



Clean Energy Regulations 2011

Select Legislative Instrument 2011 No. 221 as amended

made under the

Clean Energy Act 2011

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Part 1 Preliminary**1.1 Name of Regulations** [see Note 1]

These Regulations are the *Clean Energy Regulations 2011*.

1.2 Commencement [see Note 1]

These Regulations commence on commencement of sections 3 to 303 of the *Clean Energy Act 2011*.

1.3 Definitions — general

In these Regulations:

Act means the *Clean Energy Act 2011*.

ANREU Act means the *Australian National Registry of Emissions Units Act 2011*.

ANREU Regulations means the *Australian National Registry of Emissions Units Regulations 2011*.

CNG means compressed natural gas.

CO₂-e means carbon dioxide equivalence.

contact details, for a person, means the person's:

- (a) name; and
- (b) phone number; and
- (c) email address; and
- (d) postal address.

identifying details, for a person, means:

- (a) the person's ABN; or
- (b) if the person does not have an ABN—the person's ACN;
or
- (c) if the person does not have an ABN or ACN—the person's ARBN; or
- (d) if the person does not have an ABN, ACN or ARBN—the person's trading name and street address.

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identifying information, for a facility, means the information required under paragraphs 4.04A (2) (a) to (h) of the NGER Regulations.

identifying information, for a person, means the following information:

- (a) the person's name and trading name (if any);
- (b) the person's identifying details;
- (c) a statement about whether the person is an individual, a body corporate, a trust, a corporation sole, a body politic or a local governing body;
- (d) if the person is an individual—the following:
 - (i) the person's telephone number, email address and residential address;
 - (ii) if the person's postal address is different from the person's residential address—the person's postal address;
- (e) if the person is not an individual—the following:
 - (i) the postal address of the head office of the person;
 - (ii) the name, position, telephone number, email address and postal address of a contact person for the person;
- (f) if the person is a body corporate that is not a foreign person—details of at least one executive officer (or equivalent) of the body corporate, including the officer's name, telephone number, email address and postal address;
- (g) if the person is a body corporate that is a foreign person—the details mentioned in paragraph (f) for the body corporate and the name of any Australian agent through which the person conducts business;
- (h) if the person is a trust—the name, telephone number, email address and postal address of each trustee;
- (i) if the person is a corporation sole—the name and address of the individual who makes up the corporation sole;
- (j) if the person is a body politic or local governing body—the name, telephone number, email address and postal address of at least one officeholder of the body politic or local governing body;

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- (k) if the person is a body established under a law of the Commonwealth, a State or Territory (other than a general law allowing incorporation as a company or body corporate)—the following:
- (i) the name of the legislation establishing the body;
 - (ii) the date the body was established;
 - (iii) whether the body is a Commonwealth, State or Territory body.

liquefied natural gas, or *LNG*, has the same meaning as *liquefied natural gas* in regulation 1.03 of the NGER Regulations.

liquid petroleum gas, or *LPG*, has the same meaning as *liquid petroleum gas* in regulation 1.03 of the NGER Regulations.

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

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

Note Section 5 of the Act contains definitions for the purposes of the Act that also apply in these Regulations, including:

- benchmark average auction charge
- carbon unit
- controlling corporation
- covered emission
- declared designated joint venture
- designated joint venture
- eligible financial year
- executive officer
- facility
- financial control
- foreign person
- free carbon unit
- Jobs and Competitiveness Program
- liability transfer certificate
- liability transfer certificate
- mandatory designated joint venture
- non-group entity
- obligation transfer number or OTN
- operational control.

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- participating percentage
- registered holder
- Registry account
- relevant operator
- unit shortfall charge

1.4 Definition—applicable identification procedure

For the definition of *applicable identification procedure* in section 5 of the Act, the following procedure is the applicable identification procedure the Regulator must use in identifying a person:

- (a) the Regulator must review the person's identifying information; and
- (b) the Regulator must be satisfied that the Regulator has complete and correct identifying information for the person.

1.8 Definition—natural gas supply pipelines

- (1) For the definition of *natural gas supply pipeline* in section 5 of the Act, the kinds of pipelines mentioned in subregulation (2) are specified as pipelines that are not natural gas supply pipelines.
- (2) The pipelines are:
 - (a) anything upstream of a connection point or (if there is no connection point) an exit flange on a pipeline conveying natural gas from a gas processing plant mentioned in column 1 of the table in Schedule 2; or
 - (b) a gathering system operated as part of an upstream producing operation; or
 - (c) anything downstream of a point on a pipeline from which a person takes natural gas for use.
- (3) In this regulation:
connection point, for a pipeline conveying natural gas from a gas processing plant, means a point mentioned in column 2 of the table in Schedule 2.

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exit flange, for a pipeline conveying natural gas from a gas processing plant, means a flange mentioned in column 2 of the table in Schedule 2.

1.9 Definition—withdrawal

- (1) For the definition of *withdrawal*, in relation to natural gas, in section 5 of the Act, a withdrawal of natural gas occurs when:
 - (a) the natural gas exits from a point on a pipeline at which:
 - (i) the natural gas supplier that supplies that gas; or
 - (ii) an agent of that natural gas supplier; or
 - (iii) a person otherwise acting in accordance with an agreement entered into with that natural gas supplier;
will ascertain the amount of that natural gas supplied to a person wholly or partly for use; or
 - (b) the natural gas is combusted in machinery or equipment used to heat or compress natural gas within a natural gas supply pipeline.
- (2) To avoid doubt, natural gas is not withdrawn from a natural gas supply pipeline if the natural gas:
 - (a) goes from the pipeline to an underground storage reservoir; or
 - (b) goes between two natural gas supply pipelines; or
 - (c) goes from a natural gas supply pipeline directly into the atmosphere.

1.10 When supply of natural gas occurs

For paragraph 6 (a) of the Act, the *supply* of natural gas occurs at the time at which the gas is withdrawn from a natural gas supply pipeline.

1.11 Electronic notice transmitted to the Regulator

- (1) For subsection 7 (2) of the Act, an electronic notice must be transmitted:
 - (a) using the Regulator's website; and

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- (b) as an instruction in relation to a Registry account.
- (2) The electronic notice must be transmitted by either:
 - (a) an individual who is a registered holder of the Registry account to which the notice relates; or
 - (b) an authorised representative of the registered holder who has been given access to the Registry account under subregulation 31 (2) of the ANREU Regulations.

1.12 Requirements for documents

If these Regulations require a person to provide a document, any document provided must be current at the time it is provided.

1.13 English translation of documents

- (1) This regulation applies if:
 - (a) a person is required by these Regulations to provide a document; and
 - (b) the document is not in English.
- (2) The person must provide an English translation of the document, which has been prepared and certified by an authorised translation service as a true copy of the original document.
- (3) In this regulation:
authorised translation service means a translation service accredited by the National Accreditation Authority for Translators and Interpreters Ltd.

1.14 When documents need not be given

If these Regulations require a person to provide a document, the person does not need to provide the document if:

- (a) the person has previously provided the document to the Regulator under:
 - (i) the Act or these Regulations; or
 - (ii) the NGER Act or NGER Regulations; or

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- (iii) the ANREU Act or the ANREU Regulations; and
- (b) the document previously provided is current at the time it is required to be provided.

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- (c) the compressed natural gas, liquefied natural gas or liquid petroleum gas is transferred from storage at one place to storage at another place by the authority of:
 - (i) a written permission for the movement of the gas under paragraph 39K (6) (c) of the *Excise Act 1901*; or
 - (ii) a written permission for the removal of the gas under section 61A of the *Excise Act 1901*; and
- (d) subsection 35 (7) of the Act does not apply to the compressed natural gas, liquefied natural gas or liquid petroleum gas; and
- (e) the potential greenhouse gas emissions embodied in the relevant portion have a CO₂-e of a particular number of tonnes;

the number mentioned in paragraph (e) is a *netted-out number* of the OTN holder for the eligible financial year.

3.5A Netted-out numbers for OTN holders—use of natural gas without combustion

For subsection 35 (9) of the Act, if:

- (a) the OTN holder quotes the OTN holder's OTN in relation to a supply to the OTN holder of an amount of natural gas; and
- (b) during an eligible financial year, an amount of covered emissions from the operation of a facility was attributable to the use, without combustion, of the whole or a part (which whole or part is in this regulation called the *relevant portion*) of the amount mentioned in paragraph (a); and
- (c) the covered emissions mentioned in paragraph (b) count for the purposes of subsection 20 (1), 21 (1), 22 (1), 23 (1), 24 (1) or 25 (1) of the Act; and
- (d) subsections 35 (2) and 35 (6) of the Act do not apply to the covered emissions mentioned in paragraph (b); and

- (e) the potential greenhouse gas emissions embodied in the relevant portion have a carbon dioxide equivalence of a particular number of tonnes;

the number mentioned in paragraph (e) is a *netted-out number* of the OTN holder for the eligible financial year.

Division 4 Obligation Transfer Numbers

Subdivision 4.1 Requirements for application for OTN

3.6 Application for OTN

- (1) This regulation is made for paragraph 38 (2) (c) of the Act.
- (2) An application must be accompanied by the following information and documents:
 - (a) the identifying information for the applicant;
 - (b) a statement indicating which of sections 55B, 56, 57 and 58 of the Act is likely to require or permit the applicant to quote an OTN.
- (3) An application must also be accompanied by the following information:
 - (a) if the applicant states that section 55B of the Act is likely to require the applicant to quote an OTN—the information and documents mentioned in regulation 3.7;
 - (b) if the applicant states that section 56 of the Act is likely to permit the applicant to quote an OTN—the information and documents mentioned in regulation 3.19;
 - (c) if the applicant states that section 57 of the Act is likely to permit the applicant to quote an OTN—the information and documents mentioned in regulation 3.8;
 - (d) if the applicant states that section 58 of the Act is likely to permit the applicant to quote an OTN—the information and documents mentioned in regulation 3.9.
- (4) If more than one of the paragraphs in subregulation (3) applies to the applicant, the application need only be accompanied by the information and documents mentioned in one of the paragraphs applying to the applicant.

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3.7 Eligibility information for large gas consuming facility

- (1) This regulation applies to an application for an OTN on the basis that the applicant is likely to be required to quote an OTN to a natural gas supplier for natural gas which it is reasonably expected will be used in operating a large gas consuming facility.
- (2) The application must be accompanied by the following information and documents:
 - (a) the identifying information for the facility;
 - (b) either:
 - (i) for a facility of a mandatory designated joint venture—the name of the person nominated as having operational control of the facility under subsection 11AA (5) or 11B (5) of the NGER Act; or
 - (ii) for any other facility—the name of the person who has operational control of the facility;
 - (c) if the applicant is not the person with operational control of the facility:
 - (i) the contact details of the person mentioned in subparagraph (b) (i) or (ii) for the facility;
 - (ii) a statement describing the applicant’s relationship to that person; and
 - (iii) a statement describing the applicant’s relationship to the facility;
 - (d) the financial year in which the facility first passed the threshold test in accordance with subsection 55A (3) of the Act which resulted in the facility becoming a large gas consuming facility;
 - (e) either:
 - (i) a statement confirming the quantity of covered emissions (in tonnes of CO₂-e) from the operation of the facility that were attributable to the combustion of natural gas during the financial year mentioned in paragraph (d); or

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- (ii) a statement confirming the amount of natural gas combusted at the facility during that year;
- (f) the date from which the applicant expects to be required to quote an OTN in relation to the facility;
- (g) a statement that it is likely that the applicant will be supplied with natural gas by a natural gas supplier in the 12 month period commencing on the later of the following dates:
 - (i) 1 July 2012; or
 - (ii) the date on which the application is made;
- (h) either:
 - (i) a statement that it is likely that the applicant will use the natural gas mentioned in paragraph (g) in the operation of the facility; or
 - (ii) a statement that it is likely that the applicant will provide the natural gas mentioned in paragraph (g) to another person (the *user*) for use in the operation of the facility, and the provision of the natural gas will not involve a supply of the natural gas;
- (i) if the application includes a statement mentioned in subparagraph (h) (ii):
 - (i) the user's name and contact details;
 - (ii) a statement describing the applicant's relationship to the user;
- (j) one of the following statements:
 - (i) a statement that the applicant is currently supplied natural gas for use at the facility;
 - (ii) a statement that the applicant is not currently supplied natural gas for use at the facility and the reason why the applicant expects to start being supplied natural gas for use at the facility in the period mentioned in subparagraph (g) (i) or (ii);
- (k) either:
 - (i) documents that verify the information given to the Regulator under subparagraph (j) (i) or (ii); or
 - (ii) with the consent of the Regulator—a statutory declaration that verifies that information.

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- (3) The information required by paragraph (2) (d), and the statement mentioned in paragraph (2) (e), must be given to the Regulator in the form of statutory declarations if requested by the Regulator.

3.8 Eligibility information for feedstock

- (1) This regulation applies to an application for an OTN on the basis that the applicant is likely to be permitted to quote an OTN to a natural gas supplier for natural gas which it is reasonably expected will be used as a feedstock at a facility, business premises or other location.
- (2) The application must be accompanied by the following information and documents:
- (a) a description of the chemical process in which natural gas will be used as a feedstock, including:
 - (i) the inputs to the process and the relative amount of each input; and
 - (ii) the outputs of the process and the relative amount of each output;
 - (b) the date from which the person expects to be permitted to quote an OTN in relation to the natural gas that will be used as a feedstock at the facility, business premises or other location;
 - (c) a statement that it is likely that the applicant will be supplied natural gas by a natural gas supplier in the 12 month period commencing on the later of the following dates:
 - (i) 1 July 2012;
 - (ii) the date on which the application is made;
 - (d) one of the following:
 - (i) a statement that it is likely that all or part of the natural gas mentioned in paragraph (c) will be for use by the applicant as a feedstock at the facility, business premises or other location;

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- (ii) a statement that it is likely that the applicant will provide the natural gas to another person (the *user*) who will use all or part of the natural gas as a feedstock at the facility, business premises or other location, and the provision of the natural gas will not involve a supply of the natural gas;
- (e) if the application includes a statement mentioned in subparagraph (d) (ii):
 - (i) the user's name and contact details;
 - (ii) a statement describing the applicant's relationship to the user;
- (f) one of the following statements:
 - (i) a statement that the applicant is currently supplied natural gas for use as a feedstock at the facility, business premises or other location;
 - (ii) a statement that the applicant is not currently supplied natural gas for use at the facility, business premises or other location, and the reason why the applicant expects to start being supplied natural gas for use at the facility, business premises or other location in the period mentioned in subparagraph (c) (i) or (ii);
- (g) the information mentioned in regulation 3.10 for the facility, business premises or other location;
- (h) either:
 - (i) documents that provide evidence of the statement given to the Regulator under subparagraph (f) (i) or (ii) or
 - (ii) with the consent of the Regulator—a statutory declaration that verifies the statement.

3.9 Eligibility information for manufacture of CNG, LNG or LPG

- (1) This regulation applies to an application for an OTN on the basis that the applicant is likely to be permitted to quote an OTN to a natural gas supplier for natural gas to be used, in the course of carrying on a business, to manufacture CNG, LNG or LPG.

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- (2) The application must be accompanied by the following information and documents:
- (a) the date from which the applicant expects to be permitted to quote an OTN in relation to the natural gas that is to be used to manufacture CNG, LNG or LPG at a facility, business premises or other location;
 - (b) a statement that it is likely that the applicant will be supplied natural gas by a natural gas supplier in the 12 month period commencing on the later of the following dates:
 - (i) 1 July 2012; and
 - (ii) the date on which the application is made;
 - (c) one of the following:
 - (i) a statement that it is likely that the applicant will use all or part of the natural gas mentioned in paragraph (b) to manufacture CNG, LNG or LPG at the facility, business premises or other location;
 - (ii) a statement that it is likely that the applicant will provide the natural gas to another person (the *user*) who will use all or part of the natural gas to manufacture CNG, LNG or LPG at the facility, business premises or other location, and the provision of the natural gas will not involve a supply of the natural gas;
 - (d) if the application includes a statement mentioned in subparagraph (c) (ii):
 - (i) the user's name and contact details;
 - (ii) a statement describing the applicant's relationship to the user;
 - (e) one of the following statements:
 - (i) a statement that the applicant is currently supplied natural gas for use in the manufacture of CNG, LNG or LPG at the facility, business premises or other location;

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- (ii) a statement that the applicant is not currently supplied natural gas for use in the manufacture of CNG, LNG or LPG at the facility, business premises or other location, and the reason why the applicant expects to start being supplied natural gas for use at the facility, business premises or other location in the period mentioned in subparagraph (b) (i) or (ii);
- (f) the information mentioned in regulation 3.10 for the facility, business premises or other location;
- (g) either:
 - (i) documents that provide evidence of the statement given to the Regulator under subparagraph (e) (i) or (ii); or
 - (ii) with the consent of the Regulator—a statutory declaration that verifies the statement.

3.10 Eligibility information for location where natural gas to be used

- (1A) This regulation applies to an application to which regulation 3.8 or 3.9 applies.
- (1) If the natural gas will be used at a facility that is in existence at the time of the application, the application must also be accompanied by the following additional information:
 - (a) the identifying information for the facility;
 - (b) either:
 - (i) for a facility of a mandatory designated joint venture—the name of the person nominated as having operational control of the facility under subsection 11AA (5) or 11B (5) of the NGER Act; or
 - (ii) for any other facility—the name of the person who has operational control of the facility;
 - (c) if the applicant is not the person with operational control of the facility:
 - (i) the contact details of the person mentioned in subparagraph (b) (i) or (ii) for the facility;

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- (ii) a statement describing the applicant’s relationship to that person; and
 - (iii) a statement describing the applicant’s relationship to the facility.
- (2) If the natural gas will be used at a facility that is not in existence at the time of the application, the application must also be accompanied by the following additional information about the proposed facility:
 - (a) the identifying information for the proposed facility;
 - (b) either:
 - (i) for a proposed facility of a mandatory designated joint venture—the name of the person likely to be nominated as having operational control of the facility under section 11AA (5) or 11B (5) of the NGER Act; or
 - (ii) for any other proposed facility — the name of the person likely to have operational control of the facility;
 - (c) if the applicant is not the person with operational control of the proposed facility:
 - (i) the contact details of the person mentioned in paragraph (b) for the proposed facility;
 - (ii) a statement describing the applicant’s relationship to that person; and
 - (iii) a statement describing the applicant’s relationship to the proposed facility.
- (3) If the natural gas will be used at a business premises or other location that is not a facility or proposed facility, the application must also be accompanied by the following additional information:
 - (a) either:
 - (i) the name of the business premises or location, if any; or
 - (ii) if the premises or location does not have a name—a description of the premises or location;

- (b) the street address of the business premises or location, if any;
- (c) the latitude and longitude of the business premises or location.

Subdivision 4.2 Large gas consuming facilities

3.11 Conditions for ceasing to be large gas consuming facility

For subsection 55A (2) of the Act, a facility is taken to cease to be a large gas consuming facility if:

- (a) an application is made under subregulation 3.12 (2) or 3.14 (1) in relation to the facility; and
- (b) the Regulator decides under regulation 3.13 (2) or 3.16 (2) that the facility should cease to be treated as a large gas consuming facility.

3.12 One-off year—application

- (1) This regulation applies to a facility that will become a large gas consuming facility on the basis it has passed the threshold test in a financial year (the *one-off* year).
- (2) The operator of the facility may apply to the Regulator for a decision that the facility should, immediately after becoming a large gas consuming facility, cease to be a large gas consuming facility, on the basis that the facility:
 - (a) did not pass the threshold test in the 2 financial years preceding the one-off year; and
 - (b) is unlikely to pass the test in the 2 financial years following the one-off year.
- (3) The application must be made at least 90 days before the day on which the facility will become a large gas consuming facility.
- (4) The application must be accompanied by identifying information for the applicant.

Regulation 3.13

- (5) The application must also be accompanied by the following information and documents about the facility:
- (a) the identifying information for the facility;
 - (b) the start and end dates of the one-off year;
 - (c) either:
 - (i) a statement confirming the quantity of covered emissions (in tonnes of CO₂-e) from the operation of the facility that were attributable to the combustion of natural gas in the one-off year and each of the 2 financial years preceding the one-off year; or
 - (ii) a statement confirming the amount of natural gas combusted at the facility for the one-off year and each of the 2 financial years preceding the one-off year;
 - (d) a statement of the amount of natural gas supplied for use at the facility in the one-off year and each of the 2 financial years preceding the one-off year;
 - (e) a statement of the reason why the emissions from the facility that are attributable to the combustion of natural gas are likely to be less than 25 000 tonnes of CO₂-e in the 2 financial years after the one-off year;
 - (f) either:
 - (i) documents that verify the information given to the Regulator under paragraphs (d) and (e); or
 - (ii) with the consent of the Regulator—a statutory declaration that verifies that information.

3.13 One-off year—Regulator’s decision

- (1) This regulation applies if an application is made under regulation 3.12 in relation to a facility.
- (2) The Regulator may decide that the facility should, immediately after becoming a large gas consuming facility, cease to be treated as a large gas consuming facility, if the Regulator is satisfied that:
 - (a) the application contains the information and documents required by regulation 3.12; and

Regulation 3.14

- (b) the information contained in the application is correct; and
- (c) greenhouse gas emissions from the operation of the facility attributable to the combustion of natural gas:
 - (i) were less than 25 000 tonnes of CO₂-e in the 2 financial years preceding the one-off year; and
 - (ii) are likely to be less than 25 000 tonnes of CO₂-e in the 2 financial years following the one-off year.
- (3) Without limiting the matters the Regulator may take into account when making a decision under subregulation (2), the Regulator may take into account any previous applications made in relation to the facility under regulation 3.12.
- (4) If the Regulator is not satisfied of the matters mentioned in paragraphs (2) (a), (b) and (c), the Regulator must refuse the application.
- (5) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information or documents under regulation 3.17 in relation to the application—within 90 days after the applicant gave the Regulator the information or documents; or
 - (b) in any other case—within 90 days after the application was made.
- (6) The Regulator must tell the applicant, in writing, of the Regulator’s decision on the application.

3.14 Diminishing emissions—application

- (1) The operator of a large gas consuming facility may apply to the Regulator for a decision that the facility should cease to be a large gas consuming facility on the basis that:
 - (a) greenhouse emissions from the operation of the facility attributable to the combustion of natural gas, for the financial year immediately preceding the financial year in which the application is made, were less than 25 000 tonnes of CO₂-e; and

Regulation 3.14

- (b) it is likely that greenhouse emissions from the operation of the facility attributable to the combustion of natural gas will be less than 25 000 tonnes of CO₂-e in the financial year in which the application is made and the following financial year.
- (2) The application must be accompanied by identifying information for the applicant.
- (3) The application must also be accompanied by the following information and documents about the facility:
 - (a) the identifying information for the facility;
 - (b) if regulation 3.15 applies to the application—the name and contact details of the other person mentioned in that regulation;
 - (c) either:
 - (i) a statement, for each of the previous 3 financial years, confirming the quantity of covered emissions (in tonnes of CO₂-e) from the operation of the facility that were attributable to the combustion of natural gas in the year; or
 - (ii) a statement, for each of the previous 3 financial years, confirming the amount of natural gas combusted at the facility in the year;
 - (d) a statement, for each of the previous 3 financial years, stating the amount of natural gas supplied for use at the facility in the year;
 - (e) the reason why the emissions from the facility attributable to the combustion of natural gas are likely to be less than 25 000 tonnes of CO₂-e in the current financial year and the following financial year;
 - (f) either:
 - (i) documents that verify the information given to the Regulator under paragraphs (d) and (e); or
 - (ii) with the consent of the Regulator—a statutory declaration that verifies that information.

3.15 Diminishing emissions—notification of OTN holder

- (1) This regulation applies to an application made under regulation 3.14 in relation to a facility if a person other than the applicant (the *other person*) would have a provisional emissions number under subsection 35 (3) of the Act in relation to gas used at the facility because the facility ceased to be a large gas consuming facility, on the basis that the other person:
 - (a) on or before the date of the application, quoted an OTN under subsection 55B (1) of the Act for the supply of natural gas for use at the facility; or
 - (b) within 90 days after the application, is likely to be required to quote an OTN under subsection 55B (1) of the Act in relation to the supply of natural gas for use at the facility.
- (2) The applicant must tell the other person, in writing, about the application.

3.16 Diminishing emissions—Regulator's decision

- (1) This section applies if an application is made under regulation 3.14 in relation to a facility.
- (2) The Regulator may decide that the facility should cease to be treated as a large gas consuming facility if the Regulator is satisfied that:
 - (a) the application contains the information and documents required by subregulations 3.14 (2) and (3); and
 - (b) the information contained in the application is correct; and
 - (c) greenhouse gas emissions from the operation of the facility attributable to the combustion of natural gas:
 - (i) were less than 25 000 tonnes of CO₂-e in the previous financial year; and
 - (ii) are likely to be less than 25 000 tonnes of CO₂-e in the current financial year and the following financial year.
- (3) If the Regulator is not satisfied of the matters mentioned in paragraphs (2) (a), (b) and (c), the Regulator must refuse the application.

Regulation 3.17

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
 - (a) if the Regulator requires the applicant to give further information or documents under regulation 3.17 in relation to the application—within 90 days after the applicant gave the Regulator the information; or
 - (b) in any other case—within 90 days after the application was made.
- (5) The Regulator must tell the applicant, in writing, of the Regulator’s decision on the application.
- (6) If regulation 3.15 applies to the application, the Regulator must also tell the other person mentioned in that regulation, in writing, of the Regulator’s decision on the application.

3.17 Request for further information or documents

- (1) When considering an application under regulation 3.12 or 3.14, the Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information or documents in connection with the application.
- (2) If the applicant fails to provide the information or documents, the Regulator may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

3.18 When facility taken to cease to be large gas consuming facility

- (1) If the Regulator makes a decision under subregulation 3.13 (2) in relation to a facility, the facility ceases to be a large gas consuming facility immediately after the facility becomes a large gas consuming facility.

Regulation 3.19

- (2) If the Regulator makes a decision under subregulation 3.16 (2) in relation to a facility, the facility ceases to be a large gas consuming facility on:
 - (a) if regulation 3.15 applies to the application—the later of the following days:
 - (i) 30 June in the financial year in which the application is made;
 - (ii) 28 days after the Regulator notifies the OTN holder;
 - (b) in any other case—30 June in the financial year in which the application is made.

Subdivision 4.3 Large user of natural gas—application to be an approved person

3.19 Information and documents required with application

- (1) For subsection 56 (3) of the Act, an application by a person to be an approved person must be accompanied by identifying information for the applicant.
- (2) For paragraph 56 (3) (d) of the Act, the application must also be accompanied by the following information and documents:
 - (a) a statement indicating the eligible financial year to which the application applies;
 - (b) the identifying information for the facility;
 - (c) one of the following statements in relation to the facility:
 - (i) a statement that it is likely that the following conditions will be satisfied in the specified eligible financial year:
 - (A) the facility will be under the operational control of the applicant;
 - (B) the applicant will be supplied natural gas by a natural gas supplier;
 - (C) the natural gas will be for use in the operation of the facility;
 - (D) emissions from the combustion of natural gas at the facility will be at least 25 000 tonnes CO₂-e in the specified eligible financial year;

Regulation 3.19

- (ii) a statement that it is likely that the following conditions will be satisfied in the specified eligible financial year:
 - (A) the facility will be under the operational control of another person (the *user*);
 - (B) the applicant will be supplied natural gas by a natural gas supplier;
 - (C) the applicant will provide the whole or a part of the natural gas to the user for use in the operation of the facility;
 - (D) the provision of the natural gas by the applicant will not involve a supply of the natural gas;
 - (E) emissions from the combustion of natural gas at the facility will be at least 25 000 tonnes CO₂-e in the specified eligible financial year;
- (d) if the application is accompanied by a statement mentioned in subparagraph (c) (ii):
 - (i) the user's name and contact details;
 - (ii) a statement describing the applicant's relationship to the user;
- (e) a statement of the reason why the emissions from the facility attributable to the combustion of natural gas are likely to be at least 25 000 tonnes of CO₂-e in the specified eligible financial year;
- (f) one of the following statements:
 - (i) a statement that the applicant is currently supplied natural gas for use at the facility;
 - (ii) a statement that the applicant is not currently supplied natural gas for use at the facility, and the reason why the applicant expects to start being supplied natural gas for use at the facility in the 12 month period commencing on the later of the following dates:
 - (A) 1 July 2012;
 - (B) the date on which the application is made.

