



# Safeguard Mechanism

## Borrowing Adjustment application guideline

Version 1.0 - 29 July 2024





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## Disclaimer

This guideline has been developed by the Clean Energy Regulator (CER) to assist responsible emitters to apply for a borrowing adjustment determination under section 48 of the [National Greenhouse and Energy Reporting \(Safeguard Mechanism\) Rule 2015](#)<sup>1</sup> (the Safeguard Rule). This guideline must be read in conjunction with the [National Greenhouse and Energy Reporting Act 2007](#)<sup>2</sup> (the NGER Act), the [National Greenhouse and Energy Reporting Regulations 2008](#)<sup>3</sup> (the NGER Regulations), the Safeguard Rule, and any other legislative instrument referenced in this document in their current form at the time of reading.

Changes to the legislation may affect the information in this document. It is intended that this document will be updated in line with any legislative changes or if further clarity on a particular issue is required.

The information contained in this document is provided as guidance only.

This document is general in nature and does not cover every situation that may arise in relation to borrowing adjustment determinations or the Safeguard Mechanism broadly.

Responsible emitters are responsible for determining their obligations under the Safeguard Rule, the NGER Regulations and the NGER Act and for applying the legislation to their individual circumstances. They should seek professional advice relevant to their particular circumstances if they have any concerns.

This document does not contain legal advice and is not a substitute for independent legal advice.

The CER and the Commonwealth of Australia will not be liable for any loss or damage from any cause (including negligence) whether arising directly, incidentally, or as consequential loss or damage, out of or in connection with, any use of this guideline or reliance on it, for any purpose.

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<sup>1</sup> <https://www.legislation.gov.au/Series/F2015L01637>

<sup>2</sup> <https://www.legislation.gov.au/Series/C2007A00175>

<sup>3</sup> <https://www.legislation.gov.au/Series/F2008L02230>



## Definitions and abbreviations

Term	Meaning
<b>Australian Carbon Credit Unit (ACCU)</b>	Each ACCU represents one tonne of carbon dioxide equivalent (tCO <sub>2</sub> -e) emissions stored or avoided by an eligible offsets project.
<b>Controlling corporation</b>	<p>An entity that must register and report under the NGER Act, as defined in section 7 of the NGER Act.</p> <p>A controlling corporation is a constitutional corporation that does not have a holding company in Australia. It is generally the corporation at the top of the corporate hierarchy in Australia. It can be a 'non-operational' holding company. It may also be a foreign incorporated entity that operates directly in Australia (that is, does not operate through an Australian incorporated subsidiary).</p>
<b>Covered emissions</b>	<p>Covered emissions are defined as scope 1 emissions of one or more greenhouse gas, including:</p> <ul style="list-style-type: none"> <li>• direct emissions from fugitive emissions</li> <li>• emissions from fuel combustion</li> <li>• waste disposal and industrial process such as cement and steel making.</li> </ul> <p>Some scope 1 emissions are not covered by the Safeguard Mechanism, such as emissions from landfills associated with pre-1 July 2016 waste.</p>
<b>Designated large facility</b>	For the purposes of the Safeguard Mechanism, a facility is a designated large facility for a financial year if the total amount of covered emissions from the operation of the facility during that financial year exceeds 100,000 tCO <sub>2</sub> -e.
<b>Excess emissions situation</b>	Where the net emissions number for a facility for a financial year or MYMP exceeds the facility's baseline emissions number for that financial year or MYMP.
<b>Executive officer (EO)</b>	<p>An executive officer is defined as a:</p> <ul style="list-style-type: none"> <li>• Director</li> <li>• Chief Executive Officer (however described)</li> <li>• Chief Financial Officer (however described)</li> <li>• Company Secretary.</li> </ul>
<b>Facility</b>	<p>Under section 9 of the NGER Act, a facility is an activity, or a series of activities (including ancillary activities), that involve greenhouse gas emissions, the production of energy or the consumption of energy and that:</p> <ul style="list-style-type: none"> <li>• form a single undertaking or enterprise and meet the requirements of the NGER Regulations, or</li> <li>• are declared to be a facility under section 54, 54A or 54B of the NGER Act.</li> </ul>
<b>Net emissions number</b>	The net emissions number for a facility for a period is the total amount of covered emissions in tCO <sub>2</sub> -e for the facility during the period <b>plus</b> any ACCU issued in relation to the facility during that period <b>minus</b> any ACCUs and/or SMCs surrendered for the facility for that period.



