



# **Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 25 May 2023

David Hurley  
Governor-General

By His Excellency's Command

Chris Bowen  
Minister for Climate Change and Energy

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## 1 Name

This instrument is the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	27 May 2023
2. Schedule 1	At the same time as the <i>National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023</i> commence.	1 July 2023
3. Schedule 2	The day after this instrument is registered.	27 May 2023
4. Schedule 3	1 July 2023.	1 July 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following Acts:

- (a) the *Australian National Registry of Emissions Units Act 2011*;
- (b) the *National Greenhouse and Energy Reporting Act 2007*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments relating to the National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023

### *National Greenhouse and Energy Reporting Regulations 2008*

#### **1 Regulation 1.03 (definition of *benchmark-emissions baseline determination*)**

Repeal the definition.

#### **2 Regulation 1.03**

Insert:

*eligible facility* has the same meaning as in the Safeguard Mechanism Rule.

*landfill facility* has the same meaning as in the Safeguard Mechanism Rule.

#### **3 Regulation 1.03**

Repeal the following definitions:

- (a) definition of *prescribed (annually adjusted) production variable*;
- (b) definition of *production-adjusted baseline determination*.

#### **4 Regulation 1.03**

Insert:

*production variable*, for a facility, has the same meaning as in the Safeguard Mechanism Rule.

#### **5 Regulations 4.23C and 4.23D**

Repeal the regulations, substitute:

##### **4.23C Reporting quantities of production variables used to calculate baseline emissions number**

- (1) This regulation applies in relation to a designated large facility or an eligible facility, other than a landfill facility, to which the report relates.
- (2) The report must include, for each production variable that is to be referred to in calculating the baseline emissions number for the facility for the reporting year:
  - (a) the quantity of the production variable for the facility for the reporting year, or part of the reporting year, to which the report relates; and
  - (b) any supporting information specified in Schedule 1 to the Safeguard Mechanism Rule that applies to the calculation of that quantity.
- (3) The quantity of a production variable included in the report under paragraph (2)(a) must:
  - (a) be measured using the units specified in Schedule 1 to the Safeguard Mechanism Rule that apply in relation to the variable; and

- (b) meet any measurement requirements or procedures specified in that Schedule that apply in relation to the variable.

## **6 In the appropriate position in Part 7**

Insert:

### **Division 7.9—Application provisions relating to the Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023**

#### **7.20 Application—quantities of production variables**

Despite the amendments of regulations 4.23C and 4.23D made by Schedule 1 to the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023*, those regulations, as in force immediately before the commencement of that Schedule, continue to apply in relation to a report under Part 3, 3E or 3F of the Act for a financial year that ends on or before 30 June 2023.

## **Schedule 2—Amendments relating to the Safeguard Mechanism (Crediting) Amendment Act 2023**

### ***Australian National Registry of Emissions Units Regulations 2011***

#### **1 At the end of subregulation 27(1)**

Add:

; and (d) there are no entries for any safeguard mechanism credit units in the account.

#### **2 Paragraph 28(3)(b)**

Omit “(4) and (5)”, substitute “(4), (5) and (7)”.

#### **3 At the end of subregulation 28(3)**

Add:

; and (c) setting out the effect of any legislative rules made for the purposes of subsection 16(5) of the Act.

#### **4 In the appropriate position in Part 6**

Insert:

### **72 Amendments made by Schedule 2 to the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023***

The amendments of subregulation 28(3) made by Schedule 2 to the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023* do not apply in relation to a written notice given before the commencement of that Schedule.

### ***National Greenhouse and Energy Reporting Regulations 2008***

#### **5 Part 4A**

Repeal the Part.



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## Schedule 3—Lower emissions cement

### *National Greenhouse and Energy Reporting Regulations 2008*

#### **1 Regulation 1.03**

Insert:

*cement production activities* has the meaning given by regulation 2.20A.

*multi-site cement facility* means a facility that is a series of activities that:

- (a) are cement production activities; and
- (b) form a single undertaking or enterprise in accordance with regulation 2.20A.

#### **2 After regulation 2.20**

Insert:

##### **2.20A Forming part of a single undertaking or enterprise—multi-site cement production activities**

(1) If:

- (a) a series of activities together produce cement (*cement production activities*); and
- (b) the cement produced by the cement production activities is covered by subsection 64(1) of Schedule 1 to the Safeguard Mechanism Rule; and
- (c) the cement production activities occur at different sites; and
- (d) a nomination is approved under regulation 2.20B in relation to the cement production activities;

then the cement production activities will form part of the same single undertaking or enterprise.

Note: Cement production activities that occur at a single site will form part of the same single undertaking or enterprise in accordance with regulation 2.16.

