



**Australian Government**

**Commentary on the draft regulations relating to partial  
exemptions under the *Renewable Energy (Electricity) Act 2000***

**December 2009**

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**Note**

The commentary has been prepared to assist readers to understand and provide comment on the draft of the regulations relating to partial exemptions under the *Renewable Energy (Electricity) Act 2000*. An explanatory statement setting out the detail of the final regulations will be published once the requirements are formalised.

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## ***Chapter 1: Purpose of this document***

Amendments to the Renewable Energy Electricity Act 2000 (the Act) were passed in Parliament on 20 August 2009 to implement an expanded Renewable Energy Target (RET) scheme, designed to ensure that 20 per cent of Australia's electricity comes from renewable sources by 2020.

The RET scheme expands the renewable energy target by over 4 times to 45,000 gigawatt-hours by 2020, maintained at that level until the scheme ends in 2030.

In recognition that the RET scheme will increase costs to firms that carry on emissions-intensive trade-exposed (EITE) activities, the RET legislation includes provisions to provide partial exemptions from RET liability in respect of acquisitions of electricity used in carrying on EITE activities. It is the policy intent that these partial exemptions be provided for all activities that would qualify for the EITE assistance under the Carbon Pollution Reduction Scheme (CPRS).

The measures in the Act empower regulations to specify certain aspects of the administration of the partial legislative exemptions. This document provides explanatory commentary around the exposure draft of these regulations.

The policy framework for determining the eligibility of activities for EITE assistance under the CPRS was outlined in the White Paper and the CPRS Bills. Exposure draft regulations for the EITE assistance program have been released and definitions of some 32 activities have been released for data collection following extensive consultations. Of these, 18 are included as eligible activities in the latest draft CPRS EITE regulations.

The Government is committed to taking into account stakeholder feedback on the detail of draft regulations before it finalises the regulations. The Government is seeking to ensure that the regulations that are made are robust, practical and clear expressions of government policy. All persons wishing to comment on the draft regulations are invited to make written comments to the Department of Climate Change before close of business on 11 January 2010.

Submissions or inquiries in relation to the draft regulations should be directed to the following email and postal addresses:

Submissions should be provided before close of business on Monday 11 January 2010 to:

The Renewable Energy Team  
Renewables and Reporting Branch  
Department of Climate Change  
GPO Box 854  
CANBERRA ACT 2601  
Email [RET@climatechange.gov.au](mailto:RET@climatechange.gov.au)

Copies of this paper are available on the Department of Climate Change website at [www.climatechange.gov.au](http://www.climatechange.gov.au). Hard copies are available on request.

Inquiries about this paper may be directed to:  
The Energy and Renewables Team  
Renewables and Reporting Branch  
Department of Climate Change  
Telephone 02 6159 7430

#### Confidentiality

It will be assumed that submissions are not confidential and may be made publicly available. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly when forwarding your submission.

## ***Chapter 2: How partial exemptions are intended to work***

### Liability under the RET

Under the RET scheme, wholesale purchasers and large users of electricity ('liable entities') are required to meet a share of annual legislated targets in proportion to their share of the national wholesale electricity market. Electricity generators are able to create renewable energy certificates (RECs) for electricity produced using eligible energy sources.

Once registered, RECs are traded and sold to liable entities, mainly electricity retailers, who may surrender them to the Renewable Energy Regulator (the Regulator) to demonstrate their compliance under the scheme and avoid paying the shortfall charge. The shortfall charge is the penalty for non-compliance with RET obligations. For compliance purposes, one REC represents one megawatt-hour of electricity generated using eligible sources.

Liable entities are defined by s 35 of the Act as those persons who make 'relevant acquisitions' of electricity. Relevant acquisitions are defined by s 31 of the Act and are generally made by those entities who purchase wholesale electricity. A liable entity may either pay the charge prescribed under the *Renewable Energy (Electricity) Charge Act 2000* or surrender RECs to meet its liability. The liability is calculated by multiplying the amount of electricity acquired during a year by the 'Renewable Power Percentage' (RPP). The RPP, which is calculated each year and put into the regulations, is based upon the renewable energy target for the year as set out in s 40 of the Act. For example, regulation 23 prescribes 3.64% as the renewable power percentage for 2009.

In February each year, entities which have made 'relevant acquisitions' of electricity during the previous calendar year (called liable entities), are obliged to submit statements detailing their relevant acquisitions and to either surrender RECs equivalent to their obligation in megawatt-hours or pay the shortfall charge of \$65 per megawatt-hour of shortfall.

The broad intention is that part of the electricity supplied for use in carrying on an EITE activity, can be exempted from liability under the RET.

While some EITE entities may be directly liable under the RET for wholesale electricity purchased, most are not directly liable, and in the absence of an exemption incur RET-related costs indirectly through the purchase of electricity from a retailer.

A partial exemption certificate (PEC) has a financial value to the RET-liable entity named on the PEC. By exempting an amount of electricity from the named entity's RET-liable electricity, it reduces the number of RECs the liable entity must purchase during the year for surrender to the Regulator. Only the entity named on the PEC may claim the partial exemption.

To claim this exemption, the liable entity must provide a copy of the PEC to the Regulator by 14 February the following year as part of the entity's energy acquisition statement for the previous year.

### Eligibility for assistance

- The RET legislative and regulatory amendments replicate the industry assistance provisions of the CPRS where practicable, with partial exemptions provided for all activities that would qualify for the emission-intensive trade-exposed (EITE) assistance under the Carbon Pollution Reduction Scheme (CPRS).
- A separate eligibility assessment process for determining which activities are emissions-intensive trade-exposed activities for the purpose of providing partial exemptions under the RET will not be necessary. As CPRS eligibility assessments are finalised, these will be reflected in the RET regulations.
- The Government will use the same eligibility thresholds as under the CPRS with partial exemptions of 90 per cent and 60 per cent depending on the emissions intensity of the activity.
- The Government recognises that the increased costs associated with the expansion of the RET has two components:
  - First, the higher annual targets under the expanded RET increase the costs associated with the RET.
  - Second, if the REC price increases above the level of \$40, then the increased REC price increases the cost impact of meeting the current MRET liability of 9,500 GWh.
- For emissions-intensive trade-exposed activities defined as *highly emissions-intensive*, partial exemptions would apply for 90 per cent of the liability that relates to the expanded liability above the 9,500 gigawatt-hour target under the existing Mandatory Renewable Energy Target (MRET) scheme. For an EITE activity defined as *moderately emissions-intensive* a partial exemption of 60 per cent is to apply in relation to the expanded liability.
- Following the passage of the CPRS, the intention is to provide additional assistance under the RET for eligible EITE activities by adjusting the partial exemption rate to ensure that the same assistance rate (either 90 per cent or 60 per cent) applies to the increase in costs associated with the expansion of the RET (including the increased cost associated with meeting the existing MRET liability of 9,500 GWh). In calculating the increased costs above the existing MRET liability the Government will use a REC price of \$40.
- The processes of applying for, calculating and claiming the partial exemption are intended to minimise complexity and transaction costs by utilising the CPRS EITE framework and reporting processes and information where practicable. In particular, the calculation of the exemption is to be based upon production volumes or amounts of relevant product for each EITE activity and a baseline electricity use per unit of relevant product for that activity that reflects the electricity baseline set out in the draft CPRS EITE assistance program.