Term	Meaning
<b>NGER Report</b>	An NGER report is a submission of energy and emissions information required under the NGER Act.
<b>Operational control</b>	<p>A person is considered to have operational control over a facility if that person has authority to introduce and implement operating, health and safety, and/or environmental policies. The CER can also declare a person has operational control over the facility under section 55 or 55A of the NGER Act.</p> <p>If there is uncertainty about which person has operational control over a facility and the CER has not made a declaration under section 55 or 55A of the NGER Act, the person having operational control will be the one with the greatest authority to introduce and implement operating and environmental policies in relation to the facility.</p> <p>If among 2 or more persons neither has the greatest authority to introduce and implement operating and environmental policies in relation to a facility, and the CER has not made a declaration under section 55 or 55A of the NGER Act nor have those persons nominated one of themselves, each of those persons will be taken to have operational control over the facility.</p>
<b>Prescribed carbon unit</b>	<p>For the purposes of the NGER Act a prescribed carbon unit means:</p> <ul style="list-style-type: none"> <li>• an Australian carbon credit unit, or</li> <li>• a Safeguard mechanism credit unit.</li> </ul>
<b>Responsible emitter</b>	<p>The person with operational control of a Safeguard facility. The responsible emitter is responsible for meeting the Safeguard Mechanism requirements if the facility exceeds its safeguard threshold for a financial year.</p> <p>The responsible emitter may be an individual, a body corporate, a trust, a corporation sole, a body politic or a local governing body.</p>
<b>Safeguard threshold</b>	The number beyond which covered emissions produced by a facility in a financial year would cause it to be covered by the Safeguard Mechanism (100,000 tonnes of CO <sub>2</sub> -e in a financial year).
<b>Safeguard Mechanism Credit Unit (SMCs)</b>	<p>SMCs are a type of credit unit that may be issued for each tonne of emissions (CO<sub>2</sub>-e) that a facility's covered emissions are below its baseline. These credits can be surrendered to meet Safeguard compliance obligations, sold, or retained for future use.</p> <p>SMCs incentivise facilities to reduce their emissions when cost-effective emissions reduction opportunities exist. SMC generation creates a financial incentive for all facilities to reduce the emissions-intensity of their product, not just those facilities above their baseline.</p>
<b>Scope 1 emissions</b>	<a href="#">Scope 1 emissions</a> <sup>4</sup> are emissions released into the atmosphere as a direct result of the activity or activities at a facility level such as fuel combustion for electricity generation or cement production.

<sup>4</sup> <http://www.cleanenergyregulator.gov.au/NGER/About-the-National-Greenhouse-and-Energy-Reporting-scheme/Greenhouse-gases-and-energy#n2>



## Who is this guideline for?

This guideline document (guideline) provides information about applying for a borrowing adjustment (BA) determination for a Safeguard facility under section 48 of the Safeguard Rule. A BA determination is available for financial years commencing on or after 1 July 2023.

The Clean Energy Regulator (CER) recommends that parties involved in a BA determination application process consider this guideline. In particular, this guideline is for:

- responsible emitters for Safeguard facilities with an excess emissions situation
  - » the executive officer for the responsible emitter signing the application
- any other parties assisting a responsible emitter in preparing an application.

All references to legislative provisions in this guideline relate to the Safeguard Rule unless otherwise indicated.





## Part 1 Introduction

### 1.1 Overview of the 2023 Safeguard Mechanism reforms

The Safeguard Mechanism has been reformed following legislative changes and a consultation process undertaken by the Department of Climate Change, Energy, the Environment and Water. New obligations and reporting requirements apply to Safeguard facilities for financial years commencing on or after 1 July 2023.

