


MS20-000544

To: Minister for Energy and Emissions Reduction (For Decision)

**SAFEGUARD MECHANISM – COVID-19 RELATED RULE AMENDMENTS**

**Timing:** 3 April 2020 - to provide sufficient time to make the amendments in advance of Safeguard facilities beginning to develop and submit 2019-20 baseline applications.

<b>Recommendations:</b>			
1. Agree to the Department preparing an amendment to the Safeguard Rule to delay to 31 October 2021 the requirement for existing facilities to develop and apply for updated baselines, and to delay the application of best practice baselines to new facilities.			
			Agreed / Not agreed
2. Agree that the Department not undertake a full consultation and submissions process for the proposed amendments.			
			Agreed / Not agreed
3. Sign the letter at <b>Attachment C</b> informing the Prime Minister of your intended approach.			
			Signed / Not signed
<b>Minister:</b> 		Date: 15/7/20	
<b>Comments:</b>			
<b>Clearing Officer:</b> Sent 26/3/2020	s22	A/g General Manager, Industry Emissions Policy	Ph: s22 Mob: s22
<b>Contact Officer:</b>	s22	Manager, Safeguard and Industry Emissions Policy	Ph: s22 Mob: s22

**Key Points:**

1. The Safeguard Mechanism sets emissions limits (called baselines) on around 200 of Australia's largest emitters. Many companies must submit applications for new baselines by 31 October 2020 and all new facilities will be required to submit applications for Benchmark baselines by 31 October 2021. Many companies are likely to struggle to complete these applications by the required date due to the impacts of the COVID-19 pandemic.

2. A number of facilities covered by the Safeguard Mechanism have told the Department that the unfolding COVID-19 pandemic will affect their ability to develop baseline applications over the coming months. For example, they may not have enough internal resources available to engage with the Department on the development of the underlying elements used in baseline applications (for example production and emissions data).
  - a. Some facilities have expanded production to support Australia's response to COVID-19, this has limited internal resources available for other activities. For example, the Manildra Group has significantly expanded its ethanol production to support greater demand for hand sanitiser. Freight companies are working to keep Australia supplied with essential goods.
  - b. For other facilities, such as Qantas, downsizing of workforces and implementation of their own COVID-19 management plans are likely to limit internal resources to develop baselines.
  - c. Safeguard facilities and service providers have also begun limiting access to sites, which will affect facilities' ability to develop baselines, and prevent third party service providers from conducting required on-site audits of baseline applications.
3. To address the growing impacts of the COVID-19 pandemic on Safeguard facilities, the Department recommends that the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (Safeguard Rule) be amended to:
  - a. allow facilities to continue to use their current baselines for an additional year, removing the need to develop and lodge new baseline applications over the coming months.
  - b. delay the application of benchmark (or best practice) baselines for new facilities by one year.
4. The changes would not remove compliance obligations for Safeguard facilities. All facilities would continue to be required to keep their net emissions below baseline levels.
5. Draft amendments to implement the recommended changes are at **Attachment A**. A version of the Safeguard Rule showing the proposed amendments is at **Attachment B**.
6. Given the short window available to make these amendments, the Department proposes to seek informal feedback from key industry associations and relevant facilities. We recommend that a full consultation process not be undertaken.
  - a. This approach will allow for a faster move to the new arrangements. It also carries few risks. The proposed amendments would provide additional flexibility for all Safeguard facilities by extending the opportunity for them to apply for a bespoke baseline.
7. Should the proposed Safeguard Rule amendments not be pursued, the Safeguard Mechanism would continue to operate. However facilities facing significant COVID-19 pressures could be disadvantaged as they may not be able to access the full range of baseline setting options. Not making the proposed Safeguard Rule amendments would also risk a limited number of facilities that come online after 1 July 2020 facing a default baseline of 100,000 tonnes CO<sub>2</sub>-e, which would likely be significantly lower than their expected emissions.

8. Provided OBPR does not require the development of a Regulation Impact Statement for the proposed amendment, the Department expects to be in a position to provide you with the Rule amendment for signing in the coming weeks.
9. A letter to the Prime Minister informing him of the approach proposed in this brief is at **Attachment C** should you wish to inform him of your intended approach.

### **Sensitivities and Handling**

10. Qantas made contact with the Department on 25 March 2020 requesting a continuation of their current baseline for a further year—consistent with the recommendations in this brief.
11. Some commentators may see the proposed amendments as a weakening of the Safeguard Mechanism. The amendments do not remove compliance obligations—they instead allow facilities to move onto new, updated baselines on a timeline that takes into account the unprecedented pressures facing Australian industry at this time.