- (g) either:
 - (i) documents that provide evidence of the statements given to the Regulator under paragraphs (e) and (f); or
 - (ii) with the consent of the Regulator—a statutory declaration that verifies the statements.

Division 5 Designated joint ventures

3.20 Application for declaration

- (1) This regulation is made for subparagraphs 68 (4) (c) (ii) and (iii) of the Act.
- (2) An application must be accompanied by the following:
 - (a) the identifying information for:
 - (i) each applicant; and
 - (ii) the person who has operational control over the facility (the *operator*) of the facility;
 - (b) the identifying information for the facility;
 - (c) a statement that:
 - (i) the joint venture has the facility; and
 - (ii) the applicants are parties to an agreement that deals with the facility; and
 - (iii) the operator operates the facility exclusively for the joint venture; and
 - (iv) none of the applicants is an individual; and
 - (v) the joint venture is not a mandatory designated joint venture;
 - (d) a statement that the applicants have, and are likely to continue to have, the capacity, access to information and financial resources necessary for the applicants to comply with their obligations under the Act and the associated provisions if the declaration is made;
 - (e) a statement as to whether any of the applicants has previously been subject to obligations under the Act or the associated provisions and, if so, whether the applicant:

Regulation 3.21

- (i) has been convicted of an offence against the Act or the associated provisions; or
 - (ii) has previously been liable, or is currently liable, to pay an amount of late payment penalty and, if so, the amount of the penalty and the financial year when the penalty became payable;
- (f) a statement that the joint venture is an unincorporated enterprise carried on by 2 or more persons in common otherwise than in partnership;
- (g) if the applicants want the declaration to start on a different day from the day when the declaration is made:
 - (i) a statement by the applicants specifying the start day of the declaration; and
 - (ii) the written consent of the operator for the declaration to start on that day.
- (3) Also, the application must be accompanied by:
 - (a) documents that verify the information given to the Regulator under paragraphs (2) (c) to (f); or
 - (b) with the consent of the Regulator—a statutory declaration that verifies that information.

3.21 Making of declaration

- (1) This regulation is made for paragraph 70 (3) (d) of the Act.
- (2) The Regulator must not make a declaration of a designated joint venture if a liability transfer certificate exists in relation to the facility.

3.22 Application for participating percentage determination

- (1) This regulation is made for paragraph 74 (3) (c) of the Act.
- (2) An application must be accompanied by the following:
 - (a) the participating percentage that is proposed for each of the applicants, or the proposed way of calculating the participating percentage for each of the applicants;

Regulation 3.22

- (b) a statement as to whether the joint venture is to operate using:
 - (i) a share of goods basis; or
 - (ii) a share of services basis; or
 - (iii) another basis stated in the document;
- (c) if a share of goods basis, or share of services basis, is to be used:
 - (i) how the goods or services are to be shared between the applicants; and
 - (ii) if the goods or services are not of the same type (e.g. one applicant is to take oil and another applicant is to take gas)—the monetary value of the goods or services, and how the value is calculated;
- (d) if another basis is to be used—the way in which the economic benefits from the facility are to be shared among the applicants;
- (e) if the application relates to a mandatory designated joint venture:
 - (i) the identifying information for each applicant; and
 - (ii) the identifying information for the facility; and
 - (iii) a statement that the joint venture has the facility; and
 - (iv) a statement that the applicants are parties to an agreement that deals with the facility; and
 - (v) a statement that the joint venture is an unincorporated enterprise carried on by 2 or more persons in common otherwise than in partnership; and
 - (vi) a statement that 2 or more persons in the joint venture are able to satisfy paragraph 11 (1) (a) of the NGER Act; and
 - (vii) a statement that no particular person in the joint venture has the greatest authority to introduce and implement the policies mentioned in subparagraph 11 (1) (a) (i) or (iii) of the NGER Act in relation to the facility; and
 - (viii) a statement that no declaration under section 55 or 55A of the NGER Act applies in relation to the facility.

Regulation 3.23

- (3) Also, the application must be accompanied by:
 - (a) documents that verify the information given to the Regulator under subregulation (2); or
 - (b) with the consent of the Regulator—a statutory declaration that verifies that information.
- (4) For paragraph (2) (a), the document may state a distribution that varies from time to time.
- (5) In this regulation:
 - share of goods basis* means the basis that each applicant has a share of the goods extracted, produced or manufactured in relation to the operation of the facility.
 - share of services basis* means the basis that each applicant has a share of access to services in relation to the operation of the facility.

Division 6 Liability transfer certificates

3.23 Application for liability transfer certificate—transfer of liability to another member of a corporate group

- (1) This regulation is made for subparagraphs 81 (4) (c) (iv) and (v) of the Act.
- (2) An application must be accompanied by the following:
 - (a) the identifying information for:
 - (i) the applicant; and
 - (ii) the person who has operational control over the facility (the *operator*); and
 - (iii) the controlling corporation of the corporate group;
 - (b) the identifying information for the facility;
 - (c) a statement confirming that:
 - (i) the applicant is a company that is a member of the controlling corporation's group of which the operator is a member; and
 - (ii) the applicant is a company that is registered under Part 2A.2 of the *Corporations Act 2001*; and

Regulation 3.24

- (d) a statement, signed by the operator, confirming that the facility is under the operational control of the operator;
 - (e) a statement that the applicant has, and is likely to continue to have, the capacity, access to information and financial resources necessary for the applicant to comply with their obligations under the Act and the associated provisions if the liability transfer certificate is issued;
 - (f) if the applicant wants the declaration to start on a different day from the day when the declaration is made:
 - (i) a statement by the applicant specifying the start day of the certificate; and
 - (ii) the written consent of the operator for the certificate to start on that day;
 - (g) the written consent of the operator to the applicant making the application;
 - (h) the written acknowledgement by the operator of the operator's guarantee under section 138 of the Act.
- (3) Also, the application must be accompanied by:
- (a) documents that verify the information given to the Regulator under paragraphs (2) (c) to (e); or
 - (b) with the consent of the Regulator—a statutory declaration that verifies that information.

3.24 Application for liability transfer certificate—transfer of liability to a person who has financial control of a facility

- (1) This regulation is made for subparagraphs 85 (5) (c) (iv) and (v) of the Act.
- (2) An application must be accompanied by the following:
 - (a) the identifying information for:
 - (i) the applicant; and
 - (ii) the person who has operational control over the facility (the *operator*); and
 - (iii) if the operator is a member of a corporate group and is not the controlling corporation of the group—the controlling corporation of the corporate group;

Regulation 3.24

- (iv) if the applicant is a member of a corporate group and is not the controlling corporation of the group—the controlling corporation of the corporate group;
- (b) the identifying information for the facility;
- (c) a statement that:
 - (i) the facility is under the operational control of the operator; and
 - (ii) the applicant has financial control over the facility, and which paragraph of subsection 92 (1) of the Act describes the reason why the applicant has financial control; and
 - (iii) the applicant is not an individual; and
 - (iv) the applicant is not a foreign person; and
 - (v) if the applicant is a member of a controlling corporation's group—the operator is not a member of the group;
- (d) a statement that the applicant has, and is likely to continue to have, the capacity, access to information and financial resources necessary for the applicant to comply with their obligations under the Act and the associated provisions if the liability transfer certificate is issued;
- (e) if the applicant wants the declaration to start on a different day from the day when the declaration is made:
 - (i) a statement by the applicant specifying the start day of the certificate; and
 - (ii) the written consent for the certificate to start on that day from the persons mentioned in subparagraphs 88 (2) (b) (iii), (iv) and (v) of the Act;
- (f) if applicable:
 - (i) the written consent of the person required under subsection 85 (3) of the Act to the applicant making the application;
 - (ii) the written consent of the person required under subsection 85 (4) of the Act to the applicant making the application;
 - (iii) the written acknowledgement by the controlling corporation of the controlling corporation's guarantee under section 138 of the Act.

Regulation 3.25

- (3) Also, the application must be accompanied by:
- (a) documents that verify the information given to the Regulator under paragraphs (2) (c) to (d); or
 - (b) with the consent of the Regulator—a statutory declaration that verifies that information.

3.25 Issue of liability transfer certificate

- (1) This regulation is made for paragraphs 83 (3) (c) and 87 (3) (c) of the Act.
- (2) The Regulator must not issue a liability transfer certificate if either of the following exists in relation to the facility:
 - (a) a mandatory designated joint venture;
 - (b) a declared designated joint venture.

Regulation 4.5

Part 4 Carbon units

Division 3 Property in, and transfer of, carbon units

4.5 Transmission of carbon units by operation of law etc.

- (1) This regulation is made for paragraph 106 (3) (b) and subsection 106 (4) of the Act.
- (2) A declaration of transmission of carbon units must:
 - (a) be made in writing; and
 - (b) be signed by the transferee; and
 - (c) state the identification numbers of the carbon units; and
 - (d) state a brief description of the circumstances that resulted in the transmission; and
 - (e) state the names and addresses of the transferor and transferee; and
 - (f) state the account number of the transferor's Registry account; and
 - (g) if the transferee has a Registry account—state the account number of the transferee's Registry account.

Note If the transferee does not already have a Registry account, see subsection 106 (5) of the Act about the request to open a Registry account that must accompany the declaration.

- (3) The declaration must also be accompanied by a certified copy of a document that shows that the title of the carbon unit has been transferred to the transferee (e.g. a certified copy of a court order), as evidence of the transmission.
- (4) For subregulation (3), a **certified copy** of a document is a copy of a document that has been certified as a true copy by:
 - (a) a person mentioned in Schedule 2 to the *Statutory Declarations Regulations 1993*; or
 - (b) an Australian embassy, Australian high commission or Australian consulate (other than a consulate headed by an honorary consul); or

- (c) a competent authority under the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done at The Hague on 5 October 1961.

Note 1 Information about competent authorities under this convention can be found on the Hague Conference on Private International Law's website at www.hcch.net.

Note 2 The text of this convention is set out in Australian Treaty Series 1995 No. 11 ([1995] ATS 11).

Division 5 Special provisions relating to free carbon units

4.10 Buy-back of certain free carbon units—specified factor

- (1) For a request mentioned in subsection 116 (2) of the Act that is received by the Regulator during a period mentioned in the table in subregulation (2), the factor specified for the formula in subsection 116 (2) of the Act is:

$$\frac{1}{(1+r)^{\frac{n}{365}}}$$

where:

r is the per annum yield (expressed as a percentage) for BBB rated corporate bonds with 1 to 5 years maturity, as published by the Reserve Bank of Australia, that is the latest daily rate published prior to the day the request to the Regulator was received.

n is the number of days before 15 June in the fixed charge year that the request to the Regulator was received.

- (2) For subregulation (1), the table is the following.

Item	Period
1	1 September 2012 to 14 June 2013
2	1 September 2013 to 14 June 2014
3	1 September 2014 to 14 June 2015

Regulation 4.10

- (3) For a request mentioned in subsection 116 (2) of the Act that is received by the Regulator during a period mentioned in the following table, the factor specified for the formula in subsection 116 (2) of the Act is one.

Item	Period
1	15 June 2013 to 1 February 2014
2	15 June 2014 to 1 February 2015
3	15 June 2015 to 1 February 2016

**Part 7 Jobs and Competitiveness
 Program**

**Division 2 Formulation of the Jobs and
 Competitiveness Program**

7.1 Jobs and Competitiveness Program

For subsection 145 (1) of the Act, the Jobs and Competitiveness Program is set out in Schedule 1.

Regulation 8.1

Part 8 Coal-fired electricity generation

Division 1 Introduction

8.1 Definitions for Part 8

In this Part:

appropriate energy market means:

- (a) the National Electricity Market within the meaning of the National Electricity Law; or
- (b) the Wholesale Electricity Market provided for by Part 9 of the *Electricity Industry Act 2004* (WA).

emissions intensity has the meaning given by section 168 of the Act.

historical energy has the meaning given by section 167 of the Act.

National Electricity Law means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA).

registered auditor means:

- (a) a company that is an authorised audit company under section 1299C of the *Corporations Act 2001*; or
- (b) a person who is a registered auditor under section 1280 of the *Corporations Act 2011*; or
- (c) a registered greenhouse and energy auditor, within the meaning of the *National Greenhouse and Energy Reporting Act 2007*, who is registered in Category 2 or 3 under the *National Greenhouse and Energy Reporting Regulations 2008*.

Division 2 Certificate of eligibility for coal-fired generation assistance

Subdivision 2.1 Information that must accompany application for certificate of eligibility for coal-fired generation assistance

8.2 Information to accompany applications

This subdivision is made for paragraph 163 (1) (c) of the Act.

8.3 Information for all applications

- (1) This regulation sets out information that must accompany an application for the Regulator to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex.

Note 1 The application is made under section 162 of the Act.

Note 2 Other information specified in this Subdivision may also be required for specific applications.

- (2) The information is:
- (a) the applicant's name, address and contact details; and
 - (b) the applicant's ABN or ACN; and
 - (c) information showing that the applicant owns, controls or operates the generation complex; and
 - (d) information relating to the registration of the generation complex in the appropriate energy market; and
 - (e) the name and specifications of each generation unit that makes up the generation complex; and
 - (f) the location of the generation complex; and
 - (g) information showing whether the generation complex passes the generation complex assistance eligibility test set out in subsection 166 (2) of the Act; and
 - (h) the factor that the applicant believes should be specified under section 167 of the Act as the annual assistance factor in respect of the generation complex; and

Regulation 8.3

- (i) the number that the applicant believes is the historical energy of the generation complex, and the basis on which the applicant has worked out the number, including an explanation of the method of measurement that was applied for the purpose of working out the number; and
- (j) if the number provided under paragraph (i) is different to the number for the electricity production (within the meaning in subregulation (6)) for the facility which corresponds to the generation complex — an explanation for the difference in the numbers; and
- (k) the number that the applicant believes is the emissions intensity of the generation complex, and the basis on which the applicant has worked out the number, including:
 - (i) an explanation of any calculations relevant to the number; and
 - (ii) an explanation of the method of measurement that was applied for the purpose of working out the number; and
 - (iii) the assumptions that were made for the purpose of working out the number; and
 - (iv) the reasons for the choice of the methods and assumptions; and
- (l) if the number provided under paragraph (k) is different to the NGER emissions intensity number worked out in accordance with subregulation (4) for the facility that corresponds to the generation complex — an explanation for the difference in the numbers; and
- (m) a statement identifying any other information or document that:
 - (i) is, or was, in the possession, or under the control, of the applicant or another person (for example, a coal supplier or an appropriate energy market operator); and
 - (ii) is of significant relevance in verifying, or in helping to verify, the historical energy and emissions intensity of the generation complex.

Regulation 8.3

- (3) Paragraphs (2) (j) and (l) do not apply if:
- (a) the explanation for the difference in the numbers is that the numbers were worked out using different units of measurement; and
 - (b) the numbers would be the same if the same unit of measurement was used for both numbers.
- (4) For paragraph (2) (l), the **NGER emissions intensity number** for a facility is:

$$\frac{\text{emissions number}}{\text{electricity production}}$$

where:

emissions number is worked out in accordance with subregulation (5).

electricity production has the meaning given in subregulation (6).

- (5) For subregulation (4), the **emissions number** for a facility is worked out as follows.

Step 1 Work out the emissions (E_{ij}), in CO₂-e tonnes, of each greenhouse gas (**j**) released by the operation of the facility during the relevant period from the combustion of each fuel (**i**) consumed by the facility for the purpose of producing electricity, as follows:

$$E_{ij} = \frac{Q_i \times EC_i \times EF_{ij}}{1\,000}$$

where:

Q_i is the quantity of the fuel (**i**) consumed by the facility for the purpose of producing electricity as reported for the facility under subparagraph 4.22 (1) (a) (i) of the NGER regulations for the relevant period.

EC_i is the energy content factor of the fuel (**i**) as reported for the facility under paragraph 4.07 (2) (a) or 3 (b) of the NGER regulations for the relevant period.

Regulation 8.4

EF_{ij} is the emissions factor determined as follows:

- (a) if Method 2, 3 or 4 was used for reporting the fuel (i) and gas (j) in relation to the facility under the NGER Act for the relevant period — the factor reported for the facility under paragraph 4.07 (3) (a) of the NGER regulations for the relevant period;
- (b) in any other case — the factor specified in Schedule 1 to the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* for the relevant period.

Step 2 Add together the E_{ij} amounts worked out for the facility under step 1.

- (6) In this regulation:

electricity production for a facility means the sum of the amounts of electricity produced as reported for the facility under paragraphs 4.20 (2) (a), (b) and (c) of the NGER Regulations for the relevant period.

relevant period means the period from 1 July 2008 to 30 June 2010.

8.4 Additional information — registered generation complex

- (1) In addition to regulation 8.3, this regulation sets out information that must accompany an application for the Regulator to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex.

Note 1 The application is made under section 162 of the Act.

Note 2 Other information specified in this Subdivision may also be required for specific applications.

- (2) The information is the name, and nameplate rating, of the generation complex as published by the appropriate energy market operator as at 1 July 2010.

Regulation 8.6

8.5 Additional information — National Greenhouse and Energy Reporting Scheme

- (1) In addition to regulation 8.3, this regulation sets out information that must accompany an application for the Regulator to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex if:
 - (a) the applicant has provided information (*previous information*) about the generation complex to the Commonwealth for the purposes of estimating emissions from the generation complex under the *National Greenhouse and Energy Reporting Act 2007*; and
 - (b) the information relates to the emissions of the generation complex in the period starting on 1 July 2008 and ending on 30 June 2010; and
 - (c) the information is in the applicant's possession, or under the applicant's control.

Note 1 The application is made under section 162 of the Act.

Note 2 Other information specified in this Subdivision may also be required for specific applications.

- (2) The information is:
 - (a) the previous information; and
 - (b) an explanation of how the previous information relates to the emissions intensity of the generation complex.
- (3) However, information mentioned in subregulation (2) does not need to be provided under this regulation if the information is contained in a document provided under regulation 8.9.

8.6 Additional information — result of audit report

- (1) In addition to regulation 8.3, this regulation sets out information that must accompany an application for the Regulator to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex if the report of an audit of the application conducted by a registered auditor includes:
 - (a) a qualified reasonable assurance conclusion, in the terms of paragraph 3.17 (1) (b) of the *National Greenhouse and Energy Reporting (Audit) Determination 2009*; or

Regulation 8.7

- (b) an adverse conclusion, in the terms of paragraph 3.17 (1) (c) of that Determination; or
- (c) a conclusion that the registered auditor is unable to form an opinion about the matter being audited, in the terms of paragraph 3.17 (1) (d) of that Determination.

Note The report must accompany the application: see regulation 8.10.

- (2) The information is the applicant's comments on the registered auditor's conclusion.

Subdivision 2.2 Documents that must accompany application for certificate of eligibility for coal-fired generation assistance

8.7 Documents that must accompany applications

This subdivision is made for paragraph 163 (1) (d) of the Act.

8.8 Documents for all applications

- (1) This regulation sets out the documents that must accompany an application for the Regulator to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex.

Note 1 The application is made under section 162 of the Act.

Note 2 Other documents specified in this Subdivision may also be required for specific applications.

- (2) The documents are:
 - (a) a map showing:
 - (i) the location of the generation complex (including the location or position of each generation unit that makes up the generation complex); and
 - (ii) how the generation complex was connected to a grid as described in paragraph 166 (2) (a) (iv) of the Act; and
 - (b) any other document that is in the applicant's possession, or under the applicant's control, that has been used in the application to calculate:
 - (i) the historical energy of the generation complex; or

- (ii) the emissions intensity of the generation complex.

8.9 Additional documents — National Greenhouse and Energy Reporting Scheme

- (1) In addition to regulation 8.8, this regulation identifies a document that must accompany an application for the Regulator to issue a certificate of eligibility for coal-fired generation assistance in respect of a generation complex if:
- (a) the applicant has provided a document about the generation complex to the Commonwealth for the purposes of estimating emissions from the generation complex under the *National Greenhouse and Energy Reporting Act 2007*; and
 - (b) the document relates to the emissions of the generation complex in the period starting on 1 July 2008 and ending on 30 June 2010; and
 - (c) the document, or a copy of the document, is in the applicant's possession or under the applicant's control.

Note 1 The application is made under section 162 of the Act.

Note 2 Other documents specified in this Subdivision may also be required for specific applications.

- (2) The document or copy must accompany the application.
- (3) The document or copy must be accompanied by an explanation of how the document relates to the emissions intensity of the generation complex.

Subdivision 2.3 Reports that must accompany application for certificate of eligibility for coal-fired generation assistance

8.10 Audit report for all applications

- (1) For paragraph 163 (1) (e) of the Act, a prescribed report is a report by an independent registered auditor of an audit of an application setting out the auditor's opinion as to whether:
- (a) the application properly presents, in all material respects, the historical energy of the generation complex; and

Regulation 8.10

- (b) the application properly presents, in all material respects, the emissions intensity of the generation complex; and
- (c) the application discloses, in all material respects, the basis on which the historical energy and emissions intensity have been estimated; and
- (d) the generation complex passes the generation complex assistance eligibility test set out in subsection 166 (2) of the Act.

- (2) For subregulation (1):

audit means an audit conducted in accordance with the relevant requirements for reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

independent registered auditor means a registered auditor who is independent of the applicant or applicants to the extent that a conflict of interest situation (within the meaning of the *National Greenhouse and Energy Reporting Regulations 2008*) does not arise in relation to the auditing of the application.

- (3) For the definition of audit, a reference in the definition of **misstatement** in the *National Greenhouse and Energy Reporting (Audit) Determination 2009* to ‘the Act’ or ‘the Regulations’ is to be read as a reference to the *Clean Energy Act 2011* and these Regulations.

Part 14 Record-keeping requirements

14.1 Record keeping—applications

- (1) For subsection 227 (1) of the Act, this regulation applies if a person:
 - (a) makes an application to the Regulator under any of the following subsections of the Act:
 - (i) subsection 38 (1) (obligation transfer number);
 - (ii) subsection 56 (2) (approved person);
 - (iii) subsection 68 (2) (declaration of a joint venture);
 - (iv) subsection 74 (2) (participating percentage determination);
 - (v) subsection 81 (2) (liability transfer certificate—corporate group);
 - (vi) subsection 85 (2) (liability transfer certificate—financial control); or
 - (b) in connection with the application, gives further information to the Regulator under subregulation 3.17 (1) or subsection 39 (1), 69 (1), 75 (1), 82 (1), or 86 (1) of the Act.
- (2) When the person makes the application, or gives the further information, the person must make a record of every source document.

Example

A scanned copy of the source document.

- (3) For subregulation (2), a *source document* is:
 - (a) a document that verifies the information given to the Regulator in, or in connection with, the application; and
 - (b) the original of a document that is copied and given to the Regulator with, or in connection with, the application.
- (4) The person must keep each record for 5 years after the application is made, or the further information is given.

Note See section 227 of the Act for the penalty that applies to a person who contravenes this regulation.

Regulation 14.1A

14.1A Record keeping—notice of intention to quote OTN

- (1) This regulation applies if a person gives a written notice under paragraph 55B (1) (a), 57 (2) (a) or 58 (2) (a) of the Act to a natural gas supplier of the person's intention to quote the person's OTN.
- (2) When the written notice is given, each of the persons mentioned in subregulation (1) must make a record of the following:
 - (a) the notice;
 - (b) the date on which the notice is given;
 - (c) the number of days between the day on which the notice is given and the day on which the OTN is to be first quoted.

Example for paragraph (a)

A scanned copy of the notice.

- (3) Each of the persons must keep the record for 5 years after the record is made.

Note See section 227 of the Act for the penalty that applies to a person who contravenes this regulation.

14.2 Record keeping—withdrawal of quotation of OTN

- (1) This regulation applies if a person withdraws the quotation of an OTN that was made to another person, in relation to a supply of natural gas, by giving the other person a written notice under subsection 51 (1) or (2) or 52 (1) or (2) of the Act.
- (2) When the written notice is given, each of the persons mentioned in subregulation (1) must make a record of the following:
 - (a) the date on which the notice is given;
 - (b) the reason for withdrawing the quotation;
 - (c) if the notice is given under subsection 52 (1) or (2) of the Act—the terms of the agreement to withdraw the quotation;
 - (d) the amount of natural gas supplied in relation to the quotation of the OTN before the notice is given.

Example for paragraph (c)

A scanned copy of the written agreement.

Regulation 14.3

- (3) Each of the persons must keep the record for 5 years after the record is made.

Note See section 227 of the Act for the penalty that applies to a person who contravenes this regulation.

14.3 Record keeping—acceptance of quotation of OTN

- (1) This regulation applies if a person accepts another person's quotation of an OTN, in relation to a supply of natural gas, by giving the other person a written notice under section 59 or 60 of the Act.
- (2) When the written notice is given, each of the persons mentioned in subregulation (1) must make a record of the following:
- (a) the notice;
 - (b) the date on which the notice is given.

Example for paragraph (a)

A scanned copy of the notice.

- (3) When natural gas is supplied in relation to the quotation of the OTN, each of the persons must make a record of the following:
- (a) the date on which the natural gas is supplied;
 - (b) the amount of natural gas supplied.
- (4) Each of the persons must keep each record for 5 years after the record is made.

Note See section 227 of the Act for the penalty that applies to a person who contravenes this regulation.

Regulation 21.1

Part 21 Review of decisions**21.1 Reviewable decisions — Jobs and Competitiveness Program**

For item 30 of the table in section 281 of the Act, the decisions of the Regulator under the Jobs and Competitiveness Program, set out in the following table, are prescribed.

Note The Jobs and Competitiveness Program is set out in Schedule 1.

Item	Decision under the Jobs and Competitiveness Program in Schedule 1
1	A decision under paragraph 803 (2) (b) of the program to refuse an application
2	A decision under paragraph 803 (8) (a) of the program to consider an application on the basis of substituting an amount or volume
3	A decision under paragraph 803 (8) (c) of the program to refuse to consider an application
4	A decision under paragraph 804 (1) (b) of the program to refuse an application for the issue of free carbon units
5	A decision under subclause 902 (7) of the program to reduce the number of free carbon units to be issued by the number of carbon units that would be likely to be required to be relinquished in accordance with Part 13 of the program
6	A decision under subclause 910 (1) of the program to amend a large user certificate
7	A decision under clause 911 of the program to reduce the number of carbon units allocated
8	A decision under subclause 1304 (4) of the program to issue a relinquishment notice
9	A decision under subclause 1306 (4) of the program to issue a relinquishment notice

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Schedule 1 Jobs and Competitiveness Program

(section 7.1)

Part 1 Preliminary

- 101 This is the Jobs and Competitiveness Program.
- 102 (1) This program deals with the issue of free carbon units in respect of activities that, under the program, are taken to be emissions-intensive trade-exposed activities.
- (2) Free carbon units must not be issued to a person in accordance with this program unless the person:
- (a) meets the requirements specified in this program; and
 - (b) has a Registry account.
- 103 The activities must be carried on in Australia during any of the following eligible financial years:
- (a) the eligible financial year starting on 1 July 2012;
 - (b) any subsequent eligible financial year.
- 104 The extraction of coal is not an activity under this program that is taken to be an emissions-intensive trade-exposed activity.

