

EXPLANATORY STATEMENT

Issued by the Minister for Energy and Emissions Reduction

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment (Carbon Capture and Storage Projects) Rule 2021

Purpose of Amendment Rule

The *Carbon Credits (Carbon Farming Initiative) Amendment (Carbon Capture and Storage Projects) Rule 2021* (the Amendment Rule) sets specific arrangements for carbon capture and storage projects (CCS projects) covered by the *Carbon Credits (Carbon Farming Initiative—Carbon Capture and Storage) Methodology Determination 2021* (CCS Method).

These arrangements enable CCS projects to have an extended accounting period, and provide a longer limit on the deferral of the start of crediting periods for such projects.

Background: Emissions Reduction Fund

In 2014, the Australian Government amended the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) with the *Carbon Farming Initiative Amendment Act 2014* (CFI Amendment Act). The CFI Amendment Act established the Emissions Reduction Fund (ERF) to support investment in carbon abatement projects across all sectors of Australia's economy.

The Act is supported by subordinate legislation, including methodology determinations, the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (Principal Rule) and the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Regulations). The Principal Rule and the Regulations provide detailed explanations of the way in which the Act is administered by the Clean Energy Regulator (the Regulator). The Minister for Energy and Emissions Reduction is empowered to make legislative rules under section 308 of the Act.

The ERF is a key component of the Government's policy agenda to drive emissions reductions across the economy and to fulfil Australia's international commitments under the Paris Agreement.

Outline

The Act delegates certain administrative matters to the legislative rules. These matters include enabling the Principal Rule to specify a different limit on the deferral of start times for certain types of projects and to provide for an 'extended accounting period' for certain projects.

The Amendment Rule amends section 6 of the Principal Rule to provide for projects under the CCS method to be subject to an extended accounting period, similar to projects covered by the Alternative Waste Treatment and Source Separated Organic Waste methods. This amendment will allow the CCS method to make arrangements relating to the period after the end of the crediting period of a CCS project where no return event has occurred. This

includes monitoring and reporting obligations for the extended accounting period, which are designed to minimise risks to the integrity of abatement achieved in the crediting period that may arise where a project has not completed a return event, and ensure only abatement achieved is credited.

The Amendment Rule also inserts a new section 66D to the Principal Rule, to specify a 60 month limit on deferral of the start of a crediting period for CCS projects. Similar to existing sections of Part 5, Division 1 of the Principal Rule, this amendment specifies a different limit on deferral from the default of 18 months set out in subsection 69(5) of Act. The amendment recognises that a limit of 18 months is not appropriate for the circumstances of CCS projects, which may require longer lead times to commence the crediting period following declaration of the project.

Detailed description of the Amendment Rule

Attachment A outlines and describes the sections in the Amendment Rule.

Public consultation

Joint consultation between the Regulator and the Department of Industry, Science, Energy and Resources on the CCS Method and amendments to the Principal Rule was undertaken from 29 June 2021 until 27 July 2021. An exposure draft of proposed amendments to the Principal Rule were included as part of the consultation on the Department of Industry, Science, Energy and Resources' website for comment and feedback. Comments and advice received were taken into account in finalising the Amendment Rule.

Most submissions which commented on this issue were supportive of the proposed amendments. Other submissions proposed a longer maximum period for deferral of the crediting period, to allow more flexibility on lead in times for CCS projects.

Regulatory impact

The Office of Best Practice Regulation has confirmed that a Regulatory Impact Statement is not required, because the proposal is unlikely to have more than a minor regulatory impact.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the sections in the Carbon Credits (Carbon Farming Initiative) Amendment (Carbon Capture and Storage Projects) Rule 2021

1. Name

Section 1 provides that the name of the Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment (Carbon Capture and Storage Projects) Rule 2021*.

2. Commencement

Section 2 provides that the Amendment Rule would commence on the day after it is registered.

3. Authority

Section 3 provides that the Amendment Rule would be made under section 308 of the Act. The power to make rules in section 308 of the Act includes the power to amend or revoke rules that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

4. Schedules

Section 4 provides that the Amendment Rule would, when made, amend the Principal Rule in the manner set out in the schedules.

Schedule 1—Amendments

Item 1: Section 6

This item amends the current section text to delineate it as subsection 6(1). This will allow for item 2 to insert new subsections 6(2) and (3).

Item 2: At the end of section 6

Section 7A of the Act enables the legislative rules to specify eligible offsets projects which may be subject to an extended accounting period. The Act provides that the extended accounting period for a specified project is the period beginning immediately after the end of the crediting period, and ending at a time ascertained in accordance with the legislative rules.

This item adds new subsections 6(2) and (3). Subsection 6(2) specifies for the purposes of section 7A of the Act that an eligible offsets project covered by the CCS method is subject to an extended accounting period, unless the project has a *return event* within its crediting period. If the project has a return event within its crediting period, there is no extended accounting period.