### **Consultation: YES**

12. Office of Best Practice Regulation, Clean Energy Regulator, PM&C.

### **ATTACHMENTS**

- A:** Draft Safeguard Rule amendment (not for signing)
- B:** Track change version of the Safeguard Rule showing the proposed amendments
- C:** Letter to Prime Minister informing him of your approach



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To: Minister for Energy and Emissions Reduction (For Decision)

**NATIONAL GREENHOUSE AND ENERGY REPORTING (SAFEGUARD MECHANISM) AMENDMENT (EXTENDED TRANSITION) RULE 2020**

**Timing:** By 12 May 2020—to make the amendments in advance of Safeguard facilities beginning to develop and submit 2019-20 baseline applications.

<b>Recommendations:</b>			
1. <b>Sign and date</b> the <i>National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020 (Attachment A)</i>			
<b>Signed and dated/Not signed/Please discuss</b>			
2. <b>Approve</b> the associated Explanatory Statement (Attachment B)			
<b>Approved/Not approved/Please discuss</b>			
<b>Minister:</b> <i>Angus Telford</i>		<b>Date:</b> <i>6/5/20</i>	
<b>Comments:</b>			
<b>Clearing Officer:</b> Sent 4/5/2020	s22	General Manager, Climate Change Policy	s22
<b>Contact Officer:</b>	s22	A/g Manager, Safeguard and Industry Emissions Policy	s22

**Key Points:**

1. The Safeguard Mechanism sets emissions limits (called baselines) on around 200 of Australia’s largest emitters.
2. Due to the evolving impacts of the COVID-19 pandemic on Safeguard facilities, you agreed to the Department consulting on amendments that give businesses the option to defer new baseline applications over the coming months. This would be achieved by extending current baselines and delaying the application of benchmark baselines for new facilities by one year (**MS20-000544** refers).
  - a. The amendments would not remove compliance obligations for Safeguard facilities. All facilities must continue to keep their net emissions below baseline levels.

- b. The amendments would not prevent facilities from applying for new baselines over the coming months should they wish to, for example where they have the option to move onto a simpler form of baseline with lower audit requirements.
    - c. The amendments would allow for an orderly transition to the new baseline setting framework established in early 2019 (**MS19-000065** refers).
3. Following consultation, we are seeking your formal sign-off to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020* (the Amendment Rule). Formal sign off requires you to sign and date the front page of the instrument (**Attachment A**) and approve the Explanatory Statement (**Attachment B**). This is necessary to make the amendments.
4. Given the short window available to make these amendments, the Department did not undertake open public consultation, but sought feedback from facilities covered by the Safeguard Mechanism and key industry associations over a 10 day consultation period.
  - a. 24 companies and industry associations made submissions. All submissions supported the proposed amendments. A summary of feedback is at **Attachment D**.
5. In response to submissions, the Department recommends including an additional amendment to extend calculated baselines that expired on 30 June 2019 for an additional year.
  - a. Calculated baselines expire after three years, requiring the facility to develop and apply for a new baseline.
  - b. This additional amendment is consistent with the other proposed amendments, as it delays the need to develop and lodge new baseline applications over the coming months for over 60 facilities whose initial calculated baseline has expired.
  - c. This change is included in the Amendment Rule at **Attachment A**.
6. While some public social distancing measures are easing in certain states, Safeguard facilities will continue to face material disruptions as the pandemic evolves both domestically and internationally, affecting inbound and outbound supply chains, the deployment of internal resources, and site access for third party auditors (especially at vulnerable locations such as remote mine sites).
  - a. The amendments at **Attachment A** will help facilities to manage these issues and allow for the continued stable operation of the Safeguard Mechanism as Australia and our trading partners maintain measures to control the spread of COVID-19 over the coming year.
7. The Office of Best Practice Regulation (OBPR) advised on 20 April 2020 that the proposed amendments do not require a Regulation Impact Statement (OBPR ref ID 26446).

