



Government Gazette

of the State of

New South Wales

Number 137–Environment

Friday, 1 April 2022

The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, non-government and other notices.

Each notice in the Government Gazette has a unique reference number that appears in parentheses at the end of the notice and can be used as a reference for that notice (for example, (n2019-14)).

The Gazette is compiled by the Parliamentary Counsel's Office and published on the NSW legislation website (www.legislation.nsw.gov.au) under the authority of the NSW Government. The website contains a permanent archive of past Gazettes.

To submit a notice for gazettal, see the Gazette page.

SUBORDINATE LEGISLATION ACT 1989

Environment Protection Authority

Contaminated Land Management Regulation 2022

Notice is hereby given, under section 5(2)(a) of the Subordinate Legislation Act 1989, that consultation on the draft Contaminated Land Management Regulation 2022 is required in accordance with section 5 of the Subordinate Legislation Act 1989. The object of the draft Regulation is to remake, with minor amendments, the provisions of the Contaminated Land Management Regulation 2013, which is due for repeal on 1 September 2022.

For information, including the draft Regulation and Regulatory Impact Statement, and to make a submission please visit the EPA's Have Your Say website (<https://yoursay.epa.nsw.gov.au/>).

Submissions are due by 5 pm on Monday 2 May 2022. All submissions will be considered in finalising the draft Regulation.

Dated 25 March 2022

A handwritten signature in black ink, appearing to read 'JM', with a long vertical line extending downwards from the bottom of the signature.

Jacquelyn Miles
Director – Regulatory Policy and Reform
Environment Protection Authority

WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2001

Section 28(2) Order replacing the processing refund protocol

I, Jacqueline Moore, Acting Chief Executive Officer, NSW Environment Protection Authority:

Revocation of the existing protocol

1. Revoke the protocol issued under section 28 of the *Waste Avoidance and Resource Recovery Act 2001* by Sanjay Sridher by order dated 4 February 2020 and published in the NSW Government Gazette No 28 of 7 February 2020 at page 526.

Issuing a new protocol

2. Under section 28(2) of the *Waste Avoidance and Resource Recovery Act 2001*, issue the Material Recovery Facility Processing Refund Protocol in the following Schedule to be applied in determining the amounts payable to material recovery facility operators as processing refunds under a Scheme Coordinator Agreement.

This Order commences on the date it is published in the NSW Government Gazette.

Signed and dated:



Jacqueline Moore
Acting Chief Executive Officer
Environment Protection Authority

30 March 2022



Environment Protection Authority

Container Deposit Scheme Material Recovery Facility Processing Refund Protocol

1 April 2022

© 2022 State of NSW and the NSW Environment Protection Authority

With the exception of photographs, the State of NSW and the NSW Environment Protection Authority (EPA) are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required for the reproduction of photographs.

The EPA has compiled this publication in good faith, exercising all due care and attention. No representation is made about the accuracy, completeness or suitability of the information in this publication for any particular purpose. The EPA shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication. Readers should seek appropriate advice when applying the information to their specific needs. This document may be subject to revision without notice and readers should ensure they are using the latest version.

Every effort has been made to ensure that the information in this document is accurate at the time of publication. However, as appropriate, readers should obtain independent advice before making any decision based on this information.

All content in this publication is owned by the EPA and is protected by Crown Copyright, unless credited otherwise. It is licensed under the Creative Commons Attribution 4.0 [International](#) (CC BY 4.0), subject to the exemptions contained in the licence. The legal code for the licence is available at [Creative Commons](#).

The EPA asserts the right to be attributed as author of the original material in the following manner: © State of New South Wales and the NSW Environment Protection Authority 2022.

Published by:

NSW Environment Protection Authority

4 Parramatta Square

12 Darcy Street, Parramatta NSW 2150

Locked Bag 5022, Parramatta NSW 2124

Phone: +61 2 9995 5000 (switchboard)

Phone: 131 555 (NSW only – environment information and publications requests)

Fax: +61 2 9995 5999

TTY users: phone 133 677, then ask

for 131 555

Speak and listen users:

phone 1300 555 727, then ask for 131 555

Email: info@epa.nsw.gov.au

Website: www.epa.nsw.gov.au

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@epa.nsw.gov.au

See also www.epa.nsw.gov.au

ISBN 978 1 922778 13 0

EPA 2022P3657

April 2022

Contents

Abbreviations	1
1. About this document	2
1.1. Clarification regarding application of this Protocol	2
2. Review of the Protocol	3
3. Terminology	3
4. Objectives	3
5. Claiming processing refunds	4
5.1. Step 1: Check eligibility	4
5.2. Step 2: Complete Eligibility Confirmation form or Notify of changes	4
5.2.1. For new MRF operators	4
5.2.2. For existing MRF operators	5
5.2.3. Nominated Claim Method – Weighing or direct counting	5
5.3. Step 3: Measurement and recording of material flows	6
5.3.1. Measuring weight of input and output materials	6
5.3.2. Approval of alternative weighing equipment	6
5.3.3. Recording dates, sources and destinations of input and output materials	6
5.3.4. Record keeping requirements	7
5.3.5. Measuring weight of stock on hand materials	7
5.3.6. Approval of method for measuring the weight of stock on hand materials and measuring stock on hand	7
5.3.7. Counting	8
5.3.8. Non-claimable Material must be kept separate	8
5.3.9. Approval of method to measure and record Non-claimable materials that cannot be kept separate	8
5.4. Step 4: Reporting	8
5.4.1. Monthly Throughput Reconciliation	9
5.4.2. Annual Throughput Reconciliation	10
5.5. Step 5: Making a claim	10
6. Inter-MRF Transfers	11
6.1. Inter-MRF Transfer Scenarios	11
6.2. Inter-MRF excluded materials	11
6.3. Applying for an Inter-MRF Transfer	11
6.4. Assessment of an Inter-MRF transfer application	12
6.5. Duration of approved Inter-MRF Transfers	12
6.6. Requirements for MRF Operators	12
6.6.1. Before the Inter-MRF Transfer	12
6.6.2. After the Inter-MRF Transfer	13
6.6.3. Scheme Coordinator access to facilities	13

6.7. Inter-MRF approvals are not transferrable	13
7. Assessment and payment of claims	13
7.1. Step 1: Validating a claim	13
7.2. Step 2: Determining adjustments for non-compliance	14
7.2.1. Containers obtained before the scheme commenced	14
7.2.2. Adjustments for Refund Sharing Agreement notifications and entry into Processing Agreements	14
7.2.3. Containers not recycled	15
7.2.4. Withholding payments	15
7.3. Step 3: Assessing amounts payable	15
7.3.1. Adjustments for non-compliance	15
7.3.2. Calculating the number of eligible containers by claim method	15
7.4. Step 4: Issuing a claim assessment	16
7.5. Step 5: Paying processing refunds	17
8. Exiting the Container Deposit Scheme	17
8.1. Written notice	17
8.2. Entitlements at the point of non-eligibility	17
8.3. Timeframes for assessing the final claim and final payment	17
9. Claim and claim assessment adjustments	18
9.1. MRF operator request to amend a claim	18
9.2. MRF operator request for a review of a claim assessment	18
9.3. Scheme Coordinator amendment of claim assessment	19
9.4. Scheme Coordinator-initiated Independent Assurance	19
9.4.1. Purpose of Independent Assurance engagements	19
9.4.2. Independent Assurance Requirements	19
9.4.3. Notice of Independent Assurance	20
9.4.4. Independent Assurance Report conclusions	20
9.4.5. Costs of Scheme Coordinator-initiated Independent Assurance activities	20
9.4.6. MRF operators must cooperate with Independent Assurance activities	20
9.5. Adjusting for under and overpayments	20
9.5.1. Managing overpayments	20
9.5.2. Managing underpayments	20
10. Procedures and requirements for sampling	21
10.1. Sampling Strategy	21
10.2. Sampling	21
10.3. Determining eligible container factors	21
10.4. Publishing eligible container factors	21
10.5. Application to amend or introduce an eligible container factor	21
11. Dispute resolution	22

11.1. Dispute resolution process in this section must be undertaken	22
11.2. Step 1: Notice of Dispute	22
11.3. Step 2: Genuine attempts to resolve the dispute through negotiation	23
11.4. Step 3: Mediation	23
11.5. Step 4: Expert determination	23
11.5.1. Expert determination is final and binding	24
11.5.2. Expert determination is not arbitration	24
11.5.3. Costs of expert determination	24
11.6. Payment must not be withheld	24
11.7. Neither the State nor EPA are involved in dispute resolution	24
12. Repeal of Protocol	24
13. EPA Compliance audits	24
Appendix A	25
Glossary of Terms	25

Abbreviations

CDS	NSW Container Deposit Scheme
EPA	NSW Environment Protection Authority
EPL	Environment Protection Licence
Former Protocol	Material Recovery Facility Processing Refund Protocol January 2020
HDPE	High-density polyethylene
LPB	Liquid paperboard
MRF	Material Recovery Facility
MRF operator	Material Recovery Facility operator
NSW	New South Wales
PET	Polyethylene terephthalate
Protocol	Material Recovery Facility Processing Refund Protocol

1. About this document

This document is the Material Recovery Facility Processing Refund Protocol (Protocol) and is made under s 28(2) of the *Waste Avoidance and Resource Recovery Act 2001* (the Act). The Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (Regulation) also references this document.

