



# **Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Rules 2014**

**as amended**

made under items 342 and 359 of Schedule 1 to the

*Clean Energy Legislation (Carbon Tax Repeal) Act 2014*

**Compilation start date:** 28 May 2015

**Includes amendments up to:** *Clean Energy Legislation (Carbon Tax Repeal) (Jobs  
and Competitiveness Program) Amendment Rule 2015*

Prepared by the Department of the Environment

## About this compilation

### This compilation

This is a compilation of the *Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Rules 2014* as in force on 28 May 2015. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 28 May 2015.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

## Contents

<b>Part 1</b>	<b>Preliminary</b>	
1	Name	4
2	Commencement	4
3	Interpretation—general	4
4	Interpretation— <i>modified JCP</i>	5
<b>Part 2</b>	<b>Reporting requirements</b>	
5	Requirement to report	7
6	Timing of report	8
7	Regulator may require further information	8
<b>Part 3</b>	<b>Notice of true-up adjustment</b>	
8	Estimate of true-up adjustment for application	9
9	Notice of true-up adjustment for application	9
10	Calculation of true-up adjustment for application	10
<b>Part 4</b>	<b>Under- and over-allocations of free carbon units</b>	
11	Under-allocation of free carbon units	11
12	Final date for issue of additional free carbon units	11
13	Over-allocation of free carbon units	12
14	Final date for relinquishment of free carbon units	12
<b>Part 5</b>	<b>Collection of levy</b>	
15	Notice of true-up shortfall levy	12
16	When levy is due and payable	12
<b>Part 6</b>	<b>Miscellaneous</b>	
17	Review of decisions	12
18	Under-allocation of free carbon units after designated carbon unit day	13
<b>Endnotes</b>		
	<b>Endnote 1—About the endnotes</b>	14
	<b>Endnote 2—Abbreviation key</b>	15
	<b>Endnote 3—Legislation history</b>	16
	<b>Endnote 4—Amendment history</b>	17
	<b>Endnote 5—Uncommenced amendments [none]</b>	18
	<b>Endnote 6—Modifications [none]</b>	18
	<b>Endnote 7—Misdescribed amendments [none]</b>	18
	<b>Endnote 8—Miscellaneous [none]</b>	18

## Part 1 Preliminary

### 1 Name

These rules are the *Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Rules 2014*.

### 2 Commencement

These Rules commence on the day after registration.

### 3 Interpretation—general

- (1) An expression used in these Rules and in any of the following legislation has the same meaning in these Rules as in that legislation:

- (a) the Clean Energy Act;
- (b) the Clean Energy Regulations;
- (c) the Repeal Act.

**Note** Terms used in the legislation referred to above include the following:

- Jobs and Competitiveness Program;
- over-allocation of free carbon units;
- under-allocation of free carbon units;
- Regulator;
- true-up shortfall.

- (2) In these Rules:

***Clean Energy Act*** means the *Clean Energy Act 2011* as continued in force by the Repeal Act.

***Clean Energy Regulations*** means the *Clean Energy Regulations 2011* as continued in force by the Repeal Act.

***designated person*** means a person who is a designated person for the purpose of item 351 of Schedule 1 to the Repeal Act.

***further true-up information***—see paragraph 7(1)(a).

***modified JCP***—see section 4.

***related reportable application***, for a reportable application, means another reportable application that:

- (a) is made by the same applicant, or if there was more than one applicant, by the same applicants; and
- (b) is identified as a related reportable application in a true-up report.

***reportable activity*** means an activity that was an emissions-intensive trade-exposed activity under the Jobs and Competitiveness Program as in force on 26 November 2013.

***reportable application*** means an application for free carbon units:

- (a) that was approved under the Jobs and Competitiveness Program for financial year 2013-14; and
- (b) that related to a reportable activity; and
- (c) in relation to which:
  - (i) there was no requirement to relinquish carbon units in relation to financial year 2013-14 under Part 13 of the Jobs and Competitiveness Program that arose because of an event described in Division 2 of that Part; and
  - (ii) there was no requirement, under section 902(7) of the Jobs and Competitiveness Program, to reduce the number of free carbon units to be issued in relation to financial year 2013-14 because of the expectation of such an event.

