



## **Clean Energy (Auction of Carbon Units) Determination 2013**

---

I, Greg Combet AM, Minister for Climate Change, Industry and Innovation, make the following determination under subsection 113(1) of the *Clean Energy Act 2011*.

Dated: 7 May 2013

Greg Combet AM  
Minister for Climate Change, Industry and Innovation

---



---

# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Name of determination .....	1
2 Commencement .....	1
3 Authority.....	1
4 Definitions .....	1
5 Meaning of <i>current bid</i> and related terms .....	2
<b>Part 2—General auction requirements</b>	<b>4</b>
6 Number and timing of auctions.....	4
7 Additional auction for unsold units.....	4
8 Auction system .....	5
9 Eligibility to bid in auction .....	5
10 Ascending clock auction to be used .....	6
<b>Part 3—Procedures before auction</b>	<b>7</b>
11 Date of auction.....	7
12 Technical requirements of auction .....	7
13 Number of carbon units offered in auction .....	7
14 Minimum number of carbon units that bidder may bid for in auction.....	8
15 Auction start time.....	8
16 Deposit price for auction.....	8
17 Providing deposit.....	8
18 Opening price for auction .....	9
19 Method of setting deposit price and opening price.....	9
<b>Part 4—Procedures during bidding</b>	<b>11</b>
20 Schedule for clock rounds.....	11
21 Round price.....	11
22 Bidding .....	11
23 When bids may be made .....	11
24 When bids may be deleted or replaced.....	12
25 Number of carbon units that may be bid for .....	12
26 Notional bids.....	13
27 Notional bids do not change if less than or equal to previous round price .....	14
28 Notifying results of clock round .....	14
<b>Part 5—Procedures after bidding</b>	<b>16</b>
29 Settlement price and margin price for auction .....	16
30 Number of carbon units allocated to each bidder .....	16
31 Notice of results of auction .....	17
32 Charge for issue of carbon units.....	17
33 Notice to bidder .....	17
34 Settlement day.....	17
35 Issue of carbon units if sufficient cash deposit.....	18
36 Payment of balance of charge .....	18
<b>Part 6—Auction integrity</b>	<b>20</b>
<b>Division 1—Powers of Regulator</b>	<b>20</b>
37 Regulator may give administrative directions relating to auctioning of carbon units .....	20

---

---

38	Suspension or cancellation of auction .....	20
39	Actions after auction suspension .....	21
40	Actions after auction cancellation .....	21
41	Disqualification from bidding in auctions .....	22
<b>Division 2—Obligations of bidders</b>		23
42	Obligation not to disclose bidding strategy .....	23
43	Bidder must not cause auction to become unfair or disorderly etc. ....	23
<b>Division 3—Independent auction monitor</b>		24
44	Appointment of independent auction monitor .....	24
45	Independent auction monitor must report on each auction .....	24
46	Regulator may request additional reports .....	24
47	Independent auction monitor must inform Regulator of suspected misconduct .....	25
48	Regulator must give independent auction monitor access to information .....	25

## Part 1—Preliminary

### 1 Name of determination

This determination is the *Clean Energy (Auction of Carbon Units) Determination 2013*.

### 2 Commencement

This determination commences on the day after it is registered.

### 3 Authority

This determination is made under subsection 113(1) of the *Clean Energy Act 2011*.

### 4 Definitions

In this determination:

*Act* means the *Clean Energy Act 2011*.

*ADI* (short for authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

*adjacent current bids*, by a bidder: see section 5.

*advance bid*, in an auction, means a bid made in accordance with paragraph 23(1)(a).

*auction system* means the system referred to in section 8.

*Australian financial market* means a financial market operating in Australia in accordance with Chapter 7 of the *Corporations Act 2001*.

*authorised representative* has the same meaning as in the *Australian National Registry of Emissions Units Regulations 2011*.

*bid*: see section 22.

*clock round*: see section 10.

*current bid*: see section 5.

*deposit price*, for an auction, means the deposit price for the auction published by the Regulator under section 16.

*eligible bidder*: see section 9.

*final clock round*: see section 10.

*highest-priced current bid*, by a bidder: see section 5.

## Section 5

---

***independent auction monitor*** means the person appointed by the Regulator under section 44.

***lowest-priced current bid***, by a bidder: see section 5.

***margin price***: see section 29.

***notional bid*** means a bid that is taken to have been made as a result of section 26.

***opening price***, for an auction, means the opening price for the auction published by the Regulator under section 18.

***round price***: see section 21.

***settlement day***: see section 34.

***settlement price***: see section 29.

Note: For the definitions of the following terms, see section 5 of the Act:

- (a) auction;
- (b) business day;
- (c) carbon unit;
- (d) civil penalty provision;
- (e) European allowance unit;
- (f) group;
- (g) member;
- (h) official of the Regulator;
- (i) Registry account;
- (j) Regulator;
- (k) vintage year.

### 5 Meaning of *current bid* and related terms

- (1) In this determination, a bid made by a bidder is a ***current bid*** if:
  - (a) the bid has been manually entered into the auction system; and
  - (b) the bid has not been deleted; and
  - (c) the bid has not been replaced by a later bid by the bidder at the same price per carbon unit.

Note: There are restrictions on when a bid may be deleted or replaced: see section 24.

