emissions from production, consistent with safeguard outcome (d).
45. To encourage on-site abatement, Part 3A of the Safeguard Rules as amended provides for the creation and issuance of SMCs where designated large facilities reduce their emissions beyond their baselines. Designated large facilities are able to sell these SMCs to other designated large facilities or bank them to use in future years when it is anticipated that the cost of prescribed carbon units will have increased. This provides an economic incentive for designated large facilities to undertake on-site abatement, thereby reducing safeguard emissions.
46. I note that, in facilitating emissions reduction, the Government is providing \$600 million of funding from the Safeguard Transformation Stream in supporting development of onsite abatement opportunities of designated large facilities. Facilities that use the production variables listed in Schedule 2 of the Amended Rules are eligible to access these funds.
47. The Safeguard Transformation Stream is additional to a range of other Commonwealth, State and Territory programs that can support on-site abatement at designated large facilities, such as support from the Australian Renewable Energy Agency, Clean Energy Finance Corporation and National Reconstruction Fund.
48. While these sources of funding or financing are not directly provided for by the Safeguard Rules, as amended, they are indirectly relevant in the sense that the provision of additional financial incentives for onsite carbon

abatement would be anticipated to lead to a reduction in covered emissions. Since they are not directly provided for by the Safeguard Rules, as amended, I did not rely on these sources of funding or financing in deciding that I am satisfied that the Safeguard Rules as amended are consistent with safeguard outcome (d).

49. I note there are a range of flexibility mechanisms that interact with the declining baselines which a designated large facility can use in meeting their compliance obligations. Such measures include borrowing adjustments (Part 3, Division 6) and declared multi-year periods (Part 4, Division 2). I have considered the consistency of these mechanisms with safeguard outcome (d) and have concluded they are consistent with outcome (d), as well as outcomes (b) and (c), for the following reasons:

- a. Neither borrowing nor declared multi-year periods are intended to allow for increases in emissions compared to the previous financial year, but to provide assistance to facilities to manage the declining baseline framework (including the default decline rate of 4.9 per cent each year) for a given period. Despite their compliance being offset temporarily, there is still the requirement to meet the declining baselines with the overall price signal to reduce gross emissions.
- b. As provided by Part 3, Division 6, borrowing is limited to up to 10 per cent of a future year's baseline number. When accessing borrowing arrangements, facilities would need to plan to meet their next year's baseline, which would be decreased by the default decline rate and by the amount borrowed (plus interest) the following year. This level of interest applied to a facility's emissions baseline effectively increases their abatement obligation for the following financial year, and therefore reduces the likelihood of the use of borrowing arrangements.
- c. As outlined by Part 4, Division 2, declared multi-year periods are available to facilities that have large scale abatement projects in the near-term pipeline. Facilities must provide a declaration to the Regulator that the facility will conduct one or more activities to reduce the emissions intensity of the facility's production variables and that, as a result of those activities, they will be reasonably likely to avoid an excess emissions situation at the end of the declared multi-year period. Because of these requirements, it is anticipated that only a small number of facilities will qualify for a multi-year period in a given year and it is particularly unlikely that any of these facilities will be able to increase its emissions during the initial years of the multi-year period and still avoid excess emissions situation at the end of the period. Further, section 69B of the Safeguard Rules as amended allows the Regulator to reduce the length of a declared multi-year period where emissions are not being reduced, limiting the potential that declared multi-year periods can be used to delay the implementation of onsite abatement projects, or delay liability without the intention of conducting onsite abatement. While the Department's gross emissions analysis did not make assumptions on the use of declared multi-year periods, because of these requirements in the Safeguard Rules as amended, it is anticipated that only a small number of facilities will qualify for a declared multi-year period in a given year. These arrangements occur in the context that baselines for all designated large facilities will be subject to an annual decline rate and that the 5 year rolling average safeguard emissions is compared to the financial year which ended either three years or two years before the financial year in focus. Consequently, in aggregate across all designated large facilities, it is unlikely that the amount of any additional emissions allowed in a financial year from a declared multi-year period would be sufficient to

outweigh the reductions in emissions by other facilities, such that it is reasonable to expect the 5 year rolling average to be lower than the financial year which ended either three years or two years before the financial year in focus.