## Overview of the operation of partial exemptions

The system of partial exemptions is envisaged to operate as follows:

- An entity involved in carrying on an EITE activity, as defined initially in the RET scheme regulations and later in the CPRS EITE assistance program when it comes into force, may apply to the Regulator for a Partial Exemption Certificate (PEC) in relation to RET-liable electricity used in carrying on that activity at a particular site for a particular year.
- The Regulator would issue a PEC to the applicant setting out the amount in megawatt-hours of the electricity to be exempted for the year and including the name of the liable entity in relation to the electricity (usually the retail supplier).
- It is envisaged that the entity to whom a PEC has been issued would voluntarily provide a copy of the PEC to the liable entity (their electricity retailer) which would remove the RET liability for that supply of electricity.
- As part of the RET compliance process in February each year, the liable entity can claim exemption from RET liability for the amount of electricity set out on the PEC. The liable entity must provide a copy of the PEC to demonstrate its entitlement to the partial exemption.
- To illustrate, assume the amount of partial exemption on a PEC is 100,000 megawatt-hours (MWh) for a particular EITE activity, site and year. On surrender to the Regulator, this PEC would reduce the amount of the retailer's RET-liable electricity acquisitions by 100,000 MWh. The retailer's liability in relation to this electricity depends on the annual Renewable Power Percentage (RPP) for the year as prescribed in regulation 23. If we assume this RPP is 6.5 per cent, and note that a Renewable Energy Certificate (REC) is equivalent to 1 MWh for RET liability purposes, the value of the PEC to the retailer would amount to 6.5 per cent of 100,000 MWh, or 6,500 RECs. The financial value would be 6,500 RECs multiplied by the avoided cost of purchasing them.
- The methodology for calculating the amount of partial exemption to appear on the PEC has the following key elements:
  - The calculation is based on the annual production level data and the industry-average electricity intensity as used for CPRS EITE assistance program.
  - The calculation for a particular RET compliance year is based on annual production for the financial year ending on 30 June of the prior calendar year. This is to account for the fact that RET compliance is based on a calendar year whereas reporting under the CPRS is to be based on a financial year ending 30 June.
  - Consistent with the CPRS, the annual production estimate may be adjusted to include estimates for new entrants and for significant expansions, as well as a further adjustment or 'true-up' to offset any difference between the production used for the previous year's allocation and the actual production in that financial year.

- The assistance rates for the two emissions-intensity classifications (90% and 60%) are incorporated in factors that account for the increased impact of the expansion of RET targets above the original 9,500 GWh under the old MRET scheme, and separately for the impact of higher REC prices in relation to the original 9,500GWh. For the second factor, the Regulator is to estimate the weighted average market price of RECs over the prior year to 30 September. The 30 September date would enable early processing of PEC applications for the following year. The REC price estimate is further discussed in Chapter 7.
- To avoid providing windfall partial exemptions for electricity that is not liable under the RET, the calculation also accounts for any such electricity, whether generated on-site or separately supplied to the site. For example, if the EITE entity generates electricity that it uses on the site within 1 km of the point of generation, the self-generation provisions of the RET legislation exclude this electricity from liability.
- If during a compliance year there is a change of electricity supplier, hence a change to the relevant liable entity, an additional PEC may be issued for that activity, site and year. The policy is simply to pro-rata the existing certificate amount based upon the number of days that the new retailer will be the liable entity in respect of the site. The original PEC is then adjusted so that the total exemption for that activity, site and year remains unchanged.
- Activities partly undertaken at multiple sites are dealt with by allowing product to be referable to particular sites, under prescribed circumstances.
- Processes to determine which activities are to be considered EITE activities for the purposes of the CPRS are expected to continue into 2010. The CPRS Bill requires the program to be finalised by 1 July 2010. Regardless of when during the year an applicant is issued with a PEC, the value of the partial exemption will be based on the full year's production of relevant product.

For a more detailed outline of the ordinary operation of the partial exemption arrangements as set out in the draft regulations, please refer to chapter 5.

#### Scope of regulatory amendments

In setting the framework for assistance to eligible EITE activities, the RET legislation provides for regulations to be made in respect of the following matters:

- Definition of EITE activities under the RET scheme prior to the CPRS EITE assistance program coming into force.
- Who may apply for partial exemption certificates.
- Information to be included in applications for partial exemption certificates.
- Time when applications must be lodged and the manner of their lodgement.
- Calculation of the amount of a partial exemption.

- Form of partial exemption.
- Time periods for decision-making.
- Amendments to partial exemption certificates.
- Publication of information.

The regulations addressing these matters are explained in detail in chapter 7.

### ***Chapter 3: Relationship to the CPRS EITE assistance program***

The assistance in relation to emissions-intensive trade-exposed activities in the EITE assistance program and in relation to partial exemptions under the RET scheme have been designed to:

- be consistent wherever practical to minimise transaction costs; and
- recognise differences inherent in the two policies.

The 'partial exemption certificates' and issue of free Australian emission units under the EITE assistance program exist in different legislative structures. Accordingly, while many of the same concepts and tests have been deliberately adopted, the applications and administrative decisions under each program will be legally separate.

The key areas of commonality between the partial exemptions and the EITE assistance program are in relation to:

- the definition of 'EITE activities' which are the key trigger for assistance;
- the classification of those activities as highly or moderately emissions intensive;
- the units of 'relevant product' which relate to each activity and are converted into an amount of electricity by an industry wide activity baseline common across both programs;
- the decision making criteria upon which the Regulator must assess units of relevant product;
- the financial years upon which production must be analysed;
- the circumstances where a new entrant or significant expansion allows for 'expected production' to be taken into account, and the information required in relation to those situations;
- the 'true-up' mechanism which accommodates incremental increases and decreases in production;
- the timelines for when applications under both schemes are due;
- the decision making timelines in relation to applications which cover the same subject matter; and
- the concept of a reduction of assistance upon 'closure'.

However, the regime for PECs has particular differences relating to:

- who is eligible to apply for a PEC (although arrangements are made to facilitate the same person making applications under both schemes);

- how the rates of assistance are to be calculated (including the additional assistance when the REC price exceeds \$40);
- the impact of non-liable electricity on the amount of a partial exemption (which is not relevant to the EITE assistance program);
- the need to identify the liable entity in relation to a site and accommodate changes in liable entity; and
- where necessary, consequential apportionment of production to appropriately give effect to the circumstances of multiple sites.

The design is intended to minimise transaction costs for applicants and ensure a high degree of consistency in approach. Both schemes have also been designed to ensure that the decision making process is robust and can work even if applications are not submitted under both schemes.

## ***Chapter 4: Ordinary issuance of partial exemption certificates***

The following is a summary of how the partial exemptions arrangements will operate for a firm that operates an activity at an existing single site. Further detail of each of these aspects is provided in Chapter 7.

### *What activities are EITE for the purposes of the Act?*

EITE activities are prescribed in draft regulation 22D and detailed in Schedule 6 to the draft regulations. The activities and their details reflect those currently defined in the draft EITE assistance program regulations for the CPRS. More activities will be added to Schedule 6 as they are added to the draft CPRS EITE regulations.

The activity details define the physical and chemical transformations that make up the activity, classify the activity as either highly or moderately emissions-intensive, and quantify the so-called 'electricity baseline', an amount which represents the electricity intensity of production of the relevant output(s) of the activity.

The CPRS EITE regulations, once they come into force, will define which activities are EITE, and their applicable physical and chemical transformations for the purposes of the RET.

### *Who can apply for a partial exemption certificate?*

The Act provides for applications to be made for partial exemption certificates (PECs) by 'prescribed persons' under s 46A and for the decisions to be made by the Regulator under s 46B. The Act specifically refers to the carrying out of an EITE activity at a site and a link to the liable entity in respect of that site in ss 46A (1)(a) and (b).

Draft regulations 22F to 22J provide 4 types of 'prescribed person' who may apply for a PEC in relation to the relevant activity, site and year. These include, broadly:

- A person who has a pre-existing contract with a liable entity (an electricity retailer) in relation to electricity consumed at the site where the EITE activity is being carried on.
- A person who controls the operation of the principal facility at the site where the EITE activity is carried on, and who is directly liable under the RET for the majority of electricity acquired for consumption at the site, or is the liable entity for all electricity which gives rise to a relevant acquisition.
- A person who has a new contract with a liable entity (an electricity retailer) in relation to the first supply by the liable entity of electricity to be consumed at the site where the EITE activity is carried on.
- A person nominated by one of the 3 types of person above, provided that person has direct or indirect operational control or direct financial control over the principal facility at the site at which the EITE activity is carried on.

These regulations also act to ensure that only one valid application for a PEC in relation to a particular EITE activity, site and year can exist at a time.

### What information must be included in the application?

Information to be included in applications for PECs, as empowered under subsection 46 A (1) of the Act, is set out in regulations 22L to 22R.

These regulations prescribe information to be included with all applications. This information includes an explanation of how the EITE activity will be carried on at the site in the relevant year; the amounts and numbers required for calculation of the partial exemption along with information to substantiate their basis and how they were derived; and information relating to the electricity use at the site (for example details of electricity supply sources including on-site generation, the extent to which the electricity is RET-liable and the name of the liable entity).

Additional substantiating information is to be included where the application relates to a new-entrant site or a significantly expanded site based upon equivalent requirements in the EITE assistance program.

As empowered by subsection 46A (3) of the Act, regulation 22R requires that the information required to be included in an application for a PEC is to be verified by statutory declaration and specifies which persons may make the declaration.