Part 2 Definitions and related concepts

Division 1 Definitions

201 (1) In this program:

applicant means a person who makes an application for free carbon units in the capacity of an eligible person.

Note An applicant will deal with the Regulator through one or more contact persons who will be nominated in the application.

ASTM followed by a number (for example, ASTM D6347/D6347M-99) means a standard of that number issued by ASTM International and, if a date is included, of that date.

Note **ASTM** means the American Society for Testing and Materials.

carbon steel means material which:

- (a) contains by mass more iron (Fe) than any other single element; and
- (b) has a carbon (C) concentration less than 2%.

closed, in relation to equipment: see clause 204.

condensate has the same meaning as in the *Excise Act 1901*.

eligible person: see Part 5.

eligible petroleum feedstocks means any one or more of the following that were not produced through the conduct of an emissions-intensive trade-exposed activity carried on in Australia:

- (a) catalytic cracker feedstocks that are processed in the catalytic cracker in carrying on the emissions-intensive trade-exposed activity and have a density of 0.84 to 0.98 kg/L at 15 °C and 1 atmosphere;
- (b) hydro-cracker unit feedstocks that are processed in the hydro-cracking unit in carrying on the emissions-intensive trade-exposed activity and have a density of 0.84 to 0.98 kg/L at 15 °C and 1 atmosphere;
- (c) reformer unit feedstocks that are used to produce reformat in carrying on the emissions-intensive trade-exposed activity and have a density of 0.6 to 0.80 kg/L at 15 °C and 1 atmosphere;

- (d) alkylation unit feedstocks that are used to produce alkylate in carrying on the emissions-intensive trade-exposed activity and have a density of 0.55 to 0.62 kg/L at 15 °C and 1 atmosphere;
- (e) bitumen feedstocks that are used to produce bitumen in carrying on the emissions-intensive trade-exposed activity and have a density of at least 0.95 kg/L at 15 °C and 1 atmosphere;
- (f) lubricant base stock feedstocks that are used to produce lubricant base stocks in carrying on the emissions-intensive trade-exposed activity and have a density of 0.84 to 0.98 kg/L at 15 °C and 1 atmosphere.

equipment means equipment that is used, or is to be used, to carry on an emissions-intensive trade-exposed activity, including the following:

- (a) an apparatus;
- (b) an appliance;
- (c) a boiler;
- (d) a chimney;
- (e) a crane;
- (f) a device;
- (g) a dredge;
- (h) a dryer;
- (i) an electrolytic cell;
- (j) an engine;
- (k) a furnace;
- (l) a generator;
- (m) an incinerator;
- (n) an instrument;
- (o) a kiln;
- (p) a machine;
- (q) an oven;
- (r) plant;
- (s) a retort;
- (t) a structure;
- (u) a tool.

expected production, or expected additional production, means:

- (a) for an application to which subclause 705 (1) or (2) applies — the amount or volume of the relevant product that is reasonably likely to be produced in the financial year for which free carbon units are to be provided; and
- (b) for an application to which subclause 706 (1) applies — the amount or volume of the relevant product that is reasonably likely to be produced for the facilities that are taken to have undergone a significant expansion in the financial year for which free carbon units are to be provided above the amount of the production of that relevant product in the previous financial year.

highly emissions-intensive, in relation to an emissions-intensive trade-exposed activity, means that the base rate of assistance for the activity is explained in subclause 907 (4).

moderately emissions-intensive, in relation to an emissions-intensive trade-exposed activity, means that the base rate of assistance for the activity is explained in subclause 907 (4).

new facility: see clause 205.

NGER Measurement Determination means the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* or any other determination for the measurement of emissions issued by the Minister under subsection 10 (3) of the NGER Act.

output means the product or products mentioned in the description of an emissions-intensive trade-exposed activity that result from the carrying on of that activity (whether or not the product or products are the basis for the issue of free carbon units for the activity under Part 3).

product means a product that is specified in Part 3 as the basis for the issue of free carbon units in relation to the carrying on of an emissions-intensive trade-exposed activity.

r is the per annum yield (expressed as a percentage) for BBB rated corporate bonds with 1 to 5 years maturity, as published by the Reserve Bank of Australia, that is the latest daily rate published prior to the day an application is approved by the Regulator.

relevant product means:

- (a) in relation to an application for the issue of free carbon units — a product that is identified in the application as meeting the requirements specified in Part 3 for the basis for the issue of those free carbon units; and
- (b) in relation to free carbon units that have been issued — the product that meets the requirements specified in Part 3 as the basis for the issue of those free carbon units.

saleable quality: see clause 202.

series of new facilities: see clause 205.

significant expansion: see clause 203.

stabilised crude petroleum oil has the meaning given in the Australian Taxation Office Interpretative Decision, ATO ID 2008/154, published on 28 November 2008.

unleaded petrol means all grades of unleaded petrol meeting Australian or international standards, including standard unleaded petrol, premium unleaded petrol and other proprietary forms of unleaded petrol.

- (2) In this program, unless the contrary intention appears:
 - (a) a concentration of a substance that is expressed as a percentage is a percentage with respect to mass; and
 - (b) a reference to the moisture content of a substance expressed as a percentage is a percentage with respect to mass.
- (3) In this program, unless the contrary intention appears, an emissions-intensive trade-exposed activity is carried on at a facility if the activity, or series of activities, that constitute the facility includes some or all of the transformations specified in Part 3 as being required for carrying on an emissions-intensive trade-exposed activity.

Note Subsection 9 (1) of the NGER Act explains how an activity or series of activities constitutes a facility.

Division 2 Meaning of *saleable quality*

- 202 (1) In this program, *saleable quality* is intended to have its ordinary meaning as understood by participants in the relevant market, subject to subclauses (2) to (5).
- (2) A product is taken to be of saleable quality if it is produced to a level at which it would ordinarily be considered by participants in the relevant market:
- (a) to be an output of a process carried on as part of an emissions-intensive trade-exposed activity; and
- (b) to have a commercial value as that output.
- (3) A sub-standard product that is discarded is taken not to be of saleable quality.
- (4) A product that is recycled back into the same emissions-intensive trade-exposed activity to produce a new output may be taken to be of saleable quality only once.

Examples

- 1 Metal that is re-melted in the same equipment in which it was produced.
- 2 Paper that is re-inputted into a paper making process.
- (5) Material that is scrapped or lost before it is packaged as a product that is of saleable quality:
- (a) is taken not to be of saleable quality; and
- (b) is taken not to be included in an amount of product that is of saleable quality that is to be counted for the basis for allocation.

Division 3 Meaning of *significant expansion*

- 203 (1) In this program, a facility to which an application for the issue of free carbon units relates is taken to have undergone *significant expansion* only if:
- (a) an emissions-intensive trade-exposed activity was carried on at the facility in the financial year before the financial year to which the application relates; and
- (b) equipment has been installed, or is to be installed, to carry on the activity; and

- (c) the equipment has not previously been taken into account under this program in relation to the significant expansion of a facility; and
 - (d) for equipment that has been installed — the equipment was first fully installed at the facility not more than 4 years before the start of the financial year to which the application relates; and
 - (e) for equipment that is to be installed — the equipment is expected to be installed, or substantially installed, within 1 year after the end of the financial year to which the application relates; and
 - (f) after the equipment is commissioned, and any existing equipment that is to be decommissioned has been decommissioned, the maximum productive capacity of the equipment used to produce the relevant product will be more than 20% greater than the maximum productive capacity of the equipment that existed before the installation.
- (2) In paragraph (1) (f), in working out the maximum productive capacity of the equipment that existed before the installation, decommissioned equipment that exists at the site is not to be included if it:
- (a) has not been used since the equipment has been installed to carry on the activity; and
 - (b) is not proposed to be used for at least 12 months after the financial year to which the application relates.

Division 4 Meaning of *closed*

- 204 (1) In this program, equipment is taken to have been *closed* only in a circumstance set out in subclause (2) or (3).
- (2) Equipment is taken to have been closed if:
- (a) one or more items of equipment have been used to carry out an emissions-intensive trade-exposed activity at one or more facilities; and
 - (b) the production of all relevant products at the facility or facilities has ceased; and

- (c) it is, or becomes, unlikely that the relevant products will be produced again at the facility or facilities within 1 year after the production ceased.
- (3) Equipment is taken to have been closed in relation to the production of a relevant product if:
 - (a) one or more items of equipment have been used to carry out an emissions-intensive trade-exposed activity at one or more facilities; and
 - (b) the equipment has been producing 2 or more relevant products as a result of the same emissions-intensive trade-exposed activity; and
 - (c) all production of one or more of those relevant products at the facility or facilities has ceased; and
 - (d) the equipment is still producing at least one other relevant product; and
 - (e) it is, or becomes, unlikely that production of one or more of the relevant products mentioned in paragraph (c) will resume at the facility or facilities within 1 year after the production of that relevant product ceased.

Division 5 *Meaning of new facility and series of new facilities*

- 205 (1) In this program, a facility to which an application for the issue of free carbon units relates is a ***new facility*** only in the circumstances set out in subclause (2).
- (2) A facility is a new facility if all of the following apply:
- (a) either:
 - (i) no relevant product was produced at the site of the facility before 1 July 2011; or
 - (ii) relevant product was produced at the site of the facility before 1 July 2011 but the principal equipment used in the previous financial year at the site of the facility to carry on the emissions-intensive trade-exposed activity was not used to produce relevant product at that site before 10 July 2011;

- (b) the earlier of the following occurred on or after 10 July 2011:
 - (i) a final investment decision was published in relation to a project to construct and commission at the site of the facility equipment that is to be used to carry on the emissions-intensive trade-exposed activity;
 - (ii) construction commenced on a project at the site of the facility in relation to equipment that is to be used to carry on the emissions-intensive trade-exposed activity;
 - (c) if it is part of a series of new facilities — the series of new facilities does not include one or more facilities that are not new facilities.
- (3) For subparagraph (2)(b)(i), in considering whether the decision that was published was a final investment decision in relation to the project on or after 10 July 2011, the Regulator must have regard to the following matters:
- (a) the content of any published statement by the project proponent showing a commitment to proceed with the construction of the project;
 - (b) the project proponent's rights to land for the construction of the project;
 - (c) whether contracts for the supply and construction of the project's major equipment (including contract provisions for project cancellations) were executed;
 - (d) the status of all planning and construction approvals and licences necessary for the commencement of construction of the project (including completed and approved environmental impact statements);
 - (e) the level of commitment to financing arrangements for the project;
 - (f) whether, as at the start of 10 July 2011, a firm date had been set for project construction to commence;
 - (g) any other matter that the Regulator considers relevant.
- (4) A *series of new facilities* is 2 or more new facilities that carry on activities that are an emissions-intensive trade-exposed activity only if the activities at all of those facilities are considered.

Part 3 Emissions-intensive trade-exposed activities

Division 1 General

- 301 (1) This Part identifies emissions-intensive trade-exposed activities.
- (2) A reference in this Part to an emissions-intensive trade-exposed activity includes the following information:
- (a) a general name for the activity;
 - (b) the description of the activity;
 - (c) whether the activity is:
 - (i) highly emissions-intensive; or
 - (ii) moderately emissions-intensive;
 - (d) a summary of each basis for the issue of free carbon units in respect of the activity.
- (3) Each allocative baseline for the activity is set out in Part 4.

Division 2 Production of glass containers

- 302 (1) The production of glass containers is the physical and chemical transformation of silica (silicon dioxide (SiO₂)) and other raw and recycled materials (such as cullet) to produce blown or pressed glass containers, by controlled melting and forming in a contiguous process.
- (2) The production of glass containers is specified as an emissions-intensive trade-exposed activity.
- (3) The production of glass containers is a moderately emissions-intensive activity.
- Note* See Part 4.
- (4) The basis for the issue of free carbon units is by a tonne of blown and pressed glass containers that is:
- (a) produced by carrying on the emissions-intensive trade-exposed activity; and

(b) of saleable quality.

Note *Saleable quality* is explained in Part 2.

Division 3 Production of bulk flat glass

303 (1) The production of bulk flat glass is the physical and chemical transformation of silica (silicon dioxide (SiO₂)) and other raw and recycled materials (such as cullet) to produce bulk flat glass products, including wired glass and patterned glass, by controlled melting and forming in a contiguous process.

(2) The production of bulk flat glass is specified as an emissions-intensive trade-exposed activity.

(3) The production of bulk flat glass is a highly emissions-intensive activity.

Note See Part 4.

(4) The basis for the issue of free carbon units is by a tonne of bulk flat glass that is:

(a) produced by carrying on the emissions-intensive trade-exposed activity; and

(b) of saleable quality.

Note *Saleable quality* is explained in Part 2.

Division 4 Production of methanol

304 (1) The production of methanol is the chemical transformation of one or more of the following:

(a) hydrocarbons;

(b) hydrogen feedstocks;

(c) carbon feedstocks;

(d) oxygen feedstocks;

to produce liquid methanol (CH₃OH) in which the concentration of methanol is at least 98%.

(2) The production of methanol is specified as an emissions-intensive trade-exposed activity.

- (3) The production of methanol is a highly emissions-intensive activity.

Note See Part 4.

- (4) The basis for the issue of free carbon units is by a tonne of 100% equivalent methanol (CH₃OH) that is produced by carrying on the emissions-intensive trade-exposed activity.

Division 5 Production of carbon black

- 305 (1) The production of carbon black is the chemical transformation of gaseous or liquid hydrocarbons to produce a colloidal carbon material (known as **carbon black**) in the form of spheres or of fused aggregates of the spheres.

- (2) The particle size of the colloidal carbon must be below 1 000 nm in at least one dimension.

- (3) The production of carbon black is specified as an emissions-intensive trade-exposed activity.

- (4) The production of carbon black is a highly emissions-intensive activity.

Note See Part 4.

- (5) The basis for the issue of free carbon units is by a tonne, on a dry weight basis, of pelletised carbon black that is:

- (a) produced by carrying on the emissions-intensive trade-exposed activity; and
(b) of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 6 Production of white titanium dioxide (TiO₂) pigment

- 306 (1) The production of white titanium dioxide (TiO₂) pigment is the chemical transformation of one or more of the following:

- (a) rutile (TiO₂);
(b) synthetic rutile (TiO₂);
(c) ilmenite (FeTiO₃);

-
- (d) leucoxene;
 - (e) titanium slag that has an iron (Fe) concentration of at least 7%;
to produce white titanium dioxide (TiO₂) pigment.
- (2) The white titanium dioxide (TiO₂) pigment must:
 - (a) conform with ASTM classification D476-00; and
 - (b) have an iron (Fe) concentration of no more than 0.5%.
 - (3) The production of white titanium dioxide (TiO₂) pigment is specified as an emissions-intensive trade-exposed activity.
 - (4) The production of white titanium dioxide (TiO₂) pigment is a moderately emissions-intensive activity.

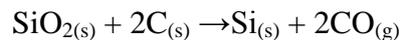
Note See Part 4.

- (5) The basis for the issue of free carbon units is by a tonne of white titanium dioxide (TiO₂) pigment that:
 - (a) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (b) conforms with ASTM classification D476-00; and
 - (c) has an iron (Fe) concentration of no more than 0.5%; and
 - (d) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 7 Production of silicon

- 307 (1) The production of silicon is the chemical transformation of silica (silicon dioxide (SiO₂)) to produce silicon (Si) with a concentration of silicon of at least 98.0%, conducted in accordance with the following overall chemical equation:



- (2) The production of silicon is specified as an emissions-intensive trade-exposed activity.
- (3) The production of silicon is a highly emissions-intensive activity.

Note See Part 4.

- (4) The basis for the issue of free carbon units is by a tonne of silicon that:
- (a) has a concentration of silicon of at least 98.0%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 8 Smelting zinc

- 308 (1) Smelting zinc is the chemical transformation of either or both of:
- (a) concentrated mineralised zinc compounds; and
 - (b) zinc-bearing secondary materials;
- to produce zinc metal (Zn) with a concentration of zinc of at least 99.95%.

- (2) Smelting zinc is specified as an emissions-intensive trade-exposed activity.

- (3) Smelting zinc is a highly emissions-intensive activity.

Note See Part 4.

- (4) The basis for the issue of free carbon units is by a tonne of zinc that:
- (a) has a concentration of zinc of at least 99.95%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 9 Integrated production of lead and zinc

- 309 (1) The integrated production of lead and zinc is the chemical transformation of either or both of:
- (a) concentrated mineralised lead compounds with or without additional lead bearing secondary materials; and
 - (b) concentrated mineralised zinc compounds with or without additional zinc bearing secondary materials;
- to produce the products mentioned in subclause (2).
- (2) For subclause (1), the products are:
- (a) lead metal (Pb) with a concentration of lead of at least 99.97%; and
 - (b) zinc in fume (Zn) with a concentration of zinc of at least 60%.
- (3) The integrated production of lead and zinc is specified as an emissions-intensive trade-exposed activity.
- (4) The integrated production of lead and zinc is a moderately emissions-intensive activity.
- Note* See Part 4.
- (5) For the production of lead metal, the basis for the issue of free carbon units is by a tonne of lead metal (Pb) that:
- (a) has a concentration of lead of at least 99.97%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is of saleable quality.
- Note* **Saleable quality** is explained in Part 2.
- (6) For the production of zinc in fume, the basis for the issue of free carbon units is by a tonne of 100% equivalent zinc contained within the zinc in fume (Zn) that:
- (a) has a concentration of zinc of at least 60%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity.

Division 10 Aluminium smelting

- 310 (1) Aluminium smelting is the physical and chemical transformation of alumina (aluminium oxide (Al_2O_3)) into aluminium metal (Al) of saleable quality.
- (2) Aluminium smelting is specified as an emissions-intensive trade-exposed activity.
- (3) Aluminium smelting is a highly emissions-intensive activity.
Note See Part 4.
- (4) The basis for the issue of free carbon units is by a tonne of primary aluminium that:
- (a) has a concentration of aluminium of at least 98%; and
 - (b) is produced as part of carrying on the emissions-intensive trade-exposed activity; and
 - (c) is weighed after electrolysis but before casting.

Division 11 Alumina refining

- 311 (1) Alumina refining is the physical and chemical transformation of bauxite (which is an ore containing mineralised aluminium compounds) into alumina (aluminium oxide (Al_2O_3)) with a concentration of aluminium oxide of at least 95%.
- (2) Alumina refining is specified as an emissions-intensive trade-exposed activity.
- (3) Alumina refining is a highly emissions-intensive activity.
Note See Part 4.
- (4) The basis for the issue of free carbon units is by a tonne of alumina (aluminium oxide (Al_2O_3)) that:
- (a) has a concentration of aluminium oxide of at least 95%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is of saleable quality.
- Note* **Saleable quality** is explained in Part 2.

Division 12 Production of high purity ethanol

- 312 (1) The production of high purity ethanol is the chemical transformation of fermentable sugars (such as $C_6H_{12}O_6$, $C_5H_{10}O_5$, $C_{12}H_{22}O_{11}$ or $C_{18}H_{32}O_{16}$) to ethanol (C_2H_5OH) and subsequent purification process to obtain a solution of high purity ethanol where the concentration of ethanol (C_2H_5OH) is at least 95% with respect to volume.
- (2) The production of high purity ethanol is specified as an emissions-intensive trade-exposed activity.
- (3) The production of high purity ethanol is a moderately emissions-intensive activity.
- Note* See Part 4.
- (4) The basis for the issue of free carbon units is by a kilolitre of 100% equivalent ethanol (C_2H_5OH) at 20 °C that is produced by carrying on the emissions-intensive trade-exposed activity, assuming a density of ethanol (C_2H_5OH) of 789.24 kg/m³ at 20 °C.

Division 13 Production of magnesia

- 313 (1) The production of magnesia is the chemical and physical transformation of magnesite (magnesium carbonate ($MgCO_3$)) into one or more of the following magnesia products:
- (a) caustic calcined magnesia that:
- (i) has a concentration of magnesium oxide (MgO) of at least 75%; and
 - (ii) is burned between 650 °C and 1 200 °C;
- (b) deadburned magnesia that:
- (i) has a concentration of magnesium oxide (MgO) of at least 85%; and
 - (ii) has grain density of 2.85 g/cm³ to 3.45 g/cm³; and
 - (iii) is burned between 1 300 °C and 2 200 °C;
- (c) electrofused magnesia that:
- (i) has a concentration of magnesium oxide (MgO) of at least 90%; and
 - (ii) has grain density of greater than 3.45 g/cm³; and

(iii) is fused at temperatures higher than 2 750 °C.

- (2) The production of magnesia is specified as an emissions-intensive trade-exposed activity.
- (3) The production of magnesia is a highly emissions-intensive activity.

Note See Part 4.

- (4) For the production of caustic calcined magnesia, the basis for the issue of free carbon units is by a tonne of caustic calcined magnesia on a dry weight basis that:
- (a) has a concentration of magnesium oxide (MgO) of at least 75%; and
- (b) is produced by, or as part of, carrying on the emissions-intensive trade-exposed activity; and
- (c) is of saleable quality;
- whether or not it is later transformed into deadburned magnesia or electrofused magnesia.

Note **Saleable quality** is explained in Part 2.

- (5) For the production of deadburned magnesia, the basis for the issue of free carbon units is by a tonne of deadburned magnesia on a dry weight basis that:
- (a) has a concentration of magnesium oxide (MgO) of at least 85%; and
- (b) has grain density of 2.85 g/cm³ to 3.45 g/cm³; and
- (c) is produced by carrying on the emissions-intensive trade-exposed activity; and
- (d) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

- (6) For the production of electrofused magnesia, the basis for the issue of free carbon units is by a tonne of electrofused magnesia on a dry weight basis that:
- (a) has a concentration of magnesium oxide (MgO) of at least 90%; and
- (b) has grain density of greater than 3.45 g/cm³; and

-
- (c) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (d) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 14 Manufacture of newsprint

- 314 (1) The manufacture of newsprint is the physical or chemical transformation, through an integrated process, of any or all of woodchips, sawdust, wood pulp and recovered paper into rolls of uncoated newsprint that:
- (a) has a grammage range of 30 g/m² to 80 g/m²; and
 - (b) has a moisture content in the range of 6% to 11%; and
 - (c) is generally usable for newspaper products.

- (2) The manufacture of newsprint is specified as an emissions-intensive trade-exposed activity.
- (3) The manufacture of newsprint is a highly emissions-intensive activity.

Note See Part 4.

- (4) For the manufacture of uncoated newsprint that:
 - (a) has a grammage range of 30 g/m² to 80 g/m²; and
 - (b) has a moisture content in the range of 6% to 11%; and
 - (c) is generally usable for newspaper products;the basis for the issue of free carbon units is the total air dried tonnes of rolls of uncoated newsprint of saleable quality produced by carrying on the emissions-intensive trade-exposed activity.

Note **Saleable quality** is explained in Part 2.

- (5) For the production of pulp from either or both of woodchips and sawdust, the basis for the issue of free carbon units is by a tonne of bone dried equivalent pulp that is:
 - (a) used in the integrated process of manufacturing newsprint; and
 - (b) produced as part of carrying on the emissions-intensive trade-exposed activity.

- (6) For the production of pulp from recovered paper, the basis for the issue of free carbon units is by a tonne of bone dried equivalent pulp that is:
- (a) used in the integrated process of manufacturing newsprint; and
 - (b) produced as part of carrying on the emissions-intensive trade-exposed activity.
- (7) For this Part, an amount of pulp or paper that is used as a basis for the issue of free carbon units for one of the following emissions-intensive trade-exposed activities:
- (a) the manufacture of newsprint;
 - (b) dry pulp manufacturing;
 - (c) cartonboard manufacturing;
 - (d) packaging and industrial paper manufacturing;
 - (e) printing and writing paper manufacturing;
 - (f) tissue paper manufacturing;
- does not count for the purposes of the basis for allocation of another of those emissions-intensive trade-exposed activities.

Division 15 Dry pulp manufacturing

- 315 (1) Dry pulp manufacturing is the physical or chemical transformation of any or all of wood chips, sawdust, wood pulp and recovered paper into either or both of rolls and bales of dry pulp that:
- (a) has a moisture content in the range of 4% to 14%; and
 - (b) is generally useable in either or both of:
 - (i) paper manufacturing; and
 - (ii) the production of sanitary products (such as a fluff pulp layer in sanitary products).
- (2) Dry pulp manufacturing is specified as an emissions-intensive trade-exposed activity.
- (3) Dry pulp manufacturing is a highly emissions-intensive activity.

Note See Part 4.

- (4) For dry pulp manufacturing, the basis for the issue of free carbon units is by a tonne of either or both of rolls and bales of dry pulp that:
- (a) has a moisture content in the range of 4% to 14%; and
 - (b) is generally useable in either or both of:
 - (i) paper manufacturing; and
 - (ii) the production of sanitary products (such as a fluff pulp layer in sanitary products); and
 - (c) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (d) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

- (5) For the production of pulp from either or both of woodchips and sawdust as part of dry pulp manufacturing, the basis for the issue of free carbon units is by an air dried tonne (applying a 10% moisture content) of equivalent pulp that is:
- (a) produced from either or both of woodchips and sawdust; and
 - (b) used in the process of manufacturing dry pulp; and
 - (c) produced as part of carrying on the emissions-intensive trade-exposed activity.
- (6) For this Part, an amount of pulp or paper that is used as a basis for the issue of free carbon units for one of the following emissions-intensive trade-exposed activities:
- (a) the manufacture of newsprint;
 - (b) dry pulp manufacturing;
 - (c) cartonboard manufacturing;
 - (d) packaging and industrial paper manufacturing;
 - (e) printing and writing paper manufacturing;
 - (f) tissue paper manufacturing;
- does not count for the purposes of the basis for allocation of another of those emissions-intensive trade-exposed activities.

Division 16 Cartonboard manufacturing

- 316 (1) Cartonboard manufacturing is the physical or chemical transformation of any or all of wood chips, sawdust, wood pulp and recovered paper into rolls of cartonboard that:
- (a) has a grammage range of 150 g/m² to 500 g/m²; and
 - (b) has a moisture content in the range of 4% to 11%; and
 - (c) is coated; and
 - (d) is generally useable as cartonboard product such as coated kraft liner, coated multiply and other coated paperboard.
- (2) Cartonboard manufacturing is specified as an emissions-intensive trade-exposed activity.
- (3) Cartonboard manufacturing is a highly emissions-intensive activity.
- Note* See Part 4.
- (4) For cartonboard manufacturing, the basis for the issue of free carbon units is by a tonne of rolls of cartonboard that:
- (a) has a grammage range of 150 g/m² to 500 g/m²; and
 - (b) has a moisture content in the range of 4% to 11%; and
 - (c) is coated; and
 - (d) is generally useable as cartonboard product such as coated kraft liner, coated multiply and other coated paperboard; and
 - (e) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (f) is of saleable quality.
- Note* **Saleable quality** is explained in Part 2.
- (5) For the production of pulp from either or both of woodchips and sawdust as part of cartonboard manufacturing, the basis for the issue of free carbon units is by an air dried tonne (applying a 10% moisture content) of equivalent pulp that is:
- (a) produced from either or both of woodchips and sawdust; and
 - (b) used in the process of cartonboard manufacturing; and

- (c) produced as part of carrying on the emissions-intensive trade-exposed activity.
- (6) For this Part, an amount of pulp or paper that is used as a basis for the issue of free carbon units for one of the following emissions-intensive trade-exposed activities:
 - (a) the manufacture of newsprint;
 - (b) dry pulp manufacturing;
 - (c) cartonboard manufacturing;
 - (d) packaging and industrial paper manufacturing;
 - (e) printing and writing paper manufacturing;
 - (f) tissue paper manufacturing;does not count for the purposes of the basis for allocation of another of those emissions-intensive trade-exposed activities.