## Sensitivities and Handling

8. Not making the amendments would lead to a disorderly transition onto the new baseline setting framework that was established in early 2019. This is because:
  - a. facilities will face difficulties accurately forecasting production and emissions for the forward three years;
  - b. some facilities, including those with expired baselines, may not have access to the baseline-setting elements they need; and
  - c. some facilities would need to apply for multiple baselines over the coming years to manage the shock to production caused by the pandemic, which would unnecessarily increase regulatory costs for those facilities.
9. Not making the amendments could also result in the unequal treatment of facilities—some may be locked out of baselines that combine Government-set and facility-specific elements, and some could potentially face default baselines of 100,000 tonnes CO<sub>2</sub>-e, which is well below their actual emissions levels. The additional costs of such an outcome could affect businesses' ability to recover from the pandemic. Not making the amendments could result in the need for further legislative amendments over the coming year.
10. The amendments will mean that any new facilities that come online in 2020-21 would have baselines set on industry average or site specific emissions intensity levels as opposed to best practice emissions intensity levels. Best practice emissions intensity levels would apply to new facilities from the start of 2021-22. We do not anticipate many facilities to fall into this category.
11. Some commentators may argue the proposed amendments are a weakening of the Safeguard Mechanism. The amendments do not remove compliance obligations—they instead allow facilities to move onto new, updated baselines on a timeline that takes into account the unprecedented pressures facing Australian industry at this time.
12. You wrote to the Prime Minister informing him of your intention to consult on and then make these amendments (**MS20-000544** refers). We understand that the Department of the Prime Minister and Cabinet has advised the Prime Minister's Office that the Prime Minister does not need to respond to your letter.
13. The Amendment Rule (**Attachment A**) is a disallowable instrument. We will provide you with further briefing should a notice of a motion to disallow be lodged.
14. Talking points are at **Attachment C**.

## Consultation: YES

15. Department of the Prime Minister and Cabinet, Australian Government Solicitor, Clean Energy Regulator and OBPR.

## ATTACHMENTS

- A:** *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020*

- B:** Explanatory Statement
- C:** Talking points
- D:** Summary of stakeholder feedback



## National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020

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I, Angus Taylor, Minister for Energy and Emissions Reduction, make the following instrument.

Dated 6 May 2020

A handwritten signature in black ink that reads "Angus Taylor". The signature is written in a cursive style.

Angus Taylor  
Minister for Energy and Emissions Reduction

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## 1 Name

This instrument is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020*.

## 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. The whole of this instrument	The day after this instrument is registered.	

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 subsection 22XS(1) of 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

### *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015*

**1 Section 4 (subparagraphs (a)(i) and (ii) of the definition of *production variable*)**

Omit “2020”, substitute “2021”.

**2 Section 4 (subparagraphs (c)(i) and (ii) of the definition of *production variable*)**

Omit “2020”, substitute “2021”.

**3 Paragraph 14(2)(a)**

Omit “2020”, substitute “2021”.

**4 Paragraphs 18(3)(c) and (d)**

Omit “2020” (wherever occurring), substitute “2021”.

**5 Subsection 23(7)**

Omit “or 1 July 2019”, substitute “, 1 July 2019 or 1 July 2020”.

**6 Paragraph 26A(2)(b)**

Omit “or 1 July 2019”, substitute “, 1 July 2019 or 1 July 2020”.

**7 Subsection 26A(5)**

Omit “2020”, substitute “2021”.

**8 Subsection 26A(6)**

Omit “2020”, substitute “2021”.

**9 Subparagraph 27(1)(d)(i)**

Omit “2020”, substitute “2021”.

**10 Paragraph 30(2)(e)**

Omit “2020”, substitute “2021”.

**11 Paragraph 31(5)(b)**

Omit “4 financial years”, substitute “5 financial years”.

**12 Subsection 31(5)**

Omit “2020”, substitute “2021”.

**13 Subsection 33(6)**

Omit “2020”, substitute “2021”.

**14 Subsection 34(9)**

Omit “2020”, substitute “2021”.

**15 After paragraph 68(1)(a)**

Add:

- (aa) to extend by 1 year the end date for a declared multi-year period ending on 30 June 2020; or

**16 After section 80**

Add:

**Division 2—Application and transitional provisions relating to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020*****81 Baseline emissions number if calculated-emissions baseline determination expired on 30 June 2019**

If a calculated-emissions baseline determination for a facility expired on 30 June 2019 and no other baseline determination applies to the financial year beginning on 1 July 2019, the baseline emissions number for the facility for the financial year beginning on 1 July 2019 is taken to be the baseline emissions number of the calculated-emissions baseline determination.

NATIONAL GREENHOUSE AND ENERGY REPORTING ACT 2007

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NATIONAL GREENHOUSE AND ENERGY REPORTING  
(SAFEGUARD MECHANISM) AMENDMENT (EXTENDED  
TRANSITION) RULE 2020

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EXPLANATORY STATEMENT

(Issued by the authority of the Minister for Energy and Emissions Reduction)



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## *General outline and statements*

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### **Background**

The *National Greenhouse and Energy Reporting Act 2007* (the Act) establishes a single national framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information. The Safeguard Mechanism is part of the Act. Together with the reporting obligations under the Act, the Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions.