**Repeal Act** means the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*.

**true-up adjustment**—see section 10.

**true-up report**—see subsection 5(2).

#### 4 Interpretation—*modified JCP*

- (1) In these Rules, a reference to the **modified JCP** is a reference to the Jobs and Competitiveness Program, modified in accordance with the following table:

Modifications to the Jobs and Competitiveness Program		
Item	Provision of Jobs and Competitiveness Program	Modification
1	Part 1	<ul style="list-style-type: none"> <li>(a) Omit heading to Schedule 1, substitute ‘Modified JCP’.</li> <li>(b) Omit ‘(section 7.1)’.</li> <li>(c) Omit clauses 101 to 104, substitute ‘101 This is the modified JCP.’</li> </ul>
2	subclause 201(1)	<ul style="list-style-type: none"> <li>(a) Omit ‘this program’, substitute ‘the modified JCP’.</li> <li>(b) Insert:               <ul style="list-style-type: none"> <li>(i) ‘<b>designated person</b> has the same meaning as in the Rules.’.</li> <li>(ii) ‘<b>true-up report</b> has the same meaning as in the Rules.’; and</li> <li>(iii) ‘<b>Rules</b> means the <i>Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Rules 2014</i>.’.</li> </ul> </li> <li>(c) In the definition of <b>r</b>, omit ‘an application is approved by the Regulator’, substitute ‘the Regulator makes a decision under paragraph 9(1)(a) of the Rules’.</li> </ul>
3	Parts 6 and 7	Throughout Parts 6 and 7: <ul style="list-style-type: none"> <li>(a) omit ‘application’, substitute ‘true-up report’;</li> <li>(b) omit ‘an application’, substitute ‘a true-up report’;</li> <li>(c) omit ‘applicant’, substitute ‘designated person’;</li> <li>(d) omit ‘an applicant’, substitute ‘a designated person’;</li> <li>(e) omit references to each of the following (however described), and substitute references to financial year</li> </ul>

---

**Modifications to the Jobs and Competitiveness Program**


---

<i>Item</i>	<i>Provision of Jobs and Competitiveness Program</i>	<i>Modification</i>
		2013-14: <ul style="list-style-type: none"> <li>(i) the financial years to which an application relates;</li> <li>(ii) the previous financial year.</li> </ul>
4	Part 6	<ul style="list-style-type: none"> <li>(a) Omit the heading to Part 6, substitute ‘Part 6—Approval of true-up report form’.</li> <li>(b) Omit clauses 601 and 602 and subclause 604(8).</li> <li>(c) In subparagraphs 604(7)(b)(ii) and (c)(ii), and sub-subparagraphs 604(7)(d)(i)(B) and (iii)(B), omit ‘by the applicant in the application’, substitute ‘in the reportable application’.</li> <li>(d) In paragraph 604(9), omit ‘the <i>Clean Energy Act 2011</i> and these regulations’, substitute ‘the <i>Clean Energy Legislation (Carbon Tax Repeal) Act 2014</i> and the Rules’.</li> </ul>
5	Part 7	<ul style="list-style-type: none"> <li>(a) Omit the heading to Part 7, substitute ‘Part 7—True-up report’.</li> <li>(b) Omit Divisions 1, 2, 3 and 4.</li> </ul>
6	Part 8	Omit.
7	Part 9	<ul style="list-style-type: none"> <li>(a) Throughout Part 9, omit references to each of the following (however described), and substitute references to financial year 2013-14:               <ul style="list-style-type: none"> <li>(i) financial year to which the current application relates; and</li> <li>(ii) the previous financial year.</li> </ul> </li> <li>(b) Omit the following:               <ul style="list-style-type: none"> <li>(i) clause 901;</li> <li>(ii) subclause 902(1);</li> <li>(iii) sub-subparagraph 902(2)(a)(i)(A);</li> <li>(iv) sub-subparagraph 902(2)(a)(i)(E);</li> <li>(v) subparagraph 902(2)(a)(ii);</li> <li>(vi) paragraph 902(2)(b);</li> <li>(vii) subclauses 902(3), (4), (5), (6) and (7);</li> <li>(viii) Divisions 2, 3 and 8;</li> <li>(ix) subparagraphs 907(15)(a)(iii) and (iv), and paragraphs 907(15)(c) and (d);</li> <li>(x) subclauses 907(17) and (18).</li> </ul> </li> <li>(c) In paragraph 902(2)(a), omit ‘as soon as practicable after approving the application:’.</li> <li>(d) In sub-subparagraph 902(2)(a)(i)(F), omit ‘; and’, substitute ‘.’.</li> <li>(e) In paragraph 907(15), omit ‘; or’, substitute ‘.’.</li> <li>(f) In subclauses 911(4), 912(6) and 914(3), omit the colon and the text following the colon, substitute ‘ multiplying</li> </ul>

---

---

**Modifications to the Jobs and Competitiveness Program**


---

**Item Provision of Jobs and Competitiveness Program**
**Modification**


---

		the number by (1+r).’.
		(g) In paragraphs 911(1)(c) and 914(1)(d), omit ‘before a decision is made on the current application,’ (each occurrence).
		(h) In paragraph 915(10)(a), omit ‘clauses 710 and 801’, substitute ‘clause 710 and section 7 of the Rules’.
8	Parts 10, 11, 12, 13 and 14	Omit.