The Protocol sets out:

- the methodology to be applied by the Scheme Coordinator to determine the amounts payable to material recovery facility (MRF) operators
- the process MRF operators must use to claim and receive processing refunds under the NSW Container Deposit Scheme (CDS or Scheme).

The Protocol may also reference guidance material published by the EPA that includes the name and location of forms, applications, and other explanatory documentation. All guidance material relating to this Protocol will be referenced on the EPA's website with this Protocol.

In the case of any inconsistency between the Protocol and the Act and Regulation, the Act and Regulation prevail to the extent of the inconsistency.

The Protocol does not apply to MRF operators that are a bottle crushing service operator or an alternative waste treatment (AWT) plant operator. Bottle crushing service operators should refer to the *Bottle Crushing Service Operator Processing Refund Protocol* as in force. At the time of publication, a Protocol for AWT operators has not been published.

1.1. Clarification regarding application of this Protocol

The Protocol commences on the date of Gazettal.

This Protocol will apply to material recycled by the MRF operator or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country from 1 April 2022 to 30 June 2022 and submitted for claim from 1 July 2022. The former protocol will apply for material recycled by the MRF operator or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country prior to 31 March 2022.

The examples below are intended to demonstrate this clarification in practice:

Example 1: Material recycled or delivered 1 January 2022 to 31 March 2022 –claim assessment timeframes under the former Protocol

- Claim assessments for material recycled by the MRF operator or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during the quarter from 1 January 2022 to 31 March 2022 will be under the former rules (section 6.6 of the former Protocol). This means the Scheme Coordinator issues a claim assessment within **45 calendar days** of the end of the quarter to which the claim relates.

Applicable Timeframes:

- A MRF operator must submit their claim by 28 April 2022.
- Claim assessment will be issued by the Scheme Coordinator by 16 May 2022.

Example 2: Material recycled or delivered 1 April 2022 to 30 June 2022 – new claim assessment timeframes

- Claim assessments for material recycled by the MRF operator or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during the quarter from 1 April 2022 to 30 June 2022 will be under the new rules (section 7.4 of this Protocol). This means the Scheme Coordinator will issue a claim assessment within **20 business days** after the expiry of the 28-day claim period at the end of each quarter.

Applicable Timeframes:

- A MRF operator must submit their claim by 28 July 2022.
- Claim assessment will be issued by the Scheme Coordinator by 25 August 2022.

2. Review of the Protocol

The Protocol will be reviewed, at a minimum, within five years of its publication, but may be reviewed more frequently when considered appropriate by the EPA.

3. Terminology

Terms within the Protocol have the same meaning as defined within the Act, including Part 5, and the Regulation. Appendix A contains a Glossary of Terms for the Protocol.

4. Objectives

The Protocol aims to:

- protect the integrity of the CDS
- maximise legitimate returns to communities
- support equity between participants
- promote efficiency.

5. Claiming processing refunds

The steps in the set-up process for MRF operators to be able to claim processing refunds are outlined below, including time frames. These steps must be completed before a quarterly claim can be made for:

- new MRF operators seeking to participate in the CDS, or
- any existing MRF operator seeking a change to their participation (e.g. adding a new MRF).

5.1. Step 1: Check eligibility

Before a MRF operator can make its first claim, it must confirm its eligibility to claim under the CDS with the Scheme Coordinator. Note that this is in addition to the process for making quarterly claims.

Existing MRF operators also need to confirm their eligibility to continue to make claims where there are changes to their operation. In accordance with s 20 of the Act, a MRF operator is eligible to claim if:

- in relation to the MRF that it seeks to make claims for, it holds an environment protection licence (EPL) under the *Protection of the Environment Operations Act 1997* authorising the processing of domestic waste (other than by thermal treatment) (a Relevant Licence), or
- it is approved in writing from the EPA as a MRF operator.

Note: If the MRF operator operates multiple MRFs, that MRF operator must hold a Relevant Licence or EPA approval for each MRF it has participating in the Scheme. The MRF operator must also be the Relevant Licence holder or the holder of the EPA approval (and not another entity that may own or operate an individual facility).

EPA approval to participate in the Scheme must be made in writing to the EPA (refer to the website guidance on this process). Applications for approval will be finalised within **28 calendar days** of the EPA receiving all required information.

5.2. Step 2: Complete Eligibility Confirmation form or Notify of changes

5.2.1. For new MRF operators

To ensure no disruption or delay to payment of claims, new MRF operators should submit the Eligibility Confirmation form to the Scheme Coordinator a minimum of **28 calendar days** before the start of the first month for which the MRF operator wants to claim. For MRF operators that need approval from the EPA, approval for each MRF it intends to make claims for are to be approved before this time.

The Eligibility Confirmation form requires the following to be supplied:

- details about the MRF operator and each MRF for which it intends to make claims
- details about the local council areas the MRF operator receives materials from and details and evidence of any processing agreements
- evidence that for each MRF the MRF operator intends to claim, the MRF operator holds a Relevant Licence or an EPA approval to participate in the Scheme
- the Nominated Claim Method to be used at each MRF (weighing or direct counting)
- any Approval of alternative weighing equipment
- the stock on hand balance and approval of a method for calculating stock on hand

- notification that Non-claimable material will be received and (if needed) an application for approval of a suitable methodology for measuring Non-claimable material that the MRF does not have the space or capacity to manage separately
- details about any changes to local council areas that the MRF operator receives materials from, and details of any processing agreements or refund sharing agreements relevant to those changes.

Once the completed Eligibility Confirmation form is assessed and eligibility to claim for processing refunds is confirmed, the Scheme Coordinator will provide access to the Scheme Coordinator Portal. MRF operator claims for processing refunds may only be made through the Scheme Coordinator.

5.2.2. For existing MRF operators

To ensure no disruption or delay to payment, a participating MRF operator should notify the Scheme Coordinator in writing of the following changes as soon as practicable after the change occurs. Refer to website guidance for details on where to send notification:

- Any change in the Relevant Licence or EPA approval to take part in the Scheme
- Any change to the details of the MRF operator or its Scheme-participating MRFs.

To ensure no disruption or delay to payment, a participating MRF operator should notify the Scheme Coordinator in writing of any changes to the following a minimum of **28 calendar days** before the start of the month for which the MRF operator intends to make a claim after those changes. Please note, however, that the Nominated Claim Method applies for an entire quarter.

Refer to website guidance for details on where to send notification. Changes must be confirmed in writing by the Scheme Coordinator:

- adding an additional material recovery facility (MRF). The notification must be made using the NSW Container Deposit Scheme – Additional MRF Notification form. Each additional MRF must be eligible to participate in the Scheme.
- any change to processing agreements with local councils under cl 18(2) of the Regulation, including supporting evidence.
- any change to the Nominated Claim Method for any material type. The notification must be made using the NSW Container Deposit Scheme – Claim Method Nomination form.
- any change to the method for estimating stock on hand. The application to change the method for estimating stock on hand must be made using the NSW Container Deposit Scheme – Stock-on-Hand Assessment form.
- any change to the management of Non-claimable Materials, including starting to receive Non-claimable Materials and (if necessary) seeking approval for a method of measuring and recording the flow of Non-claimable Materials if they cannot be kept physically separate. The application to approve a suitable method for measuring and recording the flow of Non-Claimable materials that cannot be kept separate must be made using the NSW Container Deposit Scheme – Non-claimable Materials Application form.