- (2) In this determination, if a bidder has 2 or more current bids in an auction:
  - (a) the ***lowest-priced current bid*** by the bidder is the current bid that is at a lower price per carbon unit than any of the bidder's other current bids; and
  - (b) the ***highest-priced current bid*** by the bidder is the current bid that is at a higher price per carbon unit than any of the bidder's other current bids.
- (3) In this determination, 2 current bids by a bidder in an auction are ***adjacent current bids*** if there is no other current bid by the bidder at a price per carbon unit between the prices of the 2 current bids.
- (4) In this determination, if a bidder has only one current bid in an auction:

Section 5

---

- (a) the current bid is both the *lowest-priced current bid* and the *highest-priced current bid* by the bidder; and
- (b) the bidder does not have any *adjacent current bids*.

## Part 2—General auction requirements

### 6 Number and timing of auctions

- (1) The Regulator must conduct 8 auctions of carbon units with:
  - (a) the vintage year beginning on 1 July 2015; and
  - (b) each later vintage year.
- (2) For carbon units with the vintage year beginning on 1 July 2015, the timing of the auctions must be as follows:
  - (a) 2 auctions during the financial year beginning on 1 July 2013;
  - (b) 1 auction during the financial year beginning on 1 July 2014;
  - (c) 4 auctions during the financial year beginning on 1 July 2015;
  - (d) 1 auction between 1 July 2016 and 1 February 2017.
- (3) For carbon units with a later vintage year (the **relevant vintage year**), the timing of the auctions must be as follows:
  - (a) 1 auction during the financial year that begins 3 years before the relevant vintage year;
  - (b) 1 auction during the financial year that begins 2 years before the relevant vintage year;
  - (c) 1 auction during the financial year that begins 1 year before the vintage year;
  - (d) 4 auctions during the relevant vintage year;
  - (e) 1 auction before 1 February in the financial year that begins immediately after the relevant vintage year.
- (4) If an auction is cancelled under subsection 38(1), (3) or (4) or 39(2), the auction is taken not to have been conducted for the purposes of this section.
- (5) Auctions additional to the auctions required under this section may only be conducted in accordance with section 7.

### 7 Additional auction for unsold units

- (1) This section applies if, in an auction conducted under section 6:
  - (a) not all of the carbon units offered in the auction are sold; and
  - (b) the settlement price for the auction is the opening price for the auction.
- (2) The Regulator may conduct an auction under this section, additional to the auctions required under section 6, for the carbon units that were not sold.
- (3) If the Regulator decides to conduct an additional auction under this section:
  - (a) section 11 applies as if the reference to 3 months were a reference to 15 business days; and



- (b) section 12 applies as if the reference to 2 months were a reference to 15 business days if the technical requirements are the same as in the auction in which the carbon units were not sold.

## **8 Auction system**

- (1) The Regulator must conduct an auction using an electronic system that enables bidders to make bids over a network.
- (2) The system may be operated by the Regulator or by a service provider under an arrangement with the Regulator.

## **9 Eligibility to bid in auction**

- (1) A person (an *eligible bidder*) is eligible to bid in an auction if:
  - (a) the person has a Registry account; and
  - (b) the person is not disqualified from bidding in auctions under section 41; and
  - (c) the person is not an excluded person under subsection (6); and
  - (d) the person has approved, in writing, an individual to use the auction system on behalf of the person; and
  - (e) the Regulator has, under subsection (2), approved that individual to use the auction system on behalf of the person.

- (2) The Regulator may, on receiving an application in a form approved by the Regulator from an individual who has been approved by a person under paragraph (1)(d), approve the individual to use the auction system on behalf of the person.

Note: In each auction, only one individual approved in relation to a person under this subsection may use the auction system to make bids on behalf of that person: see section 22.

- (3) In deciding whether to approve an individual under subsection (2), the Regulator may have regard to:
  - (a) whether the individual has the necessary skills, qualifications or training to use the auction system; and
  - (b) any other matter that the Regulator considers to be relevant to protect the integrity of the auction system.
- (4) However, the Regulator must not approve an individual under subsection (2) if the individual is an excluded person under subsection (6).
- (5) An approval of an individual under subsection (2) is taken to have been revoked if:
  - (a) the person in relation to whom the individual was approved informs the Regulator, in writing, that the approval of the individual under paragraph (1)(d) has been withdrawn; or
  - (b) the individual becomes an excluded person under subsection (6).
- (6) The following persons are excluded persons:

## Section 10

---

- (a) an official of the Regulator;
- (b) a service provider with which the Regulator has made an arrangement under subsection 8(2);
- (c) a director, officer, employee, contractor or subcontractor of a service provider referred to in paragraph (b);
- (d) the independent auction monitor;
- (e) if the independent auction monitor is not an individual—a director, officer or employee of the independent auction monitor;
- (f) a person who has a Registry account that is suspended under section 28D of the *Australian National Registry of Emissions Units Act 2011*.

### 10 Ascending clock auction to be used

- (1) An auction of carbon units must be an ascending clock auction, consisting of one or more rounds (***clock rounds***) for making bids.
- (2) An ***ascending clock auction*** of carbon units is an iterative process that involves inviting eligible bidders to indicate or declare the amount they would be prepared to pay by way of charge for the issue of a carbon unit, at increasing price increments, until the number of units bid for in the auction is not more than the number of units offered in the auction.
- (3) Bidding ends when there is a round (the ***final clock round***) in which the total number of carbon units bid for at the round price is not more than the number of units offered in the auction.