The reformed Safeguard Mechanism scheme includes new baselines, flexible mechanisms to manage net emissions and additional publication requirements. Baselines will decline each year in line with Australia's legislated commitments to reduce net greenhouse gas emissions by 43 percent below 2005 levels by 2030 and to achieve net-zero by 2050.

Safeguard facilities that exceed their annual baseline for financial years commencing on or after 1 July 2023 must manage their emissions before the first 1 April following the end of the financial year by using the available options for managing excess emissions.

### 1.2 What is a borrowing adjustment determination?

A BA determination is an excess emissions management option available to the responsible emitter of a facility for financial years commencing on or after 1 July 2023. A BA determination allows a facility to borrow a certain amount from its baseline emissions number from the following financial year and have it added to its baseline emissions number for the financial year to which the BA determination applies.

Where a BA determination is made by the CER for a financial year, the facility's baseline emissions number for the following financial year will be decreased by a corresponding amount, plus an additional 2% interest rate for financial years ending before 1 July 2026. In financial years starting on or after 1 July 2026, the borrowing adjustment number plus an additional 10% will be added to the baseline emissions number.

A borrowing limit of up to 10% of the facility's unadjusted baseline emissions number for the financial year applies.

BA arrangements will be reviewed as part of the 2026-27 review of the Safeguard Mechanism by the Department of Climate Change, Energy, the Environment, and Water.



### Example of a borrowing adjustment

Metalcraft is a designated large facility that has a baseline emissions number of 200,000 (without a borrowing adjustment) in the 2023-24 financial year. In this case, the 'unadjusted baseline' for the 2023-24 financial year is 200,000. For this financial year, Metalcraft had covered emissions of 210,000 tCO<sub>2</sub>-e resulting in an excess emissions situation of 10,000 tCO<sub>2</sub>-e.

When applying for a BA determination for a financial year, a facility can borrow a maximum of 10% of its baseline emission number each year. This means Metalcraft may borrow up to 20,000 (10% of its unadjusted baseline of 200,000) and increase its baseline emissions number to 220,000. However, Metalcraft only needs to borrow 5% of its baseline emissions number to address its excess emissions situation of 10,000 tCO<sub>2</sub>-e. If Metalcraft's BA determination is made by the CER for 2023-24 specifying the borrowing adjustment number as 10,000, its baseline emissions number for the 2023-24 financial year would be 210,000 (200,000 \* 5%).

In the following financial year (2024-25), Metalcraft's baseline emissions number is 195,000 (without a borrowing adjustment). The borrowing adjustment for 2024-25 because of the BA determination made for the previous financial year would reduce Metalcraft's baseline emissions number for the 2024-25 financial year by 10,200 (10,000 \* 1.02) to 184,800. This reduced baseline emissions number is considered the 'unadjusted baseline'. If Metalcraft applied for a BA determination for the 2024-25 financial year, its maximum borrowing amount would be based on this 'unadjusted baseline', i.e. it would be 18,480 (10% of 184,800).

## 1.2.1 Impact on other excess emissions management options

Note that:

### Multi-year monitoring period

A BA determination cannot be made for a financial year included in a multi-year monitoring period (MYMP) declaration for the facility.

- If a BA determination is made by the CER for a financial year, and a MYMP declaration is made by the CER at a later date which includes this financial year, the CER must revoke the BA determination.

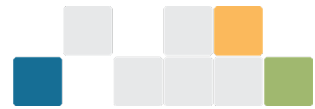
### Safeguard mechanism credits

A BA determination cannot be made for a financial year if Safeguard Mechanism Credits (SMCs) have been issued in relation to the facility for the financial year.

Conversely, SMCs cannot be issued to a facility for a financial year if it has a BA determination in place for the financial year.

- This means a facility cannot 'borrow' an amount that results in the baselines emissions number being greater than the excess emissions situation amount and become eligible for SMC issuance.





## Trade-exposed baseline-adjusted

A trade-exposed baseline-adjusted (TEBA) determination for a facility cannot be made unless the borrowing adjustment for the facility for the first financial year is zero. That is, a TEBA determination cannot be made by the CER if the first financial year of the proposed TEBA determination is a financial year to which a BA determination applies or is subject to adjustments to the baseline emissions number due to a BA determination for the facility for the previous financial year.