5.2.3. Nominated Claim Method – Weighing or direct counting

A MRF operator must nominate, to the Scheme Coordinator, the method they will use to claim for each MRF they operate and intend to submit claims for.

There are two available methods:

- Method 1 – Weighing
- Method 2 – Direct Counting.

A MRF operator may nominate to use different claim methods for different material streams at the same MRF. For example, the MRF operator may choose to use Method 1 – Weighing, to claim glass containers and use Method 2 – Direct Counting, for PET containers at the same MRF.

A MRF operator may only make one processing refund claim per quarter. This one claim can include different material streams, and different claim methods for different material streams for each MRF the MRF operator claims for.

Note: A MRF operator that nominates to use Method 1 – Weighing, will only be able to claim processing refunds for the output materials for which the EPA publish an Eligible Container Factor. Eligible Container Factors that have been published to date can be found on the EPA website at the Quarterly eligible container factors page.

Further information on the methods is provided at Appendix A.

5.3. Step 3: Measurement and recording of material flows

A MRF operator must measure and record the flow of materials for each MRF it intends to claim processing refunds for.

5.3.1. Measuring weight of input and output materials

A MRF operator must measure and record the weight of all materials entering the MRF (input materials) and leaving the MRF (output materials) at the time the materials enter or leave the MRF.

Input materials and output materials must be measured in tonnes using calibrated and verified weighing equipment or weighbridges in accordance with the *National Measurement Act 1960* (Cth).

Weighing equipment (including weighbridges) must be calibrated in accordance with all manufacturer requirements and verified (within the meaning of the *National Measurement Act 1960*) at least once a year.

The weight must be measured using weighing equipment that has the following minimum accuracy:

- for weighbridges: +/- 20kg
- for all other weighing equipment: +/- 1 kg.

Weights must be recorded to a minimum 2 decimal places.

5.3.2. Approval of alternative weighing equipment

Where a weighbridge is not available, or an alternative method of weighing is sought, a suitable weighing method must be approved by the Scheme Coordinator in writing before the start of the quarter that the MRF operator intends to claim in, or, as soon as possible if a weighbridge is no longer available, or an alternate method of weighing is sought, during a quarter.

It is the responsibility of the MRF operator to seek approval for an alternative weighing method. A MRF operator can apply to the Scheme Coordinator for approval using the NSW Container Deposit Scheme – Alternative weighing equipment form. Approval must be confirmed by the Scheme Coordinator in writing before the alternative weighing method can be used. The Scheme Coordinator may approve, at their discretion, an alternative weighing method after it is already in use.

5.3.3. Recording dates, sources and destinations of input and output materials

In addition to measuring and recording the weight of all input and output materials entering and leaving each MRF, a MRF operator must also record the following details for those input and output materials as described below.

Input materials

Date received and source, individually itemising:

- a. material received from a NSW council area, by council area
- b. material received from a commercial source generated in NSW
- c. material received from another MRF operator under an approved Inter-MRF Transfer
- d. material received from the Network Operator or a collection point operator (Non-claimable Material)
- e. material received from another MRF operator (Non-claimable Material)
- f. material received from another State or Territory or from another country, by relevant State or Territory or country (imported material).

Output materials

Date dispatched and destination, individually itemising (with Non-claimable Material itemised separately):

- a. material that is delivered to a recycling facility in Australia
- b. material that is consigned for transport to a recycling facility in a foreign country¹
- c. material that is recycled by the MRF operator
- d. material that is delivered to landfill.

5.3.4. Record keeping requirements

A MRF operator must keep all records and documents supporting each processing refund claim, and any other applications made under the Protocol, in a form that is easily and quickly accessible for inspection. This may be in an electronic or hard copy format.

MRF operators must keep records of the activities that:

- a. allow it to report accurately under the Protocol; and
- b. enable the Scheme Coordinator to ascertain whether the MRF operator has complied with its obligations under the Act, Regulation and Protocol.

The MRF operator must retain all records for seven years from the end of the reporting period to which the records relate.

5.3.5. Measuring weight of stock on hand materials

The MRF operator must measure and record the estimated weight of materials stored on the MRF site (stock on hand) each month using a methodology approved in writing by the Scheme Coordinator in accordance with section 5.3.6.

5.3.6. Approval of method for measuring the weight of stock on hand materials and measuring stock on hand

It is the responsibility of the MRF operator to seek written approval from the Scheme Coordinator of a methodology the MRF operator has developed and proposes for measuring the estimated weight of materials held on the MRF site (stock on hand) each month. The Scheme Coordinator will consider the following when deciding if the method is approved:

- the operational capacity of the MRF operator

¹ Note: There may be additional Commonwealth requirements for exporters of waste material. It is the responsibility of MRF operators to understand their obligations.

- how the measured stock on hand has been estimated to a reasonable degree of accuracy.

Examples of acceptable methods include, but are not limited to, a bale count multiplied by a measured and confirmed average bale weight, a volumetric estimate of a stockpile multiplied by a representative density, or appropriately calibrated weigh cell measurements.

A MRF operator must apply for approval using the NSW Container Deposit Scheme – Stock-on-Hand Assessment form. Scheme Coordinator approval must be confirmed in writing before the weighing method can be used. The Scheme Coordinator may approve, at its discretion, a stock on hand measurement method after it is already in use.

Once the method has been approved, the MRF operator must use that method to measure stock on hand at each facility.

5.3.7. Counting

In addition to measuring the weight, date and source/destination of input and output materials and stock on hand, a MRF operator that nominates to use Method 2: Direct Counting to determine the number of eligible containers it will claim, must measure and record the number of individual eligible containers the MRF operator counts each month. Container counts may be undertaken on a manual or automated basis. Where Method 2 is applied, the counting procedures must be validated to assess accuracy from time to time.

The methodology to validate the accuracy of the counting procedures must be approved in writing by the Scheme Coordinator. In approving a methodology, the Scheme Coordinator will consider the operating procedures of the MRF operator on a case-by-case basis when deciding to approve or not approve the method. Examples of a methodology include a manual recount, or peer review.

5.3.8. Non-claimable Material must be kept separate

A MRF operator must ensure that:

- Non-claimable Material is received and managed (counted or processed, stored and delivered) separately from all other materials received at each MRF; and
- the receipt, processing, counting, weighing, storage and delivery of the Non-claimable Material is recorded so that the throughput of this material at each MRF can always be tracked and audited.

5.3.9. Approval of method to measure and record Non-claimable materials that cannot be kept separate

Where a MRF operator wants to receive Non-claimable material at a MRF it operates and the MRF does not have the space or capacity to process, weigh, store and deliver Non-claimable Material separately, the MRF operator is responsible for seeking approval in writing from the Scheme Coordinator of a suitable method for measuring and recording the flow of Non-claimable material through the MRF. An application for approval must be made in writing to the Scheme Coordinator using NSW Container Deposit Scheme – Non-claimable Materials Application form a minimum of **28 calendar days** before the start of the quarter when the MRF operator will start to receive Non-claimable material. The MRF operator must receive the approval in writing from the Scheme Coordinator.

Refer Appendix A for definition of Non-claimable Material.

5.4. Step 4: Reporting

Each MRF operator is required to report to the Scheme Coordinator on a monthly and annual basis. Reporting requirements must include a breakdown for each MRF that the MRF operator is claiming processing refunds for.

The Scheme Coordinator may provide information reported by any MRF operator to the EPA at any time.

5.4.1. Monthly Throughput Reconciliation

A MRF operator must prepare and submit to the Scheme Coordinator within **14 calendar days** after the end of each month a Monthly Throughput Reconciliation. This must include a breakdown of the inputs, outputs and stock on hand for each MRF the MRF operator is responsible for operating and for which it is intending to claim processing refunds.

Reporting of measured weight must be in tonnes to two decimal points and in accordance with the measurement requirements.