Section 22XS of the Act empowers the Minister to make legislative rules to implement the Safeguard Mechanism. The Safeguard Mechanism was established through the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (the Principal Rule). The Principal Rule specifies the administrative detail of how safeguard provisions are implemented and the administrative processes for demonstrating compliance with Safeguard obligations.

Amendments were made to the Principal Rule in March 2019 to:

1. Bring baselines up-to-date by transitioning all facilities to calculated or production adjusted baselines over 2018-19 and 2019-20;
2. Simplify calculated baseline applications by giving businesses the option to use Government-determined *prescribed production variables* and *default emissions intensity* values for calculating baselines; and
3. Update baselines annually for actual production where facilities use eligible production variables, so they continue to reflect facility circumstances.

The March 2019 amendments established a transition period that covered the 2018-19 and 2019-20 compliance years. All facilities could apply for a transitional calculated baseline during this period where they have the option to use either:

- **default values:** Government-determined prescribed production variables and default emissions intensity values (collectively referred to as 'default values'); or
- **estimated (site-specific) values:** which take account of individual facility circumstances, either as a site-specific production variable or a site-specific 'estimated' emissions intensity value.

The March 2019 amendments established that at the end of the transition period (1 July 2020), reported (historical) baselines expire for all facilities except grid-connected electricity generators.

In September 2019, the Principal Rule was amended to extend the application deadline for calculated-emissions baselines starting in the 2018-19 compliance year in certain

circumstances. The September 2019 amendment provided facilities with greater access to the new framework established in the March 2019 amendment.

In March 2020, the Principal Rule was amended to insert Government-determined prescribed production variables and corresponding default emissions intensity values into Schedules 2 and 3 of the Principal Rule to give effect to the amendments made to the Principal Rule in March 2019.

## Purpose

*The National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020* (the Amendment Rule) was developed in response to the coronavirus (COVID-19) pandemic. The pandemic is causing significant and widespread workforce disruptions at Safeguard facilities, and some facilities are rapidly changing their processes and product mixes as they implement their pandemic management plans. This is negatively affecting facilities' ability to develop baseline applications, access independent third parties to audit baseline applications, and engage in the development of default values and benchmark emissions intensity values for use in baseline applications. Safeguard facilities are impacted by both domestic and global impacts of the pandemic.

The Amendment Rule implements a number of administrative timing changes to the Principal Rule to delay the requirement to apply for new baselines during the unfolding COVID-19 pandemic. Facilities could have remained on reported baselines for the 2019-20 year under the Principal Rule, however many would have chosen to move to new baselines that commence at the start of the 2019-20 year in order to access estimated (site-specific) values in that year. The primary effect of the Amendment Rule is to extend the transition period by one year, including allowing facilities to continue to be subject to their existing reported baselines for an additional year.

In summary, the Amendment Rule:

- allows facilities to remain on reported baselines for both the 2019-20 year and the 2020-21 year (noting that a transitional calculated baseline would need to commence no later than the start of the 2020-21 year for site-specific production variables and emissions intensity values to be used<sup>1</sup>);
- allows facilities with calculated baselines that expired on 30 June 2019 to continue to be subject to those baselines for the 2019-20 year;
- provides facilities with access to estimated (or site-specific) production variables and default emissions intensity values for calculated baselines that commence in the 2020-21 year;

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<sup>1</sup> Unless covered by the inherent emissions variability criteria.



- delays the application of benchmark baselines by one year, to 1 July 2021; and
- allows facilities to apply to the Clean Energy Regulator to extend *multi-year period declarations* (commonly called multi-year monitoring periods) that are due to expire on 30 June 2020 by one year. This delays the requirement for some facilities to source and surrender Australian Carbon Credit Units for the 2019-20 compliance year.

The Amendment Rule does not remove compliance obligations for Safeguard facilities. They continue to be required to keep net emissions below baseline levels. The amendments primarily have the effect of extending the existing two year transition period by an additional year—the 2020-21 year. This delays the full transition to the new Safeguard Mechanism framework, established in the March 2019 amendments, by one year.

As a result of the Amendment Rule, facilities are able to apply for new transitional calculated baselines that use either default values or estimated (site-specific) values in the 2020-21 year. Facilities are still able to apply for such a baseline to commence in the 2019-20 year should they choose to.