Division 17 Packaging and industrial paper manufacturing

- 317 (1) Packaging and industrial paper manufacturing is the physical or chemical transformation of any or all of wood chips, sawdust, wood pulp and recovered paper into rolls of packaging and industrial paper that:
- (a) is produced from wholly or partially unbleached input fibre; and
 - (b) has a grammage range of 30 g/m² to 500 g/m²; and
 - (c) has a moisture content in the range of 4% to 11%; and
 - (d) is uncoated; and
 - (e) is generally useable as a packaging or industrial paper, including products such as kraft liner, recycled or multiply liner, medium, sack and bag paper, wrapping paper, plasterboard liner, horticultural paper and building paper.
- (2) Packaging and industrial paper manufacturing is specified as an emissions-intensive trade-exposed activity.
- (3) Packaging and industrial paper manufacturing is a highly emissions-intensive activity.

Note See Part 4.

- (4) For packaging and industrial paper manufacturing, the basis for the issue of free carbon units is by a tonne of rolls of packaging and industrial paper that:
- (a) is produced from wholly or partially unbleached input fibre; and
 - (b) has a grammage range of 30 g/m² to 500 g/m²; and
 - (c) has a moisture content in the range of 4% to 11%; and
 - (d) is uncoated; and
 - (e) is generally useable as a packaging or industrial paper product, including products such as kraft liner, recycled or multiply liner, medium, sack and bag paper, wrapping paper, plasterboard liner, horticultural paper and building paper; and
 - (f) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (g) is of saleable quality.
- Note* **Saleable quality** is explained in Part 2.
- (5) For the production of pulp from either or both of woodchips and sawdust as part of packaging and industrial paper manufacturing, the basis for the issue of free carbon units is by an air dried tonne (assuming a 10% moisture content) of equivalent pulp that is:
- (a) produced from either or both of woodchips and sawdust; and
 - (b) used in the process of manufacturing packaging and industrial paper; and
 - (c) produced as part of carrying on the emissions-intensive trade-exposed activity.
- (6) For this Part, an amount of pulp or paper that is used as a basis for the issue of free carbon units for one of the following emissions-intensive trade-exposed activities:
- (a) the manufacture of newsprint;
 - (b) dry pulp manufacturing;
 - (c) cartonboard manufacturing;
 - (d) packaging and industrial paper manufacturing;
 - (e) printing and writing paper manufacturing;

- (f) tissue paper manufacturing;
does not count for the purposes of the basis for allocation of another of those emissions-intensive trade-exposed activities.

Division 18 Printing and writing paper manufacturing

- 318 (1) Printing and writing paper manufacturing is the physical or chemical transformation of any or all of wood chips, sawdust, wood pulp and recovered paper into rolls of coated or uncoated printing and writing paper that:
- (a) is produced from 100% bleached or brightened input fibre; and
 - (b) has a grammage range of 42 g/m² to 350 g/m²; and
 - (c) has a moisture content in the range of 4% to 11%; and
 - (d) is generally useable as a printing and writing paper product, including products such as offset paper, copy paper, laser printing paper, magazine paper, filing card paper, manilla, book printing paper, envelope paper, forms paper, scholastic paper, cheque paper and security paper.
- (2) Printing and writing paper manufacturing is specified as an emissions-intensive trade-exposed activity.
- (3) Printing and writing paper manufacturing is a highly emissions-intensive activity.
- Note* See Part 4.
- (4) For printing and writing paper manufacturing, the basis for the issue of free carbon units is by a tonne of rolls of coated or uncoated printing and writing paper that:
- (a) is produced from 100% bleached or brightened input fibre; and
 - (b) has a grammage range of 42 g/m² to 350 g/m²; and
 - (c) has a moisture content in the range of 4% to 11%; and
 - (d) is generally useable as a printing and writing paper product, including products such as offset paper, copy paper, laser printing paper, magazine paper, filing card paper, manilla, book printing paper, envelope paper, forms paper, scholastic paper, cheque paper and security paper; and

- (e) is produced by carrying on the emissions-intensive trade-exposed activity; and
- (f) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

- (5) For the production of pulp from either or both of woodchips and sawdust as part of printing and writing paper manufacturing, the basis for the issue of free carbon units is by an air dried tonne (assuming a 10% moisture content) of equivalent pulp that is:
 - (a) produced from either or both of woodchips and sawdust; and
 - (b) used in the process of manufacturing printing and writing paper; and
 - (c) produced as part of carrying on the emissions-intensive trade-exposed activity.
- (6) For this Part, an amount of pulp or paper that is used as a basis for the issue of free carbon units for one of the following emissions-intensive trade-exposed activities:
 - (a) the manufacture of newsprint;
 - (b) dry pulp manufacturing;
 - (c) cartonboard manufacturing;
 - (d) packaging and industrial paper manufacturing;
 - (e) printing and writing paper manufacturing;
 - (f) tissue paper manufacturing;does not count for the purposes of the basis for allocation of another of those emissions-intensive trade-exposed activities.

Division 19 Tissue paper manufacturing

- 319 (1) Tissue paper manufacturing is the physical or chemical transformation of any or all of wood chips, sawdust, wood pulp and recovered paper into rolls of uncoated tissue paper that:
- (a) has a grammage range of 13 g/m² to 75g/m²; and
 - (b) has a moisture content in the range of 4% to 11%; and
 - (c) is generally useable in sanitary products such as facial tissue, paper towel, bathroom tissue and napkins.

(2) Tissue paper manufacturing is specified as an emissions-intensive trade-exposed activity.

(3) Tissue paper manufacturing is a moderately emissions-intensive activity.

Note See Part 4.

(4) For tissue paper manufacturing, the basis for the issue of free carbon units is by a tonne of rolls of uncoated tissue paper that:

(a) has a grammage range of 13 g/m² to 75g/m²; and

(b) has a moisture content in the range of 4% to 11%; and

(c) is generally useable in sanitary products such as facial tissue, paper towel, bathroom tissue and napkins; and

(d) is produced by carrying on the emissions-intensive trade-exposed activity; and

(e) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

(5) For the production of pulp from either or both of woodchips and sawdust as part of tissue paper manufacturing, the basis for the issue of free carbon units is by an air dried tonne (assuming a 10% moisture content) of equivalent pulp that is:

(a) produced from either or both of woodchips and sawdust; and

(b) used in the process of manufacturing tissue paper; and

(c) produced as part of carrying on the emissions-intensive trade-exposed activity.

(6) For this Part, an amount of pulp or paper that is used as a basis for the issue of free carbon units for one of the following emissions-intensive trade-exposed activities:

(a) the manufacture of newsprint;

(b) dry pulp manufacturing;

(c) cartonboard manufacturing;

(d) packaging and industrial paper manufacturing;

(e) printing and writing paper manufacturing;

(f) tissue paper manufacturing;

does not count for the purposes of the basis for allocation of another of those emissions-intensive trade-exposed activities.

Division 20 Integrated iron and steel manufacturing

Note *Carbon steel, relevant product* and *saleable quality* are explained in Part 2.

- 320 (1) Integrated iron and steel manufacturing is the chemical and physical transformation of iron ore into crude carbon steel products and hot-rolled carbon steel products involving all of the following processes:
- (a) the chemical and physical transformation of iron ore into agglomerated iron ore, such as iron ore sinter or iron ore pellets;
 - (b) the carbonisation of coal (principally coking coal) into coke oven coke;
 - (c) the chemical and physical transformation of either or both of limestone and dolomite, into lime (including burnt lime and burnt dolomite);
 - (d) the chemical and physical transformation of iron ore feed, including agglomerated iron ore, into molten iron which includes the reduction of oxides of iron using carbon as the predominant reducing agent;
 - (e) subject to subclause (3), the chemical and physical transformation of molten iron and cold ferrous feed, such as pig iron, flat iron and ferrous scrap, into one or more of the following:
 - (i) continuously cast carbon steel products;
 - (ii) ingots of carbon steel;
 - (iii) hot-rolled carbon steel products, which commenced hot-rolling at a temperature higher than 800 °C.
- (2) Integrated iron and steel manufacturing may also include the physical transformation of continuously cast carbon steel products into hot-rolled carbon steel products which commence hot-rolling at a temperature higher than 800 °C if the continuously cast carbon steel products are produced at any other facility that conducts:
- (a) the activity of integrated iron and steel manufacturing; or
 - (b) the activity of manufacture of carbon steel from cold ferrous feed.

-
- (3) For paragraph (1) (e), the maximum percentage of cold ferrous feed transformed into one or more of the items in subparagraphs (1) (e) (i) to (iii) as a proportion of molten iron and cold ferrous feed, must not:
- (a) for a facility that does not meet the criteria in subclause 705 (1) or (2) — be greater than 30% over the previous financial year for the facility; or
 - (b) for a facility that does meet the criteria in subclause 705 (1) or (2) — be likely to be greater than 30% over the financial year to which the application relates for the facility.
- (4) Integrated iron and steel manufacturing is specified as an emissions-intensive trade-exposed activity.
- (5) Integrated iron and steel manufacturing is a highly emissions-intensive activity.
- Note* See Part 4.
- (6) For the production of iron ore sinter, the basis for the issue of free carbon units is by a tonne of iron ore sinter on a dry weight basis that:
- (a) meets the necessary requirements for use in the integrated iron and steel manufacturing process; and
 - (b) is produced as part of carrying on the emissions-intensive trade-exposed activity.
- (7) For the production of iron ore pellets, the basis for the issue of free carbon units is by a tonne of iron ore pellets on a dry weight basis that:
- (a) meets the necessary requirements for use in the integrated iron and steel manufacturing process; and
 - (b) is produced as part of carrying on the emissions-intensive trade-exposed activity; and
 - (c) is not a relevant product for the emissions-intensive trade-exposed activity of production of iron ore pellets mentioned in Division 35.

- (8) For the production of coke oven coke, the basis for the issue of free carbon units is by a tonne of coke oven coke on a dry weight basis that is produced as part of carrying on the emissions-intensive trade-exposed activity.
- (9) For the production of lime, the basis for the issue of free carbon units is by a tonne of lime on a dry weight basis that:
 - (a) meets the necessary requirements for use in the integrated iron and steel manufacturing process; and
 - (b) is produced as part of carrying on the emissions-intensive trade-exposed activity; and
 - (c) is not a relevant product for the emissions-intensive trade-exposed activity of production of lime mentioned in Division 28.
- (10) For the production of either or both of continuously cast carbon steel products and ingots of carbon steel, the basis for the issue of free carbon units is by a tonne of either or both of continuously cast carbon steel products and ingots of carbon steel that:
 - (a) is produced as part of carrying on the emissions-intensive trade-exposed activity; and
 - (b) is not a relevant product for the emissions-intensive trade-exposed activity of the manufacture of carbon steel from cold ferrous feed; and
 - (c) is of a saleable quality.
- (11) For the production of hot-rolled carbon steel products that are long products, the basis for the issue of free carbon units is by a tonne of long products of hot-rolled carbon steel that:
 - (a) is in coils or straight lengths; and
 - (b) is generally produced in rod, bar and structural (section) mills; and
 - (c) generally has a cross sectional shape such as I, T, Y, U, V, H, C, L, square, rectangular, round, flat, hexagonal, angle, channel, structural beam profile or rail profile; and
 - (d) is produced by carrying on the emissions-intensive trade-exposed activity; and

-
- (e) is produced from continuously cast carbon steel products that satisfy the requirements mentioned in subclause (13); and
 - (f) is counted as a relevant product only once in relation to the carrying on of the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; and
 - (g) is not a relevant product for the emissions-intensive trade-exposed activity of the manufacture of carbon steel from cold ferrous feed; and
 - (h) is of saleable quality.
- (12) For the production of hot-rolled carbon steel products that are flat products, the basis for the issue of free carbon units is by a tonne of flat products of hot-rolled carbon steel that:
- (a) is flat in profile, such as plate and hot rolled coil; and
 - (b) is generally produced in hot strip mills and plate mills; and
 - (c) is generally at least 600 mm wide; and
 - (d) is generally no thicker than 150 mm; and
 - (e) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (f) is produced from continuously cast carbon steel products that satisfy the requirements mentioned in subclause (13); and
 - (g) is counted as a relevant product only once in relation to the carrying on of the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; and
 - (h) is not a relevant product for the emissions-intensive trade-exposed activity of the manufacture of carbon steel from cold ferrous feed; and
 - (i) is of saleable quality.
- (13) For paragraphs (11) (e) and (12) (f), the continuously cast carbon steel products must be produced as part of carrying on:
- (a) the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; or
 - (b) the emissions-intensive trade-exposed activity of manufacture of carbon steel from cold ferrous feed.

(14) For this Division:

coke oven coke means the solid product obtained from the carbonisation of coal (principally coking coal) at a high temperature and includes coke breeze and foundry coke.

Division 21 Manufacture of carbon steel from cold ferrous feed

Note *Carbon steel, relevant product* and *saleable quality* are explained in Part 2.

- 321 (1) The manufacture of carbon steel from cold ferrous feed is the physical and chemical transformation of cold ferrous feed (such as ferrous scrap, pig iron and flat iron) by heating and melting into liquid steel and the subsequent casting of the liquid steel to produce one or more of the following:
- (a) continuously cast carbon steel products;
 - (b) ingots of carbon steel;
 - (c) hot-rolled carbon steel products, which commenced hot-rolling at a temperature higher than 800 °C.
- (2) The manufacture of carbon steel from cold ferrous feed may also include the physical transformation of continuously cast carbon steel products into hot-rolled carbon steel products which commenced hot-rolling at a temperature higher than 800 °C where the continuously cast carbon steel products are produced at any other facility that conducts:
- (a) the activity of integrated iron and steel manufacturing; or
 - (b) the activity of manufacture of carbon steel from cold ferrous feed.
- (3) The manufacture of carbon steel from cold ferrous feed is specified as an emissions-intensive trade-exposed activity.
- (4) The manufacture of carbon steel from cold ferrous feed is a highly emissions-intensive activity.

Note See Part 4.

- (5) For the production of either or both of continuously cast carbon steel products and ingots of carbon steel, the basis for the issue of free carbon units is by a tonne of either or both continuously cast carbon steel products and ingots of carbon steel that:

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- (a) is produced as part of carrying on the emissions-intensive trade-exposed activity; and
 - (b) is not a relevant product for the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; and
 - (c) is of a saleable quality.
- (6) For the production of hot-rolled carbon steel products that are long products, the basis for the issue of free carbon units is by a tonne of long products of hot-rolled carbon steel that:
- (a) is in coils or straight lengths; and
 - (b) is generally produced in rod, bar and structural (section) mills; and
 - (c) generally have a cross sectional shape such as I, T, Y, U, V, H, C, L, square, rectangular, round, flat, hexagonal, angle, channel, structural beam profile or rail profile; and
 - (d) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (e) is produced from continuously cast carbon steel products that satisfy the requirements mentioned in subclause (8); and
 - (f) is counted as a relevant product only once in relation to the carrying on of the emissions-intensive trade-exposed activity of manufacture of carbon steel from cold ferrous feed; and
 - (g) is not a relevant product for the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; and
 - (h) is of saleable quality.
- (7) For the production of hot-rolled carbon steel products which are flat products, the basis for the issue of free carbon units is by a tonne of flat products of hot-rolled carbon steel that:
- (a) is flat in profile, such as plate and hot rolled coil; and
 - (b) is generally produced in hot strip and plate mills; and
 - (c) is generally at least 600 mm wide; and
 - (d) is generally no thicker than 150 mm; and
 - (e) is produced by carrying on the emissions-intensive trade-exposed activity; and

- (f) is produced from continuously cast carbon steel products that satisfy the requirements mentioned in subclause (8); and
 - (g) is counted as a relevant product only once in relation to the carrying on of the emissions-intensive trade-exposed activity of manufacture of carbon steel from cold ferrous feed; and
 - (h) is not a relevant product for the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; and
 - (i) is of saleable quality.
- (8) For paragraphs (6) (e) and (7) (f), the continuously cast carbon steel products must be produced as part of carrying on:
- (a) the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; or
 - (b) the emissions-intensive trade-exposed activity of manufacture of carbon steel from cold ferrous feed.

Division 22 Petroleum refining

Note Condensate, eligible petroleum feedstocks, stabilised crude petroleum oil and unleaded petrol are explained in Part 2.

- 322 (1) Petroleum refining is the chemical and physical transformation of stabilised crude petroleum oil, which may be supplemented with one or more of condensate, tallow, vegetable oil, eligible petroleum feedstocks or other petroleum feedstocks, to produce a range of refined petroleum products through the following processes:
- (a) the distillation of stabilised crude petroleum oil, condensate, tallow, vegetable oil and other petroleum feedstocks;
 - (b) the adjustment of the molecular weight and structure of hydrocarbons (such as that which occurs through catalytic or hydro-cracking, steam or catalytic reforming, polymerisation, isomerisation or alkylolation);
 - (c) the blending of products from distillation and adjustment of molecular weight and structure to produce Australian and international standard diesel, jet fuel and unleaded petrol;

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- (d) the production of 2 or more of the following refinery products saleable in Australian or international markets:
- (i) hydrogen;
 - (ii) ethane;
 - (iii) propane;
 - (iv) refinery grade propylene;
 - (v) polymer grade propylene;
 - (vi) liquefied petroleum gas;
 - (vii) butane;
 - (viii) naphtha;
 - (ix) aviation gasoline;
 - (x) before oxygenate blend;
 - (xi) kerosene;
 - (xii) heating oil;
 - (xiii) solvents;
 - (xiv) lubricant base stocks;
 - (xv) leaded petrol;
 - (xvi) waxes;
 - (xvii) bitumen.
- (2) Subject to subclause (3), the activity of petroleum refining will only take place in the financial year to which the application relates if both of the following apply:
- (a) each of the processes mentioned in paragraphs (1) (a) to (d) are conducted within the financial year to which the application relates for the facility;
 - (b) the combined volume of diesel, jet fuel, unleaded petrol, lubricant base stocks and bitumen at 15 °C and 1 atmosphere produced from stabilised crude petroleum oil, condensate, tallow, vegetable oil and eligible petroleum feedstocks is:
 - (i) for a facility that does not meet the criteria in subclause 705 (1) or (2) — at least 75% of the total kilolitres of stabilised crude petroleum oil, condensate, tallow, vegetable oil and eligible petroleum feedstocks used within the previous financial year for the facility; or

- (ii) for a facility that does meet the criteria specified in subclause 705 (1) or (2) — is likely to be at least 75% of the total kilolitres of stabilised crude petroleum oil, condensate, tallow, vegetable oil and eligible petroleum feedstocks likely to be used within the financial year to which the application relates for the facility.
- (3) The processes mentioned in paragraphs (1) (a) to (d) are not required to be conducted for every product mentioned in paragraphs (1) (c) and (d) for the activity of petroleum refining to occur in the application year.
- (4) Petroleum refining is specified as an emissions-intensive trade-exposed activity.
- (5) Petroleum refining is a highly emissions-intensive activity.
Note See Part 4.
- (6) Subject to subclause (7), the basis for the issue of free carbon units for petroleum refining is by a kilolitre of:
 - (a) stabilised crude petroleum oil at 15 °C and 1 atmosphere; and
 - (b) condensate at 15 °C and 1 atmosphere; and
 - (c) tallow at 15 °C and 1 atmosphere; and
 - (d) vegetable oil at 15 °C and 1 atmosphere; and
 - (e) eligible petroleum feedstocks at 15 °C and 1 atmosphere.
- (7) A substance mentioned in paragraphs (6) (a) to (e) may be used as the basis for working out the issue of free carbon units for subclause (6) if the substance is, or is to be, refined:
 - (a) by one or both of the processes mentioned in paragraphs (1) (a) and (b); and
 - (b) into either of the following:
 - (i) one or more petroleum products mentioned in paragraphs (1) (c) and (d);
 - (ii) other by-products which result from carrying on the emissions-intensive trade-exposed activity; and

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- (c) in the financial year:
- (i) that applies, for the purpose of subclause 907 (7), to the application made under clause 701; and
 - (ii) in which the combined volume of diesel, jet fuel, unleaded petrol, lubricant base stocks and bitumen, at 15 °C and 1 atmosphere, produced from substances mentioned in paragraphs (6) (a) to (e) is:
 - (A) for new or expected additional production — likely to be at least 75% of the total kilolitres of those substances likely to be used in the financial year to which the application relates; or
 - (B) for production that is not new or expected additional production — at least 75% of the total kilolitres of those substances used in the previous financial year.

Division 23 Production of ethene (ethylene)

- 323 (1) The production of ethene (ethylene) is the chemical transformation of hydrocarbons to produce ethene (ethylene (C₂H₄)) that has a concentration of ethene (ethylene (C₂H₄)) of at least 99%.
- (2) The production of ethene (ethylene) is specified as an emissions-intensive trade-exposed activity.
- (3) The production of ethene (ethylene) is a highly emissions-intensive activity.
- Note* See Part 4.
- (4) The basis for the issue of free carbon units for the production of ethene (ethylene) is by a tonne of 100% equivalent ethene (ethylene (C₂H₄)) that is contained within ethene that:
- (a) has a concentration of ethene (ethylene (C₂H₄)) of at least 99%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 24 Production of polyethylene

- 324 (1) The production of polyethylene is the chemical transformation of ethene (ethylene (C₂H₄)) to produce polyethylene with a standard density of at least 0.910 g/cm³.
- (2) The production of polyethylene is specified as an emissions-intensive trade-exposed activity.
- (3) The production of polyethylene is a moderately emissions-intensive activity.

Note See Part 4.

- (4) The basis for the issue of free carbon units for the production of polyethylene is by a tonne of pelletised polyethylene that:
- (a) has a standard density of at least 0.910 g/cm³; and
- (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
- (c) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

- (5) For this Division:

standard density, for polyethylene, means the density of polyethylene moulded to a thickness of 1.9 mm using Procedure C of Annex A1 to ASTM D4703 *Standard Practice for Compressions Moulding Thermoplastic Materials into Test Specimens, Plaques or Sheets*, as in force from time to time.

Division 25 Production of synthetic rutile

- 325 (1) The production of synthetic rutile is the chemical transformation of ilmenite ore (ore containing FeTiO₃) through the reduction of iron oxides in order to increase the titanium dioxide (TiO₂) concentration to produce synthetic rutile that:
- (a) has a titanium dioxide (TiO₂) concentration of at least 88% but less than 95.5%; and
- (b) has an iron (Fe) concentration greater than 0.5%.
- (2) The production of synthetic rutile is specified as an emissions-intensive trade-exposed activity.

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- (3) The production of synthetic rutile is a highly emissions-intensive activity.

Note See Part 4.

- (4) The basis for the issue of free carbon units for the production of synthetic rutile is by a tonne of synthetic rutile that:
- (a) has a titanium dioxide (TiO₂) concentration of at least 88% but less than 95.5%; and
 - (b) has an iron (Fe) concentration greater than 0.5%; and
 - (c) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (d) is not a relevant product for the emissions-intensive trade-exposed activity of production of white titanium dioxide (TiO₂) pigment; and
 - (e) is of saleable quality.

Note **Relevant product** and **saleable quality** are explained in Part 2.

Division 26 Production of manganese

Note **Saleable quality** is explained in Part 2.

- 326 (1) The production of manganese is any of the following:
- (a) the physical and chemical transformation of manganese (Mn) ore into manganese sinter (Mn₃O₄) that has a concentration of manganese of at least 40%;
 - (b) the physical and chemical transformation of either or both of manganese ore and manganese sinter into either or both of the following:
 - (i) ferromanganese alloy that has a concentration of manganese of at least 67%;
 - (ii) silicomanganese alloy that has a concentration of:
 - (A) manganese of at least 60%; and
 - (B) silicon (Si) of at least 12%.
- (2) The production of manganese is specified as an emissions-intensive trade-exposed activity.
- (3) The production of manganese is a highly emissions-intensive activity.

Note See Part 4.

- (4) For the production of manganese sinter, the basis for the issue of free carbon units is by a tonne of manganese sinter that:
 - (a) has a concentration of manganese of at least 40%; and
 - (b) is produced by, or as part of, carrying on the emissions-intensive trade-exposed activity; and
 - (c) is of saleable quality.
- (5) For the production of ferromanganese alloy, the basis for the issue of free carbon units is by a tonne of ferromanganese alloy that:
 - (a) has a concentration of manganese of at least 67%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is of saleable quality.
- (6) For the production of silicomanganese alloy, the basis for the issue of free carbon units is by a tonne of silicomanganese alloy that:
 - (a) has a concentration of manganese of at least 60%; and
 - (b) has a concentration of silicon (Si) of at least 12%; and
 - (c) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (d) is of saleable quality.

Division 27 Production of clinker

- 327 (1) The production of clinker is the physical and chemical transformation of:
- (a) either or both of calcium carbonate compounds (limestone (CaCO_3)) and other calcium carbonate (CaCO_3) feedstocks; and
 - (b) any of the following:
 - (i) clay;
 - (ii) clay mixed with one or more feedstocks that contain one or more of the following:
 - (A) silicon dioxide (SiO_2);
 - (B) iron (Fe);
 - (C) aluminium oxide (alumina (Al_2O_3));

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- (iii) one or more feedstocks that, when combined, contain all of the following:
- (A) silicon dioxide (SiO_2);
 - (B) iron (Fe);
 - (C) aluminium oxide (alumina (Al_2O_3));
- that are fused together at a temperature higher than 1 000 °C into Portland cement clinker.
- (2) The Portland cement clinker must:
- (a) have a concentration of calcium silicates of at least 60%; and
 - (b) have a concentration of magnesium oxide (MgO) of not more than 4.5%; and
 - (c) be useable in the making of Portland cement.
- (3) The production of clinker is specified as an emissions-intensive trade-exposed activity.
- (4) The production of clinker is a highly emissions-intensive activity.
- Note* See Part 4.
- (5) The basis for the issue of free carbon units for the production of clinker is by a tonne of Portland cement clinker on a dry weight basis that:
- (a) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (b) has a concentration of calcium silicates of at least 60%; and
 - (c) has a concentration of magnesium oxide (MgO) of not more than 4.5%; and
 - (d) is useable in the making of Portland cement; and
 - (e) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 28 Production of lime

- 328 (1) The production of lime is the physical and chemical transformation, through the calcining process, of calcium and magnesium sources (such as calcium carbonate (CaCO_3) and magnesium carbonate (MgCO_3)) into lime that has a concentration of either or both of calcium oxide (CaO) and magnesium oxide (MgO) of at least 60%.
- (2) The production of lime is specified as an emissions-intensive trade-exposed activity.
- (3) The production of lime is a highly emissions-intensive activity.
- Note* See Part 4.
- (4) The basis for the issue of free carbon units for the production of lime is by a tonne of lime on a dry weight basis that:
- has a concentration of either or both of calcium oxide (CaO) and magnesium oxide (MgO) of at least 60%; and
 - is not a relevant product for the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; and
 - is produced by carrying on the emissions-intensive trade-exposed activity; and
 - is of saleable quality.

Note **Relevant product** and **saleable quality** are explained in Part 2.

Division 29 Production of fused alumina

- 329 (1) The production of fused alumina is the physical transformation of alumina (aluminium oxide (Al_2O_3)) by heating it to its fusion point to produce fused alumina that:
- has an alpha alumina crystalline structure; and
 - has a concentration of aluminium oxide of at least 99.0%.
- (2) The production of fused alumina is specified as an emissions-intensive trade-exposed activity.
- (3) The production of fused alumina is a highly emissions-intensive activity.

Note See Part 4.

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- (4) The basis for the issue of free carbon units for the production of fused alumina is by a tonne of fused alumina (aluminium oxide (Al_2O_3)) that:
- (a) has an alpha alumina crystalline structure; and
 - (b) has a concentration of aluminium oxide of at least 99.0%; and
 - (c) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (d) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 30 Production of copper

Note **Saleable quality** is explained in Part 2.