The MRF operator must use the system established by the Scheme Coordinator to submit reports. The Monthly Throughput Reconciliation form includes reporting on all of the following:

Inputs

- a. total weight of all material received at each MRF in that month
- b. total weight of material received at each MRF in that month from a NSW council area, by council area
- c. total weight of material received at each MRF in that month from a commercial source generated in NSW
- d. total weight of material received at each MRF in that month from another MRF operator under an approved Inter-MRF Transfer (including the original source of the material)
- e. total weight of material received at each MRF in that month from the Network Operator or a collection point operator (Non-claimable Material)
- f. total weight of material received at each MRF in that month from another MRF operator (Non-claimable Material)
- g. total weight of material received at each MRF in that month from another State or Territory or from another country, by relevant State or Territory or country.

The sum of the weight reported for each source in (b)-(g) must equal the total weight reported in (a).

Outputs

- a. total weight of all material that leaves each MRF in that month broken down by:

Material delivered for recycling

- b. total weight of each material that leaves each MRF in that month and is delivered for recycling in Australia (excluding Non-claimable Material)
- c. total weight of each material that leaves each MRF in that month and is consigned for transport to a recycling facility in a foreign country (excluding Non-claimable Material)²
- d. total weight of each material that leaves each MRF in that month and is recycled by the MRF operator making the claim (excluding Non-claimable Material)

Material delivered to another MRF

- e. total weight of material that leaves each MRF in that month and is transferred to another MRF operator under an approved Inter-MRF Transfer

² Note: There may be additional Commonwealth requirements for exporters of waste material. It is the responsibility of MRF operators to understand their obligations.

- f. total weight of material that leaves each MRF in that month and is transferred to another MRF operator without an approved Inter-MRF Transfer

Material delivered to landfill

- g. total weight of all materials that leaves each MRF in that month and is delivered to landfill (excluding Non-claimable Material)

Non-claimable material outputs

- h. total weight of each material of Non-claimable Material that leaves each MRF in that month and is delivered for recycling in Australia
- i. total weight of each material of Non-claimable Material that leaves each MRF in that month and is consigned for transport to a recycling facility in a foreign country³
- j. total weight of each material of Non-claimable Material that leaves each MRF in that month and is recycled by the MRF operator making the claim
- k. total weight of material of Non-claimable Material that leaves each MRF in that month and is delivered to another MRF operator without an approved Inter-MRF Transfer
- l. total weight of Non-claimable Material that leaves each MRF in that month and is delivered to landfill.

The sum of the weight reported for each material and destination in (b)-(l) must equal the total weight reported in (a).

Stock on hand

- a. total weight of all stock on hand at the beginning and end of the month
- b. total weight of stock on hand by material at the beginning and end of the month (excluding Non-claimable Material)
- c. total weight of stock on hand of Non-claimable Material by material at the beginning and end of the month.

The sum of the weight reported for (b) and (c) must equal the total weight reported for (a).

5.4.2. Annual Throughput Reconciliation

A MRF operator must submit an Annual Throughput Reconciliation to the Scheme Coordinator within **28 calendar days** from the end of the financial year. The MRF operator must use the form provided by the Scheme Coordinator to submit the Annual Throughput Reconciliation.

The types of information required for the Annual Throughput Reconciliation are the same as required in the Monthly Throughput Reconciliation plus the addition of information about any adjustments, such as amendments to claims.

5.5. Step 5: Making a claim

A MRF operator may submit one claim for each MRF that they operate for a processing refund at the end of each quarter.

A claim must be submitted to the Scheme Coordinator using the form approved by the EPA, which can be accessed from the Scheme Coordinator. The form lays out the information the MRF operator must provide to make the claim.

A MRF operator may only make one claim each quarter. A claim may cover more than one MRF.

³ Note: There may be additional Commonwealth requirements for exporters of waste material. It is the responsibility of MRF operators to understand their obligations.

A claim must not be made before the end of the quarter to which the claim relates and must be submitted in full no later than **28 calendar days** from the last day of the quarter.

A MRF operator must refer to the Act, Regulation and Protocol to ensure all requirements are met before making a claim and must be able to provide evidence of compliance, should the Scheme Coordinator seek to verify this.

6. Inter-MRF Transfers

Materials transferred from one MRF operator to another MRF operator become Non-claimable Materials for the receiving MRF. Under specific scenarios, a MRF operator may seek approval from the Scheme Coordinator to transfer unprocessed kerbside comingled materials to another MRF operator. If the Scheme Coordinator approves the Inter-MRF Transfer and all of the requirements for undertaking the Inter-MRF Transfer are met, then the transferred materials can be claimed by the receiving MRF operator.

6.1. Inter-MRF Transfer Scenarios

An Inter-MRF Transfer may be approved for the following reasons:

- A MRF is not operating due to a malfunction or planned maintenance that impacts the MRF's ability to handle, measure and process material for recycling, or delivery to a recycling facility in Australia or consignment for transport to a recycling facility in a foreign country⁴; or
- A MRF does not have the ability or capacity to process material to a required standard for recycling, or delivery to a recycling facility in Australia or consignment for transport to a recycling facility in a foreign country⁵; or
- Any other scenario approved by the Scheme Coordinator on a case-by-case basis at the time of considering the application.

On a case-by-case basis, the Scheme Coordinator may grant an approval after the transfer of unprocessed kerbside comingled materials have been moved and one of the above scenarios apply, provided the approval was sought as soon as practicable.

6.2. Inter-MRF excluded materials

The following materials are not eligible for Inter-MRF Transfers:

- transfers involving Non-claimable Materials
- transfers involving materials that have been processed or partly processed to any degree
- any other material reasonably determined by the Scheme Coordinator, and as notified to the MRF operators by the Scheme Coordinator.

6.3. Applying for an Inter-MRF Transfer

The Sending MRF operator must apply to the Scheme Coordinator for approval to undertake an Inter-MRF Transfer. The application must:

- a. be made in the form specified by the Scheme Coordinator
- b. state the reason for applying for an Inter-MRF Transfer

⁴ Note: There may be additional Commonwealth requirements for exporters of waste material. It is the responsibility of MRF operators to understand their obligations

⁵ Note: There may be additional Commonwealth requirements for exporters of waste material. It is the responsibility of MRF operators to understand their obligations.

- c. state who the Receiving MRF operator is; and
- d. be made a minimum of **10 business days** in advance of the proposed transfer.

The Scheme Coordinator may at its own discretion approve more immediate transfers.

6.4. Assessment of an Inter-MRF transfer application

In assessing an application for an Inter-MRF Transfer, the Scheme Coordinator must consider whether:

- a. the reason for the Inter-MRF Transfer is in accordance with an Inter-MRF Transfer Scenario in section 6.1 of this Protocol, and the proposed materials for Inter-MRF transfer are not excluded materials outlined in section 6.2
- b. as at the proposed start date of the transfer, no processing refund claim exists in relation to the material proposed to be transferred
- c. the Sending and Receiving MRF operators can meet all the requirements outlined in section 6.6 of this Protocol; and
- d. at the time of seeking approval, both the Sending MRF operator and Receiving MRF operator are eligible to claim processing refunds.

The Scheme Coordinator must notify the Sending MRF operator and Receiving MRF operator in writing of the result of its assessment within **10 business days** of receiving the application.

If the Scheme Coordinator refuses the application, it must provide a clear justification and reasoning for the refusal.

6.5. Duration of approved Inter-MRF Transfers

The Scheme Coordinator must specify an Approved Transfer Period in the approval notification to both the Sending and Receiving MRF operators.

The Sending MRF operator must transfer the Inter-MRF Transfer material to the Receiving MRF operator within the time specified in the Approved Transfer Period.

Processing refunds for material transferred outside the Approved Transfer Period cannot be claimed by the Receiving MRF operator, except at the discretion of the Scheme Coordinator.

6.6. Requirements for MRF Operators

6.6.1. Before the Inter-MRF Transfer

Before transferring the materials, the Sending MRF operator must:

- a. have obtained written approval from the Scheme Coordinator in accordance with section 6.4 of this Protocol
- b. have weighed and recorded incoming material to be transferred by source (e.g. the NSW council area it was collected from) in a format required by the Scheme Coordinator; and
- c. where possible, not unloaded material to be transferred. However, if unloaded, weigh before and after loading, record materials by source (e.g. the NSW council area it was collected from) and keep all material for transfer quarantined from all other MRF and Non-claimable Material
- d. have sent a copy of the Sending MRF operator's weighbridge records and source to the Receiving MRF operator.