---

(2) If any of the following provisions of the Jobs and Competitiveness Program applied in relation to a reportable application:

- (a) clause 707;
- (b) clause 708;
- (c) clause 709;
- (d) clause 710;
- (e) paragraph 710(2)(f);
- (f) clause 911;
- (g) clause 912;
- (h) clause 914;

the corresponding provision of the modified JCP applies in relation to the related true-up report or application referred to in paragraph 10(2)(b), as appropriate.

**Note** The effect of paragraphs (2)(a), (b), (c) and (d) is to require a true-up report to comply with clauses 707, 708, 709 and 710 respectively of the modified JCP where appropriate.

The effect of paragraphs (2)(d), (e) and (f) is to require paragraph 604(7)(d), subparagraph 604(7)(d)(iii) and paragraph 604(7)(c) respectively of the modified JCP to apply in relation to a true-up report form.

The effect of paragraphs (2)(f), (g) and (h) is to ensure that, if a maximum cap adjustment, a sub threshold emissions adjustment, or an LNG supplementary allocation adjustment applied in relation to a reportable application, those adjustments apply when calculating a true-up adjustment.

## Part 2 Reporting requirements

**Note** A person who fails to comply with a requirement under this Part may be liable to a civil penalty. See subsections 151(1) and (4) of the Clean Energy Act and item 351(3) of Schedule 1 to the Repeal Act.

### 5 Requirement to report

- (1) The Regulator must approve a form for making a true-up report, which complies with Part 6 of the modified JCP.
- (2) A designated person must give the Regulator a report, in the approved form, for each reportable application (a **true-up report**).
- (3) The report:

- (a) must:
    - (i) include the matters set out in paragraphs 603(1)(a) to (c) of the modified JCP that are required by the report form; and
    - (ii) identify the reportable application to which the report relates; and
    - (iii) comply with Part 7 of the modified JCP; and
  - (b) may identify one or more related reportable applications.
- (4) If the application was required, by clause 703 of the Jobs and Competitiveness Program, to be a combined application, the report must:
- (a) be a combined report; and
  - (b) include the details of all designated persons.

## 6 Timing of report

- (1) A true-up report must be given to the Regulator not later than:
- (a) if an extension is not granted under this section—31 October 2014; or
  - (b) if an extension is granted under this section—1 December 2014.
- (2) A designated person may request an extension under this section.
- (3) The request must:
- (a) be in writing; and
  - (b) identify the reportable application to which the request relates; and
  - (c) set out the reasons why the extension is being requested; and
  - (d) be given to the Regulator not later than 30 October 2014.
- (4) As soon as practicable after receiving the request, the Regulator must:
- (a) grant the extension; or
  - (b) refuse to grant the extension.
- (5) In making a decision under subsection (4), the Regulator must have regard to:
- (a) the reasons set out in the request; and
  - (b) the other circumstances of the request; and
  - (c) any other matter the Regulator considers relevant.
- (6) As soon as practicable after making the decision, the Regulator must notify the person who made the request, in writing, of the decision.

## 7 Regulator may require further information

- (1) If a designated person has given the Regulator a true-up report, the Regulator may, by written notice, require the designated person to give the Regulator, by the date specified in the notice, either or both of the following:
- (a) further information which, in the Regulator's view, is needed to calculate the person's true-up adjustment for the application (**further true-up information**);
  - (b) other further information.
- (2) The Regulator must not specify a date that is later than 15 December 2014.
- (3) The Regulator must ensure that:



- (a) the information required is relevant to the report; and
- (b) powers under this section are exercised in a reasonable way; and
- (c) any notices are given under this section as soon as practicable.