- 330 (1) The production of copper is either or both of the following:
- (a) the physical and chemical transformation of concentrated mineralised copper compounds into either or both of the following:
 - (i) copper cathode that has a concentration of copper greater than 99.90%;
 - (ii) copper anode that has a concentration of copper:
 - (A) of at least 99.00%; and
 - (B) of not more than 99.90%;
 - (b) the physical and chemical transformation of copper anode into copper cathode that has a concentration of copper greater than 99.90% where the copper anode:
 - (i) has a concentration of copper:
 - (A) of at least 99.00%; and
 - (B) of not more than 99.90%; and
 - (ii) was not produced as part of the transformation in subparagraph (a) (i).
- (2) For subclause (1), concentrated mineralised copper compounds include:
- (a) copper sulphide concentrates; and
 - (b) copper electrolyte solution.

- (3) The production of copper is specified as an emissions-intensive trade-exposed activity.
- (4) The production of copper is a highly emissions-intensive activity.
Note See Part 4.
- (5) For the production of copper cathode from concentrated mineralised copper compounds, the basis for the issue of free carbon units is by a tonne of copper cathode that:
- (a) has a concentration of copper greater than 99.90%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is not transformed into copper cathode as part of the transformation mentioned in paragraph (1) (b); and
 - (d) is of saleable quality.
- (6) For the production of copper anode from concentrated mineralised copper compounds, the basis for the issue of free carbon units is by a tonne of copper anode that:
- (a) has a concentration of copper:
 - (i) of at least 99.00%; and
 - (ii) of not more than 99.90%; and
 - (b) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (c) is not subsequently transformed into copper cathode as part of the transformation mentioned in subparagraph (1) (a) (i); and
 - (d) is of saleable quality.
- (7) For the production of copper cathode from copper anode, the basis for the issue of free carbon units is by a tonne of copper cathode that:
- (a) has a concentration of copper of at least 99.90%; and
 - (b) is produced from copper anode that was not produced as part of the transformation mentioned in subparagraph (1) (a) (i); and
 - (c) is produced by carrying on the emissions-intensive trade-exposed activity; and

- (d) is of saleable quality.

Division 31 Production of carbamide (urea)

331 (1) The production of carbamide (urea (CO(NH₂)₂)) is the chemical transformation of carbon dioxide (CO₂) and anhydrous ammonia (NH₃) to produce carbamide solution (urea (CO(NH₂)_{2(aq)})) that:

- (a) has a concentration of carbamide (urea (CO(NH₂)₂)) of at least 80%; and
- (b) is subsequently used to produce either or both of:
- (i) carbamide solutions (urea (CO(NH₂)_{2(aq)})); and
 - (ii) granulated, prilled or other solid forms of carbamide (urea (CO(NH₂)_{2(s)})) of saleable quality;

conducted in accordance with the following overall chemical equations:



- (2) The production of carbamide (urea) is specified as an emissions-intensive trade-exposed activity.
- (3) The production of carbamide (urea) is a moderately emissions-intensive activity.

Note See Part 4.

- (4) The basis for the issue of free carbon units for the production of carbamide (urea) is by a tonne of 100% equivalent carbamide (urea (CO(NH₂)₂)) on a dry weight basis that is:
- (a) contained within either of the following products:
- (i) carbamide solutions (urea (CO(NH₂)_{2(aq)}));
 - (ii) granulated, prilled or other solid forms of carbamide (urea (CO(NH₂)_{2(s)})) of saleable quality; and
- (b) produced by carrying on the emissions-intensive trade-exposed activity; and
- (c) of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 32 Production of sodium carbonate (soda ash) and sodium bicarbonate

332 (1) The production of sodium carbonate (soda ash) and sodium bicarbonate is the chemical and physical transformation of calcium carbonate (CaCO_3), sodium chloride (salt (NaCl)), ammonia (NH_3) and carbon bearing materials (such as coke) into one or more of the following:

- (a) light sodium carbonate (light soda ash (Na_2CO_3)) which has a concentration of sodium carbonate (soda ash (Na_2CO_3)) of at least 98.0%;
- (b) dense sodium carbonate (dense soda ash (Na_2CO_3)) which has a concentration of sodium carbonate (soda ash (Na_2CO_3)) of at least 97.5%;
- (c) refined sodium bicarbonate (NaHCO_3) which has a concentration of sodium bicarbonate (NaHCO_3) of at least 95.0%.

(2) The production of sodium carbonate (soda ash) and sodium bicarbonate is specified as an emissions-intensive trade-exposed activity.

(3) The production of sodium carbonate (soda ash) and sodium bicarbonate is a highly emissions-intensive activity.

Note See Part 4.

(4) The basis for the issue of free carbon units for the production of sodium carbonate (soda ash) and sodium bicarbonate is by a tonne of one or more of the following:

- (a) light sodium carbonate (light soda ash (Na_2CO_3)) that:
 - (i) has a concentration of sodium carbonate (soda ash (Na_2CO_3)) of at least 98.0%; and
 - (ii) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (iii) is of saleable quality;
- (b) dense sodium carbonate (dense soda ash (Na_2CO_3)) that:
 - (i) has a concentration of sodium carbonate (soda ash (Na_2CO_3)) of at least 97.5%; and
 - (ii) is produced by carrying on the emissions-intensive trade-exposed activity; and

- (iii) is of saleable quality;
- (c) refined sodium bicarbonate (NaHCO_3) that:
 - (i) has a concentration of sodium bicarbonate (NaHCO_3) of at least 95.0%; and
 - (ii) is produced by carrying on the emissions-intensive trade-exposed activity; and
 - (iii) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 33 Production of ammonium nitrate

- 333 (1) The production of ammonium nitrate is the chemical transformation of anhydrous ammonia (NH_3) to ammonium nitrate solution ($\text{NH}_4\text{NO}_3(\text{aq})$) that has a concentration of ammonium nitrate (NH_4NO_3) of 60% or more.
- (2) The production of ammonium nitrate is specified as an emissions-intensive trade-exposed activity.
 - (3) The production of ammonium nitrate is a highly emissions-intensive activity.

Note See Part 4.

- (4) For the production of ammonium nitrate, the basis for the issue of free carbon units is by a tonne of 100% equivalent ammonium nitrate that is:
 - (a) produced as part of carrying on the emissions-intensive trade-exposed activity; and
 - (b) of saleable quality.

Note **Saleable quality** is explained in Part 2.

Division 34 Production of ammonia

- 334 (1) The production of ammonia is the chemical transformation of hydrocarbons (or other hydrogen feedstock) to hydrogen (H_2) that is subsequently reacted with nitrogen (N_2) to produce anhydrous ammonia (NH_3) that has a concentration of ammonia (NH_3) of at least 98%.

(2) The production of ammonia is specified as an emissions-intensive trade-exposed activity.

(3) The production of ammonia is a highly emissions-intensive activity.

Note See Part 4.

(4) For the production of ammonia, the basis for the issue of free carbon units is by a tonne of 100% equivalent anhydrous ammonia that is:

- (a) produced as part of carrying on the emissions-intensive trade-exposed activity; and
- (b) of saleable quality.

Note *Saleable quality* is explained in Part 2.

Division 35 Production of iron ore pellets

335 (1) The production of iron ore pellets is the physical and chemical transformation of iron ore to produce iron ore pellets that are for the production of steel and that have:

- (a) a concentration of iron (Fe) of at least 63%; and
- (b) a concentration of alumina (aluminium oxide (Al_2O_3)) of no more than 2%; and
- (c) a concentration of silicon dioxide (silica (SiO_2)) of no more than 7%; and
- (d) an average diameter of between 9 and 16 millimetres.

(2) The production of iron ore pellets is specified as an emissions-intensive trade-exposed activity.

(3) The production of iron ore pellets is a moderately emissions-intensive activity.

Note See Part 4.

(4) For the production of iron ore pellets, the basis for the issue of free carbon units is by a tonne of iron ore pellets, on a dry weight basis, that:

- (a) has a concentration of iron (Fe) of at least 63%; and
- (b) has a concentration of alumina (aluminium oxide (Al_2O_3)) of no more than 2%; and

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- (c) has a concentration of silicon dioxide (silica (SiO_2)) of no more than 7%; and
 - (d) has an average diameter of between 9 and 16 millimetres; and
 - (e) is produced as part of carrying on the emissions-intensive trade-exposed activity; and
 - (f) is not a relevant product for the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing; and
 - (g) is of saleable quality.

Note **Relevant product** and **saleable quality** are explained in Part 2.

- (5) For this Division:

iron ore means any form of iron ore product that has not been:

- (a) semi-processed into iron ore balls; or
- (b) exposed to a hardening process by the application of heat or pressure; and

includes magnetite ore that has been concentrated and hematite ore that has been crushed to varying extents.

Division 36 Production of liquefied natural gas

- 336 (1) The production of liquefied natural gas is the physical transformation of natural gas (in a gaseous state) into liquefied natural gas (in a liquid state) that has a concentration of methane (CH_4) of at least 70%.
- (2) The production of liquefied natural gas is specified as an emissions-intensive trade-exposed activity.
 - (3) The production of liquefied natural gas is a moderately emissions-intensive activity.
- Note* See Part 4.
- (4) For the production of liquefied natural gas, the basis for the issue of free carbon units is by a tonne of liquefied natural gas, that:
 - (a) has a concentration of methane (CH_4) of at least 70%; and
 - (b) is produced as part of carrying on the emissions-intensive trade-exposed activity; and

- (c) is transported, as a gas or liquid, from the facility where the natural gas was liquefied and is not taken back to that facility.

Division 37 Production of magnetite concentrate

337 (1) The production of magnetite concentrate is the physical transformation of magnetite ore (ore containing Fe_3O_4 that has a key property of ferrimagnetism) to produce saleable magnetite (Fe_3O_4) concentrate that:

- (a) has a concentration of iron (Fe) of at least 60% on a dry weight basis; and
- (b) has a particle size of less than 75 microns for at least 80% of the concentrate.

Note Ferrimagnetism is ions of iron (Fe^{2+} and Fe^{3+}) spontaneously aligning in the sublattice of a crystalline solid to produce a net magnetic moment that is observed as permanent magnetisation of the solid at normal room temperature.

- (2) The production of magnetite concentrate is specified as an emissions-intensive trade-exposed activity.
- (3) The production of magnetite concentrate is a moderately emissions-intensive activity.

Note See Part 4.

(4) The basis for the issue of free carbon units for the production of magnetite concentrate is by a tonne of 100% equivalent iron (Fe) contained in saleable magnetite (Fe_3O_4) concentrate that:

- (a) has a concentration of iron (Fe) of at least 60% on a dry weight basis; and
- (b) has a particle size of less than 75 microns for at least 80% of the concentrate; and
- (c) is produced as part of carrying on the emissions-intensive trade-exposed activity; and
- (d) is of saleable quality.

Note **Saleable quality** is explained in Part 2.

Part 4 Allocative baselines

401 (1) The allocative baselines for emissions-intensive trade-exposed activities are set out in the following table and subclause (2).

Note The baselines are relevant to the formula in clause 906 for the issue of free carbon units.

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
1	Highly emission-intensive activities				
1.1	Production of bulk flat glass	Bulk flat glass of saleable quality	0.841	0.276	n/a
1.2	Production of methanol	100% equivalent methanol	0.389	0.490	0.0268
1.3	Production of carbon black	Dry pelletised carbon black of saleable quality	2.66	0.514	n/a
1.4	Production of silicon	Silicon of saleable quality	1.42	11.7	n/a
1.5	Smelting zinc	Zinc of saleable quality	0.120	4.25	n/a
1.6	Manufacture of newsprint	Air dried uncoated newsprint of saleable quality	0.496	0.697	n/a
		Bone dried equivalent pulp from either or both of woodchips and sawdust	0.0595	2.48	n/a

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
		Bone dried equivalent pulp from recovered paper	0.0404	0.431	n/a
1.7	Aluminium smelting	Primary aluminium (Al)	2.00	15.0	n/a
1.8	Production of magnesia	Dry caustic calcined magnesia of saleable quality	1.44	0.0757	n/a
		Dry deadburned magnesia of saleable quality	0.103	0.202	n/a
		Dry electrofused magnesia of saleable quality	0.0751	2.45	n/a
1.9	Dry pulp manufacturing	Dry pulp of saleable quality	0.873	0.404	n/a
		Air dried equivalent pulp	0.130	0.448	n/a
1.10	Cartonboard manufacturing	Cartonboard of saleable quality	0.866	0.774	n/a
		Air dried equivalent pulp from either or both of woodchips and sawdust	0.130	0.448	n/a
1.11	Packaging and industrial paper manufacturing	Packaging and industrial paper of saleable quality	0.338	0.554	n/a

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
		Air dried equivalent pulp from either or both of woodchips and sawdust	0.130	0.448	n/a
1.12	Printing and writing paper manufacturing	Printing and writing paper of saleable quality	0.617	0.880	n/a
		Air dried equivalent pulp from either or both of woodchips and sawdust	0.130	0.448	n/a
1.13	Alumina refining	Alumina of saleable quality	0.630	0.228	n/a
1.14	Manufacture of carbon steel from cold ferrous feed	Continuously cast carbon steel products and ingots of carbon steel of saleable quality	0.0836	0.532	n/a
		<i>Note</i> Subclause (2) applies different baselines from 1 July 2016			
		Long products of hot-rolled carbon steel of saleable quality	0.0756	0.133	n/a
		Flat products of hot-rolled carbon steel of saleable quality	0.0317	0.116	n/a

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
1.15	Production of clinker	Dry Portland cement clinker of saleable quality	0.886	0.0709	n/a
1.16	Production of copper	Copper cathode produced from copper compounds of saleable quality	0.480	1.69	n/a
		Copper anode produced from copper compounds of saleable quality	0.422	1.31	n/a
		Copper cathode produced from brought in copper anode of saleable quality	0.0573	0.387	n/a
1.17	Production of ethene (ethylene)	100% equivalent ethene (ethylene) of saleable quality	1.83	0.275	0.0617
1.18	Production of fused alumina	Fused alumina of saleable quality	0.0138	2.03	n/a
1.19	Integrated iron and steel manufacturing	Dry iron ore sinter	0.227	0.0397	n/a
		Dry iron ore pellets	0.114	0.0742	n/a
		Dry coke oven coke	0.462	0.0397	n/a
		Dry lime	0.825	0.0405	n/a

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
		Continuously cast carbon steel products and ingots of carbon steel of saleable quality <i>Note</i> Subclause (2) applies different baselines from 1 July 2016	1.56	0.145	n/a
		Long products of hot-rolled carbon steel of saleable quality	0.0756	0.133	n/a
		Flat products of hot-rolled carbon steel of saleable quality	0.0317	0.116	n/a
1.20	Production of lime	Dry lime of saleable quality	1.21	0.0476	n/a
1.21	Production of manganese	Manganese sinter of saleable quality	0.264	0.0300	n/a
		Ferromanganese alloy of saleable quality	1.42	2.61	n/a
		Silicomanganese alloy of saleable quality	1.85	4.31	n/a

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
1.22	Petroleum refining	Combined stabilised crude petroleum oil, condensate, tallow, vegetable oil and eligible petroleum feedstocks	0.160	0.0421	n/a
1.23	Production of sodium carbonate (soda ash) and sodium bicarbonate	Combined light sodium carbonate, dense sodium carbonate and refined sodium bicarbonate of saleable quality	0.828	0.130	n/a
1.24	Production of synthetic rutile	Synthetic rutile of saleable quality	1.57	0.304	n/a
1.25	Production of ammonium nitrate	100% equivalent ammonium nitrate of saleable quality	2.10	0.114	n/a
1.26	Production of ammonia	100% equivalent anhydrous ammonia of saleable quality	1.79	0.224	n/a
2 Moderately emissions-intensive activities					
2.1	Production of glass containers	Blown and pressed glass containers of saleable quality	0.495	0.308	n/a

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
2.2	Production of white titanium dioxide pigment	White titanium dioxide pigment of saleable quality	1.62	0.986	n/a
2.3	Integrated production of lead and zinc	Lead metal of saleable quality	1.12	0.355	n/a
		100% equivalent zinc in fume	3.07	0.820	n/a
2.4	Production of high purity ethanol	100% equivalent ethanol	0.728	0.168	n/a
2.5	Tissue paper manufacturing	Uncoated tissue paper of saleable quality	0.646	1.67	n/a
		Air dried equivalent pulp from either or both of woodchips and sawdust	0.130	0.448	n/a
2.6	Production of carbamide (urea)	100% equivalent carbamide of saleable quality	0.315	0.285	n/a
2.7	Production of polyethylene	Pelletised polyethylene of saleable quality	0.129	0.646	n/a
2.8	Production of iron ore pellets	Dry weight iron ore pellets of saleable quality	0.0745	0.0498	n/a
2.9	Production of liquefied natural gas	Liquefied natural gas	0.378	0.0640	n/a

Item	Activity	Basis for issue of free carbon units (tonne or kilolitre ¹)	Baselines		
			EI ^a (tCO ₂ -e/ basis)	EP ^a (MWh/basis)	NGP ^a (TJ/basis)
2.10	Production of magnetite concentrate	100% equivalent iron contained in saleable magnetite concentrate	0.000323	0.0826	n/a

Note 1 Activities in items 1.22 and 2.4 are measured by the kilolitre. All other activities are measured by the tonne.

Note 2 For item 1.19, *coke oven coke* is defined in subclause 320 (14).

Increased crude steel baselines from 1 July 2016

- (2) The following allocative baselines apply for the financial year starting on 1 July 2016 and each subsequent financial year:
- (a) production of carbon steel from cold ferrous feed that results in continuously cast carbon steel products and ingots of carbon steel — EI^a 0.0920 and EP^a 0.585;
 - (b) integrated iron and steel manufacturing to produce continuously cast carbon steel products and ingots of carbon steel — EI^a 1.72 and EP^a 0.160.

Part 5 Eligibility to apply for free carbon units

Division 1 General

501 A person is an *eligible person*, and may apply for free carbon units, if the person is eligible in accordance with each requirement set out in this Part that relates to the person.

502 For this Part, if a facility (the *first facility*) is used for the purpose of contributing to another facility carrying on an emissions-intensive trade-exposed activity, the first facility is not, by that contribution alone, to be treated as carrying on an emissions-intensive trade-exposed activity.

Example

The production of utility gases to contribute to an emissions-intensive trade-exposed activity could be contracted to a third party that is co-located at the site of the activity.

The gas producer would not be treated as carrying on the primary activity solely because gas is being produced — even though the production of gas is integral to the process and the producer is co-located at the site.

Division 2 Personal eligibility — existing activity in previous financial year

503 This Division applies if an emissions-intensive trade-exposed activity was carried on wholly or partly at a facility in the financial year (the *previous financial year*) before the financial year to which the application relates.

504 A person is eligible if both of the following apply:

- (a) on 30 June of the previous financial year, the person had operational control over the facility;
- (b) no liability transfer certificate was in force in relation to the facility on 30 June of the previous financial year.

505 A person is eligible if both of the following apply:

- (a) on 30 June of the previous financial year, the person was a participant in a designated joint venture in relation to the facility;

- (b) the person has a participating percentage determined by the Regulator in relation to that facility that is greater than zero.

Note A participating percentage is determined under section 76 or 77 of the Act.

- 506 If clauses 504 and 505 do not apply, a person is eligible if the person is the holder of a liability transfer certificate that was in force on 30 June of the previous financial year in relation to the facility.

Note If this Division does not apply to a person: see Division 3.

Division 3 Personal eligibility — no existing activity in previous financial year

- 507 This Division applies if no emissions-intensive trade-exposed activity was carried on wholly or partly at a facility in the financial year (the *previous financial year*) before the financial year to which the application relates.

- 508 A person is eligible if the Regulator is satisfied that, when the facility first starts to carry on an emissions-intensive trade-exposed activity in the financial year to which the application relates, the person will be the holder of a liability transfer certificate that is in force.

- 509 A person is eligible if:

- (a) no liability transfer certificate will be in force in relation to the facility when the facility first starts to carry on an emissions-intensive trade-exposed activity in the financial year to which the application relates; and
- (b) the Regulator is satisfied that, when the facility first starts to carry on an emissions-intensive trade-exposed activity in the financial year to which the application relates, the person will have operational control over the facility.

- 510 A person is eligible if:

- (a) no liability transfer certificate will be in force in relation to the facility when the facility first starts to carry on an emissions-intensive trade-exposed activity in the financial year to which the application relates; and

- (b) the Regulator is satisfied that, when the facility first starts to carry on an emissions-intensive trade-exposed activity in the financial year to which the application relates, the person will be a participant in a designated joint venture in relation to the facility; and
- (c) the person has a participating percentage determined by the Regulator in relation to the facility that is greater than zero.

511 The carrying on of an emissions-intensive trade-exposed activity at a facility for the purpose only of testing before the facility is commissioned or recommissioned is to be disregarded for this Division if the person carrying on the activity will not have operational control over the facility when the facility is commissioned or recommissioned.

Part 6 Approval of application form for free carbon units

601 The Regulator may approve one or more forms for making an application for free carbon units.

Note The application forms will be available on the Regulator's website.

602 The application form must require the person completing it, if there is more than one applicant, to set out a formula or other arrangement to apportion free carbon units between applicants.

603 (1) The application form must require the person completing it to give the Regulator:

- (a) a statutory declaration in accordance with subclause (2); and
- (b) the audit report by an audit company or auditor mentioned in subclause 604 (3); and
- (c) any other document in relation to a matter identified by the form as requiring the giving of the document.

(2) For paragraph (1) (a), the statutory declaration must:

- (a) be verified for each applicant by one of the following:
 - (i) a director of the applicant;
 - (ii) the applicant's chief executive officer;
 - (iii) the applicant's chief financial officer;
 - (iv) the applicant's company secretary; and
- (b) state that, based on all reasonable steps having been taken to verify the information in the application, the application is accurate and complete as far as the person verifying knows.

604 (1) The application form must require an audit to be conducted in accordance with this clause.

(2) An applicant must:

- (a) appoint an auditor who meets the requirements of subclauses (3) and (4); and
- (b) include the auditor's report with the applicant's application.

- (3) The audit must be conducted by an auditor that is:
 - (a) an authorised audit company under section 1299C of the *Corporations Act 2001*; or
 - (b) a registered company auditor under section 1280 of the *Corporations Act 2001*; or
 - (c) a registered greenhouse and energy auditor, within the meaning of the NGER Act, who is registered in Category 2 or 3 under the NGER Regulations.
- (4) The auditor must be independent of the applicant or applicants to the extent that a conflict of interest situation (within the meaning of the NGER Regulations) does not arise in relation to the auditing of the application.
- (5) The auditor preparing the applicant's audit report must:
 - (a) ensure that subclause (4) is complied with; and
 - (b) conduct the audit in accordance with subclauses (6) and (7).
- (6) The audit must be conducted in accordance with the relevant requirements for assurance engagements under:
 - (a) if reporting on emissions and energy consumption — the *National Greenhouse and Energy Reporting (Audit) Determination 2009*; and
 - (b) if reporting on production or expected production — *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information* and any other relevant standards issued by the Australian Auditing and Assurance Standards Board (AUASB).
- (7) The auditor must set out in the audit report, under a separate heading from any limited assurance conclusions provided, the auditor's reasonable assurance opinion as to whether:
 - (a) the activities set out in the application that are claimed to be an emissions-intensive trade-exposed activity comply, in all material respects, with each of the requirements in the description of the activity set out in Part 3; and

- (b) the application presents fairly, in all material respects, the amount or volume of the relevant product produced in each previous financial year that is relevant to the application in accordance with:
 - (i) the requirements for that amount or volume set out in Part 3; and
 - (ii) the measurement policies adopted and disclosed by the applicant in the application; and
 - (c) for an application to which clause 911 applies — the application presents fairly, in all material respects, the amount that is worked out under subclause 911 (2) in accordance with:
 - (i) the requirements for that amount set out in clause 911; and
 - (ii) the measurement policies adopted and disclosed by the applicant in the application.
- (8) For an application to which clause 705 or 706 applies, the auditor must set out in the audit report, under a separate heading from any reasonable assurance opinions provided, the auditor's limited assurance conclusion as to whether, based on the audit procedures performed, anything causes it to believe that:
- (a) the applicant's assumptions do not provide a reasonable basis for the preparation of the expected production amount or volume of the relevant product; and
 - (b) the expected production is not properly prepared, in all material respects, on the basis of the assumptions described in the application; and
 - (c) the expected production is not presented fairly, in all material respects, in accordance with the measurement policies adopted and disclosed by the applicant in the application.
- (9) For paragraph (6) (a), a reference in the definition of ***misstatement*** in the *National Greenhouse and Energy Reporting (Audit) Determination 2009* to 'the Act' or 'the Regulations' is to be read as a reference to the *Clean Energy Act 2011* and these Regulations.

(10) For this clause:

limited assurance conclusion has the meaning given by subsection 3.18 (2) of the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

reasonable assurance conclusion has the meaning given by subsection 3.17 (2) of the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

Part 7 Application for free carbon units

Division 1 General

- 701 An eligible person may apply for free carbon units for an eligible financial year.
- 702 (1) The application must:
- (a) be made by completing an approved application form that relates to the emissions-intensive trade-exposed activity; and
 - (b) include the matters set out in paragraphs 603 (1) (a) to (c) that are required by the application form; and
 - (c) be given to the Regulator not later than 31 October in the financial year.
- (2) Despite paragraph (1) (c):
- (a) an eligible person may, before 31 October in the financial year, apply in writing to the Regulator to allow the eligible person to give the application to the Regulator by 31 December in the financial year; and
 - (b) the Regulator must, as soon as practicable, decide whether to allow the eligible person to give the application to the Regulator by 31 December, having regard to:
 - (i) the reasons for the extension set out in the application; and
 - (ii) the other circumstances of the request; and
 - (iii) any other matter the Regulator considers relevant; and
 - (c) the Regulator must notify the eligible person of its decision as soon as practicable after making it.
- (3) If:
- (a) an eligible person does not apply in writing to the Regulator in accordance with paragraph (2) (a) to allow the eligible person to give an application to the Regulator by 31 December in a financial year; and

- (b) the eligible person attempts to give an application to the Regulator in relation to the financial year later than 31 October in the financial year;

the application has no effect.

- (4) If:

- (a) an eligible person has applied in accordance with paragraph (2) (a) to allow the eligible person to give an application to the Regulator by 31 December in a financial year; and

- (b) the Regulator has refused the application under paragraph (2) (b); and

- (c) the eligible person attempts to give an application to the Regulator in relation to the financial year later than 31 October in the financial year;

the application mentioned in paragraph (c) has no effect.

- (5) An eligible person to whom subclause (3) or (4) applies is not permitted to apply again for free carbon units in the financial year.

Division 2 Shared eligibility

- 703 (1) If:

- (a) an emissions-intensive trade-exposed activity is carried on at a facility; and

- (b) more than one person is an eligible person in relation to the facility in accordance with Divisions 2 and 3 of Part 5;

the eligible persons must make a combined application for the issue of free carbon units.

- (2) If:

- (a) activities are carried on at 2 or more facilities; and

- (b) the activities are an emissions-intensive trade-exposed activity only if the activities at all of those facilities are considered; and

- (c) more than one person is an eligible person in relation to the facilities, considered together, in accordance with Divisions 2 and 3 of Part 5;

the eligible persons must make a combined application for the issue of free carbon units.

(3) If:

- (a) an emissions-intensive trade-exposed activity is carried on at 2 or more facilities; and
- (b) 2 or more persons wish to have the emissions-intensive trade-exposed activity at those facilities considered together for the purpose of applying for the issue of free carbon units; and
- (c) more than one person is an eligible person in relation to the facilities in accordance with Divisions 2 and 3 of Part 5;

the eligible persons must make a combined application for the issue of free carbon units.