- d. I also note that the Safeguard Rules as amended, in Part 4, Division 1 provide for exemption declarations whereby, in the event of criminal activity or natural disaster, the Regulator may exempt a facility from meeting their emissions baseline for a monitoring period. Since the commencement of the Safeguard Mechanism in 2016, the Regulator has never provided an exemption declaration. These provisions are only anticipated to be used in ‘exceptional circumstances’¹¹ and, under the Safeguard Rules as amended, responsible emitters are required to undertake reasonable steps to mitigate the risks that the circumstances could result in an excess emissions situation before the circumstances occur and mitigate the likelihood of an excess emissions situation after the circumstances occur. They are therefore only anticipated to be used in very few cases and given the requirement to mitigate risks even if circumstances occur are not anticipated to have a material impact on the rolling 5 year period.

I am satisfied the Safeguard Rules as amended take into account safeguard outcome (e): that the responsible emitter for each designated large facility has a material incentive to invest in reducing covered emissions from the operation of the facility

50. Part 3A of the Safeguard Rules as amended establishes a framework for incentivising designated large facilities to reduce emissions because if, in a given financial year, a facility’s emissions are below their baseline, the facility will be rewarded through the issuance of SMCs. These SMCs can be sold to other designated large facilities or banked for future use and therefore represent a material incentive as baselines decline. Further, where facilities are above their baseline, there is a material financial incentive to invest in onsite abatement, as this will avoid the compliance cost of purchasing and surrendering prescribed carbon credits to reduce their net emissions. While still expected to be available at a price lower than the ceiling set by the cost containment measure, the cost of prescribed carbon credits is expected to increase over time as baselines decline. This provides an economic incentive for designated large facilities to invest in reducing covered emissions onsite where it is technically feasible and at an overall cost less than prescribed carbon credits. Collectively, this also provides an economic incentive for increased development in low emissions technology, which has the potential to increase the commercial availability and ultimately the cost of low-emissions technology.
51. Section 72C of the Safeguard Rules as amended requires that if, under subsection 22XN(1) of the NGER Act, the total number of ACCUs surrendered for a period exceed 30 per cent of the facility’s baseline emissions number, the responsible emitter must provide a written explanation to the Clean Energy Regulator of why more carbon abatement was not undertaken at the facility. The Regulator will publish non-commercially sensitive details of the explanation on the Regulator’s website. This requirement provides increased transparency and accountability of designated large facilities’ onsite abatement activity within the financial

¹¹ <https://www.cleanenergyregulator.gov.au/NGER/The-safeguard-mechanism/Managing-excess-emissions>

year. It will ensure that designated large facilities are carefully considering their options regarding the potential for onsite abatement activities against the use of ACCUs to meet their obligations.

52. I note that around 80 per cent of designated large facilities, generating around 86 per cent of safeguard emissions, have corporate commitments to reach net zero. In taking account safeguard outcome (e), section 72C of the Safeguard Rules as amended provides increased transparency around corporate decision making on the use of ACCUs, which is expected to lead to prioritisation of onsite abatement where it is technologically feasible and available at a price broadly relative or less than ACCUs. This provides an incentive for onsite abatement relative to the use of ACCUs and is therefore consistent with safeguard outcome (d) and takes account of safeguard outcome (e).
53. I have heard from stakeholders during consultation that in adopting flexibility mechanisms, including declared multi-year periods, industry also need to have incentives in reducing emissions onsite. Taking this into consideration, section 42AA of the Safeguard Rules as amended provides a process for issuing SMCs to a designated large facility for a declared multi-year period, which will bolster industry investment in onsite emissions abatement, therefore taking account of safeguard outcome (e).