## Part 3 Notice of true-up adjustment

### 8 Estimate of true-up adjustment for application

- (1) If a designated person does not give the Regulator either or both of the following in accordance with these Rules:

- (a) a true-up report;
- (b) further true-up information;

the Regulator must:

- (c) estimate the person's true-up adjustment for the application; and
- (d) give the person notice, in writing, of the following:
  - (i) the Regulator's reasons for making an estimate under this section;
  - (ii) the Regulator's estimate of the person's true-up adjustment for the application; and
- (e) invite the person to provide more accurate information by the date specified in the notice.

**Note** The Regulator is able to require a person to give the Regulator information or documents under section 221 of the Clean Energy Act if the Regulator believes on reasonable grounds that a person has information or a document that is relevant to the operation of these Rules. See also paragraph 358A(b) of the Repeal Act.

Section 44 of the *Clean Energy Regulator Act 2011* deals with the use that the Regulator is able to make of information or documents in its possession. See also item 333, particularly item 333(2)(b), of Schedule 1 to the Repeal Act.

- (2) The Regulator must not specify a date that is earlier than 5 business days after the date of the notice.

### 9 Notice of true-up adjustment for application

- (1) The Regulator must:

- (a) for each reportable application, decide, in writing, each designated person's true-up adjustment; and
- (b) for each reportable application or set of related reportable applications, decide, in writing, whether each designated person has:
  - (i) an under-allocation of free carbon units; or
  - (ii) an over-allocation of free carbon units; and
- (c) give each designated person notice of a decision under this section.

- (2) The Regulator must take all reasonable steps to give the notice to the person:

- (a) if the person gave the Regulator a true-up report in accordance with Part 2—within 45 days after:
  - (i) if the Regulator required further true-up information—the earlier of:
    - (A) the day the Regulator receives the information; and

- (B) the date specified in the notice; or
  - (ii) otherwise—the day the Regulator received the report; and
- (b) in any event—not later than 16 January 2015.
- (3) When calculating the person's true-up adjustment for the application, if the person provided additional information in response to an invitation referred to in paragraph 8(e):
  - (a) by the date referred to in that paragraph—the Regulator must take the information into account;
  - (b) after that date—the Regulator may, but need not, take the information into account.

## 10 Calculation of true-up adjustment for application

- (1) A designated person's **true-up adjustment** for a reportable application is calculated in accordance with this section.
- (2) First, work out the number of free carbon units that would be issued in accordance with subclause 902(2) of the modified JCP, if:
  - (a) the modified JCP were operative; and
  - (b) an application had been made in relation to financial year 2014-15, and that was a fixed charge year; and
  - (c) the application related to the same reportable activity and the same facility or facilities as that to which the reportable application related; and
  - (d)  $t$ , in the modified JCP, referred to financial year 2014-15; and
  - (e) in the formula in subclause 907(16), for  $t = 2014-15$ ,  $CP_{t-1}/CP_t = 1$ , that is,  $CP_{2013-14}/CP_{2014-15} = 1$ .

**Note** The number of free carbon units calculated in accordance with subsection (2) is equal to the adjustments that would have been made by sub-subparagraphs 902(2)(a)(i)(B), (C), (D) and (F) of the Jobs and Competitiveness Program, and that would have related to financial year 2013-14, had that program continued in operation and an application been made for free carbon units under that program for financial year 2014-15.

(2A) If:

- (a) a reportable activity:
  - (i) relates to the production of a product; and
  - (ii) provides that, for the production of that product, the basis, or one of the bases, for the issue of free carbon units is that the product is produced by or as part of carrying on the emissions-intensive trade-exposed activity; and
- (b) a process (the **improved process**) exists that allows for the production of a purer form of that product (the **improved product**);

then:

- (c) for the purposes of the modified JCP:
  - (i) the description of the corresponding activity is taken to include production of the improved product by the improved process; and
  - (ii) for the production of the improved product, the basis for the issue of free carbon units is taken to include production of the improved product by the improved process; and

- (d) for the purposes of paragraph (2)(c)—if the application relates to production of the improved product by the improved process, it is taken to relate to the same reportable activity as that to which the reportable application related.
- (2B) For subsection (2A), if an activity is described in a Division of Part 3 of the Jobs and Competitiveness Program, the ***corresponding activity*** is the activity that is described in the same numbered Division of Part 3 of the modified JCP.
- (3) The designated person's ***true-up adjustment*** for the reportable application is zero if:
  - (a) the designated person failed to give the Regulator, in accordance with these Rules:
    - (i) a true-up report; or
    - (ii) further true-up information; and
  - (b) the number of free carbon units calculated under subsection (2) is greater than zero.
- (4) Otherwise, the designated person's ***true-up adjustment*** for the reportable application is:
  - (a) if there was one applicant—the number of free carbon units calculated in accordance with subsection (2); and
  - (b) if there was more than one applicant—the number of free carbon units calculated in accordance with subsection (2), as apportioned to the designated person in accordance with the formula or other arrangement set out in the application.