704 A combined application for the issue of free carbon units must include the details of all eligible persons in relation to an emissions-intensive trade-exposed activity at the facility, or facilities, covered by the application.

Division 3 Special arrangements for facility without continuous emissions-intensive trade-exposed activity

705 (1) This clause applies if:

- (a) an application relates to the carrying on of an emissions-intensive trade-exposed activity at a particular facility or series of facilities; and
- (b) the emissions-intensive trade-exposed activity was not carried on at that facility or series of facilities in the financial year before the financial year to which the application relates.

- (2) This clause also applies if:
- (a) the application relates to the carrying on of an emissions-intensive trade-exposed activity at a particular facility or series of facilities; and
 - (b) the emissions-intensive trade-exposed activity was carried on at that facility or series of facilities in the financial year (the *previous financial year*) before the financial year to which the application relates:
 - (i) for the first time; or
 - (ii) after a period of more than 12 months during which the activity was not carried out at that facility or series of facilities; and
 - (c) no application for the issue of free carbon units was made in relation to the carrying on of the emissions-intensive trade-exposed activity at that facility or series of facilities in the previous financial year.

- (3) The application must include an assessment of the amount or volume of the relevant product that is reasonably likely to be produced in the financial year to which the application relates.

Note The assessment is the basis on which factor EAP_t^{ia} is identified for the purposes of the allocation formula in Division 4 of Part 9 for calculating the number of free carbon units to be issued to a person.

- (4) The application must also include:
- (a) information about whether any contracts or other arrangements have been entered into to buy the facility's output; and

Note The information need not include the price of the output.

- (b) information about the construction, commissioning or recommissioning of the principal equipment that is to carry on the emissions-intensive trade-exposed activity, including a reasonable estimate of when and a description of how the equipment will be constructed, commissioned or recommissioned; and
- (c) general information about the arrangements that are in place to finance the installation of any equipment at the facility; and

- (d) a statement of any factors of which the applicant is aware that may reasonably be expected to stop or delay the carrying out of the emissions-intensive trade-exposed activity or the installation of any equipment at the facility.
- (5) The information mentioned in subclause (4) is not required to be included in the application if the inclusion is prohibited by or under:
 - (a) a law of the Commonwealth, or of a State or Territory; or
 - (b) a contract; or
 - (c) any other legally binding obligation.

Division 4 Special arrangements for significant expansion

706 (1) This clause applies if:

- (a) one or more facilities to which an application relates is taken to have undergone a significant expansion; and
- (b) the applicant wishes to apply for free carbon units for expected production in respect of the expansion.

Note **Significant expansion** is explained in clause 203.

(2) The application must:

- (a) describe any relevant equipment that has been, or will be, installed or recommissioned and explain how the relevant equipment will increase the production of the relevant product in the financial year to which the application relates; and
- (b) identify any relevant product the production of which is expected to increase in the financial year to which the application relates; and
- (c) set out the amount or volume of the relevant product produced in facilities that are taken to have undergone a significant expansion during the financial year before the financial year to which the application relates; and
- (d) set out the amount or volume of the relevant product that is reasonably likely to be produced in facilities that are taken to have undergone a significant expansion during the financial year to which the application relates; and

- (e) state whether any other equipment is to be decommissioned or operated at a lower rate after the new equipment is installed or relevant existing equipment is recommissioned; and
- (f) state the maximum productive capacity of the equipment that:
 - (i) is at the facility before the installation of the equipment mentioned in clause 203; and
 - (ii) may be used to produce the relevant product; and
- (g) state the maximum productive capacity of all of the equipment that is to be used to produce the relevant product after:
 - (i) the commissioning of the equipment that is to be installed; and
 - (ii) any existing equipment that is to be decommissioned has been decommissioned; and
- (h) identify any contracts or other arrangements that have been entered into to buy the output of the facility; and

Note The information need not include the price of the output.

- (i) for new equipment that is being installed at the time of the application — give information about the commissioning of the principal equipment that is to be used to carry on the emissions-intensive trade-exposed activity, including a reasonable estimate of when and a description of how the equipment will be commissioned; and
- (j) include general information about the arrangements that are in place to finance the installation of any equipment at the facility; and
- (k) include a statement of any factors of which the applicant is aware that may reasonably be expected to stop or delay the carrying out of the emissions-intensive trade-exposed activity or the installation of any equipment at the facility.

Note The difference between paragraphs (c) and (d) is the basis on which factor EAP_t^{ia} is identified for the purposes of the allocation formula in Division 4 of Part 9 for calculating the number of free carbon units to be issued to a person.

- (3) However, if the facility produces more than one relevant product, the information in subclause (2) must relate only to each relevant product the expected production of which is directly affected by the use of the equipment.
- (4) The information mentioned in subclause (2) is not required to be included in the application if the inclusion is prohibited by or under:
 - (a) a law of the Commonwealth, or of a State or Territory; or
 - (b) a contract; or
 - (c) any other legally binding obligation.

Division 5 Special arrangements for new facilities

- 707 (1) This clause applies if an application relates to the carrying on of an emissions-intensive trade-exposed activity at a new facility or series of new facilities.
- (2) The application must only cover:
- (a) for a new facility — an emissions-intensive trade-exposed activity at that new facility; and
 - (b) for a series of new facilities — an emissions-intensive trade-exposed activity at that series of new facilities.
- Note* *New facility* and *series of new facilities* are explained in clause 205.
- (3) The person completing the application form must give the Regulator a report, in a manner and form approved by the Regulator, containing the calculations relating to amounts mentioned in paragraphs 911 (2) (c), (d) and (e) for the financial year to which the application relates.

Division 6 Special arrangements for sub-threshold facilities

- 708 (1) This clause applies if:
- (a) an application relates to the carrying on of an emissions-intensive trade-exposed activity at a facility; and
 - (b) there is no requirement under the NGER Act to report emissions from the facility; and

- (c) an application was approved in relation to the carrying on of the same emissions-intensive trade-exposed activity carried out at the facility for the financial year before the financial year to which the current application relates (the *relevant previous financial year*); and
 - (d) no event mentioned in subclause 1305 (2) occurred in relation to the carrying on of the same emissions-intensive trade-exposed activity carried out at the facility in the financial year before the financial year to which the current application relates (the *relevant previous financial year*);
 - (e) the applicant chooses to use Method 1 in clause 912 to work out the sub-threshold emissions adjustment.
- (2) The person completing the application form must give the Regulator a report, in a manner and form approved by the Regulator, setting out the scope 1 emissions, by source, from the operation of the facility for the relevant previous financial year.

Note Under Division 8 of the NGER Measurement Determination in force at the time the emissions occur must be used to work out scope 1 emissions, by source, from the operation of the facility.

Division 7 Measuring emissions in applications

709 (1) This clause applies if:

- (a) an applicant is required to estimate emissions from a facility under subclause 909 (9), subclause 911 (2) or clause 912; and
 - (b) in the previous financial year the emissions from the facility were required to be reported under section 19, 22A, 22E, 22G or 22X of the NGER Act.
- (2) For any covered emissions from a facility, the method used to estimate the emissions by source from the operation of the facility must be the same method that is used to estimate the emissions by source from the operation of the facility for the report made under section 22A of the NGER Act.

(3) For:

- (a) emissions from fuels mentioned in subsection 30 (2) of the Act; and
- (b) emissions mentioned in paragraphs 30 (11) (a) to (c) of the Act, other than emissions attributable to aluminium production;

that are consumed at a facility, the method used to estimate the emissions by source from the operation of the facility must be the same method that is used to estimate the emissions by source from the operation of the facility for the report made under section 19, 22E, 22G or 22X of the NGER Act.

(4) In this clause:

method means a method set out in the NGER Measurement Determination for estimating emissions from the operation of the facility in relation to the source of the emissions.

Part 8 Consideration of application for free carbon units

Division 1 Further information about application

- 801 (1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (2) The Regulator:
- (a) must ensure that the further information is relevant to the application; and
 - (b) must ensure that the power to require the further information is exercised in a reasonable way.
- (3) If the applicant fails to comply with the requirement:
- (a) the Regulator may:
 - (i) refuse to consider the application; or
 - (ii) refuse to take any action, or any further action, in relation to the application; and
 - (b) the Regulator must inform the applicant, in writing, of its decision as soon as practicable after making it.
- (4) Despite subclause (3), if an applicant that has failed to comply with the requirement gives the Regulator the further information before the Regulator has made a decision on the application under clause 804:
- (a) the Regulator may decide to consider the application, using the information that has been provided; and
 - (b) in considering whether to consider the application, the Regulator must have regard to:
 - (i) whether the time period specified in the notice mentioned in subclause (1) was reasonable; and
 - (ii) the reasons why the applicant breached the requirement; and
 - (iii) any other relevant matter; and

- (c) the Regulator must inform the applicant, in writing, of its decision as soon as practicable after making it.
- 802 (1) If the Regulator believes that it may be necessary for it to act under subclause 902 (7) in relation to the application, the Regulator must:
- (a) notify the applicant, in writing, as soon as practicable; and
 - (b) invite the applicant to give the Regulator further information or advice about the matter within 30 days after the date of the invitation; and
 - (c) inform the applicant that, if the applicant gives the Regulator any further information or advice after the 30 days, the Regulator is not required to consider it.
- (2) The invitation is not an undertaking or guarantee that the Regulator will make a particular decision on the application.
- (3) The Regulator:
- (a) must take the further information or advice into account if the applicant gives it to the Regulator within the 30 days; and
 - (b) may take the further information or advice into account if the applicant gives it to the Regulator after the 30 days.

Division 2 Revision of application — inadequate information about relevant product

- 803 (1) This clause applies if the Regulator:
- (a) is not satisfied that an amount or volume of the relevant product that is relevant to the application of Division 4 of Part 9 is:
 - (i) accurate; or
 - (ii) the best estimate of the relevant amount or volume possible in the circumstances; or
 - (b) is not satisfied that the amount or volume of the relevant product has been measured, or will be measured, correctly, having regard to the following:
 - (i) any requirements mentioned in Part 3 in relation to the product;

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- (ii) any relevant requirements imposed by or under the *National Measurement Act 1960*;
 - (iii) the way in which the relevant product is measured by the industry;
 - (iv) accredited industry test methods;
 - (v) any guidelines issued by the Regulator;
 - (vi) the administrative costs in implementing more accurate testing methods at the facility;
 - (vii) the frequency of the measurement;
 - (viii) any other relevant matter; or
- (c) is not satisfied that the manner in which the qualities of the relevant product were measured, or are to be measured, is reasonable, having regard to:
- (i) the matters mentioned in subparagraphs (b) (i) to (viii); and
 - (ii) the risk of the product of a facility not satisfying the relevant qualities; or
- (d) is not satisfied, in accordance with clause 903 or 904, as to an amount or volume of relevant product, relating to expected production, that is provided by the applicant under clause 705 or 706.
- (2) The Regulator must consider whether it should:
- (a) consider the application on the basis of substituting a different amount or volume that it considers to be:
 - (i) more accurate; or
 - (ii) a better estimate; or
 - (b) refuse the application on the basis that the applicant has not provided sufficient information for the Regulator to make a reasonable estimate of the amount or volume of the relevant product for Division 4 of Part 9.
- (3) If the Regulator proposes to consider the application on the basis of substituting an amount or volume, the Regulator must:
- (a) make reasonable inquiries to ascertain the more accurate amount or volume, or the better estimate of the amount or volume; and

- (b) notify the applicant, in writing, of:
 - (i) the reasons why it is not satisfied under subclause (1); and
 - (ii) the Regulator's specific concerns about the adequacy of the information provided by the applicant for the purpose of making an estimate of the amount or volume of the relevant product for Division 4 of Part 9; and
 - (iii) the proposal to substitute its own amount or volume; and
 - (iv) any proposed amount or volume that the Regulator is considering; and
 - (c) invite the applicant to give the Regulator further information or advice about the appropriate amount or volume of the relevant product; and
 - (d) inform the applicant that, if the applicant gives the Regulator any further information or advice after the period set in the notice, the Regulator is not required to consider it; and
 - (e) inform the applicant that, if there is insufficient information for the Regulator to make a reasonable estimate of the amount or volume of the relevant product for Division 4 of Part 9, the Regulator will refuse the application.
- (4) The Regulator must take all reasonable steps to notify the applicant under paragraph (3) (b) within 60 days after the Regulator received the application.
- (5) The Regulator must set a reasonable period in the notice within which the applicant must give the Regulator any further information or advice.
- (6) The invitation in paragraph (3) (c) is not an undertaking or guarantee that the Regulator will make a particular decision on the application.
- (7) The Regulator:
- (a) must take the further information or advice into account if the applicant gives it to the Regulator within the period set in the notice; and

- (b) may take the further information or advice into account if the applicant gives it to the Regulator after the period set in the notice.
- (8) After the earlier of the applicant giving the Regulator further information or advice and the end of the period specified in the notice, the Regulator must decide:
 - (a) to consider the application on the basis of substituting the amount or volume; or
 - (b) to accept the amount or volume of the relevant product provided by the applicant in the application; or
 - (c) to refuse to consider the application on the basis that the applicant has not provided sufficient information for the Regulator to make a reasonable estimate of the amount or volume of the relevant product for Division 4 of Part 9.

Division 3 Decision on application for free carbon units

- 804 (1) The Regulator must:
- (a) approve an application, or
 - (b) refuse the application.
- (2) The Regulator must take all reasonable steps to make a decision under subsection (1):
- (a) within 60 days after receiving the application; or
 - (b) if further information is requested or a revised application is invited in a notice under subclause 801 (1), 802 (1), 803 (3) or 805 (3) — within 45 days after:
 - (i) the end of the period specified in the notice; or
 - (ii) receiving the further information or revised application.
- (3) The Regulator must approve an application if:
- (a) the Regulator is satisfied that:
 - (i) the applicant is an eligible person, and no other person is an eligible person in relation to the facility or facilities to which the application relates; or

- (ii) each applicant is an eligible person, and no other person is an eligible person in relation to the facility or facilities to which the application relates; and
 - (b) the Regulator is satisfied that each activity to which the application relates meets the relevant requirements and conditions set out in Part 3; and
 - (c) the Regulator is satisfied that each emissions-intensive trade-exposed activity will be carried out at the facility or facilities specified in the application during the financial year to which the application relates; and
 - (d) the applicant has provided the documents required by clause 603; and
 - (e) the Regulator has not made a decision under paragraph 803 (2) (b) or (8) (c) to refuse the application; and
 - (f) the Regulator is satisfied that the number of free carbon units to which the applicant or applicants is entitled if the application were approved is greater than zero.
- (4) For a combined application made by the same applicants for the same activity conducted at the same facility or facilities as an application in the previous financial year, the Regulator must approve the application if the criteria in subclause (3) have been met and:
- (a) no applicant covered by the application has an outstanding debt mentioned in subclause 808 (1); or
 - (b) if an applicant covered by the application has an outstanding debt mentioned in subclause 808 (1) — the formula or other arrangement to apportion free carbon units between applicants has not been varied from the previous financial year to reduce the share of units of the applicant with the outstanding debt.
- (5) The Regulator must refuse the application in any other circumstances.

Division 4 Notification of proposed refusal

- 805 (1) If the Regulator proposes to refuse an application, the Regulator must not make a decision until the Regulator has consulted the applicant in accordance with this clause.
- (2) However, the Regulator is not required to consult the applicant if the Regulator:
- (a) has already consulted the applicant in accordance with this clause about the same matter in relation to the same application; or
 - (b) has made a decision under paragraph 803 (8) (c).
- (3) The Regulator must:
- (a) notify the applicant, in writing, that it proposes to refuse the application; and
 - (b) invite the applicant:
 - (i) to revise the application within 30 days after the date of the invitation; or
 - (ii) to give the Regulator further information or advice about the application within 30 days after the date of the invitation; and
 - (c) inform the applicant that, if the applicant gives the Regulator any further information or advice after the 30 days, the Regulator is not required to consider it.
- (4) The invitation in paragraph (3) (b) is not an undertaking or guarantee that the Regulator will change the proposed refusal.
- (5) The Regulator:
- (a) must take the further information or advice into account if the applicant gives it to the Regulator within the 30 days; and
 - (b) may take the further information or advice into account if the applicant gives it to the Regulator after the 30 days.
- (6) After the earlier of the applicant giving the Regulator further information or advice and the end of the 30 days, the Regulator must decide:
- (a) to approve the application under paragraph 804 (1) (a); or
 - (b) to refuse the application under paragraph 804 (1) (b).

Division 5 Notification of decision

- 806 (1) If the Regulator approves an application, the Regulator must notify the applicant, in writing, as soon as practicable after making the decision.
- (2) If the Regulator refuses an application after having consulted the applicant in accordance with Division 4, the Regulator must notify the applicant, in writing, as soon as practicable after making the decision.
- (3) A decision takes effect when it is made.

Division 6 Correction of inaccurate allocation of free carbon units

- 807 (1) If:
- (a) the Regulator becomes aware that the allocation of free carbon units was incorrect; and
 - (b) the Regulator becomes aware during the year to which the application relates;
- then the Regulator may make a correction in accordance with this Division.
- (2) Before making the correction, the Regulator must tell the applicant, in writing, about the proposed correction.
- (3) If the correction requires the Regulator to allocate additional free carbon units to an applicant, the additional units must be issued in accordance with subclause 902 (4).
- (4) If the incorrect allocation has resulted in an applicant being allocated too many free carbon units, the Regulator must issue a notice to the applicant in accordance with clause 1307 to relinquish a specified number of those units.

Division 7 Revision of application where outstanding debt

- 808 (1) This Division applies if the Regulator is satisfied that:
- (a) an amount of unit shortfall charge payable by an applicant remains unpaid at the time of the application; or

- (b) an amount of late payment penalty payable under section 135 of the Act may remain unpaid at the time of the application.
- (2) The Regulator must notify in writing:
- (a) if there is one applicant — the applicant; or
 - (b) if the application is a combined application — all the eligible persons covered by the application;
- that it proposes to reduce the allocation of free carbon units to the applicant with the outstanding debt (the *debtor*) mentioned in subclause (1), by the amount of the debt.
- (3) The notice must:
- (a) invite the debtor to reduce that debt to zero; and
 - (b) ask the debtor to tell the Regulator, within 30 days after receiving the notice, whether the debt has been paid in full.
- (4) If the debtor has not reduced the outstanding debt to zero within 30 days after being given the notice under subclause (2), the Regulator must reduce the debtor's allocation of free carbon units in accordance with subclause (5).
- (5) The debtor's allocation is to be reduced by the amount worked out as the debtor's outstanding debt, divided by:
- (a) for applications for the financial years starting on 1 July 2012, 1 July 2013 or 1 July 2014 — the fixed charge for the vintage year set out in subsection 100 (1) of the Act; or
 - (b) for applications for any other financial year — the benchmark average auction charge for the previous financial year.

Part 9 Method of calculating the number of free carbon units to be issued to a person

Division 1 General

- 901 This Part explains how many free carbon units are to be issued to an applicant whose application is approved.
- 902 (1) The Regulator must issue the number of units determined in accordance with this Part to the applicant's Registry account.
- (2) For applications made in relation to a financial year that is a fixed charge year, the issue of free carbon units must include the following:
- (a) as soon as practicable after approving the application:
- (i) 100% of units worked out in relation to:
- (A) the EP^a and NGP^a allocations mentioned in clause 906; and
- (B) previous year adjustments mentioned in clause 906; and
- (C) maximum cap adjustments mentioned in clause 911; and
- (D) sub-threshold emissions adjustments mentioned in clause 912; and
- (E) adjustments mentioned in clause 913; and
- (ii) 75% of units worked out in relation to the EI^a allocations mentioned in clause 906;
- (b) as soon as practicable after the start of the financial year following the vintage year of the carbon units — the remaining 25% of units worked out in relation to the EI^a allocations.
- (3) For applications made in relation to a financial year that is a flexible charge year, 100% of free carbon units must be allocated, as soon as practicable after approving the application, worked out in relation to:
- (a) the EI^a, EP^a and NGP^a allocations mentioned in clause 906; and

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- (b) previous year adjustments mentioned in clause 906; and
 - (c) maximum cap adjustments mentioned in clause 911; and
 - (d) sub-threshold emissions adjustments mentioned in clause 912; and
 - (e) adjustments mentioned in clause 913.
- (4) If, under clause 807, the Regulator is required to issue additional free carbon units to an applicant because the initial allocation was incorrect, the additional free carbon units must be issued in accordance with subclause (2) or (3) as soon as practicable after the Regulator becomes aware of the incorrect allocation.
- (5) If the application is a combined application mentioned in clause 703, the Regulator must issue the units according to the formula, or other arrangement, to apportion units set out in the application.
- (6) If:
- (a) either:
 - (i) an applicant has an outstanding debt mentioned in subclause 808 (1); or
 - (ii) the application is a combined application and one of the applicants has an outstanding debt mentioned in subclause 808 (1); and
 - (b) the applicant's outstanding debt is greater than the allocation worked out using the formula or other arrangement mentioned in clause 602;
the applicant's allocation is zero.
- (7) If the Regulator considers that the requirements for the closure of equipment will be met during the financial year to which the application relates in relation to the emissions-intensive trade-exposed activity, the Regulator must reduce the number of free carbon units by the number of carbon units that would be likely to be required to be relinquished in accordance with Division 2 of Part 13.

- (8) If the number of free carbon units worked out under this clause is not a whole number:
- (a) round up the number to the next whole number if the first decimal place is 0.5 or more; and
 - (b) round down the number to the next whole number if the first decimal place is less than 0.5.

Division 2 Special arrangements for facility without continuous emissions-intensive trade-exposed activity

- 903 (1) This clause applies:
- (a) for an application in relation to an emissions-intensive trade-exposed activity to which Division 3 of Part 7 applies; and
 - (b) if the Regulator is satisfied that the applicant has met the requirement in subclause 705 (1) or (2).
- (2) The Regulator must be satisfied that the assessment of the amount or volume of the relevant product provided under subclause 705 (3), or the amount or volume substituted by the Regulator under subclause 803 (8), is the best estimate of the amount or volume of the relevant product that is reasonably likely to be produced in the financial year to which the application relates, having regard to:
- (a) any arrangements that have been entered into to buy the facility's output; and
 - (b) the likelihood that the equipment that is to be used to carry on the emissions-intensive trade-exposed activity:
 - (i) will be commissioned as described in the application; and
 - (ii) is likely to be ready to produce the product mentioned in the application; and
 - (iii) will produce the amount or volume of the relevant product claimed by the applicant; and
 - (c) any other matter that the Regulator considers relevant.

Division 3 Special arrangements for significant expansion

904 (1) This Division applies:

- (a) for an application in relation to an emissions-intensive trade-exposed activity to which Division 4 of Part 7 applies; and
- (b) if the Regulator is satisfied that the applicant has met the requirement in subclause 706 (1).

(2) The Regulator must be satisfied that, in respect of the relevant facilities, the amount or volume of the relevant product that:

- (a) the applicant has set out as reasonably likely to be produced in the financial year to which the application relates above the level of production of the previous financial year; or
- (b) the Regulator has substituted under paragraph 803 (8) (a) as reasonably likely to be produced in the financial year to which the application relates above the level of production of the previous financial year;

is the best estimate of the amount or volume of the relevant product that is reasonably likely to be produced.

905 For subclause 904 (2), the Regulator must have regard to:

- (a) any arrangements that have been entered into to buy the facility's output; and
- (b) the likelihood that the equipment that is to be used to carry on the emissions-intensive trade-exposed activity:
 - (i) if new equipment is to be commissioned — will be commissioned as described in the application; and
 - (ii) is likely to be ready to produce the product mentioned in the application; and
 - (iii) will produce the amount or volume of the relevant product claimed by the applicant; and
- (c) the likelihood that the new or recommissioned equipment that forms the basis of the application will be installed or recommissioned as described in the application; and

- (d) the likelihood that any other equipment is to be decommissioned or operated at a lower rate after the new equipment is installed or relevant old equipment recommissioned; and
- (e) any other matter that the Regulator considers relevant.

Division 4 Formula

- 906 (1) The formula for working out the total number of free carbon units (the **baseline allocation**) to be issued to an applicant in respect of an emissions-intensive trade-exposed activity carried on during a specified period is:

$EI^a \text{ allocations}_t + EP^a \text{ allocations}_t + NGP^a \text{ allocations}_t + \text{previous year adjustments}_t$

where:

$EI^a \text{ allocations}_t$ is $k^a_t (EI^a_t \times AP^{ia}_t)$.

$EP^a \text{ allocations}_t$ is $k^a_t (EP^a_t \times EAF^i_t \times AP^{ia}_t)$.

$NGP^a \text{ allocations}_t$ is $k^a_t (NGP^a_t \times NGAF^i_t \times AP^{ia}_t)$.

$\text{previous year adjustments}_t$ is T^{ia}_t .

Note Clause 902 explains how to work out the final number of units to be allocated.

- (2) If there is more than one kind of relevant product in respect of an emissions-intensive trade-exposed activity, the formula in subclause (1) must be applied for each kind of product and the result for each kind of product added together to work out the baseline allocation to be issued for the activity.
- 907 (1) This clause explains the symbols that are used in the formula and elsewhere in this Part.
- (2) In the formula:
 - a** represents the emissions-intensive trade-exposed activity.
 - i** represents the applicant.
 - t** represents the financial period during which the emissions-intensive trade-exposed activity is carried out or is to be carried out.

$$k_t^a$$

- (3) k_t^a is the assistance rate for:
- (a) the emissions-intensive trade-exposed activity; and
 - (b) the period during which the emissions-intensive trade-exposed activity is carried out.
- (4) k_t^a is worked out as follows:
- (a) for the financial year starting on 1 July 2012 (the k_1^a) — 66.0% for a moderately emissions-intensive activity and 94.5% for a highly emissions-intensive activity;
 - (b) for each subsequent financial year — $k_1^a \times (1-0.013)^{t-1}$ rounded to the nearest 3 significant figures.

Example If k_1^a is 94.5%:

For 2013–14, k_t^a will be $94.5\% \times (1-0.013)^{2-1} = 93.3\%$.

For 2014–15, k_t^a will be $94.5\% \times (1-0.013)^{3-1} = 92.1\%$.

$$EI_t^a$$

- (5) EI_t^a is the baseline level (in Part 4) of direct emissions per unit for the production of the relevant product, including emissions associated with the use of steam.

Note 1 This is also known as the direct emissions-intensity baseline for the activity.

Note 2 An applicant may choose for this to be taken to be zero under clause 912.

$$AP_t^{ia}$$

- (6) AP_t^{ia} is the adjusted production, that is the volume or amount of the relevant product, adjusted in accordance with clause 803, to be the volume or amount used to issue carbon units for a given financial year for:
- (a) the applicant; and
 - (b) the period during which the emissions-intensive trade-exposed activity is carried out.
- (7) AP_t^{ia} is worked out using the formula:

$$P_{t-1}^{ia} + EAP_t^{ia}$$

where:

P_{t-1}^{ia} is the amount or volume of the relevant product produced in the financial year before the financial year to which the application relates.

EAP_t^{ia} is the expected additional production for:

- (a) the applicant; and
- (b) the facilities to which the criteria in subclause 705 (1) or (2) or 706 (1) relate; and
- (c) the period during which the emissions-intensive trade-exposed activity is carried out.

EP_t^a

- (8) EP_t^a is the baseline level (in Part 4) of electricity per unit for the production of the relevant product.

EAF_t^i

- (9) EAF_t^i is the electricity allocation factor, which relates to the effect of the carbon price on the price of electricity.
- (10) EAF_t^i is:
 - (a) 1; or
 - (b) the factor as modified in accordance with Division 5.

NGP_t^a

- (11) NGP_t^a is the baseline level (in Part 4) of natural gas (or its components) feedstock used per unit for the production of the relevant product.

Note This is also known as the natural gas (or components) feedstock intensity baseline for indirect natural gas emissions for the activity.

