

# **EXPLANATORY STATEMENT**

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

*National Greenhouse and Energy Reporting Act 2007*

*National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment  
(Landfill Gas Capture) Rule 2021*

## **Background**

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

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

The Safeguard Mechanism commenced on 1 July 2016. It applies to facilities with more than 100,000 tonnes of carbon dioxide equivalent (tonnes CO<sub>2</sub>-e) scope 1 (direct) emissions each year. These facilities must keep their emissions below a legislated baseline or purchase Australian carbon credit units to make up the difference. Baselines are intended to accommodate business growth and allow businesses to continue normal operations.

For landfills, emissions from waste deposited before 1 July 2016 are not covered by the Safeguard Mechanism. This ensures the Safeguard Mechanism does not retrospectively cover emissions from activities that occurred before scheme commencement, called legacy emissions. Emissions produced from waste deposited after 1 July 2016, non legacy emissions, are covered by the Safeguard Mechanism.

The landfill-benchmark baseline determination is available to the landfill sector only, recognising landfills have no discernible output, and emissions from solid waste take place in years after the waste has been deposited. A landfill baseline determination is derived using the prescribed capture efficiency rate.

## **Purpose and operation**

The *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Landfill Gas Capture) Rule 2021* (the Amendment Rule) inserts a prescribed capture efficiency rate into the formula for calculating the baseline emissions number under a landfill baseline determination. The prescribed capture efficiency rate is included in section 54 of the Principal Rule.

The capture efficiency rate represents the proportion of landfill gas that is captured and the methane in the gas destroyed.

The inclusion of a prescribed capture efficiency rate in the Principal Rule finalises the implementation of the landfill baseline determination approach that was legislated before the commencement of the Safeguard Mechanism in 2015.

Rather than being a single baseline emissions number, a landfill-benchmark baseline determination is a formula. The formula calculates the baseline emissions number applicable to a landfill facility in a particular financial year. This means that the baseline emissions number is recalculated using the formula for each year that the facility is covered by the baseline determination.

The formula calculates the baseline emissions number for the financial year  $t$  as follows:

The amount of non-legacy greenhouse gas emissions in tonnes CO<sub>2</sub>-e of the facility as included in a report under the Act for the financial year  $t$ . The amount disregards any capture of those emissions at the facility.

multiplied by

One minus the capture efficiency rate for non-legacy greenhouse gas emissions. The capture efficiency rate represents the proportion of landfill gas that is captured and destroyed, so this number is subtracted from one to calculate the amount of covered emissions for which the facility will receive a baseline allocation.

multiplied by

One minus the oxidation factor in the near surface conditions of the landfill in subsection 5.4(1) of the *National Greenhouse and Energy Reporting (Measurement) Determination* in force at the start of the financial year  $t$ . This factor represents the proportion of landfill gas that passes through the surface of the landfill and is oxidised by microbial bacteria. This number is subtracted from one to calculate the amount of non-legacy greenhouse gas emissions that is emitted after taking into account this microbial oxidation effect.

### **Authority**

The (Amendment Rule) is made under subsection 22XS(1) of the Act.

### **Consultation**

The landfill baseline approach, including the concept of a prescribed capture efficiency rate was publicly consulted on before the commencement of the Safeguard Mechanism in 2016. The landfill baseline approach was further consulted on in 2018 in the context of the March 2019 amendments to the Safeguard Mechanism.

On 18 August 2021, the Government released the proposed amendments to the Principal Rule together with an accompanying explanatory document. Comments closed on 15 September 2021. Two formal submissions were received during the public consultation process and were supportive of the amendments.

### **Regulatory impact analysis**

The Amendment Rule inserts a prescribed capture efficiency rate into the formula for calculating the baseline emissions number for landfill facilities into the Principle Rule. The Office of Best Practice Regulation has advised that the amendment instrument does not require a Regulation Impact Statement (reference number 43967).

### **Safeguard Rule details**

The Principal Rule and the Amendment Rule are legislative instruments within the meaning of the *Legislation Act 2003*. The Principal Rule commenced on 1 July 2016. The whole of the Amendment Rule will commence on the day after registration. The ordinary repeal arrangements for amending instruments apply. Details of the amendments are at [Attachment A](#).

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

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

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

### **Section 1 – Name of Instrument**

This section specifies the name of the legislative instrument is the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Landfill Gas Capture) Rule 2021* (the Amendment Rule).

### **Section 2 – Commencement**

This section provides that the whole of the instrument commences the day after it is registered.

### **Section 3 – Authority**

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

### **Section 4 – Schedules**

This section provides for the Principal Rule to be amended or repealed as set out in the applicable items in the Schedules to this instrument. The intent of changes made through the Amendment Rule is set out below.

### **Schedule 1 – Amendments**

#### **1. Section 4 (definition of Benchmark Emissions-Intensity Index)**

This item removes the text “(including the prescribed capture efficiency rate for non-legacy greenhouse gas emissions)”. This is unnecessary as the prescribed capture rate will be set out in section 54 rather than Schedule 1.

#### **2. Subsection 54(3) (formula)**

This item alters the formula for calculating the baseline emissions number for landfill facilities by replacing the notation  $BC_t$  with CER, to represent the capture efficiency rate.

#### **3. Subsection 54(3) (definition of $BC_t$ )**

The item repeals the definition and inserts a value for the capture efficiency rate, as represented by CER in the formula. The rate of 37.2 per cent has been calculated by the Department of Industry, Science, Energy and Resources as an industry average based on reported information under the *National Greenhouse and Energy Reporting Act 2007*. The value underwent independent technical review. The industry average approach is consistent with the approach taken to set default emissions intensity values for the outputs of facilities in other sectors covered by the Safeguard Mechanism. Industry average default emissions intensity values for covered facilities outside the landfill sector were set in the Safeguard Rule in three tranches in March 2020, October 2020, and July 2021.

4. Section 1 of Schedule 1

This item omits the text “and the prescribed capture efficiency rate for non-legacy greenhouse gas emissions” as the prescribed capture efficiency rate is now placed as described above, in Subsection 54(3).

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

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

### **National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Landfill Gas Capture) Rule 2021**

This 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 Safeguard Mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions.

The *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Landfill Gas Capture) Rule 2021* (the Amendment Rule) inserts a prescribed capture efficiency rate into the formula for calculating the baseline emissions number for landfill facilities into the Principle Rule.

#### **Human rights implications**

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

The Amendment Rule inserts a prescribed capture efficiency rate into the formula for calculating the baseline emissions number for landfill facilities into the Principle Rule. The rate was developed using data from facilities operating in Australia covered under the Safeguard Mechanism. A guiding principle is protecting the confidentiality of sensitive industry data through the use of high quality and robust data. To preserve confidentiality, an average of multiple data points (over multiple facilities and multiple years) was taken rather than data from a single facility.

The Amendment Rule does not authorise an unlawful interference with an individual's privacy because it applies to large facilities whose responsible emitters are only likely to be large businesses, not individuals, and the Amendment Rule adequately specifies the circumstances in which information may be collected. Information provided to the Clean Energy Regulator is protected by strict secrecy provisions in the *Clean Energy Regulator Act 2011* as well as the *Privacy Act 1988*. The information that is published about the Safeguard Mechanism is often publicly available from other sources, not of a personal nature and helps to promote the integrity of the Safeguard Mechanism.

#### **Conclusion**

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

**The Hon. Angus Taylor MP**

**Minister for Energy and Emissions Reduction**