



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

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

Summary

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

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Definitions

Abbreviation	Definition
ACCU	Australian Carbon Credit Unit, which has the same meaning as in the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> .
Amendment Rules	<i>National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023</i> .
Baseline	The baseline emissions number for a facility, as specified in section 22XL of the NGER Act.
CO ₂ -e	Abbreviation for carbon dioxide equivalent, a way of quantifying greenhouse gases to reflect their contribution to climate change compared to a unit of carbon dioxide equivalent. In the NGER Act, the carbon dioxide equivalence of an amount of greenhouse gas, means the amount of the gas multiplied by a value specified in the regulations in relation to that kind of greenhouse gas.
Covered emissions	Has the meaning given by section 22XI of the NGER Act i.e. scope 1 emissions of one or more greenhouse gases, other than emissions of a kind specified in the Safeguard Rules.
Department	Department of Climate Change, Energy, the Environment and Water
Default emissions reduction contribution	For a financial year, has the meaning given by section 31 of the Amendment Rules.
Designated large facility	A facility covered by the Safeguard Mechanism, as defined in section 22XJ of the NGER Act.
EBIT	Refers to the number of dollars that is equal to the earnings before interest and tax of the facility in the first adjusted financial year for the facility.
Facility	An activity or a series of activities that involve greenhouse gas emissions, the production of energy or the consumption of energy, as defined in section 9 of the NGER Act.
Mt	Million tonnes
NDC	Nationally Determined Contribution under the Paris Agreement
Net covered emissions	Means the total amount, in tonnes of carbon dioxide equivalence, of covered emissions for a particular designated large facility adjusted for the total amount of ACCUs or SMCs surrendered. The NGER Act established the Safeguard Mechanism to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.
Net emissions budget	The 1,233 million tonne limit on net safeguard emissions for all of the financial years between 1 July 2020 and 30 June 2030 referred to in safeguard outcome (b).
Net emissions number	Has the meaning given by section 22XD of the NGER Act, i.e., the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period: <ul style="list-style-type: none"> (a) reduced by surrendered prescribed carbon units; and (b) increased by Australian carbon credit units that were issued in relation to the facility.
Net safeguard emissions	For a financial year, means the total amount, in tonnes of carbon dioxide equivalence, of net covered emissions from the operation, during the financial year, of all designated large facilities in the financial year.
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>

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Prescribed carbon unit	Has the meaning given by section 22XM of the NGER Act, namely ACCUs and SMCs.
Regulator	Clean Energy Regulator
Responsible emitter	The person with operational control of a facility (see further section 22XH of the NGER Act).
Safeguard Mechanism	A mechanism to ensure the net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility and ensure that aggregate net covered emissions from the operation of designated large facilities decline. The mechanism is established under Part 3H of the NGER Act.
Safeguard Mechanism Act	<i>Safeguard Mechanism (Crediting) Amendment Act 2023</i>
Safeguard Rules	<i>National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015</i>
Safeguard emissions	For a financial year, means the total amount in tonnes of carbon dioxide equivalence, of covered emissions from the operation, during the financial year, of all designated large facilities for the financial year.
Scope 1 emissions	Emissions released to the atmosphere as a direct result of an activity, or series of activities at a facility level (sometimes referred to as direct emissions).
SMCs	Safeguard Mechanism Credit units, which are units issued under section 22XNA of the NGER Act
TEBA facilities	Trade-exposed baseline-adjusted facilities
Trade exposed facilities	Designated large facilities for which the primary production variable is listed in Schedule 2 of the Safeguard Rules, as amended. The primary production variable for a facility is the production variable that is most significant for its operation, having primary regard to the share of revenue and covered emissions attributable to that production variable.

Key legislative provisions

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

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

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

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

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

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

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

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

Background

The Safeguard Mechanism and Australia's Nationally Determined Contribution

6. The NGER Act establishes a single national framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information. The Safeguard Mechanism is established under Part 3H of the Act. Together with the reporting obligations under the Act, the Safeguard Mechanism provides a framework for Australia's largest industrial emitters to measure, report and manage their emissions.

7. The Safeguard Mechanism provides a legislated framework that limits the net emissions of around 215 large industrial facilities—those with more than 100,000 tonnes of scope 1 (direct) carbon dioxide equivalent (CO₂-e) emissions each year ('designated large facilities' under s 22XJ of the NGER Act). Each year, every designated large facility needs to prove that their net emissions for that year are equal to or below their baseline. Each designated large facility reports their emissions to the Regulator, which publishes the results on its website.
8. Since it commenced on 1 July 2016, reported covered emissions from designated large facilities have grown over 4 per cent from 131.3 Mt CO₂-e in 2016-17 to 136.9 Mt CO₂-e in 2020-21.¹ Under existing policy settings, these aggregate emissions are projected to reach 146 Mt CO₂-e in 2029-30.²
9. Under the Paris Agreement, to which Australia is a Party, Parties are required to communicate their Nationally Determined Contribution (NDC) which sets out their emissions reduction commitments. On 16 June 2022, Australia communicated its updated NDC under Article 4 of the Paris Agreement to the United Nations³. This updated NDC included confirmation of Australia's commitment to achieve net zero emissions by 2050, and a new, increased, 2030 target of 43 per cent below 2005 levels by 2030. The *Climate Change Act 2022* prescribes these commitments into Australian law.
10. The Australian Government is reforming the Safeguard Mechanism to reduce emissions consistent with these legislated targets. The reforms will support industry to reduce emissions efficiently, helping them maintain competitiveness as the global economy decarbonises.