Note: For ***round price***, see section 21.

## **Part 3—Procedures before auction**

### **11 Date of auction**

The Regulator must, at least 3 months before an auction, publish on the Regulator's website:

- (a) the date of the auction; and
- (b) the vintage year of the carbon units to be offered in the auction.

### **12 Technical requirements of auction**

The Regulator must, at least 2 months before an auction, publish on the Regulator's website the technical requirements for participating in the auction.

### **13 Number of carbon units offered in auction**

- (1) The Regulator must, at least 15 business days before an auction, publish on the Regulator's website the number of carbon units to be offered in the auction.

*Auctions during financial year beginning on 1 July 2013*

- (2) The number of carbon units to be offered in auctions required under section 6 during the financial year beginning on 1 July 2013 must be as follows:
  - (a) at the first auction of carbon units with the vintage year beginning on 1 July 2015—20 million carbon units;
  - (b) at the second auction of carbon units with the vintage year beginning on 1 July 2015—20 million carbon units plus any carbon units not sold at the first auction;
  - (c) at the first auction of carbon units with the vintage year beginning on 1 July 2016—20 million carbon units.

*Later auctions*

- (3) In determining the number of carbon units to be offered in any other auction required under section 6, the Regulator must have regard to:
  - (a) the requirements of section 102 of the Act; and
  - (b) the number of carbon units (if any) with the same vintage year that have been offered in a previous auction but have not been sold; and
  - (c) the desirability of distributing the auction of carbon units with a particular vintage year as evenly as possible across the 8 auctions required under section 6 of this determination.

Note: Section 102 of the Act includes requirements about the total number of carbon units to be issued, including the number to be offered at auctions.

## Section 14

---

### 14 Minimum number of carbon units that bidder may bid for in auction

- (1) If the Regulator believes on reasonable grounds that factors exist that may compromise the integrity of an auction, the Regulator may set a minimum number (being a number not more than 1 000) of carbon units that a bidder may bid for in the auction.

Note: See section 25 in relation to the maximum number of carbon units that a bidder may bid for in an auction.

- (2) If the Regulator wishes to set a minimum number of carbon units that a bidder may bid for in an auction, the Regulator must do so at least 1 month before the start time of the auction.
- (3) If the Regulator sets a minimum number of carbon units that a bidder may bid for in an auction, the Regulator must publish the minimum number on the Regulator's website at least 1 month before the start time of the auction.

### 15 Auction start time

The Regulator must, at least 15 business days before an auction, publish on the Regulator's website:

- (a) the start time of the auction; and
- (b) the time on the day before the auction from which an advance bid may be made.

### 16 Deposit price for auction

The Regulator must, at least 10 business days before an auction:

- (a) set the deposit price for the auction in accordance with section 19; and
- (b) publish the deposit price on the Regulator's website.

Note: The deposit price is used to determine the maximum number of carbon units that a bidder may bid for in the auction: see subsection 25(3).

### 17 Providing deposit

- (1) An eligible bidder who wishes to bid in an auction must give the Regulator a deposit for the auction.

Note: The amount of the deposit is used to determine the maximum number of carbon units that the bidder may bid for in the auction: see subsection 25(3).

- (2) The deposit must be in Australian dollars.
- (3) The deposit may be given in any of the following forms:
  - (a) cash;
  - (b) a guarantee from an Australian ADI;
  - (c) an irrevocable letter of credit from an Australian ADI;
  - (d) a combination of the above forms.

## Section 18

- (4) A deposit, or part of a deposit, given to the Regulator in a form other than cash must be received by the Regulator no later than 5 business days before the auction.
- (5) A deposit, or part of a deposit, given to the Regulator in cash must be received by the Regulator no later than 3 business days before the auction.

**18 Opening price for auction**

The Regulator must, on the day before an auction and before the time published under paragraph 15(b) for making advance bids:

- (a) set the opening price for the auction in accordance with section 19; and
- (b) publish the opening price on the Regulator's website.

**19 Method of setting deposit price and opening price**

- (1) This section sets out the method the Regulator must use to set the deposit price and the opening price for an auction.
- (2) The Regulator must select the Australian financial market that the Regulator considers to be the most liquid for carbon units, having regard to:
  - (a) the volume of trading in carbon units; and
  - (b) the timing of those trades; and
  - (c) the amount of open interest in carbon units.
- (3) However, if the Regulator is not satisfied that there is an Australian financial market with sufficient liquidity to reasonably predict the price of carbon units at auction, the Regulator must select the financial market that the Regulator considers to be the most liquid for European allowance units, having regard to:
  - (a) the volume of trading in European allowance units; and
  - (b) the timing of those trades; and
  - (c) the amount of open interest in European allowance units.
- (4) If the Regulator selects an Australian financial market trading in carbon units, the deposit price or opening price, as the case may be, is the following, rounded down to the nearest multiple of 5 cents (except if the result is less than 5 cents, in which case the result is rounded up to 5 cents):

$$\frac{\text{Market price} \times 0.8}{(1 + r)^{m+n}}$$

where:

***m*** is:

- (a) if the vintage year of the carbon units to be offered in the auction is later than the latest vintage year of carbon units being sold in the selected market at the market price—the number of years difference between the vintage years; and
- (b) otherwise—zero.