### **Authority**

Section 22XS of the Act empowers the Minister to make legislative rules to implement the Safeguard Mechanism.

### **Consultation**

The Government consulted Safeguard facilities on the changes in the Amendment Rule in April 2020. Affected facilities supported the proposed amendments, and indicated that it allowed for an orderly transition to the new baseline setting framework established in March 2019. Specific feedback was received on the need to ensure equal treatment of facilities on reported baselines and expired initial calculated baselines. Minor technical recommendations were suggested for this Explanatory Statement.

### **Regulatory impact analysis**

The Office of Best Practice Regulation has been consulted, and no Regulation Impact Statement is required for the Amendment Rule (OBPR ID 26446).

### **Safeguard Rule details**

The Principal Rule and the Amendment Rule are legislative instruments within the meaning of the *Legislation Act 2003*. The Principal Rule commenced on 1 July 2016. The Amendment Rule will commence on the day after registration. The ordinary repeal arrangements for amending instruments apply. Details of the amendments are set out in the following sections.

## **Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights, prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, is at Attachment A of the Explanatory Statement.



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## *Details of the sections in the Amendment Rule*

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### **1 Name**

The name of the Amendment Rule is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020*.

### **2 Commencement**

The Amendment Rule commences the day after it is registered.

### **3 Authority**

The Amendment Rule is made under subsection 22XS(1) of the *National Greenhouse and Energy Reporting Act 2007*. The power to make rules under this subsection includes the power to amend or revoke rules that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

### **4 Schedules**

This section provides for the Principal Rule to be amended by each of the items in Schedule 1. The intent of changes made through the Amendment Rule is set out below.

## **Schedule 1 – Amendments**

### **Item 1 - Section 4 (subparagraphs (a)(i) and (ii) of the definition of *production variable*)**

Section 4 of the Principal Rule establishes different definitions of the term ‘production variable’ for different circumstances.

Item 1 amends the definition of a production variable in contexts where the facility can choose to use a production variable defined in accordance with section 5 of the Principal Rule (as opposed to a prescribed production variable from Schedules 2 or 3 of the Principal Rule). Section 5-defined production variables are sometimes referred to as site-specific production variables. It changes the references “2020” to “2021”.

The amendment provides for a facility to use a Section 5-defined production variable in a calculated-emissions baseline that commences before 1 July 2021 (formerly 1 July 2020), or is made on the basis of the inherent emissions variability criteria. [*subparagraph (a)(i) of the definition of production variable*]

The item also provides for Section 5-defined production variables that are established in a calculated-emissions baseline determination that commences before 1 July 2021 (formerly 1 July 2020) to continue to be used in a production-adjusted baseline determination that follows or replaces the calculated-emissions baseline determination. [*subparagraph (a)(ii) of the definition of production variable*]

**Item 2 - Section 4 (subparagraphs (c)(i) and (ii) of the definition of *production variable*)**

This item changes the references “2020” to “2021”. It establishes that where a calculated-emissions baseline commences on or after 1 July 2021 (formerly 1 July 2020), it must use a Schedule 2 or 3 prescribed production variable, unless it is made on the basis of the inherent emissions variability criteria. *[subparagraph (c)(i) of the definition of production variable]*

The item also establishes that only Schedule 2 or 3 prescribed production variables can be used in a production-adjusted baseline determination that follows or replaces a calculated-emissions baseline determination that commenced on or after 1 July 2021 (formerly 1 July 2020). *[subparagraph (c)(ii) of the definition of production variable]*

**Item 3 - Paragraph 14(2)(a)**

This item changes the reference “2020” to “2021”. It extends by one year, to 1 July 2021, the period in which the Clean Energy Regulator must make a reported-emissions baseline determination for an inter-state transport facility for which both the national facility definition applies and the requirements of paragraphs (2)(a)(i) and (ii) are met. This allows for the consolidation of separate baselines for State and Territory transport facilities into a single national baseline. This change reflects the new expiry date for reported-emissions baselines.

**Item 4 - Paragraphs 18(3)(c) and (d)**

This item changes the references “2020” to “2021”. It changes the date on which reported-emissions baseline determinations expire. Under the Principal Rule, reported-emissions baseline determinations expire on 1 July 2020. This item in the Amendment Rule changes the expiry date to 1 July 2021.

This item, in combination with the amendments to the definition of ‘production variable’ in section 4, allows facilities to remain on a reported baseline for the 2019-20 compliance year, before moving to a new baseline in the 2020-21 year that is set in accordance with the transition period arrangements.