- » However, if the facility has a TEBA determination in place, the responsible emitter for the facility may then apply for a BA determination.
- » TEBA determination applications are due by the 31 October following the end of the financial year. BA determination applications are due by the 28 February following the end of the financial year.

## Part 2 Application requirements

### 2.1 Eligibility and application deadlines

The responsible emitter for a facility may apply for a BA determination using [Online Services](#)<sup>5</sup>.

#### 2.1.1 Eligibility

To receive a BA determination for a financial year, the responsible emitter must be able to satisfy the CER that:

- the facility has not been issued any SMCs during the financial year
- the facility does not have a MYMP declaration in place that includes the financial year
- the proposed borrowing adjustment number is not greater than 10% of the facility's unadjusted baseline for the financial year
- the facility is likely to be a designated large facility in the following financial year.

#### 2.1.2 Application deadlines

Applications must be received no later than the **28 February** immediately following the end of the financial year of the proposed BA determination. For example, 28 February 2025 is the deadline for a BA determination proposed to apply to the financial year beginning on 1 July 2023 and ending on 30 June 2024.

If a submission deadline falls on a Saturday, Sunday or Public Holiday in the Australian Capital Territory then the application can be submitted on the next business day, in accordance with subsection 36(2) of the *Acts Interpretation Act 1901*.

### 2.2 Preparing and submitting the application

An application for a BA determination is submitted online by the responsible emitter for a facility. It must be signed by an executive officer of the responsible emitter.

#### 2.2.1 Accessing the application form

The application form is accessed through [Online Services](#).<sup>4</sup>

An Online Services user with any of the access roles listed below linked to the responsible emitter will be able to prepare and edit a draft of the application form before it is submitted:

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<sup>5</sup> <https://www.cleanenergyregulator.gov.au/OSR/client-portal-beta>



- NGER Contact Person
- NGER Executive Officer
- NGER Coordinator
- NGER Data Provider
- Organisation Administrator.

For information on these roles and how to update user access and roles please see the [NGER Client Portal User Guide](#).<sup>6</sup>

The application form can be saved at any point and returned to later. A copy of the application form can be saved as a PDF and printed at any stage.

## 2.2.2 Application requirements

A summary of the application requirements are listed in the following table. [Part 3 Detailed application requirements](#) provides further details on each application requirement.

### Summary of application requirements

The applicant is required to provide the following information in the online application form.

- Responsible emitter for the facility  
The application will be pre-filled with the responsible emitter details. Users must be in the correct user and organisation profile for the current responsible emitter for the facility. See [Part 3.1 Responsible emitter](#) for more information.
- Facility name  
If a facility isn't listed, first check that the correct responsible emitter has been selected. Contact the CER if the relevant facility is still not listed.
- The financial year to which the BA determination is to apply  
This is the financial year during which the facility's baseline emissions number is increased (for example, 2023-24 financial year).
- Borrowing adjustment number  
You must provide the proposed borrowing adjustment number. This number cannot be more than 10% of the unadjusted baseline for the facility for the financial year. See [Part 3.4.1 Unadjusted baseline](#) for more information.
- Designated large facility status  
You must provide evidence demonstrating the facility is likely to be a designated large facility in the financial year immediately following the financial year the proposed borrowing

<sup>6</sup> <https://www.cleanenergyregulator.gov.au/OSR/CP/Pages/default.aspx>



adjustment determination applies to. See [Part 3.5 Designated large facility](#) for more information.

### 2.2.3 Submitting the application

Once all sections of the application are complete, an executive officer (EO) of the responsible emitter is required to acknowledge and sign the declaration that, among other things, the information supplied in the application is true and not misleading.

There are two options to sign and submit the application form:

- An EO of the responsible emitter can log in to [Online Services](#)<sup>7</sup> and open a draft version of the application, review the application, then complete any outstanding fields. They can then sign the declaration and submit the application directly.
- An Online Services user who holds a suitable access role for the responsible emitter can open the draft form and print a copy of the application. An EO of the responsible emitter can then sign the form and the person with the access role can scan and attach the signed PDF to the online application form.