The Receiving MRF operator must:

- a. acknowledge it understands its obligations in writing to the Scheme Coordinator.

6.6.2. After the Inter-MRF Transfer

Immediately on arrival of the transferred materials at the Receiving MRF, the Receiving MRF operator must:

- a. weigh and record all transferred material from the Sending MRF operator (in a format required by the Scheme Coordinator);
- b. record the approved Inter-MRF Transfer Scenario (see section 6.1 of this Protocol) and the source (e.g. the NSW council area it was collected from) of the transferred material; and
- c. send a copy of the Receiving MRF operator's weighbridge records to the Sending MRF operator.

6.6.3. Scheme Coordinator access to facilities

Sending and Receiving MRF operators undertaking an approved Inter-MRF transfer must provide access to the Scheme Coordinator, or the EPA, as requested, to conduct site inspections of any facility operated by the MRF operators in order to:

- a. validate the reason for an Inter-MRF Transfer
- b. inspect materials subject to an Inter-MRF Transfer claim
- c. validate the appropriate segregation of such materials from other materials at the Sending and Receiving MRF; and
- d. any other purpose deemed necessary to validate compliance with this section.

The Scheme Coordinator or EPA will provide reasonable notice to the MRF operator before inspection.

6.7. Inter-MRF approvals are not transferrable

An approval given in accordance with this section only applies to the Sending MRF operator and Receiving MRF operator specified in the application, and for the Inter-MRF Transfer period specified in the approval.

An approval lapses at the end of the transfer period specified in the approval, irrespective of whether any transfers have occurred.

A Sending MRF operator must obtain a separate approval for each Inter-MRF Transfer it seeks to make.

Each approval for an Inter-MRF Transfer is a unique approval for the transfer of materials between the specified MRF operators during a single and distinct period of time, and does not extend to any other Scheme participants or any other time periods.

7. Assessment and payment of claims

The Scheme Coordinator must pay a MRF operator for a valid processing refund claim in accordance with the Act, Regulation and Protocol. Where a processing refund claim is only partially valid, the Scheme Coordinator must pay the valid portion of the claim and refuse the invalid portion. The assessment process follows.

7.1. Step 1: Validating a claim

The Scheme Coordinator must assess a MRF operator claim for processing refunds and determine if the claim is valid, partly valid or invalid. Requirements that the Scheme Coordinator considers in validating a claim include confirming:

- that the MRF operator holds a Relevant Licence / EPL or an approval from the EPA for each MRF claimed for (s 20 of the Act)
- the claim does not include any containers obtained by the MRF operator before the CDS commenced (cl 18(1) of the Regulation)
- that the requirements for agreements with NSW local councils (cl 18(2) of the Regulation) have been met
- the claim was made on the approved form and contains all required information (cl 19(1) of the Regulation)
- the claim was submitted after the end of the quarter to which the claim relates and no later than **28 calendar days** from the last day of that quarter (cl 19(6) of the Regulation)
- the claim was assessed by an Approved Person (refer to Appendix A) before being submitted for the purpose of determining whether the Protocol has been applied correctly (cl 19(2) of the Regulation)
- the claim is accompanied by a declaration signed by the Approved Person certifying that, in the opinion of the Approved Person, the claimant MRF operator has correctly applied the Protocol in determining the amount of the claim (cl 19(2) of the Regulation)
- the claim is only for containers that have been recycled by the MRF operator making the claim, or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country (cl 19(4) of the Regulation)
- the MRF operator that submitted the claim has not submitted any other claim for the quarter (cl 19(5) of the Regulation).

In assessing any of these matters, the Scheme Coordinator may audit a MRF operator's facility(ies) or records, request additional information or seek evidence from third parties to determine relevant matters.

If the Scheme Coordinator finds that any of the above requirements are not met, it can find the claim to be invalid, or partly invalid, and refuse to pay part or all the claim.

7.2. Step 2: Determining adjustments for non-compliance

In instances where the Scheme Coordinator identifies a non-compliance with a requirement of the Act, Regulation or Protocol and determines that the MRF operator is ineligible or only partly eligible to claim for a processing refund during a quarter, the Scheme Coordinator must adjust the amount of refund payable in accordance with the following methods.

7.2.1. Containers obtained before the scheme commenced

In accordance with cl 18(1) of the Regulation, processing refunds are not payable to a MRF operator for containers obtained by that MRF operator before the Scheme commenced on 1 December 2017. Where the Scheme Coordinator determines that a MRF operator is claiming for containers it obtained before that Scheme commencement date, the Scheme Coordinator must deduct those containers or material from the claim.

7.2.2. Adjustments for Refund Sharing Agreement notifications and entry into Processing Agreements

If the Scheme Coordinator determines that the requirements in cl 18(2) of the Regulation have not been met for one or more NSW local council(s) at any time during the claim period, then the Scheme Coordinator must adjust the number of eligible containers determined in accordance with section 7.3.2 of this Protocol, by:

- multiplying the number of containers determined in accordance with section 7.3.2 by the Council Adjustment Factor for the corresponding month, and then

- rounding the result to the nearest whole container.

The Council Adjustment Factor will be determined for each month in the claim period in accordance with the calculations for the Council Adjustment Factor, the Eligible Days Factor and the Adjustment Tonnage as per Appendix A.

7.2.3. Containers not recycled

Where the Scheme Coordinator determines that materials that are the subject of a claim have not met the requirements in cl 19(4) of the Regulation, the Scheme Coordinator must refuse to pay processing refunds for those materials.

7.2.4. Withholding payments

Where a MRF operator has failed to:

- meet the reporting requirements in this Protocol
- provide any relevant documentation, information or assistance to the Scheme Coordinator as required by the Protocol

the Scheme Coordinator has the right to withhold payment of all or part of a claim until the failure is corrected.

7.3. Step 3: Assessing amounts payable

The Scheme Coordinator must undertake the following procedures to assess the validity of a claim (or part of a claim) and determine the amount of processing refunds payable to the MRF operator.

7.3.1. Adjustments for non-compliance

The Scheme Coordinator must first determine if any adjustments are required to the claim due to non-compliance with requirements, and adjust the claim in accordance with the relevant adjustment methodologies.

7.3.2. Calculating the number of eligible containers by claim method

Where a MRF operator has used Method 1 – Weighing to claim for one or more output materials, the Scheme Coordinator must apply the Method 1 – Weighing (Eligible Container Factor) Calculation (refer to Appendix A) to determine the number of eligible containers for each output material using this claim method.

Where a MRF operator makes a processing refund claim using Method 2 – Direct Counting for one or more materials, the Scheme Coordinator must use the Method 2 (Direct Counting) Calculation (refer to Appendix A) to determine the number of eligible containers for each material type using this claim method.

Import ratio

Where a MRF operator has also received materials from sources outside of NSW, claims for eligible containers will be assessed and refunds calculated by the Scheme Coordinator by applying the Import Ratio (refer to Appendix A).

MRF operators receiving material from sources outside of NSW are not entitled to a refund for containers received from those sources, but do not need to keep imported materials separate in the same way as Non-claimable materials.

Calculating the total processing refund payable

The Scheme Coordinator must calculate the total processing refund payable to a MRF operator for each quarter using the Total Refund Calculation (refer to Appendix A).

Deduction of sampling costs

The Scheme Coordinator must deduct from the total processing refund payable for each MRF operator the monetary cost incurred to undertake the sampling procedures. This cost shall be recovered proportionally from each Processing Refund Claim in accordance with the Sampling Costs Calculation as published on the EPA website as amended from time to time.

7.4. Step 4: Issuing a claim assessment

The Scheme Coordinator must issue a claim assessment in writing to each MRF operator that has submitted a claim for processing refunds for the previous quarter. The claim assessment must be issued within **20 business days** after the expiry of the 28-day claim period at the end of each quarter. The timeframe for the Scheme Coordinator to make an assessment may be extended by up to 10 business days by the Scheme Coordinator, in instances where further information is sought from the MRF operator.

Where the Scheme Coordinator has found that a claim is only partly valid or invalid, the claim assessment must provide clear and justifiable reasons for that assessment.