$NGAF_t^i$

- (12) $NGAF_t^i$ is the natural gas feedstock (or its components) allocation factor, which relates to the effect of the carbon cost on the cost of natural gas.

(13) $NGAF_t^i$ is explained in the following table.

Item	For product produced, or to be produced, in ...	factor $NGAF_t^i$ is (in tonnes of CO ₂ -e per TJ) ...	
		metropolitan	non-metropolitan
1	New South Wales	14.2	15.0
2	Victoria	4.0	4.0
3	Queensland	8.6	7.8
4	South Australia	10.4	10.2
5	Western Australia	4.0	3.9
6	Tasmania	n/a	F
7	the Australian Capital Territory	14.2	15.0
8	the Northern Territory	n/a	F
9	the offshore area	n/a	F
10	an external territory	n/a	F
11	the Joint Petroleum Development Area	n/a	F

(14) In subclause (13):

metropolitan means:

- (a) the area that is on, or east of, the Great Dividing Range in New South Wales, and includes Queanbeyan; and
- (b) Canberra, Melbourne, Brisbane, Adelaide and Perth.

F means value to be determined in the future.

T_t^{ia}

(15) T_t^{ia} is the adjustment for the previous financial year's production for the activity being conducted at the same facility or series of facilities for that year, which is:

- (a) zero if:
 - (i) the application relates to the financial year starting on 1 July 2012; or
 - (ii) the application relates only to a facility or facilities to which the criteria in subclause 705 (1) or (2) relate; or

- (iii) the relevant product relates only to facilities for which a requirement under Division 2 of Part 13 took effect in the financial year before the financial year to which the application relates; or
- (iv) no application was approved for free carbon units in relation to the carrying on of the emissions-intensive trade-exposed activity at the same facilities or series of facilities in the previous financial year; or
- (b) worked out using subclause (16) if the application relates to the financial year starting on 1 July 2013 or 1 July 2014; or
- (c) worked out using subclause (17) if the application relates to the financial year starting on 1 July 2015; or
- (d) worked out using subclause (18) if the application relates to a flexible charge year other than the financial year starting on 1 July 2015.

(16) For paragraph (15) (b), T^{ia}_t is worked out using the formula:

$$CP_{t-1}/CP_t \times (1+r) \times [k^a_{t-1} \times (P^{ia}_{t-1} \times (EI^a_{t-1} + EP^a_{t-1} \times EAF^i_{t-1} + NGP^a_{t-1} \times NGAF^i_{t-1})) - (\text{baseline allocation}_{t-1} - T^{ia}_{t-1})]$$

where:

CP_t is the fixed charge for the vintage year as set out in the table in subsection 100 (1) of the Act.

baseline allocation_{t-1} means the total number of free carbon units worked out under clause 906 for the previous period.

Note r is explained in Part 2.

(17) For paragraph (15) (c), T^{ia}_t is worked out using the formula:

$$CP_{t-1}/BAAC_t \times [k^a_{t-1} \times (P^{ia}_{t-1} \times (EI^a_{t-1} + EP^a_{t-1} \times EAF^i_{t-1} + NGP^a_{t-1} \times NGAF^i_{t-1})) - (\text{baseline allocation}_{t-1} - T^{ia}_{t-1})]$$

where:

BAAC_t is the benchmark average auction charge for the financial year starting on 1 July 2014.

(18) For paragraph (15) (d), T^{ia}_t is worked out using the following formula.

$$k^a_{t-1} \times (P^{ia}_{t-1} \times (EI^a_{t-1} + EP^a_{t-1} \times EAF^i_{t-1} + NGP^a_{t-1} \times NGAF^i_{t-1})) - (\text{baseline allocation}_{t-1} - T^{ia}_{t-1})$$

**Division 5 Modification of formula in Division 4 — large
user electricity contracts**

908 (1) This Division applies in relation to an application that includes a single facility that consumed more than 2 000 gigawatt-hours of electricity at the facility in the financial year starting on 1 July 2008.

(2) For this Division:

contract in relation to the supply of electricity to a facility means a contract that is either or both of the following:

- (a) a contract for the physical supply of electricity to a facility;
- (b) a contract (including a contract for differences or a derivative) under which the price paid for the supply of electricity to a facility is hedged.

eligible large user of electricity, in relation to a facility, means any of the following:

- (a) the person who had operational control of the facility on 1 July 2012;
- (b) the holder of a liability transfer certificate that was in force in relation to the facility on 1 July 2012;
- (c) a person who is a party to a contract in relation to the supply of electricity to the facility, as the purchaser of electricity, on 1 July 2012;
- (d) a person who is a participant in a designated joint venture in relation to the facility on 1 July 2012.

price, for electricity, means any monetary amount or other consideration to be provided under a contract in relation to the supply of electricity to a facility.

purchaser, of electricity, means a person:

- (a) who is a party to a contract in relation to the supply of electricity to a facility; and
- (b) who:
 - (i) in relation to a contract for the physical supply of electricity to a facility — is supplied electricity for the facility either wholly or partly under the contract; or

- (ii) in relation to a contract under which the price paid for the supply of electricity to a facility is hedged — purchases electricity for the facility.

relevant pre-existing contract means a contract in relation to the supply of electricity to a facility:

- (a) that was entered into before 3 June 2007 and was still in force on 1 May 2012; and
 - (b) that is expected to be in force on 1 July 2012.
- (3) For this Division, a contract in relation to the supply of electricity to a facility is taken not to be a relevant pre-existing contract if:
- (a) the contract was entered into before 3 June 2007; and
 - (b) after 3 June 2007, either or both of the following occur:
 - (i) one or more terms of the contract are varied;
 - (ii) other agreements or arrangements are made by the parties to the contract; and
 - (c) the Regulator is given a written statement by each party to the contract that under:
 - (i) the contract; and
 - (ii) any other agreements or arrangements, made by the parties, that are in force at the time of giving the statement;

the average cost for the purchaser of electricity as a result of the commencement of the Act and associated provisions is reasonably expected to be greater than the equivalent of 0.7 carbon units per MWh from 1 July 2012 until the end of the contract or 30 June 2021, whichever is the earlier.

- (4) For paragraph (3) (c):
- (a) the cost for the purchaser of electricity includes a cost which is conditional on the receipt of free carbon units under this program; and
 - (b) the number of free carbon units mentioned in paragraph (a) is to be worked out as if the electricity allocation factor were 1; and
 - (c) the value of the benefit of those free carbon units is not to be deducted from the cost when working out the cost for the purchaser of electricity.

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- 909 (1) An eligible large user of electricity may apply to the Regulator, before 1 August 2012, for the Regulator to issue a certificate (a ***large user electricity certificate***) modifying the formula in Division 4 for:
- (a) the facility specified in the certificate; and
 - (b) relevant products produced, or to be produced, by the emissions-intensive trade-exposed activity carried on at the facility.
- (2) If there is a relevant pre-existing contract in relation to the facility, the application must be accompanied by:
- (a) a copy of each relevant pre-existing contract; and
 - (b) a copy of any other document or contract that is relevant to the operation of any provision of the relevant pre-existing contracts that increases or decreases the price paid for electricity; and
 - (c) a statement of whether there is any information in the control or possession of a third party relevant to the increase or decrease in prices under the relevant pre-existing contracts; and
 - (d) an explanation of how the commencement of the Act and associated provisions will change the price that is paid for electricity under the relevant pre-existing contracts relative to the price that would have been charged if the Act and associated provisions had not commenced; and
 - (e) a statement of the measures that the eligible large user of electricity, and other persons involved in the supply of electricity, are able to take, as cost-effective measures, to reduce the increase in the price for electricity under the relevant pre-existing contract as a result of the commencement of the Act and associated provisions; and
 - (f) an opinion by a Queens Counsel or Senior Counsel as to how the provisions of the relevant pre-existing contracts that deal with increases in price because of the commencement of the Act and associated provisions will operate; and
 - (g) evidence that the eligible large user of electricity has shown its explanation of how the price will increase to the other parties to each relevant pre-existing contract; and

- (h) any opinion of another party to a relevant pre-existing contract, about the explanation mentioned in paragraph (g), that:
 - (i) was given to the eligible large user of electricity, in writing, before the application was made; and
 - (ii) was intended by the other party to be disclosed to the Regulator or could reasonably be regarded as having been given by the other party without reservations about being disclosed to the Regulator; and
 - (i) a statement of the date (the *end date*) for each relevant pre-existing contract that is the earliest of the following:
 - (i) the date specified in the contract, as in force on 3 June 2007, as the date on which the contract ends;
 - (ii) the date specified in the contract, as in force on 1 May 2012, as the date on which the contract ends;
 - (iii) the first date after 1 May 2012 (or the first likely date after 1 May 2012) on which the obligation to pay the price for electricity under the relevant pre-existing contract could be ended without material adverse consequences to the purchaser of electricity under that contract; and
 - (j) the portion of electricity that is likely to be used in each financial year by the facility that is attributable to arrangements other than the relevant pre-existing contracts until the last end date for the last of those relevant pre-existing contracts; and
 - (k) a statement of what the new electricity allocation factor should be in relation to each eligible financial year before the end date for the relevant pre-existing contracts; and
 - (l) a statement of the emissions intensity of any coal-fired electricity generators that are relevant for the purposes of paragraph (8) (c); and
 - (m) whether the eligible large user of electricity is unable to disclose any information relevant to the application because of a requirement to keep a matter confidential.
- (3) If there is no relevant pre-existing contract in relation to the facility, the application must be accompanied by:

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- (a) a statement that there is no relevant pre-existing contract in force; and
 - (b) if:
 - (i) a contract in relation to the supply of electricity to the facility was entered into before 3 June 2007; and
 - (ii) the contract would ordinarily have been in force on 1 May 2012; and
 - (iii) the contract ceased to be in force before 1 May 2012;a description of the parties to the contract and the date on which the contract ceased to be in force.
- (4) The Regulator must:
- (a) prepare a draft large user electricity certificate that sets out:
 - (i) a new electricity allocation factor for each eligible financial year until the end date for the last of the relevant pre-existing contracts; or
 - (ii) if there are no relevant pre-existing contracts — a statement that the electricity allocation factor is not to be modified in relation to an emissions-intensive trade-exposed activity carried on at the facility; and
 - (b) give a copy of the draft certificate to:
 - (i) the eligible large user of electricity; and
 - (ii) each other party to a relevant pre-existing contract; and
 - (c) notify the eligible large user of electricity and each other party, in writing, of the reasons why it has prepared the draft certificate; and
 - (d) invite the eligible large user of electricity and each other party to give the Regulator comments about the draft certificate within 30 days after the date of the invitation.
- (5) The invitation is not an undertaking or guarantee that the Regulator will make a particular decision on the application.
- (6) If, after considering any comments about the draft certificate received in accordance with the invitation in subclause (4), the Regulator is satisfied that it has sufficient information to be

able to issue a certificate, the Regulator must issue a large user electricity certificate that sets out:

- (a) a new electricity allocation factor for each eligible financial year until the end date for the last of the relevant pre-existing contracts; or
 - (b) if there are no relevant pre-existing contracts — a statement that the electricity allocation factor is not to be modified in relation to an emissions-intensive trade-exposed activity carried on at the facility.
- (7) For each eligible financial year, the new electricity allocation factor must be worked out as follows:

$$(1 \times \text{non-contract portion}) + (X \times \text{contract portion})$$

where:

non-contract portion means the portion of electricity that is not included in the contract portion for that eligible financial year (expressed as a percentage).

X means the Regulator's reasonable estimate of the number of carbon units issued on 31 October of that eligible financial year that would represent the difference in price for the supply of 1 MWh of electricity on that day between:

- (a) the price that would have been paid for electricity under the relevant pre-existing contracts that have not reached their end dates if the Act and associated provisions had not commenced; and
- (b) the likely price for electricity under those contracts as a result of the commencement of the Act and associated provisions.

contract portion means the portion of electricity that is reasonably likely to be attributable, for that eligible financial year, to a relevant pre-existing contract that has not reached its end date (expressed as a percentage).

- (8) For subclause (7):
- (a) factor **X** may be:
 - (i) an actual number for a financial year; or

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- (ii) the product of a formula, or another suitable procedure, that may use updated information relating to electricity market prices or the price of carbon units; and
 - (b) factor X must not be less than 0; and
 - (c) factor X must not be more than:
 - (i) if the price increase for electricity for any of the relevant pre-existing contracts that have not reached their end date relates to the costs that are imposed on one or more coal-fired electricity generators because of the commencement of the Act and associated provisions — the weighted average emissions-intensity of those generators in respect of the financial year starting on 1 July 2008, worked out in accordance with subclause (9); or
 - (ii) in any other case — 1; and
 - (d) if the price for the supply of electricity on 31 October of the relevant financial year is not reflective of the weighted average price increase for the supply of electricity on a typical day during the relevant financial year, the Regulator must use:
 - (i) a more appropriate day in the relevant financial year; or
 - (ii) the weighted average price increase.
- (9) For subparagraph (8)(c)(i), the weighted average emissions-intensity of the generators is to be worked out by dividing the emissions of the generator's facilities reported under the NGER Act by the sent out generation of the generator in the financial year starting on 1 July 2008.
- (10) If an application is not made under subclause (1) before 1 August 2012, the Regulator must use an electricity allocation factor of zero in respect of any emissions-intensive trade-exposed activity carried on at the facility in the first 10 eligible financial years of the application of the Act and associated provisions.

Note The first 10 eligible financial years of the application of the Act and associated provisions start on 1 July 2012, 1 July 2013, 1 July 2014, 1 July 2015, 1 July 2016, 1 July 2017, 1 July 2018, 1 July 2019, 1 July 2020 and 1 July 2021.

- 910 (1) The Regulator must amend a large user electricity certificate issued under clause 909 in any of the following circumstances:
- (a) a relevant pre-existing contract on the basis of which the certificate was issued is terminated as a result of circumstances beyond the control of the purchaser of electricity under the relevant pre-existing contract;
 - (b) the Regulator's interpretation of a relevant pre-existing contract on the basis of which the certificate was issued differs substantially from:
 - (i) a binding decision of a State or Territory Supreme Court, the Federal Court or the High Court on the relevant pre-existing contract; or
 - (ii) a binding decision of an independent arbitrator or independent expert on the relevant pre-existing contract;
 - (iii) a binding decision of a Court mentioned in subparagraph (i) on a contract in which the provisions relating to the price paid for electricity by the purchaser are, in all material respects, the same as the equivalent provisions in, or relating to, the relevant pre-existing contract;
 - (c) the Regulator believes it is appropriate to amend the certificate to correct a minor error in the certificate.
- (2) Before amending the large user electricity certificate, the Regulator must consult with the person who is the eligible person in respect of any relevant activity conducted at the relevant facility when the circumstance mentioned in subclause (1) occurs.
- (3) If paragraph (1) (a) applies:
- (a) the end date of the relevant pre-existing contract is taken to be the day on which the relevant pre-existing contract is terminated; and
 - (b) the Regulator must amend the large user electricity certificate by amending the electricity allocation factor for each remaining eligible financial year until the end date for the last of the relevant pre-existing contracts, in accordance with subclause 909 (7).

- (4) If paragraph (1) (b) applies, the Regulator must amend the large user electricity certificate by amending the electricity allocation factor for each remaining eligible financial year until the end date for the last of the relevant pre-existing contracts, in accordance with the relevant decision of the Court, independent arbitrator or independent expert.

Division 6 Maximum number of units to be allocated to new facilities

Note *New facility* and *series of new facilities* are explained in clause 205.

911 (1) This Division applies if:

- (a) an application (the *current application*) is made for the issue of free carbon units in a financial year in relation to the carrying on of an emissions-intensive trade-exposed activity at a new facility or series of new facilities; and
- (b) either:
- (i) an application was approved for the issue of free carbon units in relation to the carrying on of the emissions-intensive trade-exposed activity for the financial year before the financial year to which the current application relates (the *relevant previous financial year*); or
- (ii) an event mentioned in subclause 1305 (2) occurred in relation to the carrying on of the emissions-intensive trade-exposed activity in the financial year before the financial year to which the current application relates (the *relevant previous financial year*); and
- (c) before a decision is made on the current application, the number of free carbon units that would be worked out for the current application using the formula (the *starting formula*):

$$k_{t-1}^a \times (EI_{t-1}^a + EP_{t-1}^a) \times (P_{t-1}^{ia})$$

is:

- (i) for the second year in which an application is made under the program and the following 4 financial years — greater than 120% of the number that is worked out under subsection (2); and

- (ii) for each subsequent financial year — greater than the number that is worked out under subsection (2).
- (2) For paragraph (1) (c), add together the following amounts for the relevant previous financial year:
- (a) the amount of any covered emissions attributable to the operation of the new facility or series of new facilities;
 - (b) the amount of total emissions attributable to the combustion of fuels mentioned in subsection 30 (2) of the Act that are attributable to the operation of the new facility or series of new facilities;
 - (c) any amount of electricity (measured in MWh) that is:
 - (i) consumed in the operation of the new facility or series of new facilities that is the subject of the application; and
 - (ii) supplied by electricity generators that are:
 - (A) co-located with one or more of the new facilities, or directly connected to the new facilities by a dedicated line; and
 - (B) not part of the new facility or series of new facilities;

multiplied by the total amount of emissions of the electricity generators and then divided by the total amount of electricity (measured in MWh) generated by those electricity generators as measured at all the generator terminals;

- (d) the amount of electricity, measured in MWh, attributable to the operation of the new facility or series of new facilities, worked out using the formula:

$$(I - X) \times \alpha$$

where:

I is the amount of electricity purchased from an electricity grid and consumed in the operation of the facilities;

X is the amount of electricity produced by electricity generators that are part of the facilities which was not consumed by those facilities and was exported to an electricity grid or to another facility;

α is:

- (i) EAF_t^i (as defined in subclause 907 (10)); or
- (ii) if A is less than B — the total amount of emissions associated with electricity produced by electricity generators that are part of the facilities divided by the total amount of electricity generated by those electricity generators (measured at all the generator terminals);

where:

A is the amount of electricity consumed from the operation of the facilities other than any electricity to which paragraph (c) applies; and

B is the amount of electricity produced by electricity generators that are part of the facilities;

- (e) any emissions associated with the production of steam imported from another facility for the operation of the new facility or series of new facilities.

- (3) The number of carbon units that are required to be issued in accordance with this Part in respect of the current application is reduced (the *maximum cap adjustment*) by the difference identified in paragraph (1) (c).

- (4) The number of carbon units worked out under subclause (3) is to be adjusted by:

- (a) for the financial year starting on 1 July 2013 — multiplying the number by \$23.00, dividing the result by \$24.15 and multiplying that number by $(1+r)$; and
- (b) for the financial year starting on 1 July 2014 — multiplying the number by \$24.15, dividing the result by \$25.40 and multiplying that number by $(1+r)$; and
- (c) for the financial year starting on 1 July 2015 — multiplying the number by \$25.40 and dividing the result by the benchmark average auction charge for the financial year starting on 1 July 2014.

Note r is explained in Part 2.

- (5) To avoid doubt, an allocation of free carbon units made in respect of the current application must take into account any other allocation of units approved, or for which an event mentioned in subclause 1305 (2) occurred, in the application year for an emissions-intensive trade-exposed activity conducted at the new facility or series of new facilities.

Division 7 Sub-threshold emissions adjustments

- 912 (1) The sub-threshold emissions adjustment is the adjustment made to allocations of free carbon units as a result of a facility not passing the threshold test in sections 20 to 25 of the Act.
- (2) If subclause (3) applies, an applicant may choose to use method 1 (set out in subclauses (4) to (7)) to work out the sub-threshold emissions adjustment or may choose to apply method 2 (set out in subclause (8)).
- (3) For a facility:
- (a) method 1 applies if:
 - (i) a facility involves carrying on one or more activities identified in Part 3; and
 - (ii) either:
 - (A) an application was approved for free carbon units in relation to the carrying on of the same activities at the same facilities or series of facilities in the financial year before the financial year to which the current application relates; or
 - (B) an event mentioned in subclause 1305 (2) occurred in relation to the carrying on of the same activities at the same facilities or series of facilities in the financial year before the financial year to which the current application relates; and
 - (iii) the facility does not pass the threshold test under sections 20 to 25 of the Act; and
 - (iv) the person mentioned in those sections in relation to the facility does not have a provisional emissions number; and

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- (b) method 2 applies if:
- (i) a facility involves carrying on one or more activities identified in Part 3; and
 - (ii) the facility does not pass the threshold test under sections 20 to 25 of the Act; and
 - (iii) the person mentioned in those sections in relation to the facility does not have a provisional emissions number.

Method 1

- (4) For each of the facilities mentioned in subclause (3), work out the result using the formula:

$$CE_{t-1}^a - NG_{t-1}^a$$

where:

CE_t^a is the total covered emissions from the operation of the facility in the financial year to which the application relates.

NG_t^a is the emissions from the combustion of natural gas from the facility in the financial year to which the application relates.

Note An applicant may be required to report emissions under clause 708.

- (5) The number of carbon units that are required to be issued in accordance with method 1 in relation to the current application is reduced by the sub-threshold emissions adjustment worked out by adding together the result for each facility under subclause (4) that relates to the application.
- (6) The number of carbon units worked out under subclause (5) is to be adjusted by:
- (a) for the financial year starting on 1 July 2013 — multiplying the number by \$23.00, dividing the result by \$24.15 and multiplying that number by (1+r); and
 - (b) for the financial year starting on 1 July 2014 — multiplying the number by \$24.15, dividing the result by \$25.40 and multiplying that number by (1+r); and

- (c) for the financial year starting on 1 July 2015 — multiplying the number by \$25.40 and dividing the result by the benchmark average auction charge for the financial year starting on 1 July 2014.

Note r is explained in Part 2.

- (7) However, if:
- (a) an application is made in relation to a facility for a financial year; and
 - (b) the number of units allocated in relation to the application is adjusted in accordance with this clause; and
 - (c) another application (the *subsequent application*) is made in relation to the facility for the financial year;
- the sub-threshold emissions adjustment is taken to be zero for the subsequent application.

Method 2

- (8) For an application:
- (a) EI_t^a , mentioned in subclause 907 (5), is taken to be zero; and
 - (b) the sub-threshold emissions adjustment is zero.

If not a facility mentioned in subclause (3)

- (9) If the facility is not a facility mentioned in subclause (3), the sub-threshold emissions adjustment is zero.

Division 8 Adjustments relating to Joint Petroleum Development Area and Greater Sunrise unit area

- 913 (1) This Division applies if an emissions-intensive trade-exposed activity was carried on wholly or partly at a facility in the financial year before the financial year to which the application relates (the *previous financial year*) and, during a period that is included in, or consists of, the previous financial year, the facility is located in:
- (a) the Joint Petroleum Development Area; or

- (b) the Greater Sunrise unit area.
- (2) The Regulator must reduce the baseline allocation worked out under clause 906 by the amount of emissions from carrying out the emissions-intensive trade-exposed activity that are not included in the facility's provisional emissions number under section 26, 27 or 28 of the Act.

Part 10 Year to which units apply

Division 1 Application in first year of the program

1001(1) If:

- (a) an application is made before the end of 31 October 2012 (or a later time in accordance with clause 702) in relation to the financial year starting on 1 July 2012; and
 - (b) the Regulator is required to issue free carbon units; the free carbon units have a vintage year of that financial year.
- (2) However, if the Regulator does not, before 31 January 2014, issue free carbon units in relation to an application in respect of the financial year starting on 1 July 2012, the free carbon units have a vintage year of the financial year in which they are issued.
- (3) If subclause (2) applies, the free carbon units amount is to be adjusted by multiplying the amount by \$23.00, dividing the result by \$24.15 and multiplying that number by $(1+r)$.

Note r is explained in Part 2.

Division 2 Application in second year of the program

1002(1) If:

- (a) an application is made before the end of 31 October 2013 (or a later time in accordance with clause 702) in relation to the financial year starting on 1 July 2013; and
 - (b) the Regulator is required to issue free carbon units; the free carbon units have a vintage year of that financial year.
- (2) However, if the Regulator does not, before 31 January 2015, issue free carbon units in relation to an application in respect of the financial year starting on 1 July 2013, the free carbon units have a vintage year of the financial year in which they are issued.

- (3) If subclause (2) applies, the free carbon units amount is to be adjusted by multiplying the number by \$24.15, dividing the result by \$25.40 and multiplying that number by $(1+r)$.

Note r is explained in Part 2.

Division 3 Application in third year of the program

1003(1) If:

- (a) an application is made before the end of 31 October 2014 (or a later time in accordance with clause 702) in relation to the financial year starting on 1 July 2014; and
- (b) the Regulator is required to issue free carbon units; the free carbon units have a vintage year of that financial year.

- (2) However, if the Regulator does not, before 31 January 2016, issue free carbon units in relation to an application in respect of the financial year starting on 1 July 2014, the free carbon units have a vintage year of the financial year in which they are issued.

- (3) If subclause (2) applies, the free carbon units amount is to be adjusted by:

- (a) multiplying the amount by \$25.40; and
- (b) dividing the result by the benchmark average auction charge for the financial year starting on 1 July 2014.

Division 4 Application in subsequent years

1004(1) If:

- (a) an application is made before the end of 31 October (or a later time in accordance with clause 702) in relation to a financial year (the *application year*) that is a flexible charge year; and
- (b) the Regulator is required to issue free carbon units; the free carbon units that are issued have a vintage year of the application year.

- (2) However, if the Regulator does not, before 1 December in the financial year after the application year, issue free carbon units, the free carbon units have a vintage year of the financial year in which they are issued.

Part 11 Keeping records and materials

- 1101 (1) A person issued free carbon units must keep the following records for 5 years from when the record is made:
- (a) a copy of each application the person made to the Regulator for the issue of those free carbon units;
 - (b) the documents and materials relied on by the person to prepare the application;
 - (c) the testing and measurement results relied on by the person to ensure that the requirements for the relevant product were satisfied;
 - (d) records showing the production of the amount or volume of the relevant product in each financial year for which the free carbon units were issued.
- (2) The documents and materials:
- (a) must not be reproductions of any original documents; and
 - (b) must be kept in hard copy; and
 - (c) must be materials that were relied on by the applicant.
- (3) However, if a person tells the Regulator that a record has been lost or destroyed during the period records must be kept, the Regulator may treat a complete copy of the record as the original from the time of the loss or destruction.
- (4) This clause does not apply if:
- (a) the Regulator has notified the person that the retention of the records is not required; or
 - (b) the person is a company that has gone into liquidation and been finally dissolved.

Part 12 Reporting requirements

- 1201 If free carbon units have been issued in relation to an emissions-intensive trade-exposed activity at a facility or series of facilities, the person to which the free carbon units were issued (the *recipient*) must give the Regulator the reports set out in this Part.
- 1202 If an executive officer of the recipient (or, if the recipient is not a body corporate, a person with an equivalent function) becomes aware that the recipient will no longer be an eligible person in relation to one or more facilities that carry on an emissions-intensive trade-exposed activity on the next 30 June, the recipient must give the Regulator a report stating who is likely to be an eligible person in relation to the facilities on that date.
- 1203 If an executive officer of the recipient (or, if the recipient is not a body corporate, a person with an equivalent function) becomes aware that:
- (a) a decision has been taken to stop the production of one or more relevant products at a facility or series of facilities, indefinitely or for more than 12 months, while the Regulator is considering an application in relation to the production of those relevant products; and
 - (b) a requirement relating to the closure of equipment is reasonably likely to occur within 6 months;
- the recipient must give the Regulator a report of when the requirement is likely to occur.
- 1204 If an executive officer of the recipient (or, if the recipient is not a body corporate, a person with an equivalent function) becomes aware that a requirement relating to the closure of equipment has occurred, the recipient must give the Regulator a report of when the requirement occurred.
- 1205 If an executive officer of the recipient (or, if the recipient is not a body corporate, a person with an equivalent function) becomes aware that a circumstance mentioned in clause 910 exists, the recipient must give the Regulator a report of when the circumstance came into existence.

