

EXPLANATORY STATEMENT

Issued by the Minister for Industry, Energy and Emissions Reduction

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment (Industrial and Commercial Emissions Reduction Projects) Rule 2021

Purpose of Amendment Rule

The *Carbon Credits (Carbon Farming Initiative) Amendment (Industrial and Commercial Emissions Reduction Projects) Rule 2021* (the Amendment Rule) provides a longer limit on the deferral of the start of crediting periods for industrial and commercial emissions reduction (ICER) projects covered by the *Carbon Credits (Carbon Farming Initiative—Industrial and Commercial Emissions Reduction) Methodology Determination 2021* (ICER Method).

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 Industry, 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.

The Amendment Rule inserts a new item to the table at section 66D of the Principal Rule, to specify a 36 month limit on deferral of the start of a crediting period for ICER 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 ICER 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 ICER Method and amendments to the Principal Rule was undertaken from 20 July 2021 until 17 August 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.

Submissions which commented on this issue were supportive of the proposed amendments.

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 (Industrial and Commercial Emissions Reduction Projects) Rule 2021

1. Name

Section 1 provides that the name of the Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment (Industrial and Commercial Emissions Reduction 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 66D (after table item 1)

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.

This item inserts new item 2 into the table at section 66D to the Principal Rule, which specifies that projects covered by the ICER Method are subject to a limit of 36 months, amounting to 3 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 ICER Method will be compliant if it is no later than 36 months after the declaration of the project took effect.

Section 66D makes clear that new item 2 of the table 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, or revocation of a method consistent with the Act, or where the Regulator has approved the application of a different method to a project 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 (Industrial and Commercial Emissions Reduction Projects) Rule 2021

The *Carbon Credits (Carbon Farming Initiative) Amendment (Industrial and Commercial Emissions Reduction 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 projects subject to the *Carbon Credits (Carbon Farming Initiative—Industrial and Commercial Emissions Reduction) Methodology Determination 2021* (ICER Method) to defer the start of their crediting periods for up to 3 years. The Amendment Rule should be viewed in combination with the ICER Method which provides for the eligibility of industrial and commercial emissions reduction 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 Industry, Energy and Emissions Reduction