Amendments to the Safeguard Rules

11. Section 22XS of the NGER Act empowers me to make rules to implement the Safeguard Mechanism by legislative instrument. These rules may prescribe matters required or permitted by the NGER Act and matters necessary or convenient to be prescribed for carrying out or giving effect to the Safeguard provisions in the NGER Act. The Safeguard Rules are a legislative instrument made under section 22XS(1) of the NGER Act. The measures set out in the Amendment Rules, such as the creation of SMCs, are consistent with *the Safeguard Mechanism (Crediting) Amendment Act 2023* (Safeguard Mechanism Act).

¹ Safeguard facility emissions are published by the Clean Energy Regulator at:

<https://www.cleanenergyregulator.gov.au/NGER/The-safeguard-mechanism/safeguard-data/safeguard-facility-reported-emissions> .

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

³ Australia's Nationally Determined Contribution, available at: [https://unfccc.int/sites/default/files/NDC/2022-06/Australias NDC June 2022 Update %283%29.pdf](https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%283%29.pdf)

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

Consultations

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

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- draft *Safeguard Mechanism Reforms (Crediting) Amendment Bill 2022*,
- draft *Carbon Credits (Carbon Farming Initiative) Amendment (Safeguard Facility Eligibility Requirements) Rules 2022*
- a *Position Paper* (January – February 2023), factsheets, webinar, and 3 roundtables
- exposure draft legislation (January – February 2023)
 - draft *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023*,
 - draft *Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) 2023*,
 - draft *Australian National Registry of Emissions Units Rules 2023*,
 - draft *Safeguard Mechanism Legislation Amendment (2023 Measures No 1) Regulations 2023*
- Over 170 meetings held between June 2022 to April 2023
- Over 570 submissions have been received on the consultation paper, exposure draft legislation and position paper
- A summary of the consultation is included in the Regulatory Impact Analysis referred to in paragraph 18(i) below.

Material on which my decision was based

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

- a. National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023
- b. Carbon Credits (Carbon Farming Initiative) Amendment (No.2) Rules 2023
- c. Australian National Registry of Emissions Units Rules 2023
- d. Explanatory Statement: National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023
- e. Explanatory Statement: Carbon Credits (Carbon Farming Initiative) Amendment (No.2) 2023
- f. Explanatory Statement: Australian National Registry of Emissions Units Rules 2023
- g. Draft Statement of Reasons
- h. Other analysis relating to Statement of Reasons – including calculations that contain Cabinet-in-Confidence information
 - i. Decline rate analysis – Calculations from the Department relating to projected emissions without reforms and specific default decline rate required to achieve net emissions outcomes.
 - ii. Gross emissions analysis – Calculations from the Department relating to projected emissions without reforms, potential uptake of on-site abatement and historical emissions data, relating to 5 year rolling average emissions outcomes. The data underlying these calculations is classified Cabinet in

Confidence and in addition, the information could be market sensitive. It has consequently been covered by public interest immunity claims tabled to the Senate Environment and Communications Legislation Committee (1 March 2023) and provided to the Senate on 9 March 2023 under a Senate Order of 7 March 2023.

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

Reasons

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

19. Part 3 of the Safeguard Rules as amended specifies the default decline rate for a financial year. The default decline rate is a percentage representation of the amount that baselines, and therefore the cap on aggregate net emissions, are reduced in each financial year, subject to changes in production. The default decline rate is translated for use in baseline calculations in the default emissions reduction contribution number.
 - a. For each financial year in the period that ends on 30 June 2030, the default decline rate is 0.049, or 4.9 per cent.
 - b. For each financial year in the period that begins on 1 July 2030, the default decline rate is 0.03285, or 3.285 per cent.
20. The default emissions reduction contribution number is a key input to baseline calculations. It translates the default decline rate to a form suitable for use in baseline calculations. For the year beginning 1 July 2023 it equates to 1 minus the default decline rate of 0.049. For each year, an additional 0.049 is subtracted from the default emissions reduction contribution of the previous year up until 1 July 2030.
21. The default decline rate as provided for within Part 3 of the Safeguard Rules as amended was specifically calculated by the Department to ensure net safeguard emissions do not exceed a total of 1,233 million tonnes of carbon dioxide equivalence between 1 July 2020 and 30 June 2030, as outlined in following paragraphs.
22. The default decline rate to 30 June 2030 was formulated on the basis of analysis completed by the Department, which was informed by projected safeguard emissions from *Australia's*

*emissions projections 2022*⁴, Australia's 2030 targets expressed in Australia's NDC and data contained in the National Greenhouse Gas Inventory Quarterly Update: June 2022⁵.