1206(1) If:

- (a) an executive officer of the recipient (or, if the recipient is not a body corporate, a person with an equivalent function) becomes aware, during:
 - (i) the financial year for which the free carbon units have been issued (the *first financial year*); or
 - (ii) the following financial year;that no application for free carbon units will be made in respect of the facility for the following financial year; and
- (b) the requirement under clause 1304 for the recipient to relinquish carbon units has not been imposed in the first financial year;

the recipient must give the Regulator a report containing the information in subclause (3).

(2) If:

- (a) an executive officer of the recipient (or, if the recipient is not a body corporate, a person with an equivalent function) becomes aware, during:
 - (i) the financial year for which the free carbon units have been issued (the *first financial year*); or
 - (ii) the following financial year;that an application by the recipient for the issue of free carbon units would, if it were made, be refused because the Regulator would not be satisfied as to the matter mentioned in paragraph 804 (3) (f); and
- (b) the requirement under clause 1304 for the recipient to relinquish carbon units has not been imposed in the first financial year;

the recipient must give the Regulator a report containing the information in subclause (3).

(3) The recipient's report must contain the following:

- (a) the amount of production of all relevant products for the facility during the first financial year; and
- (b) the information required to be given to the Regulator under subclause 603 (1); and

- (c) for a new facility or series of new facilities — the calculations relating to the amounts mentioned in paragraphs 911 (2) (c), (d) and (e) for the first financial year; and
- (d) for a sub-threshold facility to which clause 708 applies — the scope 1 emissions, by source, from the operation of the facility for the first financial year.

1207(1) The recipient must give the report under clauses 1202, 1204 and 1205 within 30 days after the executive officer or other person becomes aware of the matter.

- (2) The recipient must give the report under clause 1203 within the later of:
 - (a) 30 days after the executive officer or other person becomes aware of the matter; and
 - (b) 5 months before the requirement relating to the closure of equipment is reasonably likely to occur.
- (3) The recipient must give the report under clause 1206 within:
 - (a) if equipment is taken to have been closed — 90 days after the closure occurred; and
 - (b) in any other case — 90 days after the end of the first financial year.

Part 13 Relinquishment of carbon units

Division 1 General

- 1301 A person is required to relinquish a number of carbon units if:
- (a) a number of free carbon units have been issued to the person for a financial year in accordance with this program; and
 - (b) either:
 - (i) an event described in this Part occurs during that financial year; or
 - (ii) a circumstance described in this Part comes into existence during that financial year.

Division 2 Closure of equipment

Subdivision 1 Closure

- 1302 An event is that equipment used to carry on an emissions-intensive trade-exposed activity is closed.
- 1303 (1) If the equipment mentioned in clause 1302 is closed and the requirement to relinquish carbon units under clause 1304 has taken effect, the number of free carbon units that must be relinquished is worked out in accordance with this clause.
- (2) Identify the total of:
- (a) the amount or volume of the relevant product that was:
 - (i) produced using the equipment in the financial year (the *first financial year*) before the financial year in which the requirement to relinquish carbon units under clause 1304 took effect; and
 - (ii) used in respect of an application for the issue of free carbon units under this program for the financial year in which the requirement to relinquish carbon units under clause 1304 took effect; and

- (b) the amount or volume of the relevant product that was:
 - (i) treated as expected additional production in accordance with subclause 907 (7); and
 - (ii) to be produced using the equipment in the financial year in which the requirement to relinquish carbon units under clause 1304 took effect.
- (3) For each relevant product mentioned in subclause (2), identify the amount or volume of the relevant product that was, or is likely to be, produced using the equipment in the financial year in which the requirement to relinquish carbon units under clause 1304 took effect.
- (4) Work out the difference between the 2 amounts worked out under subclause (2) and (3) (the *unused balance*).
- (5) Work out the number of free carbon units that would have been issued for the current financial year on the basis of the unused balance and then subtract the number of carbon units that were not issued to a person in respect of the equipment because of subclause 902 (8).
- (6) The result is the number of carbon units that must be relinquished.
- (7) However, if the number mentioned in subclause (6) is greater than the total number of units issued to the person for the activity in the financial year in which the requirement to relinquish carbon units under clause 1304 took effect, the number of carbon units that must be relinquished is the total number of units.

Subdivision 2 Procedure for relinquishment on closure

1304 (1) If:

- (a) equipment is closed; and
- (b) at that time, the person carrying out the activity considered that it was unlikely that the equipment would be used again to produce the relevant product within 1 year after the equipment was closed;

the person's requirement to relinquish the relevant number of carbon units takes effect from that time.

- (2) If:
- (a) equipment is closed; and
 - (b) at that time, it was not possible for the person carrying out the activity to determine whether the equipment would be used again to produce the relevant product that is identified in Part 3 as the basis for the issue of free carbon units within 1 year after the equipment was closed; and
 - (c) the person carrying out the activity determined, within 1 year after the equipment was closed, that it was unlikely that the equipment would be used again to produce the relevant product within that period of 1 year;
- the person's requirement to relinquish the relevant number of carbon units takes effect from the time of the determination in paragraph (c).
- (3) If:
- (a) equipment is closed; and
 - (b) at that time, it was not possible for the person carrying out the activity to determine whether the equipment would be used again to produce the relevant product that is identified in Part 3 as the basis for the issue of free carbon units within 1 year after the equipment was closed; and
 - (c) the equipment was not used again to produce the relevant product within that period of 1 year;
- the person's requirement to relinquish the relevant number of carbon units takes effect from the end of that period of 1 year.
- (4) If the Regulator is satisfied that the person is required to relinquish carbon units, it must issue a notice to the person setting out:
- (a) the basis on which it is satisfied; and
 - (b) the number of carbon units that it considers must be relinquished in accordance with clause 1303.
- (5) However, the Regulator must not issue a notice more than 3 years after the requirement to relinquish the relevant number of carbon units took effect.

- (6) The person must relinquish the relevant number of carbon units not more than 90 days after the day on which the Regulator gives the notice.

Division 3 Negative allocation

1305 (1) An event is that:

- (a) a person has given the Regulator a report mentioned in subclause 1206 (1); and
- (b) clause 1304 does not apply to the person in a financial year for which free carbon units have been issued in respect of an emissions-intensive trade-exposed activity at a facility; and
- (c) if the person made an application for the issue of free carbon units in respect of the facility, the sum of:
 - (i) the previous year adjustment under subclause 907 (15); and
 - (ii) the maximum cap adjustment under clause 911; and
 - (iii) the sub-threshold adjustment under clause 912;would result in a negative number of carbon units being issued to the person.

(2) An event is that:

- (a) a person has given the Regulator a report mentioned in subclause 1206 (2); and
- (b) clause 1304 does not apply to the person in a financial year for which free carbon units have been issued in respect of an emissions-intensive trade-exposed activity at a facility; and
- (c) if the person made an application for the issue of free carbon units in respect of the facility, the application would be refused because the Regulator would not be satisfied as to the matter mentioned in paragraph 804 (3) (f); and
- (d) the application of the formula in Part 9 would result in a negative number of carbon units being issued to the person.

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- (3) An event is that:
- (a) a person has not given the Regulator a report mentioned in subclause 1206 (1) or (2); and
 - (b) clause 1304 does not apply to the person in a financial year for which free carbon units have been issued in respect of an emissions-intensive trade-exposed activity at a facility; and
 - (c) the person applied for the issue of free carbon units in respect of an emissions-intensive trade-exposed activity at a facility; and
 - (d) the application is refused because the Regulator is not satisfied that the application complies with paragraph 804 (3) (f); and
 - (e) the application of the formula in Part 9 would result in a negative number of carbon units being issued to the person.
- 1306 (1) If subclause 1305 (1) applies, the number of free carbon units that must be relinquished is the negative number mentioned in paragraph 1305 (1) (c).
- (2) If subclause 1305 (2) applies, the number of free carbon units that must be relinquished is the negative number mentioned in paragraph 1305 (2) (d).
- (3) If subclause 1305 (3) applies, the number of free carbon units that must be relinquished is the negative number mentioned in paragraph 1305 (3) (e).
- (4) If the Regulator is satisfied that the person is required to relinquish carbon units, it must issue a notice to the person setting out:
- (a) the basis on which it is satisfied; and
 - (b) the number of carbon units that it considers must be relinquished in accordance with subclause 1305 (1), (2) or (3).
- (5) However, the Regulator must not issue a notice more than 3 years after the requirement to relinquish the relevant number of carbon units took effect.

- (6) The person must relinquish the relevant number of carbon units not more than 90 days after the day on which the Regulator gives the notice.

Division 4 Inaccurate allocation of free carbon units

- 1307 (1) If, under clause 807, the Regulator is required to issue a notice to a person to relinquish a specified number of free carbon units because the initial allocation to the person was incorrect, the Regulator must issue the notice in accordance with this clause.
- (2) The Regulator must issue a notice to the person setting out:
- (a) the basis on which the Regulator is satisfied that the units are to be relinquished; and
 - (b) the number of carbon units that the Regulator considers must be relinquished in accordance with clause 807.
- (3) The person must relinquish the relevant number of carbon units not more than 90 days after the day on which the Regulator gives the notice.

Part 14 Incidental provisions

- 1401 (1) The Regulator may, in writing, issue guidelines about any of the following matters:
- (a) the way in which the production of the relevant product may be measured;
 - (b) an appropriate frequency of testing or sampling of the product;
 - (c) the considerations that the Regulator will take into account in determining whether or not the production of the product has met one or more requirements of this program.
- (2) A guideline is not binding on an applicant.
- (3) The Regulator must have regard to the following matters for the purpose of making the guidelines:
- (a) any relevant requirements imposed by or under the *National Measurement Act 1960*;
 - (b) the way in which the relevant product is measured in the industry;
 - (c) any way in which:
 - (i) the product was measured for the purpose of determining the content of this program; and
 - (ii) the measurements were reported to the Department in 2009 for that purpose;
 - (d) whether the frequency of measuring the amount or volume of relevant product enables the production of representative and unbiased data;
 - (e) any accredited industry test methods for the product;
 - (f) the risk that production by the facility will not satisfy the relevant qualities of the relevant product;
 - (g) the administrative costs of implementing more accurate testing methods at a facility.
- (4) The Regulator must consult as it considers appropriate before making or amending the guidelines.

- (5) The Regulator must publish proposed guidelines, and proposed amendments of the guidelines:
 - (a) on the Regulator's website; and
 - (b) in any other place the Regulator considers appropriate.

Schedule 2 Pipelines that are not natural gas supply pipelines

(subregulation 1.8 (4))

Gas processing plant Exit flange or connection point

New South Wales

Rosalind Park
(Camden)

In respect of the pipeline mentioned in pipeline licence no. 30 under the Pipelines Act 1967 of New South Wales, the 150NB flange located approximately 2 metres upstream of the pipeline insulating joint and immediately downstream of the Rosalind Park Gas Plant's sales gas metering facility

Victoria

Longford gas
processing plant,
Garretts Road,
Longford, Victoria

The exit flanges contained within the Longford Metering Station at Garretts Road, Longford, Victoria which are connected to the two 600 mm pipes from the prescribed gas processing plant to the Longford Metering Station and are:

- (a) the 600 mm weld on the 750 mm by 600 mm reducer; and
- (b) the upstream flange face of the 600 mm branch valve; and
- (c) the 600 mm weld 3 000 mm downstream on the side arm of the 600 mm equal tee,

all of which are immediately upstream of the metering runs which form a part of the Longford Metering Station

North Paaratte gas
processing plant,
Government Road,
Paaratte, Victoria

The exit flange that is the upstream flange face of the first actuated slamshut valve immediately upstream of the metering runs which form a part of the Paaratte Metering Station at Government Road, Paaratte

Gas processing plant Exit flange or connection point

Queensland

References to diagrams in the entries relating to Queensland are references to diagrams held by the Department of Mines and Energy at Brisbane

Wungoona J.V. (Wallumbilla)	<p>In respect of the pipeline mentioned in pipeline licence PPL no. 2 (Wallumbilla to Brisbane) under the <i>Petroleum Act 1923</i> of Queensland, the flange located immediately upstream of the series of valves before the meter run, as shown on diagram W, Wungoona JV-RBP ML 1A Metering Station and marked ‘AA’ on the diagram</p> <p>In respect of the pipeline mentioned in pipeline licence PPL no. 30 under the <i>Petroleum Act 1923</i> of Queensland, the pipe weld on the upstream side of an insulating joint located immediately upstream of the main flow control valve, as shown on diagram X, Wungoona JV—Duke Energy Pipeline and marked ‘BB’ on the diagram</p>
Ballera	<p>In respect of the pipeline mentioned in pipeline licence PPL no. 24 under the <i>Petroleum Act 1923</i> of Queensland, the 2 flanges on the upstream sides of 2 isolating valves upstream of where the pipeline separates into 2 parallel meter runs, as shown on diagram Y, Ballera Gas Centre—SWQ Unit—Epic Pipeline and marked ‘CC’ and ‘DD’ on the diagram</p> <p>In respect of the pipeline mentioned in pipeline licence PPL no. 41 under the <i>Petroleum Act 1923</i> of Queensland, the pipe weld on the upstream side of the insulating joint leading to the 2 meter runs operated by the Ballera-Mount Isa Pipeline, as shown on diagram Z, Ballera Gas Centre—SWQ Unit—Ballera and marked ‘EE’ on the diagram</p>
Gilmore	<p>In respect of the pipeline mentioned in pipeline licence PPL no. 15 under the <i>Petroleum Act 1923</i> of Queensland, the upstream flange of the actuated slamshut valve XV-0305 that is located on the metering skid downstream of the gas flow measurement, as shown on Energy Equity’s P & I Drawing No. G101-40F-0004</p>
Moura Mine	<p>In respect of the pipeline mentioned in mining lease ML no. ML 80032 under the <i>Mineral Resources Act 1923</i> of Queensland, the downstream face of the flanged ball valve SLV 0202 located between the dehydration unit and the launcher station, as shown on Drawings Nos NP03777-P11 and NP03777-P77</p>

Gas processing plant	Exit flange or connection point
Kincora	In respect of the pipeline mentioned in pipeline licence PPL no. 3 under the <i>Petroleum Act 1923</i> of Queensland, the 150NB class 600 flange immediately downstream of the Kincora Gas Plant's 150NB class 600 actuated isolation valve, as shown on P & ID Drawing No. 600-1001 Rev 3
Central Treatment (Westgrove)	In respect of the pipeline mentioned in pipeline licence PPL no. 11 under the <i>Petroleum Act 1923</i> of Queensland, the 200NB class 900 flange located approximately 0.7m away from the Central Treatment Plant's main 200NB pipeline and pig launching facility immediately downstream of the plant's 200NB class 900 main isolation valve, as shown on P & ID Drawing No. 3100-10-0020 Rev 6
Rolleston	In respect of the pipeline mentioned in pipeline licence PPL no. 10 under the <i>Petroleum Act 1923</i> of Queensland, the 150NB class 900 flange located immediately downstream of the 150NB class 900 isolation valve that is immediately downstream of the moisture analyser on the Rolleston Gas Plant's sales gas metering facility, as shown on P & ID Drawing No. 3500-10-0020 Rev 5
Dawson River Central	In respect of the pipeline mentioned in pipeline licence PPL no. 26 under the <i>Petroleum Act 1923</i> of Queensland, the 150NB class 600 flange located immediately downstream of the 150NB class 600 isolation valve at the tie-in station, as shown on P & ID Drawing No. DR—11014 Rev 1
Moura Central	In respect of the pipeline mentioned in pipeline licence PPL no. 26 under the <i>Petroleum Act 1923</i> of Queensland, the 150NB class 600 flange located immediately downstream of the 150NB class 600 isolation valve at the tie-in station pit, as shown on P & ID Drawing No. DR—11014 Rev 1

Gas processing plant	Exit flange or connection point
<i>Western Australia</i>	
North West Shelf Gas Project Domestic Gas	In respect of the pipeline that is the subject of pipeline licence PL40 under the <i>Petroleum Pipelines Act 1969</i> of Western Australia, the upstream flange of the flange joint immediately upstream of the most upstream of the monolithic insulation joints that are inside the fence of the pipeline's Dampier facilities compound
Tubridgi	In respect of the pipeline that is the subject of pipeline licence PL16 under the <i>Petroleum Pipelines Act 1969</i> of Western Australia, the downstream flange of the plant exit shut down valve that: <ul style="list-style-type: none"> (a) is between the pipeline pig launcher and the pipeline meter station; and (b) is the first shut down valve downstream of the connection to the 150 mm pipe from the filter separator
Dongara	In respect of the pipeline that is the subject of pipeline licence PL1 under the <i>Petroleum Pipelines Act 1969</i> of Western Australia, the upstream flange of the flange joint at the inlet end of the isolating valve that is at the inlet to the pipeline inlet gas flow meter
Beharra Springs	In respect of the pipeline that is the subject of pipeline licence PL18 under the <i>Petroleum Pipelines Act 1969</i> of Western Australia, the upstream flange of the insulated flange joint that: <ul style="list-style-type: none"> (a) is immediately upstream of the first barred tee downstream of the pig launcher; and (b) is on the through line of the tee
Griffin	In respect of the pipeline that is the subject of pipeline licence PL19 under the <i>Petroleum Pipelines Act 1969</i> of Western Australia, the downstream flange of the flange joint that connects the 200mm Griffin Gas Header pipe with the 200mm pipe connecting with the 250mm pipe to the pipeline meter station

Gas processing plant Exit flange or connection point

South Australia

Moomba Plant	<p>In respect of the pipeline conveying natural gas from the Moomba natural gas processing plant to Adelaide, the insulating joint situated between the meter station for the pipeline and EPIC's after cooler (as indicated in Diagram 1 below)</p> <p>In respect of the pipeline conveying natural gas from the Moomba natural gas processing plant to Sydney, the downstream weld of the 600mm x 750mm reducer situated, upstream of the insulation flange, between the meter station and East Australian Pipeline Ltd's mainline 750mm valve on the outlet of the meter station (as indicated in Diagram 2 below)</p>
Katnook Plant	<p>The insulating flange that is located one metre inside the boundary fence of the plant, upstream of the pipeline branch to Safries and downstream of the emergency shut down skid, as shown on drawing 107.5.1 held by the Office of Energy Policy at Adelaide</p>

Gas processing plant Exit flange or connection point

Northern Territory

Palm Valley Gas Plant	<p>In respect of the Palm Valley Gas Pipeline the flange:</p> <ul style="list-style-type: none">(a) shown as the insulating flange on the drawing entitled Palm Valley—Alice Springs Gas Pipe Line Well-Head Assembly—Drawing Number 10-011 (Revision 6 of 8/84) held by the Northern Territory Department of Mines and Energy at Darwin; and(b) situated at the Palm Valley Gas Plant immediately inside the perimeter fence downstream of the main gas plant and immediately upstream of the launching system
Mereenie Gas Plant	<p>In respect of the Mereenie Gas Pipeline—the flange:</p> <ul style="list-style-type: none">(a) shown as the insulating flange (I.F.) on the drawing entitled Amadeus Basin to Darwin Pipeline Mereenie Meter Station—P & I Diagram Inlet and Station Limit Valve—Drawing Number AD M000-7002 (Revision D of 25.2.86) held by the Northern Territory Department of Mines and Energy at Darwin; and(b) situated at the Mereenie Gas Plant immediately inside the perimeter fence and downstream of the main gas plant

DIAGRAM 1

MOOMBA PLANT PRESCRIBED PLANT AND EXIT FLANGE
- MOOMBA TO ADELAIDE PIPELINE

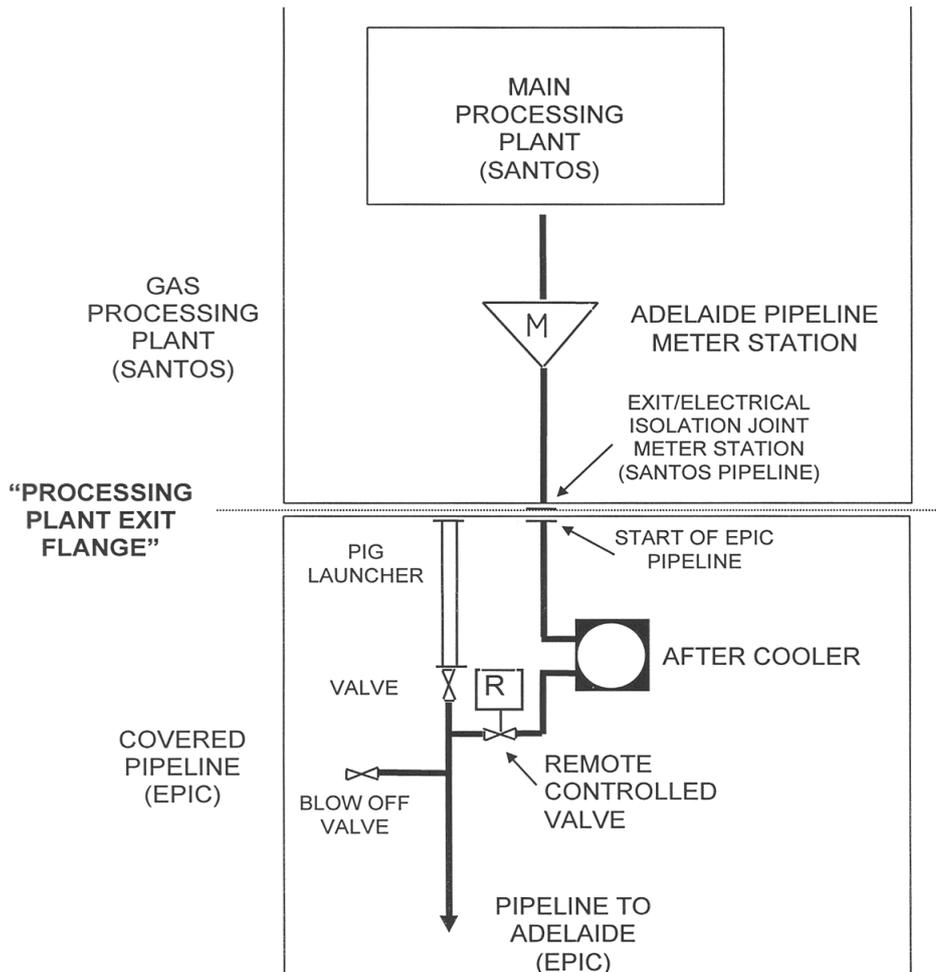


DIAGRAM 2
MOOMBA PLANT PRESCRIBED PLANT AND EXIT FLANGE
- MOOMBA TO SYDNEY PIPELINE

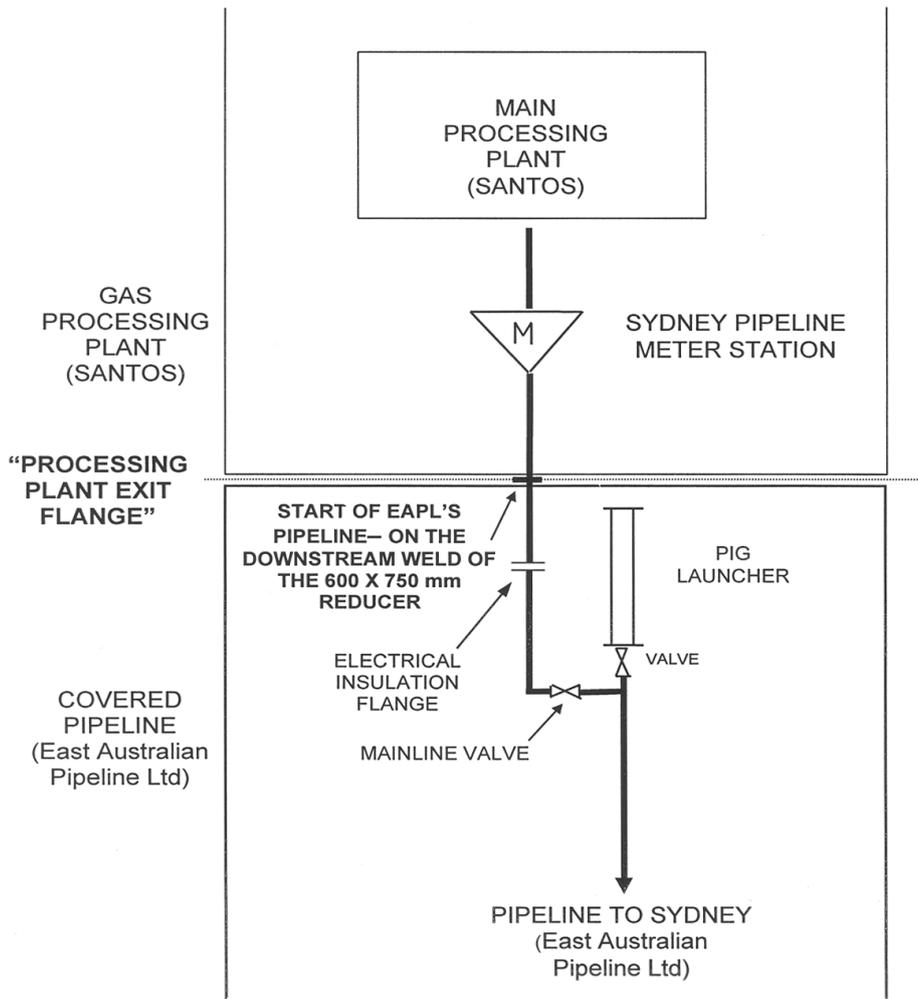


Table of Instruments

Notes to the *Clean Energy Regulations 2011***Note 1**

The *Clean Energy Regulations 2011* (in force under the *Clean Energy Act 2011*) as shown in this compilation comprise Select Legislative Instrument 2011 No. 221 amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2011 No. 221	28 Nov 2011 (see F2011L02473)	2 Apr 2012 (see r. 1.2 and F2011L02617)	
2012 No. 12	27 Feb 2012 (see F2012L00417)	2 Apr 2012 (see s. 2 and F2011L02617)	—
2012 No. 51	20 Apr 2012 (see F2012L00904)	21 Apr 2012	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 1.3.....	am. 2012 No. 51
Note to r. 1.3.....	ad. 2012 No. 12 am. 2012 No. 51
R. 1.4.....	ad. 2012 No. 51
R. 1.8.....	ad. 2012 No. 51
R. 1.9.....	ad. 2012 No. 51
R. 1.10.....	ad. 2012 No. 51
R. 1.11.....	ad. 2012 No. 51
R. 1.12.....	ad. 2012 No. 51
R. 1.13.....	ad. 2012 No. 51
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Div. 3 of Part 3.....	ad. 2012 No. 51
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R. 3.5A.....	ad. 2012 No. 51
Division 4	
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R. 3.6.....	ad. 2012 No. 51
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R. 3.8.....	ad. 2012 No. 51
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Subdivision 4.2	
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R. 3.14.....	ad. 2012 No. 51
R. 3.15.....	ad. 2012 No. 51
R. 3.16.....	ad. 2012 No. 51
R. 3.17.....	ad. 2012 No. 51
R. 3.18.....	ad. 2012 No. 51

Table of Amendments

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Provision affected	How affected
Subdivision 4.3	
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Division 5	
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Heading to r. 4.10.....	ad. 2012 No. 51
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Renumbered r. 4.10.....	2012 No. 51
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Part 7.....	ad. 2012 No. 12
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R. 14.1A.....	ad. 2012 No. 51
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Part 21	
Part 21.....	ad. 2012 No. 12
R. 21.1.....	ad. 2012 No. 12
Schedule 1	
Schedule 1.....	ad. 2012 No. 12
Parts 1–14.....	ad. 2012 No. 12

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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Schedule 2

Schedule 2	ad. 2012 No. 51
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