- (2) For the purposes of paragraph (b), treat the cement production activities as if they were carried out at a facility.

##### **2.20B Nominating multi-site cement production activities**

*Scope*

- (1) This regulation applies if cement production activities occur at different sites.

*Nomination*

- (2) The person with overall control in relation to the cement production activities may, for activities conducted on or after 1 July 2023, nominate the cement production activities at different sites that are to form part of the same single undertaking or enterprise.
- (3) The Regulator must approve the nomination if the Regulator is satisfied that:

- (a) all the activities at the different sites listed in the nomination are cement production activities; and
- (b) if the person who made the nomination has overall control in relation to the cement production activities in accordance with subregulation 2.14(2)—all the other persons who could have satisfied subregulation 2.14(1) at the time the nomination was made have indicated their agreement with the nomination.

*When nomination is in effect*

- (4) A nomination approved under this regulation takes effect on:
  - (a) the 1 July of the financial year in which the nomination is approved; or
  - (b) in the circumstances covered by subregulation (5)—the day on which the later nomination is approved.
- (5) The circumstances covered by this subregulation in relation to a nomination (the **later nomination**) are as follows:
  - (a) a nomination by another person (the **earlier nomination**) has been in effect in relation to cement production activities;
  - (b) that other person no longer has overall control in relation to the cement production activities;
  - (c) a person currently with overall control in relation to the cement production activities makes the later nomination;
  - (d) the later nomination is approved.
- (6) A nomination approved under this regulation ceases to have effect:
  - (a) on the day the Regulator revokes the nomination or such other day as specified in the revocation request (if any); or
  - (b) for the earlier nomination in the circumstances covered by subregulation (5)—at the end of the day before the day the later nomination is approved.

*Revoking an approved nomination*

- (7) The Regulator must revoke a nomination approved under this regulation if the person who made the nomination requests the Regulator revoke the nomination.
- (8) The Regulator may revoke a nomination approved under this regulation if:
  - (a) the Regulator becomes aware of circumstances relating to the cement production activities or sites listed in the nomination; and
  - (b) as a result of those circumstances, the Regulator is no longer satisfied of the matters in subregulation (3); and
  - (c) the person who made the nomination has not made a request to vary or revoke the nomination within 60 days of those circumstances occurring.
- (9) The Regulator may also revoke a nomination approved under this regulation if:
  - (a) the Regulator becomes aware that the person who made the nomination no longer has overall control in relation to the cement production activities listed in the nomination; and
  - (b) within 60 days of that person ceasing to have overall control in relation to the cement production activities:
    - (i) that person has not made a request to revoke the nomination; or

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- (ii) a person with overall control in relation to the activities has not made a new nomination in relation to the activities.

*Varying an approved nomination*

- (10) The person who made a nomination approved under this regulation may request the Regulator to vary the nomination in relation to the cement production activities or sites that are to form part of the same single undertaking or enterprise.
- (11) The Regulator must approve the variation request if the Regulator is satisfied that:
- (a) all the activities at the different sites listed in the request are cement production activities; and
  - (b) if the person who made the nomination has overall control in relation to the cement production activities in accordance with subregulation 2.14(2)—all the other persons who could satisfy subregulation 2.14(1) at the time the request is made have indicated their agreement with the variation.
- (12) The variation takes effect on the day the Regulator approves the variation or such other day as specified in the variation request (if any).

*Requirements for nomination or request for variation or revocation*

- (13) A nomination, or a request for variation or revocation of a nomination, under this regulation must:
- (a) be made to the Regulator; and
  - (b) be in the form approved by the Regulator.

### **3 Paragraph 4.04A(2)(c)**

Omit “or a network or pipeline facility”, substitute “, a network or pipeline facility or a multi-site cement facility”.

### **4 Paragraphs 4.04A(2)(d) and (e)**

After “pipeline facility”, insert “or a multi-site cement facility”.

### **5 Subparagraph 4.04A(2)(f)(i)**

Omit “or a network or pipeline facility”, substitute “, a network or pipeline facility or a multi-site cement facility”.

### **6 After regulation 4.28**

Insert:

#### **4.28A Reporting for facilities that are multi-site cement facilities**

- (1) This regulation applies in relation to a report provided to the Regulator under section 19, 22G or 22X of the Act if:
- (a) a facility of the corporation is a multi-site cement facility; and
  - (b) the facility is in more than one State or more than one State and one Territory.

- (2) The information for the facility about greenhouse gas emissions or production or consumption of energy that the corporation is required to provide in its report under this Part must be apportioned in respect of each State and Territory (if any) that the facility is physically located in.
- (3) The report must include information as to the apportionment.