If you are having difficulty accessing, completing or submitting the online form please contact the CER.

## Part 3 Detailed application requirements

### 3.1 Responsible emitter

The application must be submitted by the current responsible emitter for the facility. The responsible emitter for a facility is the person (individual, body corporate, trust, corporation sole, body politic or local governing body) with [operational control](#)<sup>8</sup> of the facility.

The application form will be pre-filled with responsible emitter details based on the organisation identified in the user and organisation profile icon in top right-hand corner of the Online Services page. If an applicant needs to change to a different responsible emitter, click on the user and organisation profile icon and select 'Switch Organisations'. If the required responsible emitter doesn't appear, contact someone in the organisation that already has access and they can provide access if appropriate (see [NGER client portal user guide](#)<sup>9</sup> for more information).

If a responsible emitter is not already registered under the NGER Act, and it is not a controlling corporation, it must apply to register under section 15B of the NGER Act. For more information on how to identify the responsible emitter for a facility and apply for registration, please see [Registration](#)<sup>10</sup>.

### 3.2 Facility name

The application form will provide a list of Safeguard facilities under the selected responsible emitter to choose from. If you need to make an application for a facility that is not listed, please contact the CER.

<sup>7</sup> <https://www.cleanenergyregulator.gov.au/OSR/online-services>

<sup>8</sup> <https://www.cleanenergyregulator.gov.au/NGER/Reporting-cycle/Assess-your-obligations/Reporting-thresholds#n3-2>

<sup>9</sup> <https://www.cleanenergyregulator.gov.au/DocumentAssets/Pages/NGER-Client-Portal-User-Guide.aspx>

<sup>10</sup> <https://www.cleanenergyregulator.gov.au/NGER/Reporting-cycle/Register-and-deregister>



### 3.3 Start date

The application must specify the financial year to which the BA determination would apply. If the BA determination is made by the CER, this is the financial year during which the facility's baseline emissions number will be increased.

### 3.4 Borrowing adjustment number

The application must specify the proposed BA number. This number may be any whole number that is between 1 and the number that is equal to but not exceeding 10% of the facility's unadjusted baseline for the financial year.

If the BA determination is made by the CER, this BA number is added to the baseline emissions number for facility for the financial year that the BA determination applies to. This number, plus the interest rate (starting at 2% for financial years ending before 1 July 2026 and then increasing to 10% for financial years commencing on or after 1 July 2026) will be subtracted from the baseline emissions number for the facility for the following year.

#### 3.4.1 Unadjusted baseline

The unadjusted baseline is the facility's baseline emissions number for a financial year that would be in place if no BA determination is made by the CER for the financial year. Where a facility has a BA determination in place for the previous financial year, and therefore has a BA number for the previous financial year, the facility's unadjusted baseline for the financial year is the baseline emissions number that is reduced by the BA number for the previous financial year. This unadjusted baseline is the basis for the maximum 10% borrowing limit.

### 3.5 Designated large facility

The CER must not approve a BA determination application unless satisfied that the facility is likely to be a designated large facility in the financial year immediately following the financial year to which the proposed BA applies to.

A facility must provide information that shows this, such as production and emissions forecasts showing that the facility will likely be operating and with covered emissions over 100,000 tCO<sub>2</sub>-e for the following financial year.

The information in the online application may be provided as text directly into the form or a document may be attached.

## Part 4 Other matters

### 4.1 Processing, decision-making and publication

#### 4.1.1 Application receipt and processing timeframes

On receipt of the application, the CER will then check the application to ensure that it is complete. If the application is not complete, the CER may give the responsible emitter a notice to provide further information, so that a formal assessment of the application can begin (see [Part 4.1.2 Requests for further information](#)).

Once the application is complete, the CER will take all reasonable steps to ensure a decision is made by 30 days after receiving the application or 30 days after the end of the specified period to provide additional information if a request for further information was made under section 49.



