**EXPLANATORY STATEMENT**

**Select Legislative Instrument 2013 No. 44**

Issued by the Authority of Minister for Climate Change, Industry and Innovation

*Renewable Energy (Electricity) Act 2000*

*Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)*

Section 161 of the *Renewable Energy (Electricity) Act 2000* (the Act) provides, in part, that the Governor-General may make Regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act, as amended by the *Renewable Energy (Electricity) Amendment Act 2010* (the Amendment Act) establishes the Renewable Energy Target (RET) scheme to encourage electricity generation from eligible energy sources. The RET is designed to ensure that the equivalent of at least 20 per cent of Australia’s electricity supply is generated from renewable sources by 2020.

Under the Act, wholesale electricity purchasers (‘liable entities’) are required to contribute to the RET in proportion to their share of the national wholesale electricity market. The Act provides for the creation of renewable energy certificates by renewable energy generators and for installations of small generation units (SGUs) such as rooftop solar photovoltaic (PV) systems, and solar water heaters. One certificate generally represents one megawatt-hour (MWh) of electricity from eligible energy sources. The Act also provides for assistance in the form of partial exemption certificates (PECs) for electricity used in activities that are defined to be emissions-intensive and trade-exposed (EITE), such as aluminium smelting and the integrated production of lead and zinc.

The *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) provide an administrative framework to implement the Act, including in relation to assistance to EITE activities in the form of PECs.

The *Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)* (the Regulation) amends the Principal Regulations.

Details of the Regulation are included in Attachment A.

**Consultation**

The *Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)* reflects the outcomes of comprehensive consultation by the Department with the public and stakeholders in assessing activities for eligibility as EITE activities primarily under the Jobs and Competitiveness Program (the Program). The eligibility requirements are the same for EITE activities under the RET scheme.

The Department of Climate Change and Energy Efficiency (the Department) commenced a formal process for defining and determining the eligibility of EITE activities in February 2009 and has conducted stakeholder workshops to assist in the creation of appropriate definitions and boundaries for activities. The process also involved the approval of activity definitions by the Minister for Climate Change and Energy Efficiency for the purposes of data collection and publication on the Department's website. Audited data has been submitted to the Government on the basis of the approved activity definitions. Relevant industries that submitted data to the Government for the formal assessment of respective activities were consulted in regard to the drafting of the definitions to be included in the Regulations to ensure that the structure of the definitions generally reflects the conduct of the activities generally.

The policy framework for determining the eligibility of EITE activities for assistance under the Program was originally developed in 2009 and has been used to establish the eligibility of activities defined to date under the RET scheme under the Act. The process for assessing activities and defining the technical aspects of the activities, including setting assistance rates and allocative baselines, is outlined in the paper titled *Establishing the eligibility of activities under the Jobs and Competitiveness Program* (which is available from the Department’s website [www.climatechange.gov.au](http://www.climatechange.gov.au)).

The Department has consulted with the helium industry in accordance with the process described above in order to establish the helium activity.

The Department has consulted with the nickel and coke oven coke industries regarding the changes to these activities. These changes are the result of specific requests from industry to clarify the regulations and ease implementation. No objections have been raised.

**Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

**ATTACHMENT A**

**Details of the Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)**

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)*.

**Section 2 – Commencement**

This section provides that the Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

**Section 3 – Authority**

This section specifies that the Regulation is made under the *Renewable Energy (Electricity) Act 2000*.

**Section 4 – Schedule(s)**

This section provides that the Regulation amends or repeals each instrument that is specified in a Schedule to the Regulation.

**Schedule 1 – Amendments**

**1 Subregulations 22X(1A) and (1B)**

This item allows for applications for Partial Exemption Certificates for the production helium and the production of nickel to be given to the Clean Energy Regulator before 1 June 2013.

**2 to 5 Paragraphs 731(a) and (b), and Paragraphs 733(a) and (b) of Schedule 6**

These items amend paragraphs 731(a) and 733(a) to clarify that coke oven coke has a strength after reaction of at least 50%. They also amend paragraphs 731(b) and 733(b) to require that coke oven coke has a reactivity index of at most 40%. These amendments relate to the production of coke oven coke and the issue of free carbon units.