### When can (and must) applications be made?

As empowered by paragraph 46A (2) (c) of the Act, the timing of lodgement of applications is dealt with under regulations 22S to 22U of the draft regulations.

Applications can be made immediately after the relevant regulations come into force. However, there are time limits on when these applications must be made.

The regulations provide flexibility in lodgement timeframes for the first year of operation (2010) to account for the fact that some EITE activities are still being defined. For 2010, applications may generally be made up until 31 October 2010, whereas for subsequent years, they must be made before 1 January of the compliance year to which the application applies. The PEC will provide an exemption based on the full year's production regardless of when an application is made, before 31 October 2010

### How is the partial exemption calculated?

Paragraph 46B (1) (a) of the Act empowers the regulations to prescribe the method for working out the amount in megawatt-hours of electricity to be exempted from liability under the RET scheme in respect of the particular EITE activity, site and year to which the PEC is to apply. The partial exemption can only be claimed by the liable entity named on the PEC.

Draft regulations 22W to 22ZD detail the method for calculating the amount of partial exemption.

Conceptually, the partial exemption is intended to exempt from liability an amount of megawatt-hours of electricity consumed in the EITE activity at the site for that calendar year. This amount is intended to account for:

- the emissions-intensity classification of the particular EITE activity (whether highly or moderately emissions-intensive);

- the additional RET liability, in terms of megawatt-hours (MWh), which is due to the expansion of the renewable energy target for the year above the previous MRET target of 9,500 GWh; and
- once the CPRS legislation has passed in Parliament, the additional liability for the year in respect of the previous MRET which is due to the increase above \$40 of the Regulator's reasonable estimate for the weighted average market price of Renewable Energy Certificates (RECs) for the year.

As discussed earlier, it is intended that the method be designed to minimise complexity and transaction costs by utilising where practicable the information reported through the development and implementation of the EITE assistance program under the CPRS. The EITE assistance program under the CPRS is based around annual reporting (each October) of the amount or volume of relevant product produced in the previous financial year (ending 30 June). A constant industry-average electricity intensity of production in terms of MWh per unit of relevant product (called the electricity baseline), which is used in calculating EITE assistance under the CPRS, is determined for each EITE activity and included in the activity details in the CPRS regulations. Multiplying the amount of annual production by the electricity intensity of production yields an amount representing the electricity used for the year in the EITE activity at the site.

This provides a simple, uniform and transparent basis for calculating the partial exemption which avoids the additional cost and complexity involved in measuring and reporting annually on actual electricity use associated with an activity.

Electricity used for a particular compliance year must be estimated in advance. This is accomplished by using the actual production for the financial year ending on 30 June in the prior year as reported under the CPRS EITEs program, to estimate the production for the relevant RET compliance year. The method includes a further adjustment (essentially a true-up factor) to offset any difference between the production used for the previous year's allocation and the actual production in that financial year.

Consistent with the CPRS EITE methodology, the method includes the flexibility to accommodate new entrants and significant expansions by applying an upfront estimate of additional expected production for the current financial year.

The method must also account for the fact that in some cases, not all of the electricity used in carrying on EITE activity attracts a liability under the RET. For example, some electricity may be exempt under the Act's self-generation provisions. It is important to account for this, where material, to avoid providing a windfall in respect of non-liable electricity. The method chosen for dealing with non-liable generation recognises the additional complexity and costs of measuring and reporting around additional sources of non-liable electricity and excludes any generation from plant smaller than 1MW capacity from consideration.

The calculation method for the partial exemption is reflected in the following generic form of the equation which relates to a particular EITE activity, site and year (see subregulation 22X (1) for the detailed equation):

$$PE = EP \times ASP \times k \times G; \text{ where}$$

PE is the amount of the partial exemption in MWh;

EP is the electricity baseline in MWh per unit of product as determined through the CPRS EITE assistance process;

ASP is the amount of relevant product produced at the site to be used in calculating the partial exemption, adjusted to account for any expected new or additional production, and also to account for the difference between production as allocated for the previous year and the actual production in that financial year;

k is the exemption rate that accounts for the emissions-intensity classification, the proportion of the relevant annual target that is above 9,500 GWh and, where relevant, the adjustment for the degree to which the average of the REC price for the year exceeds \$40; and

G is a factor to account for the proportion of electricity used in the activity that is not liable under the RET. The method for establishing this factor reduces complexity and transaction costs by taking as a proxy that proportion of total electricity consumed at the site over the prior financial year which is liable electricity, and allowing electricity from generators smaller than 1 MW nameplate capacity to be disregarded.

Factor k comprises two additive components:

- The first component, called 'base k', combines the factor (90% or 60%) representing the emission intensity classification of the activity with the proportion of the annual target for the year which is above 9,500 GWh.
  - For example, for the compliance year 2010 for a moderately emission-intensive activity, this component is  $[60\% \times (12,500 - 9,500) / 12,500] = 14.40\%$ .
- The second component, called 'additional k', combines the emission intensity factor with the proportion of the weighted average REC price which exceeds \$40 and the proportion of the annual target that 9,500 GWh represents. The draft regulations prescribe that each year the Regulator must estimate the weighted average market price of a REC for the preceding 12 months ending 30 September and publish this number on its website by 31 October.

This component of partial exemption is provided in the PEC for the following year. As the new targets do not take effect until January 2010, the first year for which this component is included is 2011.

- For example, assuming the average REC price for 2010 year is estimated to be \$60, and given the 2010 target is 12,500 GWh. The component for 2011 is  $[(60\% \times 9500/12500) \times (60 - 40)/60] = (45.60\% \times 33.33\%) = 15.2\%$ .
- Regulation 22X includes tables which assist in determining these components.

*By when must the Regulator issue a PEC following an application?*

Regulations 22ZG to 22ZI prescribe periods for issuing PECs. The periods allowed are different in the early years of 2010 and 2011, where the Regulator must issue the PEC within 90 days of receipt of a complete application, or within 60 days of receipt of any further information required by the Regulator. In future years, the Regulator must issue a PEC within 30 days after the later of either receipt of an application for a PEC or a decision to approve an application under the CPRS EITE assistance program.

*Under what circumstances can a PEC be amended?*

As empowered by subsections 46C (2) and 46C (3) of the Act, regulations 22ZJ to 22ZN prescribe circumstances under which the Regulator may amend a PEC and matters that the Regulator must have regard to in deciding whether to amend.

When considering a request for amendment to a PEC, the Regulator must have regard to matters around accuracy of the information on the certificate; miscalculation of the amount of partial exemption; whether the liable entity has consented to the amendment; prior consideration of the issues on which the request is based; and the timing of the request. The Act also allows the Regulator to have regard to any other matter that it considers relevant in considering requests for amendment.

The circumstances under which the Regulator may amend a PEC on its own initiative are that there has been a change of liable entity (for example through a change of electricity retailer); if the activity has ceased at a site; or if during a year the Regulator becomes aware that a PEC in respect of that year is inaccurate.

## ***Chapter 5: What if there is a change of retailer?***

The draft regulations deal with the case where the liable entity (typically the electricity retailer) may change during a year. In this circumstance, it is intended that a separate PEC be able to be issued for the EITE activity, site and year, in respect of the liable electricity provided by the new retailer over the remainder of the year.

It is also intended that when the new PEC is issued, the old PEC for the activity, site and year is to be adjusted so that the total of the amount of the old and new partial exemptions equals that originally set out on the old PEC.

Several draft regulations combine to deal with changes in liable entity:

- Draft regulation 22K specifies that the person who has been issued with a PEC for the relevant EITE activity, site and year may apply again, before the end of the relevant year, for a second PEC.

Regulation 22K also allows for one further PEC to be issued for the relevant EITE activity, site and year.

- Draft regulation 22Q prescribes that the application for a new PEC in respect of a change in liable entity is to include substantiating information on the circumstances around the change of liable entity, evidence of the date at which the change occurred and evidence that both the old and new liable entities have been informed of the application.
- Draft regulation 22T specifies that an application for a new PEC in respect of a change in liable entity must be made by the end of the compliance year to which the application relates.
- Draft regulation 22ZC prescribes the method for calculating the amount of the partial exemption for a new certificate issued as a result of a change of liable entity. Under this method, the new PEC is assigned a portion of the partial exemption for the original PEC that reflects the proportion of the year for which the new entity is to be the relevant liable entity. The draft regulation also provides for the same pro-rata method to apply for a second change of liable entity during a year.
- Draft regulation 22ZL deals with amendment of the original PEC to offset the amount of partial exemption calculated for a new PEC issued in relation to a change in liable entity. The method involves reducing the amount on the original PEC by an amount that reflects the proportion of the year for which the new entity is to be the relevant liable entity. This regulation also provides for the same pro-rata method to apply to a second change of liable entity during a year. This ensures that the sum of the three amounts of partial exemption remains equal to that set out on the original PEC.