## Section 19

---

Example: If the auction is of carbon units with the vintage year beginning on 1 July 2017, but the market price is for the sale of carbon units with the vintage year beginning on 1 July 2015, then  $m$  is 2.

**market price** is the lowest current price on the selected market for carbon units with any vintage year, in transactions with a settlement period of no more than 4 years but disregarding transactions with a settlement period of 5 days or less if the Regulator is not satisfied that that segment of the market has sufficient liquidity to reasonably predict the price of carbon units in the auction.

$n$  is:

- (a) if the market price is for a transaction with a settlement period of 5 days or less—zero; and
- (b) otherwise—the amount of time, expressed in years, between the date of the auction and the settlement date of the transaction.

$r$  is the most recent daily rate published by the Reserve Bank of Australia for the per annum yield (expressed as a percentage) for BBB rated corporate bonds with 1 to 5 years maturity.

- (5) If the Regulator selects a financial market trading in European allowance units, the deposit price or opening price, as the case may be, is the following, rounded down to the nearest multiple of 5 cents (except if the result is less than 5 cents, in which case the result is rounded up to 5 cents):

$$\frac{\text{Market price} \times 0.6}{(1 + r)^{m+n}}$$

where:

$m$  is:

- (a) if the vintage year of the carbon units to be offered in the auction is later than the current financial year—the number of years difference between the vintage year and the current financial year; and
- (b) otherwise—zero.

Example: If the auction takes place in the financial year beginning on 1 July 2015 for carbon units with the vintage year beginning on 1 July 2017, then  $m$  is 2.

**market price** is the lowest current price on the selected market for European allowance units in transactions with a settlement period of no more than 4 years, converted to Australian dollars using the most recent exchange rate published by the Reserve bank of Australia.

$n$  is:

- (a) if the market price is for a transaction with a settlement period of 5 days or less—zero; and
- (b) otherwise—the amount of time, expressed in years, between the date of the auction and the settlement date of the transaction.

$r$  is the most recent daily rate published by the Reserve Bank of Australia for the per annum yield (expressed as a percentage) for BBB rated corporate bonds with 1 to 5 years maturity.

## Part 4—Procedures during bidding

### 20 Schedule for clock rounds

- (1) Clock rounds must start and end between 9 am and 5 pm on business days.
- (2) The scheduling of clock rounds between those times is at the Regulator's discretion.
- (3) The length of each clock round and the interval between each round are at the Regulator's discretion.

### 21 Round price

- (1) The **round price** for the first clock round of an auction must be the opening price for the auction.
- (2) The **round price** for a later clock round is to be an amount determined by the Regulator that is more than the round price for the previous clock round.

Note: Subsection 39(3) contains an exception to this subsection for the restart of a suspended auction.

### 22 Bidding

- (1) A **bid** is an offer to purchase a specified number of carbon units at a specified price (in whole cents) per carbon unit.
- (2) A bid in an auction must be made using the auction system.
- (3) In each auction, only one individual who is approved under subsection 9(2) in relation to an eligible bidder may use the auction system to make bids on behalf of the eligible bidder.
- (4) Subject to sections 23 to 27, a bidder may:
  - (a) delete a current bid by the bidder; or
  - (b) replace a current bid by the bidder with another bid at the same price per carbon unit as the current bid.

### 23 When bids may be made

- (1) Bids in an auction may be made:
  - (a) between the time published by the Regulator under paragraph 15(b) for making advance bids and the start time of the auction; and
  - (b) during each clock round of the auction.
- (2) The price per carbon unit of an advance bid or a bid made in the first clock round must be the opening price or higher.

## Section 24

---

- (3) The price per carbon unit of a bid made in a later clock round must be more than the round price for the previous clock round.

Example: If the round price for the second clock round of an auction was \$12.50, then bids at \$12.50 or below cannot be made once the second clock round has ended. The lowest price per carbon unit allowed in a bid made in the third clock round would be \$12.51.

- (4) An eligible bidder must not bid in the second or a later clock round of an auction if the bidder has not made any advance bids or any bids during the first clock round.

### 24 When bids may be deleted or replaced

- (1) A current bid in an auction may be deleted by the bidder, or replaced by the bidder with another bid at the same price per carbon unit, only:
- (a) between the time published by the Regulator under paragraph 15(b) for making advance bids and the start time of the auction; or
  - (b) during the first clock round; or
  - (c) during a later clock round if the price per carbon unit of the bid is greater than the round price for the previous clock round.
- (2) The Regulator may delete a current bid made by a bidder if:
- (a) the bidder requests the Regulator to delete the bid; and
  - (b) the Regulator is satisfied that the bidder is unable to delete the current bid in accordance with subsection (1) using the auction system because of a technical difficulty.

### 25 Number of carbon units that may be bid for

- (1) Unless a minimum number of carbon units that a bidder may bid for in an auction has been set under subsection 14(1), there is no minimum number of carbon units that a bidder must bid for in the auction.
- (2) A bid must not be made for more carbon units than are offered in the auction.
- (3) Subject to subsections (2) and (5), the number of carbon units in a bidder's first bid, or in a bid that is at a price per carbon unit lower than or equal to the bidder's lowest-priced current bid, must be less than or equal to the following, rounded down to the nearest whole unit:

$$\frac{\text{Deposit} \times 10}{\text{Price denominator}}$$

where:

**deposit** is the amount that the bidder deposited with the Regulator for the auction under section 17.

**price denominator** is:

- (a) the deposit price for the auction; or
- (b) if the opening price for the auction is lower than the deposit price—the opening price.