The claim assessment must include:

- a. clear and justifiable reasons for refusing part, or all, of a claim
- b. the total processing refund payable to the MRF operator for the quarter
- c. the total number of eligible containers the Scheme Coordinator has verified that the MRF operator has recycled, or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during the quarter
- d. where Method 1 – Weighing, was used for any output material type:
 - i. the total weight of each output material type for the quarter, excluding any Non-claimable Material
 - ii. the eligible container factor applied to each output material type for the quarter
 - iii. the Import Ratio applied, for each output material type
 - iv. the number of eligible containers delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during the quarter for output material type
- e. where Method 2 – Direct Counting, is used for any output material type:
 - i. the total counted number of eligible containers recycled by the claimant, or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country by the MRF for each Output material type in the quarter, excluding any Non-claimable Material
 - ii. the Import Ratio applied, for output material type that are eligible for a processing refund
 - iii. the number of eligible containers delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during the quarter for output material type that are eligible for a processing refund
- f. the sampling cost deduction for the MRF operator for the quarter
- g. any other information required by the Processing Refund Requirements.

7.5. Step 5: Paying processing refunds

For a valid or partially valid claim assessment, the Scheme Coordinator must deposit the assessed amount of processing refunds into the nominated bank account of the MRF operator within **10 business days** of issuing that assessment.

8. Exiting the Container Deposit Scheme

8.1. Written notice

These exit procedures will apply where a MRF operator:

- decides to no longer participate in the Scheme
- loses eligibility for non-compliance (e.g. ceases to hold a Relevant Licence or no longer has a valid Refund Sharing Agreement or Processing Agreement in place)
- loses eligibility due to insolvency or another unforeseen circumstance.

A MRF operator that is no longer eligible to participate in the CDS, or wants to cease participation in the CDS, must provide written notice to the Scheme Coordinator at least 20 business days before the date it intends (or is required) to make its last quarterly claim, to avoid any disruption or delay of payment. The written notice is to provide the Scheme Coordinator with the following information:

- a. the date of expiry of any relevant Refund Sharing Agreement(s) and/or Processing Agreement(s)
- b. the last date materials will be received (input materials) and the last date that materials will be recycled by the MRF operator, or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country (output materials) that the MRF operator intends to claim.

8.2. Entitlements at the point of non-eligibility

To avoid any delays to payment, a MRF operator must make its final claim no later than the quarter immediately following the MRF operator providing 20 business days' notice. After that final claim, a MRF operator will not be able to make any further processing refund claims unless it re-confirms its eligibility to claim.

8.3. Timeframes for assessing the final claim and final payment

The Scheme Coordinator will have an additional **20 business days** to undertake the assessment of the existing MRF operator's final claim.

If an audit finds that an earlier claim assessment must be amended and the Scheme Coordinator has overpaid the MRF operator, then the Scheme Coordinator can withhold the final processing refund payment until the issue is resolved. Resolution may be by agreement between the Scheme Coordinator and MRF operator, through an independent assurance audit finding, or at the conclusion of a dispute resolution process.

9. Claim and claim assessment adjustments

9.1. MRF operator request to amend a claim

A MRF operator may make a request to the Scheme Coordinator to amend a claim if the MRF operator has identified it made an error in the information provided in the claim form, and if the following applies:

- a. the request is made within **100 calendar days** from the date of the original claim
- b. the request is made in writing and includes relevant evidence to validate the error and the requested amendment
- c. the initial processing refund claim was lodged with the Scheme Coordinator within **28 calendar days** of the last day of the end of the quarter using the approved form
- d. the MRF operator met all the requirements of the Act, Regulation and Protocol during the period for which the amendment applies.

The Scheme Coordinator must accept a claim amendment if the above requirements are met and it can verify the validity of the error and the amended information. In reviewing an amendment request, the Scheme Coordinator:

- a. must have regard to whether all requirements for making a processing refund claim were met by the MRF operator
- b. must have regard to the validity of the matters presented by the MRF operator.

The Scheme Coordinator must give written notice (including its reassessment, if required) of its decision regarding the request for claim amendment to the MRF operator within **60 calendar days** after the request is received by the Scheme Coordinator.

If the Scheme Coordinator refuses to permit the request to amend a submitted claim, then the Scheme Coordinator must notify the MRF operator of its decision in writing and include clear and justifiable reasons for refusing.

If the request to amend a submitted claim is approved, the Scheme Coordinator must deposit the difference in the amount of processing refund determined in the amended claim assessment into the nominated bank account of the MRF operator within **10 business days** of issuing a claim assessment. If the amended claim assessment determines the MRF operator was overpaid, section 9.5.1 of this Protocol applies.

9.2. MRF operator request for a review of a claim assessment

A MRF operator may request the Scheme Coordinator to review a claim assessment. The request must:

- be in writing; and
- provide a description of the matter to be reviewed with reference to the Act, Regulation and Protocol and relevant supporting evidence; and
- be received by the Scheme Coordinator no later than **60 calendar days** after the claim assessment is made (which includes reassessments of amended claims).

The purpose of a review is to enable a fresh consideration of a claim assessment by the Scheme Coordinator where the MRF operator does not agree with the assessment either wholly or in part.

The Scheme Coordinator must reconsider the claim assessment and confirm, vary or set aside the original claim assessment. The Scheme Coordinator must give written notice of its decision

regarding the reconsideration to the MRF operator within **60 calendar days** after the request is received by the Scheme Coordinator.

A MRF operator must apply for a review before commencing mediation or expert determination in accordance with the procedures in this Protocol.

9.3. Scheme Coordinator amendment of claim assessment

The Scheme Coordinator may amend a processing refund claim assessment from the current or a prior quarter or quarters, where:

- a. the MRF operator agrees to the proposed amendment, including through mediation
- b. a Scheme Coordinator-initiated Independent Assurance opinion is that the proposed amendment is justified
- c. a decision has been made under the Expert Determination Process, or a court proceeding has determined that the proposed amendment by the Scheme Coordinator is justified.

If the Scheme Coordinator amends a claim assessment on the basis of an Independent Assurance, or outcome of dispute resolution, the Scheme Coordinator must notify the MRF operator and provide clear and justifiable reasons for the amendment (unless the amendment is agreed to by the MRF operator).

9.4. Scheme Coordinator-initiated Independent Assurance

9.4.1. Purpose of Independent Assurance engagements

Independent Assurance engagements are for the following purpose:

- the Scheme Coordinator intends to amend a previous claim assessment and the MRF operator does not agree with the amendment.

In addition to the verification activities completed by the Scheme Coordinator's internal audit team, the Scheme Coordinator may appoint an appropriately qualified assurance practitioner as an assurance team leader to carry out assurance of a MRF operator's compliance with one or more aspects of the Act, Regulation and/or Protocol.

The Scheme Coordinator may initiate an Independent Assurance Report to investigate issues concerning the question of facts, when it intends to amend one of its previous claim assessments.

Independent Assurance reports are sought to obtain assurance about whether information provided by the MRF operator is free from material misstatement. They do not address matters relating to the interpretation of law. Questions of law, such as those that arise when parties are in dispute, must be addressed through the formal dispute resolution methods in this Protocol.

9.4.2. Independent Assurance Requirements

An assurance report must be the result of an assurance engagement which:

- a. was conducted in accordance with the relevant requirements for limited assurance engagements and reasonable assurance engagements under the Australian Standard on Assurance Engagements (ASAE): ASAE 3000 *Assurance Engagements other than Audits or Reviews of Historical Financial Information* and ASAE 3100 *Compliance Engagements*; ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*; and
- b. had an assurance team leader who is registered as a Registered Company Auditor under the *Corporations Act 2001* (Cth).

9.4.3. Notice of Independent Assurance

The Scheme Coordinator must give written notice to the MRF operator of a decision to initiate an Independent Assurance. The notice must:

- specify the assurance team leader
- specify the period within which the assurance is to be undertaken
- specify the type of assurance to be carried out
- specify the matters to be covered by the assurance
- be given to the MRF operator at a reasonable time before the assurance is to be undertaken.

9.4.4. Independent Assurance Report conclusions

Independent Assurance reports issued under this section will specify conclusions in accordance with the standards referenced in 9.4.2

9.4.5. Costs of Scheme Coordinator-initiated Independent Assurance activities

The costs associated with Scheme Coordinator-initiated assurance activities will be shared between the Scheme Coordinator and the MRF operator.