### Example showing calculations

To illustrate, we assume that it is June 2010 and the firm Nathaniel's Glassworks Inc (NGI) carries on an EITE activity at a particular site and has an electricity supply contract with retailer Christopher's Energy Ltd (CEL) for provision of electricity for use at the site. CEL is the RET-liable entity for this electricity.

We also assume that NGI has been granted a PEC for the EITE activity at the site for the current year. The PEC names CEL as the liable entity and the amount of the partial exemption as stated on the PEC is 730 megawatt-hours (MWh).

#### *First change of liable entity in a year*

We next assume that NGI has changed retailer effective 15 June and applies to the Regulator for a PEC in respect of RediPower P/L, the new retailer.

In this case, the Regulator would calculate the amount of the partial exemption (PE) for the new liable entity under r 22ZC as follows:

$PE(\text{RediPower}) = PE(\text{CEL}) \times (\text{days in 2010 from 15 June} / \text{total days in 2010}) = 730 \times 200/365 = 400 \text{ MWh}$ . The new PEC would include this amount and name RediPower as the liable entity.

Having issued the new PEC naming RediPower as the liable entity, the Regulator is required under r 22ZL to amend the amount of the partial exemption on the first PEC downwards as follows:

$PE(\text{CEL amended}) = PE(\text{CEL}) - [PE(\text{CEL}) \times (\text{days in 2010 from 15 June} / \text{total days in 2010})]$   
 $= 730 - ((200/365) \times 730) = 330 \text{ MWh}$ .

#### *Second change of liable entity in a year*

We now assume that NGI again changes retailers effective as of 20 October 2010, and applies prior to the end of 2010 for another PEC in respect of Energy Bargains Ltd (EBL), the newest liable entity. In this case, the Regulator would calculate the amount of the PE for the newest PEC as follows:

$PE(\text{EBL}) = PE(\text{RediPower}) \times (\text{days in 2010 from 20 October} / \text{days in 2010 from 15 June})$   
 $= 400 \times 73/200 = 146 \text{ MWh}$ . The newest PEC would include this amount and name EBL as the liable entity.

Having issued the third PEC, including EBL as the liable entity, the Regulator is required under r 22ZL to amend the amount of the partial exemption on the second PEC downwards as follows:

$PE(\text{RediPower amended}) = PE(\text{RediPower}) - [PE(\text{RediPower}) \times (\text{days in 2010 from 20 October} / \text{days in 2010 from 15 June})]$   
 $= 400 - (400 \times 73/200) = 254 \text{ MWh}$ .

As intended, the sum of  $PE(\text{CEL amended}) + PE(\text{RediPower amended}) + PE(\text{EBL})$  is 730MWh.

## ***Chapter 6: What if parts of an EITE activity are conducted at different sites?***

The draft regulations deal with the case where parts of an EITE activity are undertaken at more than one site.

As an example a multi-site activity may involve primary transformations at a site (site 1) to produce intermediate products along with small amounts or volumes of relevant product. Another site (site 2) may transform the bulk of the intermediate product to produce most of the relevant product. There may also be an additional site (site 3), where some incidental operation is undertaken, for example finalising, storing or transporting intermediate or relevant (final) product. It is also possible that while all of the relevant product may be produced at one site, significant electricity may be used at another site or sites that undertake only intermediate transformations.

This case does not deal with a situation where an entity carries on the complete EITE activity independently at a number of sites. This situation is dealt with in similar manner to a single site activity, that is, one PEC may be issued for each independent instance of that activity.

The policy intent for multi-site cases is that:

- a PEC may be issued in respect of each site where a significant amount of electricity is used, regardless of whether any relevant product is produced there;
- the share of the total exemption for the activity which goes to a site is to be based on the site's estimated share of total liable electricity used in the activity; and
- the calculation of partial exemptions for the all sites involved in the particular activity is to retain the standard overall methodology which utilises production for the year, the electricity baseline for the EITE activity and adjustment for non-liaible generation.

Several draft regulations combine to deal with multiple site activities:

- Subregulation 22A (7) allows an amount or volume of relevant product included in an application to be referred to a nominated site provided certain conditions are met in relation to the site and the amount or volume of relevant product.
- Subregulation 22A (9) defines all sites carrying on components of a particular instance of an EITE activity, generally where intermediate products need to be transported between sites in order to make the relevant (final) product, as an 'activity group'.
- Subregulation 22B sets out the conditions referred to in subregulation 22A (7). The conditions include that a unit of relevant product can only be referred to one site (no double counting) and that the site must carry out substantive transformations necessary to production of the relevant product. Processes such as transport (for example by pumping) or storage, particularly where they involve only small amounts of electricity, are generally seen as incidental or ancillary rather than substantive processes in the transformations that define the EITE activity.

Regulation 22B also sets out how the amount of relevant product referable to a site is to be calculated. The method involves allocating the total amount of the partial exemption amongst sites in the 'activity group' that carry on substantive parts of the activity broadly in proportion to the amount of electricity they consume in carrying on the EITE activity.

Consistent with the intent to keep transaction costs low, the regulation does not require precise figures for electricity consumed in the activity at the site, but rather requires only a reasonable approximation of the amount of electricity used. If the EITE activity uses less than 80 per cent of total site electricity, electricity used in the activity is to be estimated directly; otherwise an estimate of total site electricity may be used.

- Regulation 22M requires that an application for a PEC is to explain how the conditions for nominating any relevant product referred to a site have been met.

### Example showing calculations

Assume that company Elsie Rylee Ltd carries on an EITE activity partly at each of 3 sites as follows:

#### *Site 1*

- Produces most of intermediate product and 400 tonnes of relevant product per year; and
- uses 5,000 MWh at the site, 70 % or 3,500 MWh of which is used in the EITE activity;

#### *Site 2*

- Produces most of the relevant product (1,600 tonnes per year); and
- uses 8,000 MWh of electricity at the site, of which around 90% is used in the activity.

#### *Site 3*

- Undertakes only ancillary tasks of storage and pumping relevant product to cargo ship; and
- uses 100 MWh of electricity

The amount of relevant product referable to a site (SP) for the year, according to the method in r 22B (2)(b) is found using the generic formula  $SP = PT \times (ES / ET)$ , where

PT is the total of relevant product across all sites = 1,600 + 400 + 0 = 2,000 tonnes;

ES is a reasonable estimate of electricity used, for example:

- ES(Site1) is, because the activity uses less than 80% of site electricity, a reasonable estimate of the amount of electricity acquired for use in the activity = 3,500 MWh.
- ES(Site2) is, because the activity uses more than 80% of site electricity, a reasonable estimate of the electricity acquired for use at the site = 8,000 MWh.

ET is the sum of ES at all sites undertaking significant (non-ancillary) transformations under the definition of the activity. In this case  $ET = ES(\text{Site1}) + ES(\text{Site 2}) = 8,000 + 3,500 = 11,500$  MWh.

Based on the above:

$SP(\text{Site1}) = 2,000 \times (3,500/11,500) = 609$  tonnes of relevant produce referable to site1;

$SP(\text{Site2}) = 2,000 \times (8,000/11,500) = 1,391$  tonnes of relevant product referable to site 2; and

$SP(\text{Site3}) = 0$  as it undertakes only ancillary parts of the activity.

## ***Chapter 7: Commentary on the individual regulations***

The regulations relating to partial exemption certificates will be a new Part 3A of the general regulations made under the *Renewable Energy (Electricity) Act 2000*. There will also be a new Schedule 6 which will define EITE activities, classify activities as highly or moderately emissions-intensive and provide the baseline level of megawatt-hours per unit of product.

### **Terms used in the draft regulations (r 22A – 22C)**

Part 3A of the regulations will draw upon concepts used in the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), Carbon Pollution Reduction Scheme Bill 2009 (CPRS Act) and the proposed emissions-intensive trade-exposed assistance program (EITE assistance program).

From the NGER Act and CPRS Act the following concepts are used or incorporated:

- Controlling corporation.
- Facility.
- Financial control.
- Group.
- Joint venture.
- Member.
- Operational control.