In the absence of the Amendment Rule, many facilities would have chosen to move to a new transitional calculated baseline to commence on 1 July 2019 in order to access estimated (site-specific) values. Under the Amendment Rule, facilities are able to use estimated (site-specific) production variables and emissions intensity values in baseline applications for transitional calculated baselines that commence at the start of the 2020-21 compliance year, but not later years.

Estimated (site-specific) emissions intensity values can only continue to be used in calculated baseline applications that relate to compliance years that follow the 2020-21 year where the provisions in section 25 apply.

**Item 5 - Subsection 23(7)**

Subsection 23(7) is amended to include reference to “1 July 2020” to allow a calculated-emissions baseline determination established under the new facility criteria to commence on 1 July 2020 at the latest (formerly 1 July 2019).

**Item 6 - Paragraph 26A(2)(b)**

This item includes a reference to “1 July 2020” to establish that a baseline application can meet the transitional-calculated baseline criteria in circumstances where an existing calculated-emissions baseline determination commences on 1 July 2020 at the latest (formerly 1 July 2019), and the new baseline application uses one or more prescribed production variables not used in the first determination.

This paragraph allows a facility to apply for a transitional-calculated baseline in advance of prescribed production variables being made available in Schedules 2 and 3 of the Principal Rule, and then apply for a new transitional-calculated baseline that picks up one or more newly-established prescribed production variables.

**Item 7 - Subsection 26A(5)**

This item changes the reference to “2020” to “2021”. Subsection 26A(5) in the Principal Rule established that where a facility applies for a calculated-emissions baseline determination to commence on 1 July 2020, one or more prescribed production variables must be applicable to the facility in accordance with any requirements in Schedule 2 or 3. Item 7 amends the Principal Rule to delay the 1 July 2020 date to 1 July 2021.

**Item 8 - Subsection 26A(6)**

This item changes the reference to “2020” to “2021”. It amends subsection 26A(6) to delay by one year (to 1 July 2021) the date on which a commencing calculated-emissions baseline determination must meet the criteria in paragraphs 26A(6)(a) and (b).

**Item 9 - Subparagraph 27(1)(d)(i)**

This item changes the reference to “2020” to “2021”. Section 27 deals with information that is required to be included in a calculated-emissions baseline application. The amendment to subparagraph 27(1)(d)(i) establishes that where a calculated-emissions baseline is to commence before 1 July 2021 (formerly 1 July 2020), or is made on the basis of the inherent emissions variability criteria, the application for the baseline must include the information at sub-subparagraphs 27(1)(d)(i)(A) and (B). These sub-subparagraphs allow a facility to nominate the use of either an estimated (site-specific) emissions intensity value, or a default emissions intensity value.

**Item 10 - Paragraph 30(2)(e)**

This item changes the reference to “2020” to “2021”. Paragraph 30(2)(e) establishes the date beyond which a commencing calculated-emissions baseline determination (excluding those made on the basis of the inherent emissions variability criteria) must use only prescribed



production variables and default emissions-intensities. This date is amended to be 1 July 2021.

**Item 11 - Paragraph 31(5)(b)**

This item changes the reference to “4 financial years” to “5 financial years”. It amends paragraph 31(5)(b) to ensure consistency with the amendment in item 12, below and reflects the new transition date of 1 July 2021.

**Item 12 - Subsection 31(5)**

This item changes the reference to “2020” to “2021”. It amends the subsection to establish that a calculated-emissions baseline determination that was made on the basis of the new facility criteria expires on 1 July 2021 (formerly 1 July 2020) wherever the covered emissions from the facility were not over 100,000 t CO<sub>2</sub>-e in any of the five financial years starting on 1 July 2016.

**Item 13 - Subsection 33(6)**

This item changes the reference to “2020” to “2021”. It delays the application of benchmark-emissions baseline determinations by one year, to 1 July 2021.

**Item 14 - Subsection 34(9)**

This item changes the reference to “2020” to “2021”. It establishes that a benchmark-emissions baseline determination made under the significant expansion criteria can only commence on or after 1 July 2021 (formerly 1 July 2020).

**Item 15 - After paragraph 68(1)(a)**

This item adds a new paragraph to subsection 68(1) to establish that a responsible emitter can apply to the Clean Energy Regulator to extend by one year the end date of a declared multi-year period ending on 30 June 2020.

This amendment allows greater flexibility for some facilities to manage Safeguard Mechanism compliance while managing the immediate impacts of the COVID-19 pandemic. This amendment does not remove the obligation to keep net emissions below baseline levels.