The Act and CCS method impose certain responsibilities for monitoring and reporting on the project during the extended accounting period to ensure integrity of abatement achieved by the project. Under the method, storage site monitoring emissions and fugitive emissions for a reporting period during the extended accounting period are subtracted from the net abatement

when a project applies for a certificate of entitlement following a return event. For example, offsets reports would be required for such projects at least once every two years.

A *return event* has the meaning given in section 26 of the CCS Method, and requires that certain processes have been completed for each storage site under the applicable Commonwealth, State or Territory legislation. It is expected that the return of the recognised licence, or the issue of certification analogous to it, would indicate that the storage site is secure and the greenhouse gases injected in it can be considered permanently stored. Return events need to be completed for every storage site that is part of the project and not just some of those storage sites for the defined 'return event' to occur. An example of such requirements is section 399 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The extended accounting period commences at the end of the crediting period for the project in accordance with section 7A of the Act, and ends with the earlier of the two circumstances listed in new paragraphs 6(2)(a) and (b); the first under paragraph 6(2)(a) being the day after the return event for the project occurs, or the second under paragraph 6(2)(b) being 25 years after the crediting period for that project ends.

Paragraph (2)(b) allows for circumstances where a project is unable to complete a return event within a 25 year period, for example where a project proponent cannot satisfy a relevant authority that it has met the relevant conditions of a recognised law of a State or Territory to surrender a recognised licence. The period is defined as 25 years, which allows reasonable time for a project proponent to complete a return event and claim withheld abatement, but ensures proponents are not indefinitely responsible for reporting to the Regulator. If the extended accounting period for a project ends without a return event occurring in accordance with new paragraph 6(2)(b), the CCS Method does not allow for the project proponent to apply to be credited for the balance of abatement withheld for risk of reversal.

New subsection 6(3) provides legal certainty that a reference to a methodology determination in subsections 6(1) and (2) includes any earlier versions of that methodology determination consistent with application provisions in the Act. This includes methodology determinations which apply after expiry, variation, revocation of a method consistent with the Act, or where the Regulator has approved the application of a different method from the start of a reporting period consistently with section 130 of the Act.

Item 3: After section 66C

Subsection 69(5) of the Act establishes a default limit of 18 months on deferral of the start of a crediting period after the declaration of an eligible offsets project takes effect, unless otherwise specified for a particular kind of project in the legislative rules.

Item 3 inserts new section 66D to the Principal Rule, which provides for certain methodology determinations to have a different number of months specified as the limit of deferral of start of crediting period, as specified in the table at section 66D. This format will allow consistency in format, and simplify how limits on deferral of start of crediting period are specified in future amendments.

The table at item 3 specifies that projects covered by the CCS Method are subject to a limit of 60 months, amounting to 5 years. The period is expressed in months to be consistent with the

terms of the delegation by subsection 69(5) of the Act. In accordance with subsection 69(5) of the Act and the Amendment Rule, the start time for a project covered by the CCS Method will be compliant if it is no later than 60 months after the declaration of the project took effect.

Item 3 makes clear that new section 66D applies to projects covered by any earlier versions of that methodology determination consistent with application provisions in the Act. This includes methodology determinations which apply after expiry, variation, revocation of a method consistent with the Act, or where the Regulator has approved the application of a different method from the start of a reporting period consistently with section 130 of the Act.

Statement of Compatibility with Human Rights

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

Carbon Credits (Carbon Farming Initiative) Amendment (Carbon Capture and Storage Projects) Rule 2021

The *Carbon Credits (Carbon Farming Initiative) Amendment (Carbon Capture and Storage Projects) Rule 2021* (the Amendment Rule) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) enables the crediting of greenhouse gas abatement from emissions reduction activities across Australia. Greenhouse gas abatement is achieved either by reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it.

The *Carbon Credits (Carbon Farming Initiative) Rule 2015* details additional administrative procedures under the Act, including information and audit requirements for project applications and reports, the fit and proper person test for participants, procedures for parts of the carbon abatement purchasing process, the length of reporting periods, and notification and record-keeping requirements

The Amendment Rule amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* to allow for an extended accounting period for carbon capture and storage projects and to allow such projects to defer the start of their crediting periods for up to 5 years. The Amendment Rule should be viewed in combination with the *Carbon Credits (Carbon Farming Initiative—Carbon Capture and Storage) Methodology Determination 2021* which provides for the eligibility of carbon capture and storage projects under the Act.

Human rights implications

The Amendment Rule does not engage any of the applicable rights or freedoms.

A detailed statement of compatibility of the provisions of the Emissions Reduction Fund is provided in the Explanatory Memorandum for the *Carbon Farming Initiative Amendment Bill 2014*:

<https://www.legislation.gov.au/Details/C2014B00129/Explanatory%20Memorandum/Text>.

Conclusion

The Amendment Rule is compatible with human rights because it does not limit any human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Hon Angus Taylor MP

Minister for Energy and Emissions Reduction