Where the other legislation is cross-referenced, these references will take the meaning of those terms as in force from time to time. Additionally, the declaration decisions under the NGER Act will have the same effect under these definitions as they do under the NGER act and CPRS Act.

From the EITE assistance program, the following concepts are used:

- Highly emissions-intensive.
- Moderately emissions-intensive.
- Product.
- Relevant Product.
- Saleable quality.

A new concept for the purposes of this part is the concept of production which is 'referrable to a site'. This term is used as part of the method for calculating the amount of a partial exemption. Where an EITE activity is carried on wholly at one site, all of the production of a relevant product will be attributed to that site for the purposes of calculating the partial exemption. Where an EITE activity is carried on partly at one site and partly at one or more other sites, there are a number of rules governing the proportion of production from the EITE activity as a whole which is attributed or referred to each site. These were explained in Chapter 6.

## **EITE Activities (r 22D and Schedule 6)**

EITE activities are a set of defined transformations of particular inputs into a given set of outputs. The Australian Government has been making decisions on which transformations should be listed as EITE activities through the development of the EITE assistance program. The same transformations which are eligible for assistance under that program will be eligible for partial exemption certificates under these regulations.

This is achieved by the definition of 'emissions-intensive trade-exposed activity' in s 5 of the REE Act. That definition provides that the REE Act regulations may define EITE activities but that, once the EITE assistance program is made, that program will define the transformations which are EITE activities. This change in definitions occurs as soon as the regulations establishing the EITE assistance program are formally made. There is a power to make transitional regulations if necessary.

Accordingly, Schedule 6 of the draft regulations sets out transformations which are EITE activities for the initial regulations. Any EITE activity which is assessed as eligible before the regulations are made will be included in the regulations. It is intended that other EITE activities will be added at various points in 2010 as they are included in the EITE assistance program.

However, it should be noted that the classification of the activity as highly or moderately emissions intensive, the description of the relevant product or products for the activity and the electricity baseline per amount or volume of a relevant product will remain in Schedule 6. These classifications and numbers will be kept consistent with the EITE assistance program to ensure that there is no differential treatment of the same transformation under each program.

## **Publication of information (r 22E)**

Section 38C of the REE Act specifies that certain information is published about partial exemptions.

Section 38C also allows for additional information to be prescribed in the regulations. In particular proposed r 22E (1) requires that the EITE activities which made up a liable entity's partial exemption be named. For instance, retailer A may have a partial exemption of 100,000 megawatt-hours, worth \$320,000, which was made up of partial exemption certificates for the EITE activities of the production of flat glass, manufacture of newsprint and smelting zinc.

Proposed r 22E (2) provides for a yearly publication of each person to whom a partial exemption certificate is issued and the EITE activity to which that certificate relates.

Proposed r 22E (3) provides for the publication of the total amount of partial exemptions for each EITE activity for that year. For instance, in 2020 it may be the case that a certain activity received partial exemptions totalling 21,000,000 megawatt hours which was the total of the partial exemptions for each instance of the activity.

## **Who may apply for partial exemption certificates (r 22F – 22K)**

Only a 'prescribed person' is eligible to apply for a partial exemption certificate. This flows from subsection 46A(1) of the Act which allows the regulations to create a class of persons who are eligible to make applications. The policy intent of the provisions is that the 'prescribed person' is a legal person involved in the carrying out of the EITE activity and not a person unrelated to the activity, or simply the retailer who supplies electricity to the site. It is also important that there are not multiple applications in relation to the same site and EITE activity so that assistance is only allocated once for a given use of electricity.

The regulations 22F to 22K provide for three broad categories of person in different situations:

- Regulations 22G – 22I are essentially capturing the legal person with the closest connection to the electricity supply arrangements with the site.
- Regulation 22J is a flexibility mechanism whereby the person prescribed above can nominate an entity with a more overarching connection to the activity, principally the types of entities who may have liability under the CPRS for the emissions from the activity (whether as a person with operational control over the facility, as a controlling corporation or a person with financial control).
- Regulation 22K provides for a second and third prescribed person for the site and activity in the circumstances where the liable entity has changed from the liable entity mentioned on the certificate.

When an entity puts in an application in one of the first two categories for a site and activity, no further applications may be made in relation to the site and activity for that year (other than those made under regulation 22K).

### *Regulation 22G - previous supply contract*

The key to eligibility under regulation 22G is that a person was a party to a contract for the supply of electricity consumed at the site during the year immediately preceding the application year and that contract was with a liable entity. Generally, this person is the person paying an electricity retailer for the electricity consumed at the site. It is not intended that the liable entity itself would be eligible under this regulation.

### *Regulation 22H - liable entity with operational control*

There are some circumstances where the person conducting the EITE activity at a site is also the liable party under the Act for the relevant acquisitions which occur in the supply of electricity to the site. For instance, a number of firms are market customers in the national electricity market. They make relevant acquisitions from the Australian Energy Market Operator when they purchase electricity from the wholesale pool. Other firms may be a liable entity because they operate their own generation onsite and this generation is not exempt under the Act. A firm may also purchase electricity from a third party in circumstances that give rise to a relevant acquisition.

Regulation 22H captures these entities by the use of the concept of operational control from the *National Energy and Greenhouse Reporting Act 2007* and the principal 'facility' which is carried on at the site. This avoids developing another test to identify a person who is conducting an activity and is also a liable entity. For the person to be the prescribed person under 22H, they may be the liable entity for either the majority of electricity consumed at the site or all of the electricity which gives rise to a relevant acquisition under the Act. This is to ensure that if a person is only a liable entity in relation to a very small amount of electricity consumed at the site and another entity is the liable entity for the majority of electricity, that person cannot use regulation 22H to receive the full partial exemption which would ordinarily be given to the primary liable entity.

#### *Regulation 22I – new contract*

It is anticipated that there will almost always be a person under regulations 22G or 22H in relation to a site. Even when the site is being constructed, electricity is usually required for that construction to take place. However, there is a recognition that circumstances may arise where there are no contractual arrangements governing the existing supply of electricity. Regulation 22I allows for the person with a contract for the first supply of electricity to the site in the coming year to be a prescribed person in relation to the site and activity.

#### *Regulation 22J – nominated person*

This regulation allows a person prescribed under regulations 22G – 22I to nominate another person to be the prescribed person in relation to the site and activity. These may be:

- the person with operational control of the principal facility at the site;
- the controlling corporation who has a member of their group with operational control; or
- a person with financial control over the facility.

Financial control over a facility is defined in the same manner as in clause 81 of the CPRS Bill.

#### *Regulation 22K – liable entity changes*

This regulation allows for a prescribed person to reapply for a new certificate where the liable entity, such as the electricity retailer, in respect of the site changes during the year. The regulations accommodate two changes of liable entity. After that point, no further partial exemption certificates will be issued. For this clause to apply, the first partial exemption certificate must have been issued. In these circumstances, there are particular rules for determining the amount of the new partial exemption in regulation 22ZC. This is explained more in Chapter 5.

## **Information to be included in applications for partial exemption certificates (r 22L – 22R)**

As with the EITE assistance program, it is essential that the Regulator is presented with a range of information to support an application upfront in the decision making process. This will facilitate timely decisions and reduce the need for the Regulator to request additional information to carry out its assessment of the application.

The core information that will be needed is:

- (a) The applicant's name, address and contact details.
- (b) The applicant's ABN and ACN.
- (c) The name and work contact details of a contact person for the application.
- (d) A description of the basis upon which the applicant is a prescribed person;
- (e) An explanation of how the emission-intensive trade-exposed activity will be carried on at the site in the year and how any requirements relating to the conduct of the activity will be met;
- (f) An explanation of the amount or volume of relevant production and other numbers relevant to the application of the method for calculating the amount of the partial exemption including:
  - (i) the basis on which such amounts have been calculated;
  - (ii) how any amounts or volumes of relevant product have been measured;
  - (iii) how the nomination of amounts or volumes of a relevant product satisfy the conditions in the regulations; and
  - (iv) how any other requirements relating to those amounts have been met.
- (g) A statement of the amount of the partial exemption that should be set out in the partial exemption certificate and how that amount should be calculated.
- (h) A map setting out the key aspects of the site.
- (i) The name of the liable entity that is to be listed on the certificate.
- (j) A statement concerning State, Territory and Commonwealth approvals where an activity is not yet conducted at a site.
- (k) Information about any generation capacity which exists at the site and whether the generation gives rise to any relevant acquisitions.
- (l) Information about any electricity used at the site that is not a relevant acquisition because of subsection 31 (2) of the Act.