23. *Australia's emissions projections 2022* suggested that an estimated 421 Mt CO₂-e could be emitted from designated large facilities over the period 2020-21 to 2022-23. This would have left 812 Mt CO₂-e from the 1,233 Mt CO₂-e safeguard net emissions budget for the period 2023-24 to 2029-30. Based on the outcomes from the 2021-22 compliance year, net safeguard emissions were 3 Mt CO₂-e lower than projected, and so the remaining portion of the net emissions budget for 2023-24 to 2029-30 is 815 Mt CO₂-e.
24. The Department's decline rate analysis, which I relied on, calculates the projected declining baselines for designated large facilities over 2023-24 to 2029-30 on the basis of a facility specific consideration of the baseline emissions numbers in accordance with Part 3 of the Safeguard Rules as amended. In undertaking consideration on a facility by facility basis, the decline rate analysis took into account the likely numbers of facilities subject to each of the following provisions in paragraph 25 below. Since international best practice emissions intensities have not yet been determined apart from reservoir carbon dioxide feeding existing liquefied natural gas, the decline rate analysis applied Australian best practice as a proxy for international best practice, adapted for Australian circumstances. This is a conservative approach to the analysis since there will be times when Australian best practice is the lowest emissions intensity and other times when best practice occurs in another country or countries. Consequently, the overall outcome is expected to be lower using international best practice, adapted for Australian circumstances, than Australian best practice.
25. The decline rate analysis took into account the following provisions in Part 3 of the Safeguard Rules as amended:
 - a. Division 1 of Part 3 – General – which establishes that the minimum baseline emissions number is 100,000 (unless a borrowing adjustment applies); the baseline emissions for a shale gas facility (as defined in Division 7 of Part 3) for a financial year is zero; and the baseline emissions number for a facility for a financial year that begins after 30 June 2049 is to be zero.
 - b. Division 2 of Part 3 – Existing facilities – which establishes the hybrid model initially weighted towards the use of site-specific emissions intensity values, transitioning to industry average emissions intensity values by 2030. Reservoir carbon dioxide from

⁴ Department of Climate Change, Energy, the Environment and Water, December 2022, Australia's emissions projections 2022, available at: <https://www.dcceew.gov.au/climate-change/publications/australias-emissions-projections-2022#:~:text=In%20June%202022%20Australia%20updated,emissions%20budget%20from%202021%2D2030.>

⁵ [https://www.dcceew.gov.au/climate-change/publications/national-greenhouse-gas-inventory-quarterly-update-june-2022#:~:text=The%20trend%20result%20for%20the,electricity\)%20and%20fugitive%20emissions%20sectors.](https://www.dcceew.gov.au/climate-change/publications/national-greenhouse-gas-inventory-quarterly-update-june-2022#:~:text=The%20trend%20result%20for%20the,electricity)%20and%20fugitive%20emissions%20sectors.)

new gas fields supplying existing liquefied natural gas has a production variable at best practice emission intensity of zero.

- c. Division 3 of Part 3 – New facilities – which establishes that baselines will be set at international best practice, adapted for Australian circumstances.
- d. Division 4 of Part 3 – Landfill facilities – which provides the baseline arrangement of landfill facilities. I note that landfill facilities have different coverage and baseline setting arrangements to other facilities—calculated from a default capture efficiency rate of 37.2 per cent.
- e. Division 5 of Part 3 – Emissions reduction contribution – which establishes the emissions contribution for both facilities which are not TEBA (ie ‘regular facilities’) and those that are TEBA.

26. The Department’s decline rate analysis allows for a 15 Mt CO₂-e emissions reserve, to protect against the event that emissions from designated large facilities are higher than originally projected. The reserve has been established to:

- a. Manage uncertainty in the production and emissions from new projects that may enter the Safeguard Mechanism, as well as uncertainty in the future production and emissions from existing designated large facilities.
 - i. The level of production uncertainty included in the reserve is benchmarked to the interannual variability of historical reported emissions from designated large facilities of around 1 per cent. Without the Safeguard reforms, emissions are projected by *Australia’s emissions projections 2022* to grow at an annual average of 0.7 per cent a year between 2020-21 and 2029-30. The production uncertainty component allows for annual average growth in emissions of over 0.9 per cent a year between 2020-21 and 2029-30.
 - ii. Expectations of new facilities estimated to enter the Safeguard Mechanism were aligned with Australia’s emissions projections 2022 and the Office of Chief Economist’s Resources and Energy Major Projects List: 2022⁶ where those projects have a high likelihood of proceeding.
 - iii. The approach to setting baselines for new entrants under the Safeguard Rules, as amended, at international best practice (as outlined in Part 3, Division 3, Section 29) leads to net emissions from new entrants being estimated at 15 Mt to 2030, compared to estimated emissions of 38 Mt to 2030 without reforms.