I am satisfied the Safeguard Rules as amended take into account safeguard outcome (f): the competitiveness of trade-exposed- industries is appropriately supported as Australia and its regions seize the opportunities of the move to a global net zero economy

54. Under the Safeguard Rules as amended, two categories of trade exposed facilities will receive assistance to manage competitiveness issues and carbon leakage risks. These categories are 'trade exposed' facilities and TEBA facilities and are defined in Section 4 of the Safeguard Rules. The arrangements for these different categories of facilities will provide appropriate support to the competitiveness of trade-exposed industries, as Australia and its regions seize the opportunities of the move to a global net zero economy.
55. As provided by Part 3, Division 5, Subdivision D, of the Safeguard Rules as amended, TEBA facilities will be eligible to apply to the Regulator for a discounted decline rate based on a scheme impact metric. The minimum decline rate and scheme impact metric will differ depending on whether the facility's primary production variable is designated as manufacturing or non-manufacturing. This differential treatment recognises the differences between the two in terms of structural margins and capital intensity, and the increased impacts to manufacturing within Australia. As outlined above, as well as taking this into account in relation to safeguard outcome (f), I have considered the consistency of these arrangements with safeguard outcomes (b), (c) and (d).
56. Part 3, Division 5, Subdivision C of the Safeguard Rules as amended provides the framework for specialised treatment for TEBA facilities. Facilities that can demonstrate that their scheme cost impacts under the scheme are above a specified threshold may apply to the Regulator to have a reduced baseline decline rate applied for a three-year period.
57. As outlined within Part 3, Division 5, Subdivision C, in determining the lower decline rate, manufacturing facilities will use scheme cost as a percentage of facility Earnings Before Interest and Taxes (EBIT), reflecting the value-added nature of their margins. Scheme cost for a facility will be determined by multiplying a baseline exceedance in a particular year by the default prescribed unit price. Assistance to the manufacturing sector will commence at 3% and the minimum baseline decline rate will be available at 10%. The minimum baseline decline rate for manufacturing facilities will be 1% each year. Non-manufacturing facilities will use

scheme cost as a percentage of facility revenue, with access to concessional baseline decline rates commencing at 3% and the minimum baseline decline rate will be available at 8%. The minimum baseline decline rate for non-manufacturing facilities will be 2% each year.

58. I note that both categories of trade-exposed and TEBA facilities, as designated under the Safeguard Rules as amended, will be eligible to access the \$1.9 billion Powering the Regions Fund (PRF). Within the PRF, the Government will support trade-exposed facilities to invest in low emissions technology through the \$600 million Safeguard Transformation Stream and will also support industries providing critical inputs to clean energy industries (including steel, cement, lime, aluminium and alumina) through the \$400 million Critical Inputs Fund. This assistance will complement the Safeguard Mechanism and other government policies to help Australia and its regions seize the opportunities of the move to a global net zero economy.
59. Part 3, Division 2 sets baselines for existing facilities using a production adjusted framework with a hybrid approach between site-specific and industry average values that transitions towards full industry average values from 2030. I note that production adjusting baselines as provided in Division 2 of this Part take into account supporting the competitiveness of trade-exposed facilities as:
- a. They do not penalise facilities that increase their production, and
 - b. They do not create an incentive for facilities to reduce their production to avoid their safeguard liability, which could occur if baselines were set on an absolute basis.
60. I note that the general design of the Safeguard Mechanism, which does not impose costs on every tonne of emissions, but declines baselines on a trajectory to net zero by 2050, supports competitiveness and has similarities to free allocation used internationally in schemes to reduce emissions. International actions to reduce emissions consistent with commitments under the Paris Agreement are also relevant to the nature of potential competitiveness impacts, along with corporate commitments of trade-exposed industries.
61. Schedule 2 provides the basis for defining the 'trade exposure' of facilities and is relevant to how the Safeguard Rules take into account safeguard outcome (f) of the Act. Section 1 of Schedule 2 provides a table which lists trade-exposed production variables that are also manufacturing sector facilities. Section 2 of this Schedule provides another table that lists production variables that are non-manufacturing production variables.