## Section 26

Note: Taking the lower amount means that the result of the formula will be larger.

- (4) Subject to subsection (5), for any bid (other than a bid under subsection (3)) to be made by a bidder, the number of carbon units bid for at a price per carbon unit must be less than or equal to:
  - (a) the number of carbon units in any current bid made by the bidder at a lower price per carbon unit; and
  - (b) if the bid is made in the second or a later clock round—the number of carbon units in any notional bid by the bidder at a price per carbon unit that is less than or equal to the round price for the previous clock round.
- (5) If:
  - (a) a minimum number of carbon units that a bidder may bid for in the auction has been set under subsection 14(1); and
  - (b) the maximum number of carbon units for which a bidder may make a bid under subsection (3) or (4) is less than that minimum number;
 the bidder must not make the bid.
- (6) The Regulator must not accept a bid that:
  - (a) does not comply with subsection (2), (3) or (4); or
  - (b) is made in contravention of subsection (5).
- (7) If, as a result of a new bid, an existing current bid at a higher price per carbon unit no longer complies with subsection (4), the existing current bid is taken to have been deleted.

Example: A bidder has current bids for 800 carbon units at \$10 per carbon unit and 500 carbon units at \$15 per carbon unit. The round price for the previous clock round was \$5.

If the bidder makes a new bid for 400 carbon units at \$12 per carbon unit, the new bid complies with subsection (4) and is allowed (because 400 is less than the 800 units bid for at \$10). However, as a result of this the bid for 500 carbon units at \$15 per carbon unit no longer complies with subsection (4) (because 500 is not less than the 400 units bid for at \$12). This is resolved by taking the bid for 500 carbon units to have been deleted.

- (8) In this section, a reference to a bid does not include a notional bid.

## 26 Notional bids

- (1) This section applies subject to section 27.
- (2) At each price (in whole cents) per carbon units that is less than the price of the bidder's lowest-priced current bid, the bidder is taken to have bid for the same number of carbon units as in the bidder's lowest-priced current bid.

Note: For **lowest-priced current bid**, see section 5.

Example: If the bidder has made a bid for 500 carbon units at \$10 per carbon unit, and has made no bids at lower prices, the bidder is taken to have bid for 500 carbon units at \$9.99 per carbon unit and all prices less than \$9.99.

- (3) At each price (in whole cents) between the prices of a pair of adjacent current bids by the bidder, the bidder is taken to have bid for the same number of carbon units as in the higher-priced of the adjacent current bids.

## Section 27

---

Note: For *adjacent current bids*, see section 5.

Example: If the bidder has made bids for 500 carbon units at \$10 per carbon unit and 250 carbon units at \$15 per carbon unit, and has made no bids at prices in between, the bidder is taken to have bid for 250 carbon units at each price between \$10.01 and \$14.99.

- (4) The bidder is taken not to have bid for any carbon units at any price per carbon unit that is higher than the price of the bidder's highest-priced current bid.

Note: For *highest-priced current bid*, see section 5.

Example: If the bidder has made a bid for 100 carbon units at \$20 per carbon unit, and has made no bids at higher prices, the bidder is taken to have bid for 0 carbon units at \$20.01 per carbon unit and all prices more than \$20.01.

## 27 Notional bids do not change if less than or equal to previous round price

- (1) This section applies if:
- (a) a notional bid is taken to have been made by a bidder for a number of carbon units at a price per carbon unit; and
  - (b) in the second or a later clock round:
    - (i) the bidder makes a new bid; or
    - (ii) the bidder deletes a current bid; or
    - (iii) the Regulator deletes one of the bidder's current bids; or
    - (iv) the bidder replaces a current bid with another bid at the same price per carbon unit as the current bid; and
  - (c) at the time the new bid is made, or the current bid is deleted or replaced, the price per carbon unit of the notional bid is less than or equal to the round price for the previous clock round.
- (2) The number of carbon units of the notional bid is not affected by the new bid or the deletion or replacement of the current bid.

Example: In the first clock round, the round price is \$10. A bidder makes a bid for 800 carbon units at \$20 per carbon unit. As a result, the bidder is taken to have bid for 800 carbon units at \$19.99 per carbon unit and all prices less than \$19.99.

In the second clock round, the round price is \$15. The bidder makes no bids in this round.

In the third clock round, the bidder replaces the previous bid with a bid for 400 carbon units at \$20 per carbon unit. This section will not apply to the notional bids at each price between \$15.01 and \$19.99, and so at those prices the bidder will now be taken to have bid for 400 carbon units (see section 26). However, this section will apply to the notional bids at \$15 per carbon unit and all prices less than \$15. As a result, the bidder will still be taken to have bid for 800 carbon units at those prices.

## 28 Notifying results of clock round

- (1) After each clock round (the *completed clock round*) other than the final clock round, and before the next clock round, the Regulator must notify each bidder of:
- (a) the total number of carbon units that were bid for in the completed clock round at the round price; and
  - (b) the round price for the next clock round.