⁶ Department of Industry, Science and Resources, December 2022, Resources and energy major projects: 2022, available at: <https://www.industry.gov.au/publications/resources-and-energy-major-projects-2022>

- b. Account for the event that designated large facilities access trade-exposed baseline-adjustments to a greater extent than estimated in the decline rate analysis.
- 27. Through its components as described above, the reserve accounts for greater than anticipated emissions from existing facilities and new facilities and higher than anticipated access to trade-exposed baseline adjustments.
- 28. The Department's decline rate analysis calculates the default decline rate from projected baselines to limit emissions to the remaining net emissions budget of 800 Mt CO₂-e (i.e., 815 Mt CO₂-e – 15 Mt CO₂-e) over the financial years 2023-24 to 2029-30. This decline rate analysis, together with the expectation that net safeguard emissions would total 418 Mt CO₂e over 2020-21 to 2022-23, is consistent with net emissions from designated large facilities not exceeding 1,233 Mt CO₂-e over the 10 years 2020-21 to 2029-30 (ie 418 Mt CO₂-e + 815 Mt CO₂-e).
- 29. I note there are several flexibility measures in the Safeguard Rules as amended that would not directly affect the total amount of net safeguard emissions to 30 June 2030, however, establish certain frameworks for designated large facilities in meeting their baselines. These include:
 - a. SMCs – Part 3A of the Safeguard Rules as amended provides for the application for, and calculation and issuance of, SMCs where the emissions of a designated large facility or eligible facility (as defined under subsection 58B) are below the facility's baseline in a given year. Part 4, Division 5 of the Safeguard Rules as amended provides that facilities can surrender SMCs to meet their compliance obligations for a given financial year.
 - b. ACCUs – Part 4, Division 5 of the Safeguard Rules as amended provides that designated large facilities can surrender ACCUs to meet their obligations. An ACCU represents one tonne of emissions avoided or sequestered. Each ACCU surrendered by a facility reduces its net emissions by one tonne.
 - c. Borrowing arrangements – Part 3, Division 6 of the Safeguard Rules as amended provides for borrowing adjustments for facilities' baselines. Up to 10 per cent of a facility's baseline will be allowed to be borrowed each year up to 30 June 2030, with a 2 per cent interest applied in the year after the borrowing occurs for the first 2 years, and a 10 per cent interest applied in the year after borrowing occurs in subsequent years. This means facilities will be allowed to have a higher number of net safeguard emissions in one financial year by up to 10 per cent, provided their net safeguard emissions in the next financial year are reduced by that amount plus the relevant interest rate.
 - d. Declared multi-year periods – Part 4, Division 2 provides for five-year declared multi-year periods. This will allow facilities to smooth out abatement trajectories by allowing facilities to average out an exceedance in an initial year (or years) with below-baseline emissions in later years, after a facility has implemented a project.
- 30. These measures do not allow for increases in net emissions over the period to 2030, rather they provide flexibility for when and how facilities meet their compliance obligations up until 2030.
- 31. I am satisfied that these measures are consistent with safeguard outcome (b), for the following reasons:

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- a. Each SMC is equivalent to one tonne of carbon dioxide equivalent. SMCs are issued within the overall carbon constraint of the declining baselines as described above. Any use of SMCs for the purposes of compliance to 30 June 2030 would not add to the overall net safeguard emissions from designated large facilities since they represent a reduction in emissions from another facility or from that facility in a previous financial year in the period up to 30 June 2030.
- b. Each ACCU represents one tonne of emissions avoided or sequestered. Each ACCU surrendered by a designated large facility reduces its net covered emissions by one tonne. I note the *Carbon Credits (Carbon Farming Initiative) Act 2011* has arrangements to ensure the integrity of ACCUs and further work is underway to enhance this framework⁷.
- c. Neither borrowing arrangements nor declared multi-year periods extend beyond 30 June 2030, ensuring that they are consistent with safeguard outcome (b) by requiring on-site emissions reduction or the surrender of ACCUs or SMCs to occur by 30 June 2030.

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

- a. The Department's decline rate analysis used to set the decline rate took into account the number of facilities that are expected to qualify as TEBA based on the considerations below.
 - i. Using activity forecasts consistent with *Australia's emissions projections 2022*, declining hybrid baselines were projected at a facility level for trade exposed facilities.
 - ii. Cost impacts were estimated based on projected facility exceedances multiplied by central ACCU price forecasts. Estimated revenue was based on five year historical commodity data or publicly available revenue data. Estimated EBIT was based on publicly available data.
 - iii. Where cost impact was estimated to exceed the ratio of cost impacts given by section 29 of the Safeguard Rules as amended, facility baselines were adjusted according to section 28. The classification of manufacturing and non-manufacturing facilities was undertaken according to Schedule 2 in the Safeguard Rules as amended.