Regulation 22N requires audits reports and submissions submitted for the purposes of the eligibility of the activity as an EITE activity for the purposes of the EITE assistance program to be resubmitted where they relate to production amounts or volumes used for the purposes of calculating the amount of a partial exemption. It also requires an explanation of any differences between production volumes claimed and those previously provided. The regulation also requires audit reports submitted under the EITE assistance program to be submitted to the Regulator as part of these applications.

Regulation 22O prescribes information relating to new entrants equivalent to the requirements imposed under the EITE assistance program (see clause 705).

Regulation 22P prescribes information relating to significant expansions equivalent to the requirements imposed under the EITE assistance program (see clause 706).

Regulation 22Q prescribes particular information where the application relates to the circumstances of a change of liable entity during the year. The applicant must:

- (a) specify the circumstances in which the liable entity (the old liable entity) mentioned in paragraph 22K (b) ceased to be the liable entity;
- (b) provide evidence of the date on which the old liable entity ceased to be the liable entity and the date the liable entity mentioned in paragraph 22K (c) (the new liable entity) became the liable entity; and
- (c) provide evidence that both the old and new liable entity have been informed of the application.

Regulation 22R requires that the information in the application be verified by statutory declaration. The persons eligible to verify the application are those who would fall within the definition of executive officer under the CPRS Bill.

### **Time and manner for the lodgement of applications (r 22S – 22V)**

For the first year (the 2010 calendar year), general applications for a partial exemption certificate may be made until 31 October 2010. For subsequent years the applications must be made before 1 January in the year to which the application relates. For instance, if a person wanted to apply for a partial exemption certificate relating to the 2011 calendar year, the application would need to be submitted to the Regulator no later than 31 December 2010.

However, in the case of applications which concern a change of liable entity (those under regulation 22K), these applications must be made before 1 January in the year following the year to which the application relates. For instance, if a liable entity changes during the 2012 calendar year the application under regulation 22K must be made no later than 31 December 2012. This is to ensure that liable parties have as much certainty as possible about whether or not the amount of their partial exemptions will change in the month and a half before their annual acquisition statements are due (i.e. 14 February of that year).

Regulation 22V requires that an application for a PEC is to be sent to the Regulator by post or fax. If sent by fax, the original must also be sent by post.

## **General calculation of amount of partial exemption (r 22W – 22ZB and 22ZD)**

The method for the calculation of the amount of a partial exemption gives effect to the policy commitments of a 90% and 60% exemption for the portion of the target above 9,500 gigawatt-hours plus an additional level of assistance where the REC price is greater than \$40. It also draws heavily upon the structure and considerations relevant to the calculations under Part 9 of the EITE assistance program under the CPRS. The aim is that for an activity conducted wholly within one site, the exact same production information would be submitted and used for the purposes of both assistance regimes in the exact same manner. This should minimise compliance costs and promote timely decision making.

Regulation 22W guides readers through the different aspects of the division.

Regulation 22X sets out the basic method for calculation in a similar manner to clauses 906 and 907 of the EITE assistance program. The amount of the partial exemption for each year is calculated by multiplying the following amounts:

- The electricity baseline of a relevant product (e.g. 11.7 megawatt-hours per tonne of silicon);
- a relevant amount or volume of a relevant product which is to be used for that year, which is referred to as 'ASP' (e.g. 100 tonnes of silicon);
- the relevant assistance rate for the year which is the sum of the general rate for the year and any additional percentage which results from the REC price being over \$40 (e.g. 21.60% for 2010 for a highly emissions-intensive activity and 14.40% for a moderately emissions-intensive activity); and
- an adjustment relating to the proportion of liable and non-liable electricity which is used at the site (e.g. 70% if 30% of the electricity at the site did not give rise to a relevant acquisition in the previous financial year).

### Calculation of the REC price (r 22X (3))

Subregulation 22X(3) outlines the REC price to be used when calculating any assistance in circumstances where the REC price exceeds \$40. The REC price is to be the Regulator's reasonable estimate (as published on the Regulator's website in accordance with regulation 22ZD) for the weighted average market price of a REC for the 12-month period ending on 30 September in the previous year. The 30 September date would enable early processing of PEC applications for the following year.

The REC market has two segments:

- Most RECs coming from renewable energy projects are sold along with electricity as part of long-term power purchase agreements with electricity retailers to underpin project investments. Contract prices reflect the revenue needed on top of the base electricity price needed to underpin project viability. Market information is scant for this segment as the RECs and the physical electricity are often bundled and the contracts are commercially sensitive.

- There is also a smaller spot market where packets of RECs are bought and sold by REC suppliers, liable entities or REC traders 'over the counter'.
- While there will be cross-influences between the spot and long-term segments, the long-term market tends to be less volatile.

In arriving at a reasonable estimate for the volume-weighted average price over a 12-month period, it is envisaged that the Regulator would use a methodology which is transparent and utilises objective and quantifiable data from arms-length transactions available in the public domain. For these reasons, it is envisaged that the Regulator would base his estimate on the spot market price.

The spot market is transparent and is reported publicly, for example by the Australian Financial Markets Association which provides a weekly update.

Longer-term contracts tend to be commercially sensitive, and are not public. As RECs are often bundled with the physical electricity in these contracts, the RECs price is not clear. It may also be difficult to establish whether or not the transactions are at arm's-length. The intent is to ascertain a market price, rather than a price paid by a particular entity. As such, contract information would also need to be available for all or a significant proportion of the market, to be representative.

Subregulation 22X(3) allows some flexibility for the Regulator in the method for estimating the weighted average REC price as the best method for estimating these prices is likely to change over time as the REC market grows and evolves.

Regulation 22ZD ensures that the Regulator's estimation of the REC price is published by 31 October each year (or 31 days after the assessment period has ended). The publication of the REC price on the website will ensure that the same REC price is used for all applications for a given year.

#### Application of the formula

Regulation 22Y sets out how the relevant amounts and volumes of relevant production are put together to make an amount determined to be the ASP (adjusted site production) for the purposes of the formula.

Subregulation 22Y(1) sets out a particular rule for the first year (2010) that any one of the three previous financial years may be used for the purposes of the calculation method, or, if no relevant product was produced in any of those years, an estimate of the production likely in the 2009-10 financial year. This production must be referrable to the site mentioned in the application and be accurate or a best estimate under regulation 22Z.

Subregulation 22Y(3) sets out the general rules which follow for the years 2011 and following based upon the formula in the EITE assistance program. The general rule is that the production amount or volume is the sum of the following:

- The production of the product in the previous financial year (i.e. production in 2009-10 is relevant for the 2011 calendar year);

- any amount of new or expected additional production which the site might be eligible for because it is a new entrant or has undergone a significant expansion (as defined in the EITE assistance program); and
- a 'true-up' amount of production which relates to whether the previous year's allocation was under or over the production which did occur in the previous financial year. This is calculated in the same manner as in the EITE assistance program. No true-up amounts are used for new entrants or where there was no application in relation to the previous year.

Regulation 22Z sets out a test for what the Regulator needs to consider in relation to being satisfied that an amount or volume of a relevant product is accurate or the best estimate of the relevant amount or volume possible in the circumstances. This regulation ensures that the same considerations and criteria under the EITE assistance program are applied to the same production amounts or volumes used for the purposes of calculating a partial exemption. This should ensure that decisions made under the EITE assistance program can easily flow through to the decisions under these regulations without different issues needing to be assessed and analysed under each scheme.

Accordingly, criteria such as those in clause 803 of the EITE assistance program are equally relevant to the amount or volumes under these regulations as under the EITE assistance program. It would also be expected that the actual decision under the EITE assistance program would be a relevant matter which the Regulator would also take into account before making a decision.

The regulation also gives special relevance to audit reports and submissions to the Department of Climate Change in the formulation of the eligibility of the activity for inclusion in the EITE assistance program under the CPRS. This is because of the overlap in data requirements between the two initiatives. It should also facilitate the processing of initial applications.

Regulation 22ZA defines the 'new or expected additional production' amounts to ensure that they are consistent with the amounts under the EITE assistance program for new entrants and significant expansions.

Regulation 22ZB concerns the formula for the apportionment of assistance where not all electricity consumed at the site is liable electricity. Where all electricity is purchased from the grid, the factor G will be 100% and no reduction of assistance will occur. However, where this is not the case the liable and non-liable electricity at the site in the previous financial year is examined to determine a percentage by which the amount of the partial exemption is reduced. For this purpose, generation from generators with a nameplate rating of less than 1MW do not need to be considered.