---

Section 28

---

- (2) As soon as practicable after the final clock round, the Regulator must notify each bidder that bidding in the auction has ended.
- (3) The Regulator must use the auction system to notify bidders under this section.
- (4) The Regulator must publish on the Regulator's website, for each clock round:
  - (a) the round price for the clock round; and
  - (b) the total number of carbon units that were bid for at the round price.
- (5) The Regulator may publish the information required under subsection (4) for a clock round at any time during the auction but, if the information has not been published before the end of the final clock round, the Regulator must publish the information as soon as practicable after the final clock round.

## Part 5—Procedures after bidding

### 29 Settlement price and margin price for auction

- (1) The **settlement price** for an auction is the highest price at which the total number of carbon units bid for in the auction is equal to or more than the number of units offered in the auction.
- (2) However, if the total number of carbon units bid for at the opening price for the auction is less than the number of units offered in the auction, the **settlement price** is the opening price.
- (3) For the purposes of section 111 of the Act:
  - (a) the settlement price is taken to be the amount a bidder with a bid at that price has indicated or declared, in the course of the auction, that the bidder would be willing to pay by way of charge for the issue of a unit; and
  - (b) the Regulator is taken to have accepted that amount.

Note: See subsections 111(5) and (6) of the Act.

- (4) In this section, a reference to a bid includes a notional bid.
- (5) The **margin price** for an auction is the settlement price for the auction plus 1 cent.

### 30 Number of carbon units allocated to each bidder

- (1) As soon as practicable after the final clock round of an auction, the Regulator must determine the number of carbon units to be allocated to each bidder in accordance with this section.
- (2) If the total number of carbon units bid for in the auction at the settlement price is equal to or less than the number of units offered in the auction, the number of units to be allocated to each bidder is the number of units that the bidder bid for at the settlement price.
- (3) If the total number of carbon units bid for in the auction at the settlement price is more than the number of units offered in the auction, the number of units to be allocated to each bidder is the following, rounded down to the nearest whole unit:

$$B_M + (U - D_M) \times \frac{B_S - B_M}{D_S - D_M}$$

where:

$B_M$  is the number of units the bidder bid for at the margin price.

$B_S$  is the number of units the bidder bid for at the settlement price.

$D_M$  is the total number of units bid for at the margin price.

## Section 31

$D_S$  is the total number of units bid for at the settlement price.

$U$  is the number of units offered in the auction.

- (4) In this section, a reference to a bid includes a notional bid.

### 31 Notice of results of auction

The Regulator must, as soon as practicable after the final clock round of an auction, publish on the Regulator's website:

- (a) the settlement price for the auction; and
- (b) the total number of carbon units allocated to bidders in the auction.

### 32 Charge for issue of carbon units

- (1) The total charge payable by a bidder for the issue of the carbon units that are allocated to the bidder as the result of an auction is the settlement price for the auction multiplied by the number of units allocated to the bidder.
- (2) The balance payable by a bidder is the total charge payable less any part of the deposit given by the bidder under section 17 that was in the form of cash.

Note: The balance payable may be zero or a negative number, meaning the bidder is entitled to have any allocated carbon units issued without further payment and (if the balance payable is negative) to receive a refund of part of the bidder's deposit: see section 35.

### 33 Notice to bidder

- (1) As soon as practicable after the final clock round of an auction, the Regulator must notify, in writing, each bidder in the auction of the following:
  - (a) the settlement price for the auction;
  - (b) the number of carbon units (if any) allocated to the bidder;
  - (c) the total charge payable by the bidder;
  - (d) the balance payable by the bidder.

Note: The Regulator must also publish information about the results of an auction on the Regulator's website: see section 195 of the Act.

- (2) The notice may specify the form in which the balance must be paid.

### 34 Settlement day

- (1) The **settlement day** for a bidder in an auction is:
  - (a) 3 business days after the bidder is notified of the settlement price for the auction under section 33; or
  - (b) if the Regulator sets a later day (being a day not more than 10 business days after the bidder is notified of the settlement price for the auction under section 33)—that later day.
- (2) If the Regulator sets a later day under paragraph (1)(b), the Regulator must notify the bidder in writing of the later day.

## Section 35

---

### 35 Issue of carbon units if sufficient cash deposit

- (1) If the balance payable by a bidder is less than zero, the Regulator must:
  - (a) issue to the bidder any carbon units allocated to the bidder under section 30; and
  - (b) refund the bidder's cash deposit in excess of the total charge payable; and
  - (c) discharge any non-cash deposit given by the bidder under section 17.
- (2) If the balance payable by a bidder is zero, the Regulator must:
  - (a) issue to the bidder any carbon units allocated to the bidder under section 30; and
  - (b) discharge any non-cash deposit given by the bidder under section 17.

### 36 Payment of balance of charge

- (1) If the balance payable by a bidder is more than zero, the balance must be paid to the Regulator no later than the settlement day for the bidder.

Note: See subsection (5) for when a payment by electronic transfer is taken to have been made.
- (2) The balance must be paid in Australian dollars.
- (3) The balance must be paid:
  - (a) by electronic funds transfer; or
  - (b) if the notice given under subsection 33(1) specifies a form of payment—in that form.
- (4) The balance is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the balance payable.