⁷ <https://www.dcceew.gov.au/climate-change/emissions-reduction/independent-review-accus>

- iv. The total amount of baseline-adjustments estimated over 2023-24 to 2029-30 for trade-exposed facilities was incorporated into the baseline decline calculation.
 - b. As outlined in paragraph 26 above, the baseline decline rate was calculated factoring in a reserve, which provides a buffer if more facilities than expected qualify for TEBA status.
- 33. The provisions in Part 4, Division 4 help ensure there are necessary checks and balances to ensure that the correct net emissions information is reported.
 - a. Section 72A in Part 4, Division 4 provides for excess surrender situations in circumstances where a person has surrendered a number of prescribed carbon units for the purposes of reducing the net emissions number for a facility in error.
 - b. Subsection 22XK(4) of the NGER Act provides that if ACCUs attributable to carbon abatement at a designated large facility are issued for a particular period, the net emissions number for that period is increased by the quantum of ACCUs. Section 72B details circumstances in which subsection 22XK(4) of the Act does not apply, whereby if ACCUs are issued for carbon abatement at a facility for emissions not covered by the Safeguard Mechanism (e.g., scope 2 emissions) the increase to the net emissions number does not occur.
- 34. Section 22XN(6) of the NGER Act provides that, if ACCUs attributable to carbon abatement at a designated large facility are purchased by the Commonwealth under a carbon abatement contract, they are treated as though they had been surrendered for the purpose of reducing the net emissions number for the facility for the relevant period. Subsection 22XN(7) of the NGER Act states that subsection 22XN(6) does not apply in circumstances prescribed in the Safeguard Rules. Under section 72E of the Safeguard Rules as amended, subsection 22XN(6) of the Act does not apply in relation to a carbon abatement contract entered into after 30 March 2023 (otherwise than by way of novation). Further, section 22XN(6) of the Act does not apply if ACCUs are purchased under a carbon abatement contract that does not refer to the project for which the ACCUs were issued. These provisions grandfather the access to 'deemed surrender' arrangements. These arrangements do not change the quantum of ACCUs required to meet a facility's baseline. The quantity of ACCUs potentially affected by these arrangements is capped because new carbon abatement contracts will not be able to access these arrangements. Overall, I am satisfied that the access to 'deemed surrender' arrangements in the Safeguard Rules as amended, is consistent with meeting the net emissions budget to 30 June 2030, since under 'deemed surrender' arrangements the same quantum of ACCUs required to meet a particular facility's baseline are still surrendered to the Australian Government.
- 35. I also note that the NGER Act has a robust penalty regime for the enforcement of the obligations under the Safeguard Mechanism, addressing any risks that non-compliance could increase net emissions. This includes civil penalties, infringement notices and injunctions to require a non-compliant entity to surrender ACCUs or SMCs to bring their net emissions down to their baseline.

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

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

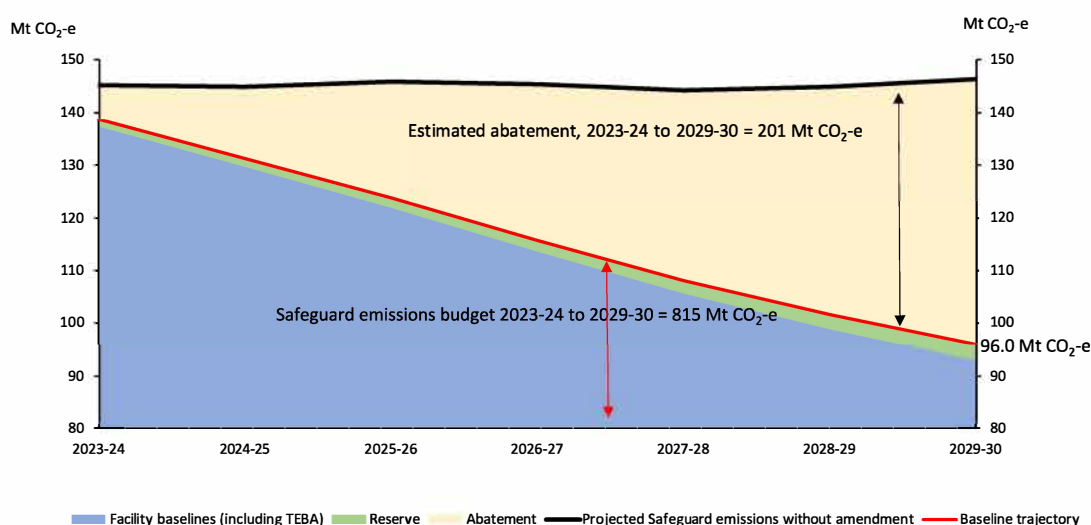


Figure 1. Safeguard baseline trajectory, 2023-24 to 2029-30

37. The default decline rate detailed within Part 3, Division 5 of the Safeguard Rules as amended for a financial year beginning 1 July 2030 or later is a rate that reduces to zero over the 20 years 2030-31 to 2049-50, ensuring that aggregate baselines for designated large facilities reach net zero by 2049-50 (referred to here as the emissions target), which is consistent with safeguard outcome (c)(ii).