9.4.6. MRF operators must cooperate with Independent Assurance activities

If the Scheme Coordinator has initiated an Independent Assurance, the MRF operator must provide the assurance team leader and any assurance team members with all reasonable facilities and assistance necessary for the effective exercise of the assurance team leader's duties under the Protocol.

9.5. Adjusting for under and overpayments

9.5.1. Managing overpayments

The Scheme Coordinator must advise the MRF operator in writing that it has identified an overpayment and detail the extent of that overpayment.

Where a MRF operator agrees that there has been an overpayment, or where an independent process (expert determination, independent assurance report, or court proceedings) has determined that an overpayment has been made to a MRF operator, the Scheme Coordinator may invoice the MRF operator for the full amount of the overpayment and the MRF operator must reimburse the Scheme Coordinator the total amount within **10 business days** of receiving the invoice, or within a timeframe agreed by the Scheme Coordinator in writing.

The Scheme Coordinator may withhold or offset any or all further quarterly payments in whole or in part that may otherwise be due to the MRF operator until such overpayment is repaid in full.

9.5.2. Managing underpayments

The Scheme Coordinator must deposit any outstanding processing refund amount identified as owing to the MRF operator into the MRF operator's nominated bank account within **10 business days** of the written notice of decision. The written notice of decision may be from the Scheme Coordinator or following the conclusion of an independent process, such as dispute resolution, independent assurance or court proceedings. The nominated bank account is the bank account provided to the Scheme Coordinator for the purpose of receiving a processing refund in accordance with the Protocol.

10. Procedures and requirements for sampling

10.1. Sampling Strategy

The EPA will prepare procedures in accordance with the Sampling Strategy for the following purposes:

- in relation to Method 2 – Direct Counting, to set out the sampling requirements to assess the accuracy of container counts
- in relation to the determination of the Eligible Container Factor (refer to Appendix A) – to set out the sampling requirements for the collection of representative data on the number of eligible containers per kilogram of material processed by Scheme-participating MRF operators across NSW.

10.2. Sampling

For each quarter, the Scheme Coordinator will arrange and pay for independent sampling auditors to undertake sampling. All sampling results will be provided by the independent sampling auditors to the EPA within **7 calendar days** from the end of each quarter to enable calculation of the Eligible Container Factor (refer to Appendix A).

Sampling results provided to the EPA must be presented in the manner as agreed by the EPA and include:

1. sampling data in a format agreed with the independent sampling auditors and the EPA
2. finalised claims data from the previous quarter.

The Scheme Coordinator may arrange with a MRF operator for the sampling auditors to take samples at their facilities at any time within normal business hours. The MRF operator must provide all reasonable assistance (including access) in relation to the facilities required by the sampling auditor and their team.

10.3. Determining eligible container factors

The eligible container factor (Efi) will be calculated and approved by the EPA.

The eligible container factor for each output material type will be determined using:

- sampling data
- claim information
- any other relevant further information that the EPA requests within time frames outlined in such a request.

10.4. Publishing eligible container factors

The EPA will publish the eligible container factor for the quarter within **43 calendar days** after the last day of the quarter. Where the 43rd calendar day falls on a weekend or public holiday, the eligible container factor may be published on the next business day.

10.5. Application to amend or introduce an eligible container factor

Eligible container factors for material categories (including mixed material types) are determined by the EPA and published on the NSW EPA website from time to time. Refer to the EPA CDS website

for a current list of eligible container factors for approved materials and approved mixed material categories.

MRF operators may apply to the EPA for a new eligible container factor, including a new mixed category of materials by using the Container Factor – Material Type form. The MRF operator must include evidence of why a container factor should be amended or introduced. Examples of relevant evidence are documentation of a change in sorting technology or documentation about methods to separate and or count/weigh material.

MRF operators are advised to submit these applications a minimum of **135 calendar days** prior to the commencement of the quarter in which the operator would like the factor to first apply. MRF operators should contact the Scheme Coordinator before making an application to find out whether a new or amended container factor is required and the potential for additional costs.

Sampling costs to determine container factors are shared by MRF operators based on the formula published on the EPA website as amended from time to time. A MRF operator that introduces a new container factor may be subject to additional costs to meet sampling requirements.

Applications will be considered on a case by case basis. MRF operators must provide access to the EPA and Scheme Coordinator for site visits as part of the application assessment process. Timeframes for assessing an application will be dependent on the evidence provided and may extend beyond the 135 day period depending on the level of complexity of the changes to the sampling methodology and verification processes or the reporting systems. For example, if the EPA determines that sampling trials need to be undertaken to develop a sampling methodology, then a longer timeframe than 135 days may be required.

An application will be rejected if the MRF operator provides insufficient evidence or the application is otherwise incomplete. An application will be refused if the EPA determines that the application should be refused on its merits. The merits are assessed on potential benefits to the Scheme and Scheme participants, potential risk to the Scheme, whether the proposed action would unfairly prejudice other participants and whether the action would cause inefficiencies.

11. Dispute resolution

11.1. Dispute resolution process in this section must be undertaken

Mediation or expert determination, as described in this section, must be exhausted before either party (namely the Scheme Coordinator or MRF operator) commences legal proceedings, unless the parties otherwise agree.

11.2. Step 1: Notice of Dispute

If a dispute or difference arises between the Scheme Coordinator and a MRF operator in respect of any fact, matter or thing arising out of, or in any way in connection with this Protocol (including the manner in which the Scheme Coordinator applies the Act, Regulation or Protocol), the party raising the dispute must:

- give a notice to the other party in writing, specifying:
 - the issues in dispute (including relevant dates)
 - reasons why the party is of the view there is a dispute (including relevant supporting evidence)
 - the party's position in relation to the dispute.

This is the 'Notice of Dispute'.

11.3. Step 2: Genuine attempts to resolve the dispute through negotiation

Within **14 business days** following the receipt of a Notice of Dispute, the parties must attempt to undertake genuine and good faith negotiations with a view to resolving the dispute either in person or through electronic communication. These negotiations must take place before mediation is commenced.

The relevant parties that undertake the negotiation must have the authority to agree to a resolution of the dispute.

If parties reach agreement following negotiation (in whole or part), the outcome must be reduced to writing and will be final and binding on the parties.

Before beginning mediation, the parties may agree to extend the timeframe for negotiations.

11.4. Step 3: Mediation

Where a dispute between the MRF operator and the Scheme Coordinator remains unresolved (in whole or part) for **30 business days** following the Notice of Dispute, either party may give written notice to the other party requiring that the dispute be submitted to mediation (Mediation Notice). The mediation must be in accordance with the Resolution Institute Mediation Rules. The mediator must be:

- a. agreed between the parties within **10 business days** after the receipt of the Mediation Notice; or
- b. if the parties fail to reach agreement, the incumbent Chair of the Resolution Institute will nominate the mediator.

Unless otherwise agreed by the parties, the costs of mediation will be shared equally between the parties, and each party will bear its own legal costs.

11.5. Step 4: Expert determination

Where a dispute between the MRF operator and the Scheme Coordinator remains unresolved after taking part in mediation, either party may give written notice to the other party (Expert Determination Notice) requiring that the dispute be submitted for expert determination. The parties can also agree to refer the matter to Expert Determination if genuine attempts have been taken to resolve the dispute through negotiation in accordance with section 11.3 of the Protocol.

The parties can begin expert determination without commencing mediation by agreement.

The expert determination must be conducted by:

- a. an independent industry expert agreed by the parties within **10 business days** after receipt of the Expert Determination Notice; or
- b. where the parties fail to reach an agreement, an independent industry expert appointed by the incumbent Chair of the Resolution Institute.

The expert will:

- i. act as an expert and not as an arbitrator
- ii. proceed in any manner they think fit
- iii. conduct any investigation they consider necessary to resolve the dispute or difference
- iv. examine such documents, and interview such persons, as they may require and
- v. make such directions for the conduct of the determination as they consider necessary.

The expert determination process will be conducted in accordance with the above and the current dispute resolution rules, as published by the Resolution Institute from time to time.

Unless otherwise agreed between the parties, the expert must notify the parties of their decision within **25 business days** from the acceptance by the expert of their appointment.