Note: The effect of this subsection is that a bidder must add the value of any bank charge or government duty to the amount of a payment.
- (5) If the balance is paid by electronic funds transfer, the balance is taken to have been paid to the Regulator no later than the settlement day for the bidder if:
  - (a) the Regulator receives evidence that an electronic transfer of the balance was made no later than that day; and
  - (b) the balance is received in the Regulator's bank account no later than 3 business days after that day.
- (6) If the balance is paid in accordance with subsections (1) to (3), the Regulator must:
  - (a) issue to the bidder the carbon units allocated to the bidder under section 30; and
  - (b) discharge any non-cash deposit given by the bidder under section 17.
- (7) If the balance is not paid in accordance with subsections (1) to (3):
  - (a) any cash deposit given by the bidder under section 17 is forfeited; and
  - (b) the Regulator must call on any non-cash deposit given by the bidder under section 17.

Section 36

---

Note: The Regulator must not issue carbon units to a person who has not tendered payment in full of the total amount of charges payable for the issue of the units: see subsection 111(2) of the Act and section 32 of this determination.

## **Part 6—Auction integrity**

### **Division 1—Powers of Regulator**

#### **37 Regulator may give administrative directions relating to auctioning of carbon units**

The Regulator may give a direction of an administrative character in relation to the auctioning of carbon units to:

- (a) a bidder; or
- (b) an individual who uses the auction system to make bids in an auction on behalf of an eligible bidder.

#### **38 Suspension or cancellation of auction**

##### *Auction in progress*

- (1) The Regulator may suspend or cancel an auction that is in progress if the Regulator believes on reasonable grounds that:
  - (a) the auction cannot continue in a fair and orderly manner; or
  - (b) it is likely that the auction will not be able to continue in a fair and orderly manner.
- (2) For the purposes of this section, an auction is in progress until at least one bidder has been notified of the settlement price for the auction under section 33.

##### *Upcoming auction*

- (3) The Regulator may cancel an upcoming auction if the Regulator is satisfied that the auction cannot be conducted in a fair and orderly manner.
- (4) The Regulator may cancel an upcoming auction within 3 business days of the start of the auction if no eligible bidder has given the Regulator a deposit under section 17.

##### *Fair and orderly manner*

- (5) Circumstances that might prevent an auction continuing, or being conducted, in a fair and orderly manner include but are not limited to the following:
  - (a) a fault or malfunction in the auction system, or another system operated by the Regulator;
  - (b) a circumstance that compromises the integrity of the auction system;
  - (c) a failure or suspected failure to comply with this determination;
  - (d) a failure or suspected failure to comply with a direction given by the Regulator relating to the auctioning of carbon units;
  - (e) a breach or suspected breach of any of the following that affects the auctioning of carbon units or the conduct of bidders:
    - (i) the *Corporations Act 2001*;



- (ii) the *Competition and Consumer Act 2010*;
- (iii) the *Criminal Code*;
- (iv) any other Commonwealth, State or Territory law;
- (f) the occurrence, suspected occurrence or possible future occurrence of conduct intended to compromise the auction.

### **39 Actions after auction suspension**

- (1) If the Regulator suspends an auction under subsection 38(1), the Regulator may restart the auction if, within a reasonable period of time, the Regulator is satisfied that the auction can continue in a fair and orderly manner.
- (2) If the Regulator is not so satisfied, the Regulator must cancel the auction.
- (3) If the Regulator restarts the auction, the Regulator may, if the Regulator considers it necessary to enable the auction to continue in a fair and orderly manner:
  - (a) despite section 21, determine a round price for the first clock round after the suspension that is lower than the round price for one or more clock rounds before the suspension; or
  - (b) declare that a round price determined by the Regulator before the suspension is taken not to have been determined; or
  - (c) delete a bid that was made before the suspension.

### **40 Actions after auction cancellation**

- (1) If the Regulator cancels an auction under subsection 38(1), (3) or (4) or 39(2), the Regulator must either:
    - (a) reschedule the auction to start within 7 business days of the day that the cancelled auction started or was due to start; or
    - (b) return all deposits given by bidders under section 17 for the cancelled auction.
- Note: The cancelled auction is taken not to have been conducted for the purposes of section 6: see subsection 6(4).
- (2) If the Regulator reschedules the auction under paragraph (1)(a), the Regulator must publish on the Regulator's website:
    - (a) the date and start time of the rescheduled auction; and
    - (b) the new date by which deposits for the auction, or changes to existing deposits, must be made.
  - (3) If the Regulator reschedules the auction under paragraph (1)(a) and the deposit price had been set for the cancelled auction, the deposit price for the rescheduled auction is the same as for the cancelled auction.
  - (4) If the Regulator reschedules the auction under paragraph (1)(a), the Regulator must set an opening price for the rescheduled auction under section 18.