38. Part 3, Division 1 of the Safeguard Rules as amended provides a direct obligation that emissions baselines for a facility for a financial year that begins after 30 June 2049 are zero.

39. I am aware that baselines adjusting based on production levels as provided for in Part 3 need mechanisms to address risks that total emissions may exceed the emissions target if production increases more than expected. For the reasons outlined in paragraph 26 above, I am satisfied that this risk has been managed.

40. The default decline rate has also been specifically calculated to take account of the risk that new entrants will lead to an exceedance of the overall budget as it has been calculated to include all expected new entrants, as well as a buffer for unexpected production increases from new and existing facilities, as outlined in paragraph 26 above.

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

41. Safeguard outcome (d) requires the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 to be lower than the past 5-year rolling average safeguard emissions for that financial year, where the past 5-year rolling average Safeguard emissions is defined as one fifth of the total amount of safeguard emissions for the 5 financial years previous to the financial year that ended 3 years before the start of the current financial year (for financial years that begin before 1 July 2027), and from the 2027-28 financial year onwards, for the 5 financial years that ended 2 years before the start of the current financial year.
42. The Department, alongside the Department of Treasury, undertook modelling of the abatement and carbon market opportunities and the resulting safeguard emissions under policy elements, including borrowing, reflected in Safeguard Rules as amended, to inform Cabinet deliberations. A summary of this analysis, on which I relied, was included in the Department's gross emissions analysis.
43. The Department's gross emissions analysis indicates the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 are estimated to be lower than the past 5-year rolling average safeguard emissions for that financial year, which is consistent with outcome (d).
44. The decline rate analysis I have received provides that the default baseline decline rates as outlined by Part 3, Division 5, which were used in formulating the default emissions reduction contribution have taken into consideration new entrants into the Safeguard Mechanism consistent with the assumptions and inputs to Australia's emissions projections 2022, as well as the level of TEBA facilities that will be made to 2030. The default emissions reduction contribution provided in Part 3, Division 5 has been calculated to ensure that emissions will steadily decline to zero by 2050, accounting for any greater than expected increases in emissions from production, consistent with safeguard outcome (d).
45. To encourage on-site abatement, Part 3A of the Safeguard Rules as amended provides for the creation and issuance of SMCs where designated large facilities reduce their emissions beyond their baselines. Designated large facilities are able to sell these SMCs to other designated large facilities or bank them to use in future years when it is anticipated that the cost of prescribed carbon units will have increased. This provides an economic incentive for designated large facilities to undertake on-site abatement, thereby reducing safeguard emissions.
46. I note that, in facilitating emissions reduction, the Government is providing \$600 million of funding from the Safeguard Transformation Stream in supporting development of onsite abatement opportunities of designated large facilities. Facilities that use the production variables listed in Schedule 2 of the Amended Rules are eligible to access these funds.
47. The Safeguard Transformation Stream is additional to a range of other Commonwealth, State and Territory programs that can support on-site abatement at designated large facilities, such as support from the Australian Renewable Energy Agency, Clean Energy Finance Corporation and National Reconstruction Fund.