## Part 4                      Under- and over-allocations of free carbon units

### 11                      Under-allocation of free carbon units

- (1) For paragraph 352(b) of the Repeal Act, the conditions are satisfied if:
  - (a) for a reportable application with no related reportable applications—the true-up adjustment for the application (the ***under-allocation number***) is greater than zero; and
  - (b) for a set of related reportable applications—the sum of the true-up adjustments for the applications (the ***under-allocation number***) is greater than zero.
- (2) For paragraph 352(d) of the Repeal Act, the number of units in the designated person's under-allocation in relation to the reportable application or applications is the under-allocation number.

### 12                      Final date for issue of additional free carbon units

The Regulator must issue free carbon units in accordance with item 353 of Schedule 1 to the Repeal Act not later than the earlier of:

- (a) 2 days after issue of a notice under section 9; and
- (b) 23 January 2015.

**13 Over-allocation of free carbon units**

- (1) For paragraph 354(b) of the Repeal Act, the conditions are satisfied if:
- (a) for a reportable application with no related reportable applications—the true-up adjustment for the application (the ***over-allocation number***) is less than zero; and
  - (b) for a set of related reportable applications—the sum of the true-up adjustments for the applications (the ***over-allocation number***) is less than zero.
- (2) For paragraph 354(d) of the Repeal Act, the number of units in the designated person's over-allocation in relation to the reportable application or applications is the negative of the over-allocation number.

**14 Final date for relinquishment of free carbon units**

For the definition of ***number of units relinquished*** in item 355(2) of Schedule 1 to the Repeal Act, the period ends on 2 February 2015.

**Part 5 Collection of levy****15 Notice of true-up shortfall levy**

- (1) The Regulator must notify each designated person who has a true-up shortfall, in writing:
- (a) that levy is due and payable on the true-up shortfall on a specified date that is the 15<sup>th</sup> business day after the date of the notice; and
  - (b) of the amount of the levy.
- Note** For the amount of the levy, see the *True-Up Shortfall Levy (General) (Carbon Tax Repeal) Act 2014* and the *True-Up Shortfall Levy (Excise) (Carbon Tax Repeal) Act 2014*.
- (2) The Regulator must give a notice under this section as soon as practicable after the date referred to in section 14, and in any event, no later than 5 business days after the Regulator determines the amount of the levy.

**16 When levy is due and payable**

For item 356 of Schedule 1 to the Repeal Act, levy imposed on a true-up shortfall of a person is due and payable on the 15<sup>th</sup> business day after the date of the notice of the levy under section 15.

**Note** A late payment penalty applies to any amount of levy that is not paid by this date. See item 357 of Schedule 1 to the Repeal Act.

**Part 6 Miscellaneous****17 Review of decisions**

An application may be made to the Administrative Appeals Tribunal to review a decision of the Regulator under paragraphs 9(1)(a) or (b).

**18 Under-allocation of free carbon units after 23 January 2015**

If:

- (a) the Regulator or the Administrative Appeals Tribunal decides that a designated person has an under-allocation of free carbon units; and
- (b) at a time after 23 January 2015, the Regulator is satisfied that there is a number,  $N$ , of free carbon units of the under-allocation that the Regulator has not issued to the person in accordance with item 353(1) of Schedule 1 to the Repeal Act;

the Regulator must pay the designated person the following amount:

$$N \times \$24.15$$

**Note** This provision permits cash payments and adjustments when it is too late to issue free carbon units.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnote 5—Uncommenced amendments

Endnote 6—Modifications

Endnote 7—Misdescribed amendments

Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

**Endnote 2—Abbreviation key**

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = legislative instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s)	sub-s = Sub-section(s)
/sub-subparagraph(s)	

**Endnote 3—Legislation history**

<b>Name</b>	<b>FRLI registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Rules 2014	14 August 2014 (F2014L01091)	15 August 2014	-
Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Amendment Rule 2015	27 May 2015 (F2015L00740)	28 May 2015	-



## Endnote 4—Amendment history

Provision affected	How affected
Part 3, sub-s 10(2A)	ad F2015L00740
Part 3, sub-s 10(2B)	ad F2015L00740

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**