## Section 41

---

### 41 Disqualification from bidding in auctions

- (1) The Regulator may disqualify a person from bidding in an auction for a period of up to 5 years if the Regulator believes on reasonable grounds that the person has engaged in misconduct in relation to the auctioning of carbon units.
- (2) In deciding whether to disqualify a person under subsection (1), the Regulator may have regard to the following:
  - (a) whether the person has breached a provision of this determination;
  - (b) whether the person has breached a direction given by the Regulator relating to the auctioning of carbon units;
  - (c) if carbon units were allocated to the person as the result of an auction—whether the person paid the total charge payable for the units as required by section 36;
  - (d) whether the person has breached:
    - (i) the *Corporations Act 2001*; or
    - (ii) the *Competition and Consumer Act 2010*; or
    - (iii) the *Criminal Code*; or
    - (iv) any other Commonwealth, State or Territory law that is relevant to the auctioning of carbon units or the conduct of bidders;
  - (e) any other matters that relate to the integrity of the auctioning of carbon units.
- (3) If the Regulator disqualifies a person (the **first person**) under subsection (1) who is a member of a controlling corporation's group, the Regulator may also disqualify another member of the same group.
- (4) The maximum period for which a person can be disqualified under subsection (3) is the period for which the first person has been disqualified.
- (5) The Regulator must publish on the Regulator's website:
  - (a) the name of any person who has been disqualified under subsection (1); and
  - (b) if the disqualified person has a Registry account—the name of any authorised representative for the Registry account; and
  - (c) the period of the disqualification.

## **Division 2—Obligations of bidders**

### **42 Obligation not to disclose bidding strategy**

- (1) An eligible bidder must not disclose:
  - (a) a bid; or
  - (b) a proposed bid; or
  - (c) bidding-related information;that could reasonably be expected to affect or be capable of affecting the outcome of an auction.
- (2) However, subsection (1) does not prevent an eligible bidder from disclosing information:
  - (a) to the Regulator; or
  - (b) to any service provider engaged by the Regulator in relation to auctions or the settlement of auctions; or
  - (c) to the independent auction monitor; or
  - (d) to an individual who is approved under subsection 9(2) to use the auction system on behalf of the eligible bidder; or
  - (e) if the eligible bidder is a member of a controlling corporation's group—to another member of the same group; or
  - (f) for the purpose of obtaining finance to purchase carbon units in an auction; or
  - (g) for the purpose of obtaining legal or financial advice in relation to an auction; or
  - (h) if the disclosure is required or permitted by another law.
- (3) Subsection (1) is a civil penalty provision.

Note: Part 17 of the Act provides for pecuniary penalties for breaches of civil penalty provisions.

### **43 Bidder must not cause auction to become unfair or disorderly etc.**

A bidder must not:

- (a) act in a manner that disrupts the fair and orderly conduct of an auction; or
- (b) fail to act if that failure disrupts the fair and orderly conduct of an auction; or
- (c) take advantage of a fault or malfunction in the auction system or another system operated by the Regulator; or
- (d) take advantage of any other circumstance that may compromise an auction.

Section 44

---

## Division 3—Independent auction monitor

### 44 Appointment of independent auction monitor

- (1) The Regulator must appoint an independent person (the *independent auction monitor*) to monitor the conduct of auctions.
- (2) A person must not be appointed under subsection (1) unless the Regulator is satisfied that the person has appropriate experience or knowledge.

### 45 Independent auction monitor must report on each auction

- (1) Within 3 business days after the final clock round of an auction, the independent auction monitor must give the Regulator a report, in writing, on the following matters:
  - (a) whether the auction was conducted in accordance with the Act, this determination and any other applicable laws;
  - (b) the conduct of participants in the auction, including any misconduct that may require investigation or enforcement activity;
  - (c) whether trading conditions in the auction were fair and orderly at all times;
  - (d) how the settlement price for the auction compares with the prices for carbon units on relevant secondary markets;
  - (e) any other matter relating to the auction that the Regulator has asked the independent auction monitor to include in the report.
- (2) The Regulator may make a request before or during an auction for a matter to be reported on under paragraph (1)(e).
- (3) The independent auction monitor must also give the Regulator, at the same time as the report is given under subsection (1), a report on the auction that is suitable for publication. The report for publication must not:
  - (a) identify individual bids or bidders in the auction; or
  - (b) include any commercial-in-confidence information; or
  - (c) include any information that the Regulator considers may compromise any inquiry or investigation into possible misconduct by participants in the auction.
- (4) The Regulator must publish the report for publication given to the Regulator under subsection (3) on the Regulator's website as soon as practicable after receiving it.

### 46 Regulator may request additional reports

- (1) The Regulator may ask the independent auction monitor to prepare additional reports on any matter specified by the Regulator relating to the auctioning of carbon units.
- (2) The Regulator may determine the date by which it requires the independent auction monitor to report on the specified matter.

**47 Independent auction monitor must inform Regulator of suspected misconduct**

The independent auction monitor must inform the Regulator immediately if the independent monitor:

- (a) becomes aware of behaviour of a person that could lead to the person being disqualified from bidding in an auction under section 41; or
- (b) becomes aware of a matter that could warrant the Regulator suspending or cancelling an auction; or
- (c) otherwise suspects that a bidder or prospective bidder in an auction has engaged in misconduct in relation to the auctioning of carbon units.

**48 Regulator must give independent auction monitor access to information**

The Regulator must give the independent auction monitor access to all information the Regulator has relating to auctions and the auction process, including the following:

- (a) details of bidders;
- (b) information about deposits paid;
- (c) information about bids made;
- (d) any communications between the Regulator and bidders or between the Regulator and individuals using the auction system to make bids;
- (e) information that will assist the independent auction monitor in the performance of the monitor's functions.