48. While these sources of funding or financing are not directly provided for by the Safeguard Rules, as amended, they are indirectly relevant in the sense that the provision of additional financial incentives for onsite carbon abatement would be anticipated to lead to a reduction in covered emissions. Since they are not directly provided for by the Safeguard Rules, as amended, I did not rely on these sources of funding or financing in deciding that I am satisfied that the Safeguard Rules as amended are consistent with safeguard outcome (d).
49. I note there are a range of flexibility mechanisms that interact with the declining baselines which a designated large facility can use in meeting their compliance obligations. Such measures include borrowing adjustments (Part 3, Division 6) and declared multi-year periods (Part 4, Division 2). I have considered the consistency of these mechanisms with safeguard outcome (d) and have concluded they are consistent with outcome (d), as well as outcomes (b) and (c), for the following reasons:
- a. Neither borrowing nor declared multi-year periods are intended to allow for increases in emissions compared to the previous financial year, but to provide assistance to facilities to manage the declining baseline framework (including the default decline rate of 4.9 per cent each year) for a given period. Despite their compliance being offset temporarily, there is still the requirement to meet the declining baselines with the overall price signal to reduce gross emissions.
 - b. As provided by Part 3, Division 6, borrowing is limited to up to 10 per cent of a future year's baseline number. When accessing borrowing arrangements, facilities would need to plan to meet their next year's baseline, which would be decreased by the default decline rate and by the amount borrowed (plus interest) the following year. This level of interest applied to a facility's emissions baseline effectively increases their abatement obligation for the following financial year, and therefore reduces the likelihood of the use of borrowing arrangements.
 - c. As outlined by Part 4, Division 2, declared multi-year periods are available to facilities that have large scale abatement projects in the near-term pipeline. Facilities must provide a declaration to the Regulator that the facility will conduct one or more activities to reduce the emissions intensity of the facility's production variables and that, as a result of those activities, they will be reasonably likely to avoid an excess emissions situation at the end of the declared multi-year period. Because of these requirements, it is anticipated that only a small number of facilities will qualify for a multi-year period in a given year and it is particularly unlikely that any of these facilities will be able to increase its emissions during the initial years of the multi-year period and still avoid excess emissions situation at the end of the period. Further, section 69B of the Safeguard Rules as amended allows the Regulator to reduce the length of a declared multi-year period where emissions are not being reduced, limiting the potential that declared multi-year periods can be used to delay the implementation of onsite abatement projects, or delay liability without the intention of conducting onsite abatement. While the Department's gross emissions analysis did not make assumptions on the use of declared multi-year periods, because of these requirements in the Safeguard Rules as amended, it is anticipated that only a small number of facilities will qualify for a declared multi-year period in a given year.

These arrangements occur in the context that baselines for all designated large facilities will be subject to an annual decline rate and that the 5 year rolling average safeguard emissions is compared to the financial year which ended either three years or two years before the financial year in focus. Consequently, in aggregate across all designated large facilities, it is unlikely that the amount of any additional emissions allowed in a financial year from a declared multi-year period would be sufficient to outweigh the reductions in emissions by other facilities, such that it is reasonable to expect the 5 year rolling average to be lower than the financial year which ended either three years or two years before the financial year in focus.

- d. I also note that the Safeguard Rules as amended, in Part 4, Division 1 provide for exemption declarations whereby, in the event of criminal activity or natural disaster, the Regulator may exempt a facility from meeting their emissions baseline for a monitoring period. Since the commencement of the Safeguard Mechanism in 2016, the Regulator has never provided an exemption declaration. These provisions are only anticipated to be used in 'exceptional circumstances'⁸ and, under the Safeguard Rules as amended, responsible emitters are required to undertake reasonable steps to mitigate the risks that the circumstances could result in an excess emissions situation before the circumstances occur and mitigate the likelihood of an excess emissions situation after the circumstances occur. They are therefore only anticipated to be used in very few cases and given the requirement to mitigate risks even if circumstances occur are not anticipated to have a material impact on the rolling 5 year period.

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

50. Part 3A of the Safeguard Rules as amended establishes a framework for incentivising designated large facilities to reduce emissions because if, in a given financial year, a facility's emissions are below their baseline, the facility will be rewarded through the issuance of SMCs. These SMCs can be sold to other designated large facilities or banked for future use and therefore represent a material incentive as baselines decline. Further, where facilities are above their baseline, there is a material financial incentive to invest in onsite abatement, as this will avoid the compliance cost of purchasing and surrendering prescribed carbon credits to reduce their net emissions. While still expected to be available at a price lower than the ceiling set by the cost containment measure, the cost of prescribed carbon credits is expected to increase over time as baselines decline. This provides an economic incentive for designated large facilities to invest in reducing covered emissions onsite where it is technically feasible and at an overall cost less than prescribed carbon credits. Collectively, this also provides an economic incentive for increased

⁸ <https://www.cleanenergyregulator.gov.au/NGER/The-safeguard-mechanism/Managing-excess-emissions>

development in low emissions technology, which has the potential to increase the commercial availability and ultimately the cost of low-emissions technology.

51. Section 72C of the Safeguard Rules as amended requires that if, under subsection 22XN(1) of the NGER Act, the total number of ACCUs surrendered for a period exceed 30 per cent of the facility's baseline emissions number, the responsible emitter must provide a written explanation to the Clean Energy Regulator of why more carbon abatement was not undertaken at the facility. The Regulator will publish non-commercially sensitive details of the explanation on the Regulator's website. This requirement provides increased transparency and accountability of designated large facilities' onsite abatement activity within the financial year. It will ensure that designated large facilities are carefully considering their options regarding the potential for onsite abatement activities against the use of ACCUs to meet their obligations.
52. I note that around 80 per cent of designated large facilities, generating around 86 per cent of safeguard emissions, have corporate commitments to reach net zero. In taking account safeguard outcome (e), section 72C of the Safeguard Rules as amended provides increased transparency around corporate decision making on the use of ACCUs, which is expected to lead to prioritisation of onsite abatement where it is technologically feasible and available at a price broadly relative or less than ACCUs. This provides an incentive for onsite abatement relative to the use of ACCUs and is therefore consistent with safeguard outcome (d) and takes account of safeguard outcome (e).
53. I have heard from stakeholders during consultation that in adopting flexibility mechanisms, including declared multi-year periods, industry also need to have incentives in reducing emissions onsite. Taking this into consideration, section 42AA of the Safeguard Rules as amended provides a process for issuing SMCs to a designated large facility for a declared multi-year period, which will bolster industry investment in onsite emissions abatement, therefore taking account of safeguard outcome (e).