Other provisions

62. In deciding to make the Amendment Rules, I considered the following Parts and Schedules of the Safeguard Rules as amended which are not discussed above and which support the effective operation of the Safeguard Mechanism regulatory scheme but do not otherwise directly relate to the safeguard outcomes:

- a. Part 1 provides definitions of terms used within the Safeguard Rules.
- b. Part 2 of the Safeguard Rules as amended provides that emissions of the kind specified are not 'covered emissions' for the purposes of this Act (as contemplated by section 22XI of the NGER Act), and specifies the designated large facility threshold for paragraph 22XJ(1)(b) of the Act. This Part accordingly determines the coverage of the Safeguard Mechanism.
- c. Part 5 of the Safeguard Rules as amended concerns the registration of facilities, reporting and record keeping required under the NGER Act. New section 78A of Part 5 sets the conditions in which an audit of a regulatory report must be provided under s 74AA of the Act and matters the audit report must contain. It requires that, if emissions for a facility exceed 1 million tonnes in any financial year, the responsible emitter must submit an audit report that provides either a reasonable assurance conclusion or a qualified reasonable assurance conclusion that the quantities specified of greenhouse gases from the operation of the facility are correct. This section provides additional assurance, as part of a mature monitoring, reporting and verification regulatory scheme, of the accuracy of emissions figures which underpins the tracking of emissions against the objects of the Act.
- d. Part 6 of the Safeguard Rules as amended outlines the application and transitional arrangements for previous amendments to the Safeguard Rules. New Division 5 of Part 6 contains application, saving and transitional provisions relation to the Amendment Rules, to ensure the new provisions apply in a way and at a time that ensure the reforms operate as described above, from 1 July 2023, and continue existing obligations for the remainder of the 2022-23 financial year, which contributes to ensuring the net emissions budget in safeguard outcome (b) is met.
- e. Schedule 1 of the Safeguard Rules as amended lists production variables, which are metrics associated with designated large facilities, and default emissions intensity values for these production variables. These production variables and default emissions intensity values are an input to the calculations for determining the baseline emissions number, as described above. The Department is undertaking a review of production variables to ensure that they continue to incentivise, wherever possible, lower emissions production.

For the reasons above, I, the Hon Chris Bowen MP, Minister for Climate Change and Energy, am satisfied that Safeguard Rules as amended are consistent with the safeguard outcomes in paragraphs 3(2)(b), (c) and (d), and take into account the safeguard outcomes in paragraphs 3(2)(e) and (f), of the NGER Act.

Name and position Hon Chris Bowen MP, Minister for Climate Change and Energy

Signature

Date of decision 3 May 2023

ATTACHMENT B – Matters to be considered by the 2026-27 Review into the Safeguard Mechanism

Context

The Government has committed to review Safeguard Mechanism policy settings in the financial year 2026-27, to ensure the scheme's design is appropriately calibrated and effectively delivering emissions reductions in line with Australia's targets. The 2026-27 review will be made on two years of post-reform data and consider reforms outcomes, whilst providing an opportunity to ensure its continued effectiveness. The review will be an opportunity to provide stakeholders with certainty on a range of key policy measures to 2030 and beyond in driving further investment in on-site abatement.

Scope

The review will broadly consider the effectiveness of the design of the Safeguard Mechanism reform in achieving the objects of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act). The review will assess the ongoing effectiveness of a range of policy elements that are key to the scheme's success. The scope of the review will include matters such as:

- the emissions baseline decline value
- whether international units should be considered
- the suitability of arrangements for emissions-intensive, trade-exposed activities
- the role and importance of manufacturing facilities in providing sovereign manufacturing capability (in particular capabilities that support national decarbonisation investment and investments made by such facilities after the commencement of the reforms)
- the impact of any carbon border adjustment mechanism that might be in place at the time of the review
- the commercial readiness and viability of technology to reduce emissions from manufacturing and other facilities
- the carbon efficiency of these facilities when compared to the competing import facilities;
- the progress of international commitments and policies to reduce emissions
- the sufficiency of the cost containment measure;
- the treatment of flexibility mechanisms beyond 2030, such as banking and borrowing and multi-year monitoring periods;
- the use of Safeguard Mechanism Credits and offsets beyond 2030, noting these credits provide a significant incentive for investment in onsite abatement;
- whether any competitive neutrality issues have arisen with the coverage arrangements.