11.5.1. Expert determination is final and binding

The outcome of expert determination is final and binding on the parties, except in the case of manifest error.

11.5.2. Expert determination is not arbitration

Expert determination under this section is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from their own knowledge and expertise.

11.5.3. Costs of expert determination

Unless otherwise agreed by the parties, the costs of expert determination will be shared equally between the parties, and each party will bear its own legal costs.

11.6. Payment must not be withheld

Only payments that are the subject of a dispute may be withheld by the Scheme Coordinator. The Scheme Coordinator must not withhold other payments that the MRF operator claims for that do not come within the scope of the dispute.

11.7. Neither the State nor EPA are involved in dispute resolution

The Scheme Coordinator is responsible for interpreting and applying the Protocol. Where a dispute arises between the MRF operator and the Scheme Coordinator, the State of NSW and the EPA will not be a party to, or the arbiter of, any such disputes. MRF operators should seek independent advice when applying the Protocol to their specific needs.

12. Repeal of Protocol

The provisions of this Protocol continue to apply to anything commenced under this Protocol, in the event it is repealed.

13. EPA Compliance audits

An Authorised Officer appointed by the EPA may conduct an audit or inspection of a MRF operator including any of its facilities, to determine compliance with the Act, Regulation and Protocol at any time.

Appendix A

Glossary of Terms

Adjustment Tonnage

Adjustment Tonnage is the proportion of the total material received by the MRF associated with each council and assessed for each month of the claim period.

The Scheme Coordinator will determine the Adjustment Tonnage as follows:

If the MRF operator has available weighbridge records for the claim period, the Scheme Coordinator will utilise the weighbridge records to calculate the Adjustment Tonnage for each council each month.

If weighbridge records are not available for the whole claim period, the Scheme Coordinator will utilise the Annual Throughput Reconciliation to calculate the Adjustment Tonnage for each council. The use of annual data will mean the Adjustment Tonnage will be the same for each council for each month of the claim period.

Adjustment Tonnage is calculated as follows:

Adjustment Tonnage_i = weight of material for council i / total weight of all council material

Note: If weighbridge records are used, the weights will be based on the totals for each month taken from the weighbridge records. If the Annual Throughput Reconciliation is used, the weights will be the annual totals reported in the Annual Throughput Reconciliation.

Approved Person

An Approved Person for the purposes of cl 19 of the Regulation, is:

- a director of the MRF operator or the ultimate parent entity of the MRF operator;
- the chief executive officer of the MRF operator or the ultimate parent entity of the MRF operator;
- the chief financial officer of the MRF operator or the ultimate parent entity of the MRF operator;
- the company secretary of the MRF operator or the ultimate parent entity of the MRF operator; or
- any designated person to whom the above persons have delegated their authority in writing.

Council Adjustment Factor

The Council Adjustment Factor is calculated for each month in the claim period. The Council Adjustment Factor is the sum of the Eligible Days Factor for each council for month j multiplied by the Adjustment Tonnage for each council delivering material to the MRF during month j.

$$\text{Council Adjustment Factor}_j = \sum_{i=1}^n (\text{Eligible Days Factor}_{ij} \times \text{Adjustment Tonnage}_{ij})$$

Eligible Days Factor_{ij} means the Eligible Days Factor for council i in month j.

Adjustment Tonnage_{ij} means the Adjustment Tonnage for council i in month j.

n = the number of councils delivering material to the MRF during month j.

Eligible Days Factor

Eligible Days Factor means the number of days during month j of the claim period that the MRF Operator was compliant with cl 18(2) of the Regulation for each council divided by the total number

of days that material was received from that council. The Scheme Coordinator will determine this by reference to the following (non-exhaustive):

Claim declaration submitted by the MRF operator for the claim period;

Eligibility confirmation for the claim period in accordance with section 5.2.1 and 5.2.2 of the Protocol including notifications to the EPA in accordance with cl 18(2)(a)(i) and cl 18(2)(b) of the Regulation and evidence of Processing Agreements submitted to the Scheme Coordinator;

Weighbridge records; and

any other information reasonably determined by the Scheme Coordinator

Eligible Days Factor is calculated for each council as follows:

Eligible Days Factor_{ij} = Number of days compliant with cl 18(2) of the Regulation in month j for council i / Number of days from the first date to the last date inclusive in month j that material was received from council i.

In the absence of weighbridge records or other acceptable business records, the number of days that material was received from council i will be equal to the total number of calendar days in that month.

For the avoidance of doubt, the Eligible Days Factor for a council will be a number ranging from 0 (no compliance) to 1 (full compliance).

Note: The Eligible Days Factor is calculated for each month for each council. This means the Eligible Days Factor may differ for each month in the claim period.

Import Ratio

Materials received from NSW sources to total materials received by the MRF against the total estimated number of eligible containers delivered from the MRF using the following calculation:

$$S = \frac{N}{T}$$

Where:

S is the import ratio.

N is the total weight of material received at the MRF from sources within NSW during the claim period (quarter), excluding any Non-claimable Material.

T is the total weight of material received at the MRF from all sources during the claim period (quarter), excluding any Non-claimable Material.

Note: The Import ratio is calculated for the entire claim period (quarter). It is not a monthly calculation.

Inter-MRF Transfer material

Any unprocessed kerbside comingled material received from another MRF operator that meets the requirements for an Inter-MRF Transfer in the Protocol and is approved in accordance with section 6.4 of the Protocol.

Material recovery facility (MRF)

A facility or a place that is or includes the processing for reuse or recycling of domestic waste designated for recycling and collected by that or any other person during the course of domestic waste management services.

Material recovery facility operator (MRF operator)

See s 20 of the Act.

Method 1 – Weighing (Eligible Container Factor) Calculation

$$E_{ij} = (Q_{ij} \times S \times E_{fi})$$

Where:

E_{ij} is the estimated number of eligible containers of material type i recycled by the MRF operator making the claim or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country, during month j of the claim period.

Q_{ij} is the total weight of output material type i measured in tonnes recycled by the MRF operator making the claim or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country, excluding any Non-claimable Material during month j of the claim period.

S is the import ratio determined using the import ratio calculation for the claim period

E_{fi} is the eligible container factor for output material i as referenced in section 10.3.

i is the material type for which the claim is being made

j is the month being assessed during the claim period

Method 2 (Direct Counting) Calculation

$$E_{ij} = (Q_{eij} \times S)$$

Where:

E_{ij} is the estimated number of eligible containers of material type i recycled by the MRF operator making the claim or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during month j of the claim period.

Q_{eij} is the total counted number of eligible containers for output material type i recycled by the MRF operator making the claim, or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during month j of the claim period, excluding any Non-claimable Material.

S is the import ratio determined using the import ratio calculation for the claim period.

Non-claimable Material

Is any processed or unprocessed material *received* by a MRF from the Network Operator, a collection point operator or another MRF operator.

The exception to this is:

material that is transferred from one facility to another (either within the same or a different class of facility) by the same MRF operator (where that receiving facility is a 'recycling facility' in accordance with cl 17 of the Regulation and it is for the purposes of recycling).

material that has been the subject of an approved Inter-MRF Transfer in accordance with this Protocol.

Relevant Licence

A current licence (EPL) under the *Protection of the Environment Operations Act 1997* authorising the processing of domestic waste (otherwise than by thermal treatment).

Sampling Costs Calculation

The formula for sampling costs calculations is published on the EPA website as amended from time to time.

Sampling Strategy

The MRF Processing Refund Protocol Sampling Strategy sets out the theory and methodology for the development of sampling. The Sampling Strategy is published on the EPA website, as amended from time to time.

Total Refund Calculation

The Scheme Coordinator must calculate the total processing refund payable to a MRF operator for each material type each claim period using the calculation:

$$P_i = \sum_{j=1}^3 E_{ij} \times RA$$

Where:

P_i is the Total Processing Refund Payable to the MRF operator for material type i for the claim period (quarter).

$$\sum_{j=1}^3 E_{ij}$$

is the sum of the estimated number of eligible containers of material type i for months 1, 2, 3 of the claim period (quarter) recycled by the MRF operator making the claim, or delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country during the quarter for all output material types, excluding any Non-claimable Material.

RA is the refund amount per eligible container, as set out in the Regulation.