### Example

"Energy Plus" is an electricity retailer. It has one large customer (Silcon World) who conducts the activity of the production of silicon, which is the main activity carried on at a single site.

Silcon produces around 30,000 tonnes of silicon of at least 98% purity each year, and uses around 350,000 megawatt-hours (MWh) per year of grid electricity at the site.

Silcon World has a contract with Energy Plus for this grid supply to the site, but also generates some 10,000 MWh of electricity on-site using a 5MW generator which combusts waste from Silcon's processing plant. We assume this on-site generation does not attract a RET liability.

Silcon produced the following amounts of silicon in the relevant financial years:

- a. 30,000 tonnes in 2006-07.
- b. 28,000 tonnes in 2007-08.
- c. 29,000 tonnes in 2008-09.

In the financial year ending 30 June 2009, Silcon used 345,000MWh of liable grid electricity and 10,000MWh of non-liable, on-site generation.

#### **First year exemption - 2010**

Silcon World, as the prescribed person under regulation 22G, applies for a Partial Exemption Certificate (PEC) for its site for the 2010 calendar year, nominating Energy Plus as the relevant liable entity.

Silcon World sets out how it is carrying out the silicon production activity as defined. It chooses 2006-07 as the year for production information and sets out that its 30,000 tonnes of silicon have a concentration of silicon over 98%.

Silicon production is set out in Division 2 of Part 7 of Schedule 6 of the regulations as a 'highly emissions-intensive activity', so is assisted at the 90 per cent rate.

The Regulator would satisfy itself that the tonnes of product nominated in the application were in fact produced to the relevant standard and that the activity is being carried out. It would then calculate the amount of the partial exemption (PE) for the year, using the method in r 22X as follows:

PE = EP x ASP x k x G, where:

- EP is the electricity baseline for the EITE activity entitled 'Production of silicon'. Factor EP for Production of Silicon, from Division 3 of Part 7 of Schedule 6 is 11.7 MWh per tonne of silicon.
- ASP is the amount of production applicable for the year. This is calculated according to regulation 22Y which sets out that for 2010, the applicant may specify the total output of any of the 3 financial years immediately preceding the year for which the PEC is to apply. As indicated above, Silcon has chosen FY 2006-7, for which production was 30,000 tonnes.

- k is the partial exemption assistance rate, which has 2 components. The first is the so-called 'base k' in respect of the expansion of the target for the year above 9,500 GWh and is found from column 2 of the table in subregulation 22X(2). The percentages in column 2 incorporate the percentage assistance (90%) applying to a highly emissions-intensive activity for the year 2010. The figure in the table is calculated by multiplying the 90% assistance rate for a highly by the percentage contribution to the 2010 target which is above 9,500 GWh. This contribution is  $(12,500 - 9,500) / 12,500 = 0.24$  or 24%. Thus 'base k' for 2010 for silicon production is  $90\% \times 24\% = 21.60\%$ .

The second component, called 'additional k', to apply after the CPRS legislation passes in Parliament, relates to the increase in REC price above \$40 for a year. It represents the additional impact that REC prices above \$40 have on the RET burden for the original 9,500GWh MRET target. This factor is to be derived from historical REC prices with effect from 2011, so is zero for 2010.

Thus k for 2010 = 21.60%.

- G is the adjustment for generation or acquisition of non-liable electricity that is consumed at the site in the EITE activity. It assumes for ease of measurement and reporting that the ratio of liable to non-liable electricity used in an EITE activity is the same as the ratio of liable to non-liable electricity for the whole site. Regulation 22ZB provides the method for calculating G.

Using the formula in subregulation 22ZB (1)  $G = (345,000 / 355,000) = 0.972$  or 97.2%.

- Thus, for 2010,  $PE = 11.7 \times 30,000 \times 21.60\% \times 97.2\% = 73,693$  MWh.

The Regulator would then issue a Partial Exemption Certificate (PEC) which nominates Energy Plus as the liable entity and sets out the amount of the partial exemption for the site and year as 73,693 MWh.

Silicon World could then provide a copy of the PEC to Energy Plus to enable the exemption to be claimed in respect of the electricity supplied to the site during the year. The retailer could claim a reduction of 73,693 MWh in its liable electricity for the year by including the copy as part of its compliance assessment documentation by 14 February 2011.

### **Second year exemptions - 2011**

We assume in 2009-10 Silicon World produces 31,000 tonnes of silicon, uses 360,000 MWh of grid electricity and generates 11,000 MWh on-site.

On 31 October 2010 the Regulator looks at the REC prices for the year ending 30 September and estimates that the REC price had a weighted average of \$60. This is published on the website.

Before 1 January 2011, Silicon World applies for a partial exemption certificate for the 2011 calendar year.

For 2011, again  $PE = EP \times ASP \times k \times G$ , where this time:

- $EP = 11.7$  MWh/tonne as before.

- ASP is more complex than for 2010, as a so-called true-up factor (ST) is to be used in determining ASP for 2011 and subsequent years.

Subregulation 22X (3) prescribes that for these later years,  $ASP = SP + EASP + ST$ , where

SP is the actual production for the previous financial year (FY2009/10 in this case).

EASP is the estimated new or additional production for new entrants or where a significant expansion is being undertaken. This factor is zero for Silcon for 2011 as they have an existing operation and have not expanded their plant capacity.

ST is an adjustment for the previous year's actual production. This adjustment represents the difference between the previous financial year's actual production and the actual production the prior year, adjusted for any estimate of expected additional production for the previous year. Subregulation 22Y (5) prescribes that for 2011, the production for the prior year is to be taken as the amount as set out in the application for the PEC for 2010 (that is, 30,000 tonnes). Thus  $ST = 31,000 - 30,000 - 0 = 1,000$  tonnes.

This means that for 2011 using the formula above,  $ASP = 31,000 + 0 + 1,000 = 32,000$  tonnes;

- 'Base k' for 2011 is 32.33% from the table in subregulation 22X (2).

'Additional k', combines the emission intensity factor (90% for silicon production) with the proportion of the weighted average REC price which exceeded \$40 over the year to end-September 2010, and the proportion of the annual target that 9500 GWh represented in 2010.

'Additional k' is calculated using the formula in subregulation 22X (3). The formula is:

'additional k' =  $(((\text{estimated REC price}) - 40) / (\text{estimated REC price})) \times [\text{additional assistance \%}]$ .

In this case 'Additional k' =  $(60 - 40)/60 \times \text{additional assistance \%}$  for the year. The 'additional assistance %' for a year, which is set out in the table in subregulation 22X (5) combines the emission intensity factor of 90% with the percentage contribution of the 9,500 GWh to the annual target for the prior year. For 2011 this is  $90\% \times (9,500/12,500) = 68.40\%$ . From this, additional k =  $(20/60) \times 68.4\% = 22.8\%$ .

Thus  $k = 32.33\% + 22.8\% = 55.13\%$ .

- G for 2011, from the ratio of liable to total electricity to the site is  $360,000 / 371,000$  or 97.0%.
- Therefore the amount of partial exemption for 2011 is  $11.7 \times 32,000 \times 55.13\% \times 97.0\% = 200,215$  MWh.

### Third year exemptions - 2012

Silicon World then produces 30,000 tonnes of silicon in 2010-11, and uses 350,000 MWh of grid electricity and 6,000 MWh of on-site generation at the site.

On 31 October 2011 the Regulator looks at the REC prices for the year ending 30 September and determines that the REC price had a weighted average of \$55. This is published on the website.

Before 1 January 2012 Silicon World applies for a partial exemption certificate for the 2012 calendar year.

In 2012 then:

- EP = 11.7 MWh/tonne as before.
- $ASP = SP + EASP + ST$ , where SP is the actual production for the previous financial year (FY2010/11 in this case); EASP is zero again for 2012; and  $ST = 30,000 - 31,000 - 0 = -1,000$  tonnes. This means that for 2012,  $ASP = 30,000 + 0 - 1,000 = 29,000$  tonnes.
- 'Base k' for 2012 is 40.15% from the table in subregulation 22X (2).  
 $\text{'Additional k'} = [(55 - 40) / 55] \times [57.67\% \text{ (from table in r 22X (5))}] = 15.73\%$   
Thus  $k = 40.15\% + 15.73\% = 55.88\%$ .
- G for 2011, from the ratio of liable to total site electricity is  $350,000 / 356,000$  or 98.3%.
- Therefore the amount of partial exemption for 2012 is  $11.7 \times 29,000 \times 55.88\% \times 98.3\% = 186,378$  MWh.