As part of the 2026-27 review, the Climate Change Authority will advise the Government on the extent to which on-site abatement is being driven by the reforms, and whether any additional incentives are required (such as a discount on ACCUs when used for more than a certain percentage of a baseline or any circumstances where limits on the use of ACCUs may be appropriate).

ATTACHMENT C – 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 (Reforms) Rules 2023

The Amendment Rules are 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 Legislative Instrument

The *National Greenhouse and Energy Reporting Act 2007* (the NGER 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 NGER Act. Together with the reporting obligations under the NGER Act, the Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions.

The *Safeguard Mechanism (Crediting) Amendment Act 2023* amends the NGER Act, the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Carbon Farming Initiative Act), and *Australian National Registry of Emissions Units Act 2011* (ANREU Act) to establish the framework for creating SMCs, covering how credits are issued, purchased, and included in Australia's National Registry of Emissions Units. These credits each correspond to a tonne carbon dioxide equivalent of emissions (or difference in emissions compared to a facility's baseline) and can be traded and used by other facilities to reduce their net emissions.

The Amendment Rules support the changes made to the NGER Act, by amending the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015*.

Human rights implications

The Amendment Rules will primarily regulate entities or corporations, which are not covered by human rights treaties, rather than individuals.

The Amendment Rules engage, or may engage, the following human rights:

- the right to privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR)

The effects of climate change can exacerbate extreme weather events such as bushfires, flooding, heatwaves, and dangerous storms that threaten the life and health. This could engage the right to life in Article 6 of the ICCPR. The Amendment Rules, by helping to deliver Australia's greenhouse gas emissions reduction targets, could promote human rights by mitigating the effects of climate change.

The Rules will primarily regulate entities rather than individuals

While the Amendment Rules purport to place various obligations on “persons”, generally it uses that term to denote an entity which is not an individual, including body corporate safeguard-covered entities and greenhouse gas project proponents (see the definition of “person” under sections 2B and 2C of the *Acts Interpretation Act 1901*).

The primary classes of “persons” that will be regulated by the Amendment Rules are “responsible emitters”, as defined in 22XH of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), for facilities covered by the Safeguard Mechanism. These entities are listed on the Clean Energy Regulator’s website at <https://www.cleanenergyregulator.gov.au/NGER/The-safeguard-mechanism>, and it is understood that each so listed is a constitutional corporation.

As such, there are very few provisions of the Amendment Rules that regulate and consequently limit the human rights of individuals.

Right to Privacy and Reputation – Article 17 ICCPR

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person’s privacy, family, home and correspondence, and unlawful attacks on a person’s reputation. The right to privacy includes respect for informational privacy, including in respect of storing, using and sharing personal information, and the right to control the dissemination of this information. It also provides that persons have the right to protection of the law against such interference or attacks. The rights contained in Article 17 of the ICCPR may be subject to permissible limitations where limitations are authorised by law and are non-arbitrary. For limitations to be non-arbitrary they must be reasonable, necessary and proportionate to a legitimate objective.

The Amendment Rules amend and further impose reporting requirements on regulated entities, with regard to their greenhouse gas emissions.

Conclusion

The Amendment Rules are compatible with human rights and freedoms outlined above. Although they engage with some human rights and freedoms, the nature of these measures being largely limited to corporate entities ensures that any such limitations are reasonable, necessary and proportionate to achieving the legitimate objective of reducing greenhouse gas emissions.

The Hon. Chris Bowen MP
Minister for Climate Change and Energy