**Item 16 – After section 80**

This item adds a new Division 2 to Part 6 of the Principal Rule. It allows for a facility to remain on a calculated emissions baseline that expired on 30 June for the 2019-20 year. This ensures such facilities are treated consistently with facilities on reported emissions baselines. The transitional provision does not create a new baseline determination for the facility, but deems the baseline emissions number to equal the previous baseline emissions number under the expired calculated emissions baseline determination.

## Statement of Compatibility with Human Rights

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

*National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020*

This Disallowable 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 Disallowable Legislative Instrument

The Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions. It places emissions limits, called baselines, on large facilities that emit more than 100,000 tonnes of carbon dioxide equivalent a year, giving covered businesses a legislated obligation to keep net emissions below their baseline.

Amendments were made to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (the Principal Rule) in March 2019, including bringing baselines up-to-date by transitioning all facilities to calculated or production adjusted baselines over 2018-19 and 2019-20.

The *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Extended Transition) Rule 2020* (the Amendment Rule) amends the Principal Rule to extend the two year transition period by one year. It is intended to reduce baseline application pressure on Safeguard Facilities caused by the impacts of the COVID-19 pandemic. The Amendment Rule:

- allows facilities to retain their current baselines (as well as calculated baselines that expired at the end of the 2019-20 year) for an additional year;
- delays the application of benchmark baselines by one year to 1 July 2021; and
- allows facilities to apply to the Clean Energy Regulator to extend by one year certain multi-year period declarations.

### Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

### Conclusion

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

**The Hon. Angus Taylor MP**  
**Minister for Energy and Emissions Reduction**



**ATTACHMENT C****Talking Points**

- The Safeguard Mechanism places emissions limits—called baselines—on Australia’s largest emitters.
- In response to the evolving impacts of the COVID-19 pandemic, the Government has made some administrative timing changes to the scheme to reduce administrative obligations on Safeguard facilities as they respond to the pandemic.
- The amendments do not remove compliance obligations for any Safeguard facilities.
- Emissions limits will continue to apply.
- All Safeguard facilities must continue to keep their net emissions below baseline levels, including in the 2019-20 year.

***What are the amendments?***

- The amendments:
  - Allow facilities to continue to use their current baselines for an additional year; and
  - Delay the application of benchmark baselines for new facilities by one year.
- These changes will delay the need for facilities to prepare and lodge baseline applications over the coming months as they manage the impacts of the COVID-19 pandemic.
- Facilities will have an additional year to transition onto the new baseline setting arrangements introduced in March 2019, which provide a simpler and fairer way to set baselines.
- The amendments will ensure there is an orderly transition onto the new baseline setting framework.

***Why are the amendments needed?***

- Businesses covered by the Safeguard Mechanism are facing unprecedented challenges during the COVID-19 pandemic. These include:
  - Constraints on their ability to have independent third parties conduct on-site audits of baseline applications;
  - Significant workforce disruptions, including redeployments and downsizing, which are leading to constraints on internal resources;
  - Changes in business operations, including to support Australia’s response to the pandemic, which are affecting the ability of some sectors to finalise key elements of the new baseline setting framework.

- For example, some businesses have significantly expanded their ethanol production to support greater demand for hand sanitiser. Freight companies are working to keep Australia supplied with essential goods.
- The amendments will help facilities manage these impacts while maintaining the requirement that all facilities keep net emissions below baseline levels.

***Who was consulted?***

- The Department of Industry, Science, Energy and Resources consulted affected businesses and industry groups on the changes in April 2020.