### Fourth year exemptions - 2013

Silicon World then produces 30,000 tonnes in 2011 -12 and uses 350,000 MWh of grid electricity and 6,000 MWh of on-site generation at the site.

It also applies for a significant expansion in 2012-13 where it expects to produce 40,000 tonnes, or 10,000 tonnes more than in 2011 - 12. The regulator accepts this.

On 31 October 2012 the Regulator looks at the REC prices for the year ending 30 September and determines that the REC price had a weighted average of \$50. This is published on the website.

Before 1 January 2013 Silicon World applies for a partial exemption certificate for 2013.

- EP = 11.7 MWh/tonne as before.
- $ASP = SP + EASP + ST$ , where SP is the actual production for the previous financial year (FY2011/12 in this case); EASP is now 10,000 tonnes for 2013; and  $ST = 30,000 - 30,000 - 0 = 0$ . This means that for 2013,  $ASP = 30,000 + 10,000 + 0 = 40,000$  tonnes.
- 'Base k' for 2013 is 45.12% from the table in subregulation 22X (2).  
 $\text{'Additional k'} = [(50 - 40) / 50] \times [49.85\% \text{ (from table in r 22X (5))}] = 9.97\%$   
Thus  $k = 45.12\% + 9.97\% = 55.09\%$ .

- G for 2011, from the ratio of liable to total electricity to the site is 350,000 / 356,000 or 98.3%.
- Therefore the amount of partial exemption for 2013 is  $11.7 \times 40,000 \times 55.09\% \times 98.3\% = 253,438$  MWh.

#### **Fifth year – 2014 - ASP amount**

If 38,000 tonnes were produced in 2012-13, then the ASP amount for 2014 would be:

- $ASP = SP + EASP + ST$ , where SP is the actual production for the previous financial year (FY2012/13 in this case); EASP is now 0 for 2014; and  $ST = 38,000 - 30,000 - 10,000 = -2,000$  tonnes. This means that for 2014,  $ASP = 38,000 + 0 - 2,000 = 36,000$  tonnes.

#### **Calculation of amount of partial exemption when liable entity changes (r 22ZC)**

Regulation 22ZC prescribes a different method for when a partial exemption certificate has already been issued, a liable entity changes for a site and a new partial exemption certificate is needed. The policy is simply to pro-rata the existing certificate amount based upon the number of days that each liable entity has been, or will be, a liable entity in respect of the site. For instance, if the liable entity changes half way through a year, the new certificate will be half of the original certificate. Regulation 22ZL then operates to reduce the first certificate by a half.

A second change of liable entity is also provided for in subregulation 22ZC (2) where the same pro rata approach is used on the second certificate and under regulation 22ZL that second certificate is also reduced.

Further details, including an example, were provided in chapter 5.

#### **Form of partial exemption (r 22ZE)**

The partial exemption certificate (PEC) needs to include a range of information to facilitate the proper and efficient operation of the exemption mechanism. Most importantly, the certificate can only relate to one liable entity which is named in the PEC and needs to have a number of megawatt hours specified as the amount of the partial exemption. The Regulator also needs mechanisms to verify the validity of each PEC provided with the liable entity's annual energy acquisition statement. This will be assisted by the detailed information provided on the PEC.

The certificate is also a summary of the key inputs which made up the amount of the partial exemption. This information will make the manner in which the Regulator has applied the regulations transparent to the prescribed person. It will also facilitate the consideration of any applications to amend the certificate under s 46C of the Act.

The certificate will also need to record and monitor any amendments to the certificate which may have been made after it was issued.

## **Time periods for decision making (r 22ZG – 22ZI)**

For 2010 and 2011 when the EITE assistance program is not in operation, the Regulator must make a decision:

- within 90 days of receiving an application if the Regulator did not need to seek additional information; or
- within 60 days of receiving additional information requested by the Regulator.

These time limits encourage applicants to provide all of the necessary information with an application. This is similar to the structure of decision making under the CPRS.

For 2012 and later years, applications are intended to be decided alongside applications under the EITE assistance program. It is intended that the EITE assistance program will be the primary decision-making forum on production volumes, significant expansions and other criteria which will then drive the decision-making under the regulations. As such, decisions on partial exemption certificates will be due 30 days after the decision on the equivalent application under the EITE assistance program is made (or in the event that applications for a partial exemption certificate are made less than 30 days before such a decision, 30 days from when the application was received). This should ensure the maximum level of consistency with the two schemes.

However, in the event that applications for partial exemption certificates are made without corresponding applications for assistance under the EITE assistance program, the timelines provided for in the 2010 and 2011 years will apply.

## **Amendments to partial exemption certificates (22ZJ – 22ZN)**

The Act (s 46C) provides the flexibility for the Regulator to amend partial exemption certificates (PECs), either on request by the person to whom the PEC has been issued or on the Regulator's own initiative.

Regulation 22ZJ prescribes matters the Regulator must have regard to in deciding whether to amend a PEC on request. These matters are not intended to compel the Regulator to reopen consideration of issues around the information the Regulator used in calculating the partial exemption. As such, they are confined to inaccuracies in the information on the PEC (for example the name of the liable entity) and miscalculations by the Regulator in applying the prescribed method to calculate the amount of the partial exemption, (which would include calculation of intermediate factors (such as G or k)). As a reduction in the partial exemption would reduce the value of the PEC to the relevant liable entity, it is important that there has been an opportunity for renegotiation of relevant supply arrangements. Accordingly, the matters for the Regulator to consider include whether the liable entity has consented to the change, and whether the request for amendment was made before the end of the relevant compliance year.

Draft regulation 22ZK introduces regulations 22ZL to 22ZN, each of which prescribes a different circumstance where the Regulator may amend a PEC on its own initiative.

Regulation 22ZL deals with changes to a liable entity. It operates in combination with regulation 22K which enables an additional PEC to be issued for each of up to two changes of liable entity in a compliance year, and regulation 22ZC which prescribes a pro-rata calculation method for the partial exemption applicable to the additional PECs issued. Regulation 22ZL operates to reduce the older certificate (the original PEC where the first change of liable entity occurs, and the second PEC where a second change of liable entity occurs to enable a third PEC to be issued). The amount of reduction under the method in 22ZL mirrors the pro-rata approach in regulation 22ZC and is illustrated in the detailed example in Chapter 5 above.

The EITE assistance program provides for the relinquishment of Australian emission units on the closure of equipment at a facility. Regulation 22ZM provides a similar mechanism to reduce an amount of a partial exemption in the circumstance where an activity:

- ceases to be conducted at the site for a period of longer than 3 months; and
- is unlikely to be conducted again at that site for a period of at least 9 months.

Where this occurs, the amount of the partial exemption is reduced on a pro rata basis for the number of days during the year for which the activity will not be conducted. For example, if there was a partial exemption for 365 megawatt hours and the activity closed with 100 days left in the year, the amount of the partial exemption would be reduced to 265 megawatt hours i.e.  $365 - ((365 \times 100) \div 365) = 265$ .

The Regulator may also become aware during a year that the partial exemption certificate is inaccurate. This may just be an error in the form of the information recorded on the certificate, but it could also be a more substantive error concerning the amount of the partial exemption. This would include circumstances where the Regulator took a view on the amount or volume of relevant product from an EITE activity and that same amount or volume was the subject of an appeal process under the CPRS legislation. The finding of the appeals body under the CPRS legislation could well indicate to the Regulator that the partial exemption certificate is inaccurate and should be amended to better reflect the correct amount or volume of production for that activity. Accordingly, regulation 22ZN provides a mechanism for the Regulator to amend the certificate to correct the inaccuracy.

### **Record keeping (r 22ZO)**

It is anticipated that most of the essential records for the operation of the partial exemption certificate provisions will be captured by the combined effect of s 160 of the Act and the record keeping requirements under the EITE assistance program. However, the one additional element that is required by the regulations is additional details about:

- electricity consumed at a site in the financial year beginning 6 months before the year to which the partial exemption certificate relates;
- the amount of electricity generated at the site for which no relevant acquisition of electricity occurs during that financial year; and

- the amount of electricity delivered to the site for which no relevant acquisition occurs between the point of generation and point of use.

This is only relevant to applications where there is an adjustment for non-liable generation at the site. The purpose of the provision is to ensure that there is accurate metering data on these amounts for the determination of the following year's application.