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

54. Under the Safeguard Rules as amended, two categories of trade exposed facilities will receive assistance to manage competitiveness issues and carbon leakage risks. These categories are 'trade exposed' facilities and TEBA facilities and are defined in Section 4 of the Safeguard Rules. The arrangements for these different categories of facilities will provide appropriate support to the competitiveness of trade-exposed industries, as Australia and its regions seize the opportunities of the move to a global net zero economy.
55. As provided by Part 3, Division 5, Subdivision D, of the Safeguard Rules as amended, TEBA facilities will be eligible to apply to the Regulator for a discounted decline rate based on a scheme impact metric. The minimum decline rate and scheme impact metric will differ depending on whether the facility's primary production variable is designated as manufacturing or non-manufacturing. This differential treatment recognises the differences between the two in terms of structural margins and capital intensity, and the increased impacts to manufacturing within Australia. As outlined above, as well as taking this into account in relation to safeguard outcome (f), I have considered the consistency of these arrangements with safeguard outcomes (b), (c) and (d).

56. Part 3, Division 5, Subdivision C of the Safeguard Rules as amended provides the framework for specialised treatment for TEBA facilities. Facilities that can demonstrate that their scheme cost impacts under the scheme are above a specified threshold may apply to the Regulator to have a reduced baseline decline rate applied for a three-year period.
57. As outlined within Part 3, Division 5, Subdivision C, in determining the lower decline rate, manufacturing facilities will use scheme cost as a percentage of facility Earnings Before Interest and Taxes (EBIT), reflecting the value-added nature of their margins. Scheme cost for a facility will be determined by multiplying a baseline exceedance in a particular year by the default prescribed unit price. Assistance to the manufacturing sector will commence at 3% and the minimum baseline decline rate will be available at 10%. The minimum baseline decline rate for manufacturing facilities will be 1% each year. Non-manufacturing facilities will use scheme cost as a percentage of facility revenue, with access to concessional baseline decline rates commencing at 3% and the minimum baseline decline rate will be available at 8%. The minimum baseline decline rate for non-manufacturing facilities will be 2% each year.
58. I note that both categories of trade-exposed and TEBA facilities, as designated under the Safeguard Rules as amended, will be eligible to access the \$1.9 billion Powering the Regions Fund (PRF). Within the PRF, the Government will support trade-exposed facilities to invest in low emissions technology through the \$600 million Safeguard Transformation Stream and will also support industries providing critical inputs to clean energy industries (including steel, cement, lime, aluminium and alumina) through the \$400 million Critical Inputs Fund. This assistance will complement the Safeguard Mechanism and other government policies to help Australia and its regions seize the opportunities of the move to a global net zero economy.
59. Part 3, Division 2 sets baselines for existing facilities using a production adjusted framework with a hybrid approach between site-specific and industry average values that transitions towards full industry average values from 2030. I note that production adjusting baselines as provided in Division 2 of this Part take into account supporting the competitiveness of trade-exposed facilities as:
- a. They do not penalise facilities that increase their production, and
 - b. They do not create an incentive for facilities to reduce their production to avoid their safeguard liability, which could occur if baselines were set on an absolute basis.
60. I note that the general design of the Safeguard Mechanism, which does not impose costs on every tonne of emissions, but declines baselines on a trajectory to net zero by 2050, supports competitiveness and has similarities to free allocation used internationally in schemes to reduce emissions. International actions to reduce emissions consistent with commitments under the Paris Agreement are also relevant to the nature of potential competitiveness impacts, along with corporate commitments of trade-exposed industries.
61. Schedule 2 provides the basis for defining the 'trade exposure' of facilities and is relevant to how the Safeguard Rules take into account safeguard outcome (f) of the Act. Section 1 of Schedule 2 provides a table which lists trade-exposed production variables that are also manufacturing sector facilities. Section 2 of this Schedule provides another table that lists production variables that are non-manufacturing production variables.

Other provisions

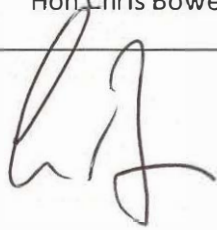
62. In deciding to make the Amendment Rules, I considered the following Parts and Schedules of the Safeguard Rules as amended which are not discussed above and which support the effective operation of the Safeguard Mechanism regulatory scheme but do not otherwise directly relate to the safeguard outcomes: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

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

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

Signature



Date of decision 3 May 2023