## ATTACHMENT D

**Summary of stakeholder feedback**

- The Department consulted with peak bodies and Safeguard facilities on the proposed amendments from 17 to 29 April 2020.
- We received 24 submissions, comprising 18 from companies and 6 from industry associations (listed in Tables 1 and 2 below).
  - All submissions supported the amendments.
  - The Department also received a supportive email from Rio Tinto, but did not receive a formal submission from them.
- A number of companies and industry associations noted the amendments are intended to allow businesses to defer baseline applications for 2019-20, but did not cover the specific scenario where an initial calculated baseline expires on 30 June 2019.
  - Based on this feedback, the Department added an amendment (Item 16) to extend initial calculated baselines that expired on 30 June 2019 for one additional year.
  - s45, Origin, s45 the Australian Petroleum Production and Exploration Association (APPEA) and the Australian Industry Greenhouse Network (AIGN) raised this issue.
  - This inconsistency would have meant around 60 facilities would have been required to develop new baselines over the coming months or face the default baseline of 100,000 tonnes. The default baseline is well below most facilities' emissions.
- Submissions from APPEA, the Business Council of Australia, AIGN and Origin requested another lodgement deadline for baseline applications be delayed.
  - They suggested that facilities that wish to use the 2020-21 year to set their baseline should be permitted to submit a baseline application to the Clean Energy Regulator later than the currently mandated date of 31 July 2020.
  - The Department has not included an additional amendment in response to this suggestion. The suggested change is not needed to support facilities through the pandemic—applying for a baseline by 31 July 2020 is optional. Under the Amendment Rule, facilities are able to remain on their current baselines for the 2019-20 year and move to a new baseline in the 2020-21 year or the 2021-22 year.
  - Adjusting the 31 July deadline could lead to adverse outcomes under the scheme by creating an opportunity for facilities to access an artificially high baseline in all future years. They could do this by increasing their emissions intensity for part of the 2020-21 year, allowing them to lock in that value for future baselines.
  - Facilities are not prevented from applying for a baseline before 31 July 2020, should they wish to, and have been encouraged to engage with the Clean Energy Regulator on the development of their baseline application if this is their intent.
- A small number of submissions suggested minor technical wording changes to the Explanatory Statement. The Department has amended the Explanatory Statement accordingly.

**Table 1. Companies that provided submissions**

<b>Company</b>	<b>Sector</b>
Qantas	Aviation
Australia Gas Infrastructure Group (AGIG)	Gas supply
s45	s45
s45	s45
Orion Mining	Mining
GFG Alliance	Mining / Steel
s45	s45
Origin	Oil and gas
s45	s45
s45	s45
s45	s45
s45	s45
s45	s45
Bluescope	Steel
s45	s45
s45	s45
s45	s45
s45	s45

**Table 2. Industry associations that provided submissions**

<b>Industry association</b>
APPEA
Australian Aluminium Council
Australian Industry Greenhouse Network
Business Council of Australia
Cement Industry Foundation
Chamber of Minerals and Energy of Western Australia

Freedom of Information

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**From:** s22  
**Sent:** Tuesday, 5 May 2020 5:00 PM  
**To:** s22  
**Cc:** s22; DLO Taylor; s22  
**Subject:** RE: COVID-19 related amendments to the Safeguard Rule – advance copy of MS20-001205 [DLM=For-Official-Use-Only]

**Security Classification:**  
For Official Use Only

Thanks s22 – good timing as the Minister will be in Canberra tomorrow. I'll try get it signed then.

s22  
Adviser  
Office of the Minister for Energy and Emissions Reduction | The Hon Angus Taylor MP  
s22

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For Official Use Only

**From:** s22  
**Sent:** Tuesday, 5 May 2020 4:57 PM  
**To:** s22  
**Cc:** s22; DLO Taylor; s22  
**Subject:** COVID-19 related amendments to the Safeguard Rule – advance copy of MS20-001205 [DLM=For-Official-Use-Only]

Hi s22

Please find attached an advance copy of MS20-001205 seeking the Minister's sign off on the COVID-19 related amendments to the Safeguard Mechanism.

This follows targeted consultation on the proposed amendments (MS MS20-000544 refers), which closed last Wednesday.

A PDMS item with the official version of this brief will be sent to the Minister's office shortly.

Please let me know if you'd like to discuss.

Kind regards,

s22

Safeguard & Industrial Policy | Climate Change Division  
Department of Industry, Science, Energy and Resources  
Ph: s22  
Email: s22 @industry.gov.au

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For Official Use Only



Freedom of Information

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**From:** DLO Taylor  
**Sent:** Friday, 17 April 2020 9:34 AM  
**To:** s22  
**Cc:** s22; Parl Briefs; s22  
CGP; DLO Taylor; SPB - Science and Technology; s22  
**Subject:** Signed brief return: MS20-000544 - Safeguard mechanism - COVI-19 related rule amendments [SEC=UNCLASSIFIED]

**Security Classification:**  
UNCLASSIFIED

Hi s22

The Minister has considered the above brief:

Recommendation 1: **Agreed**

Recommendation 2: **Agreed**

Recommendation 3: **Signed**

The hardcopy brief will be returned to the department in the next courier run for processing.

The signed letter attached to your submission has been dispatched electronically by the DLOs.

Kind regards,

s22

**Departmental Liaison Officer | Office of the Hon Angus Taylor MP  
Minister for Energy and Emissions Reduction**

**a:** Parliament House, Canberra, ACT 2600

**t:** s22

[@industry.gov.au](mailto:s22@industry.gov.au)

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