A responsible emitter may, by written notice to the CER, withdraw an application at any time before a decision is made on the application.

#### 4.1.2 Requests for further information

If additional information is required at any point to inform the decision-making process, the CER may request more information. The request may be made through an informal request or, if the information required is substantial, through a more formal request made under section 49 of the Safeguard Rule. The request will specify the period in which the information must be provided and this is typically within 14 days.

If the requested information is not provided within the specified period, the CER may refuse to consider the application or refuse to take any action, or any further action, in relation to the application.

#### 4.1.3 Decision to make a BA determination

The CER may make a BA determination for a financial year if satisfied of the following matters:

- the number proposed as the borrowing adjustment number in the application is not greater than 10% of the unadjusted baseline for the facility for the financial year
- no SMCs have been issued in relation to the facility for the financial year
- the financial year is not included in a declared multi-year monitoring period for the facility
- the facility is likely to be a designated large facility in the financial year immediately following the financial year.

If the CER decides to make the BA determination, the responsible emitter will be notified by email shortly after the decision has been made. The notification will also explain what information about the BA determination will be published on CER's website (see below).

#### 4.1.4 Decision to refuse to make a BA determination

Before any decision to refuse to make a BA determination, the CER will notify the responsible emitter of its intention and provide reasons for the proposed decision. The responsible emitter will have an opportunity to respond to the proposed reasons. If CER still decides to refuse to make a BA determination, it will provide written notice of the decision, including reasons for the decision, to the responsible emitter.

#### 4.1.5 Review rights

A person whose interests are affected by a decision of the CER to make or refuse to make a BA determination and is not satisfied with the decision may apply to the Administrative Appeals Tribunal for review of the decision.

The CER will notify the responsible emitter of their review rights in the notice of decision (refer to section 56 of the [NGER Act](#)<sup>11</sup> for more details).

#### 4.1.6 Publication of details of the determination

The CER is required under section 50(5)(b) of the Safeguard Rule to publish the details of the BA determination on its website. Details will be published as soon as is practicable and will include the following information:

- the type of determination
- the facility name

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<sup>11</sup> [Federal Register of Legislation - National Greenhouse and Energy Reporting Act 2007](#)



- the responsible emitter for the facility
- the start and end date of the BA determination
- the borrowing adjustment number for the financial year to which the BA determination applies.

If the BA determination is revoked, details of the revocation will also be published.

The CER must also publish a range of information about facilities specified under section 72 of the Safeguard Rule, including the annual baseline emissions number, covered emissions of facilities, and information on units issued or surrendered under the scheme.

#### **4.1.6.1 Request not to publish information in a BA determination**

Under specific circumstances responsible emitters can apply under section 25 of the NGER Act to request that some information included in a BA determination not be published.

A request can only be made in relation to information which reveals or could be capable of revealing:

- trade secrets, or
- any other matter having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed about a specific facility, technology or corporate initiative relating to the corporation or person.

In assessing an application, the CER will consider whether the applicant has demonstrated that there are real and substantial grounds to find that publishing the information will (or could reasonably) reveal a trade secret or affect the commercial value of a specific facility, technology, or corporate initiative. Grounds that are speculative, hypothetical, or theoretical will not be sufficient.

For more information about how to make a request for information not to be published see [Application for information not to be published](#)<sup>12</sup>.

## **4.2 Revocation of a BA determination by the CER**

The CER must revoke a BA determination if satisfied that:

- the BA determination specifies a borrowing adjustment number for a facility for a financial year; and
- the CER declares that, for the purposes of section 22XG of the Act, a specified period is a declared multi year period for the facility; and
- the financial year is included in that period.

If a BA determination is revoked for this reason, it will cease to be in force for the financial year it applied to.

Before any decision to revoke a BA determination, the CER will provide a notice of intent, including reasons for the proposed decision, to the responsible emitter, which will provide an opportunity for the responsible emitter to comment before a final decision is made.

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<sup>12</sup> <https://www.cleanenergyregulator.gov.au/NGER/Forms-and-resources/Forms#Application-for-information-not-to-be-published>