**6 Subclause 740(2) of Schedule 6 (paragraph (a) of definition of *cobalt products*)**

This item includes cobalt oxyhydroxide (CoOOH) in the definition of cobalt products considered to be eligible production for the purpose of the issue of Partial Exemption Certificates.

**7 Subclause 740(2) of Schedule 6 (paragraph (b) of definition of *intermediate nickel products)***

This item changes the minimum concentration of nickel in the intermediate nickel products definition of mixed nickel-cobalt hydroxide precipitate from 42% to 35%.

**8 At the end of Schedule 6**

Item 8 inserts in Schedule 6 to the Principal Regulations a new Part 49, comprising 3 divisions which together define the activity ‘production of helium’ as an EITE activity, including the scope of the activity, its emissions-intensity classification and electricity baseline. The inclusion of the production of helium in the Principal Regulations as an emissions-intensive trade-exposed (EITE) activity will enable partial exemptions from liability under the Renewable Energy Target (RET) scheme to be provided in respect of electricity used in undertaking this activity.

**Part 49 Production of helium**

**Division 1 Production of helium**

Clause 743 – Production of helium

Clause 743 provides that the production of helium is the physical and chemical transformation of a gas mixture that has a concentration of helium (He) less than or equal to 10 per cent with respect to moles (inclusive) to helium where the concentration of helium (He) is greater than or equal to 99 per cent with respect to moles.

The activity as conducted during the period used to assess the eligibility of the activity involved the onsite separation and liquefaction of gas mixtures to produce helium.

The inputs of the activity have been defined to include a gas mixture that has a concentration of helium less than or equal to 10 per cent. The output of this activity is saleable helium that has a concentration of helium greater than or equal to 99 per cent with respect to moles.

The activity does not include the upstream mining and extraction of gas inputs. The activity also does not include the production of liquefied natural gas.

**Division 2 Classification of activity**

Clause 744 – Classification of activity

Clause 744 prescribes that the production of helium is classified as a moderately emissions‑intensive activity. This has the effect that electricity used in the activity as defined is eligible for a partial exemption from RET liability at the moderately emissions‑intensive rate.

**Division 3 Electricity baseline for calculating partial exemption**

Clause 745 – Electricity baseline for product

Clause 745 provides that the electricity baseline for calculating the amount of a liable entity’s partial exemption for the production of helium is 36.5 megawatt‑hours (MWh) per tonne of saleable helium.

To be eligible for assistance, the helium output must have been produced by carrying on the activity (as defined by clause 743) to be eligible as a relevant product. For example, if imported helium is mixed with output produced from the activity, only the proportion of helium that is an output from the activity would be included in the tonnes of the relevant product.

The helium must be of saleable quality (as defined in Regulation 22C of the Principal Regulations). In particular, the tonnes of helium which are lost or discarded are not to be included in the tonnes of relevant product.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

**Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)**

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

**Overview of the Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)**

The *Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3)* (the Regulation) amends the existing *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations). The Principal Regulations provide an administrative framework to implement aspects of the *Renewable Energy (Electricity) Act 2000* (the Act) to establish the Renewable Energy Target (RET) scheme, including in relation to power station accreditation, eligibility requirements for renewable energy sources, eligibility requirements for solar water heaters and small generation units, the calculation methods for determining the number of certificates, establish the eligibility of activities for partial exemption certificates and a compliance monitoring and enforcement framework to support the integrity and smooth operation of the RET scheme for participants.

**Human rights implications**

The Regulation engages the right to privacy and reputation, at least to the extent that it applies to the collection of personal information by the Clean Energy Regulator. The Regulation requires certain persons to provide personal information when applying for Partial Exemption Certificates.

Although, in some circumstances some of the contact details may already be publicly available. The contact details of these individuals will not be publicly disclosed. The individual’s information will be regulated and treated in accordance with the secrecy provisions set out in the *Renewable Energy (Electricity) Act 2000* and the *Privacy Act 1988*.

**Conclusion**

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

**Greg Combet**

**Minister for Climate Change, Industry and Innovation**