EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Climate Change and Energy,
the Hon. Chris Bowen MP

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023

Legislative Authority

Section 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Carbon Farming Initiative Act) empowers the Minister to make legislative rules prescribing matters required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The power to make rules in section 308 of the Act includes the power to amend rules already made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

Purpose

The *Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023* (the Amendment Rules) amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule).

The Amendment Rules preclude new projects that involve the creation of Australian Carbon Credit Units (ACCUs) solely from reducing emissions covered by the Safeguard Mechanism at designated large facilities as defined in the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) from being declared to be eligible offsets projects under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Carbon Farming Initiative Act).

The Amendment Rules also remove the requirement for the Clean Energy Regulator to cancel ACCUs as soon as practicable after they are delivered under a carbon abatement contract.

These measures support the Government's reforms to the Safeguard Mechanism, which will be implemented in part through the *Safeguard Mechanism (Crediting) Amendment Bill 2022* (the Bill), and further associated amendments to delegated legislation. Passage of the Bill is not necessary for the Amendment Rules to be made.

Background: Australia's carbon crediting scheme

The Carbon Farming Initiative 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, consistent with Australia's international obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement.

In 2014, the *Carbon Farming Initiative Amendment Act 2014* (Carbon Farming Initiative Amendment Act) expanded the crediting of emissions reductions to support investment in carbon abatement projects across all sectors of Australia's economy.

The Carbon Farming Initiative Amendment Act enabled the Australian Government to purchase approved and verified emissions reductions from registered projects. The Clean Energy Regulator (the Regulator) is empowered under the Act to conduct processes to purchase emissions reductions, and enter into contracts on behalf of the Commonwealth.

Abatement of emissions at industrial facilities is included in the eligible activities under Australia's carbon crediting scheme. There are six types of carbon crediting methods available for industry, with around 18 different active methods. There has been a limited number of projects registered at facilities covered by the Safeguard Mechanism. Many of these projects involve energy efficiency improvements or reduce methane emissions at landfills and coal mines.

Background: Safeguard Mechanism

The NGER 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.

The Safeguard Mechanism commenced on 1 July 2016. It applies to facilities with more than 100,000 tonnes of scope 1 (direct) carbon dioxide equivalent (t CO_2-e) emissions each year. These facilities must keep their emissions below a legislated baseline or surrender prescribed carbon units (which include ACCUs) to make up the difference.

The Bill builds incentivises facilities covered by the Safeguard Mechanism to reduce emissions and contribute to Australia's international commitments. The reforms to the Safeguard Mechanism will support emissions reductions in the industrial sector, helping to ensure Australian businesses can remain competitive as the world decarbonises. The Bill was introduced to Parliament on 30 November 2022.

The Bill provides for credits, known as Safeguard Mechanism Credits or SMCs, to be issued to facilities whose emissions are below baseline levels. These credits each represent a tonne of emissions and can be traded and used by other Safeguard covered facilities to reduce their net emissions. This means that even if a facility's emissions are below its baseline level, it has an incentive to implement cost-effective emissions reduction opportunities.

In response to stakeholder feedback, the Bill enables Rules under the Carbon Farming Initiative Act to provide for the sale of ACCUs from a Government registry account. This provides flexibility for how the Government might manage its holdings of ACCUs, such as if the Government decided to assist in price stability under the reformed Safeguard Mechanism.

Operation

The Amendment Rules insert an eligibility requirement which prevents a project from being declared to be an eligible offsets project if it is likely to solely involve the creation of ACCUs from carbon abatement of covered emissions from the operation of a Safeguard facility. The requirement applies to project applications that are made on or after the day that the Amendment Rule commences.

The Amendment Rule also removes the requirement in subsection 11A(2) that, for the purposes of paragraph 20H(1)(c) of the Carbon Farming Initiative Act, the Regulator must cancel ACCUs received through carbon abatement contracts, as soon as practicable.

Detailed description of the Amendment Rules

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

Public consultation

The Department released a consultation paper on reforms to the Safeguard Mechanism on 18 August 2022 and submissions were open until 20 September 2022. An exposure draft of the Bill was open for public consultation from 10 October 2022 to 28 October 2022.

The Amendment Rules reflect feedback that eligible offset projects should be allowed to be registered where they both reduce emissions covered by the Safeguard Mechanism and reduce non-covered emissions, provided that ACCUs are issued only for abatement from non-covered emissions.

Many businesses made submissions that raised concerns about the risk of the price of compliance units being too high. To manage this risk, the Bill would enable rules under the Carbon Farming Initiative Act to provide for the Regulator to sell ACCUs that are held by the Commonwealth. The amendment to section 11A allows for this scheme design, in response to stakeholder feedback.

Review

The Government will monitor the implementation of the changes to the Principal Rule.

The Government proposes five-yearly reviews of the Safeguard Mechanism reforms including amended requirements under the Carbon Farming Initiative Act. The first of these is proposed to be conducted in 2026-27.

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.

Regulatory impact

An Impact Assessment is not required, as the Amendment Rules are non-regulatory in nature and have zero regulatory cost.

ATTACHMENT A

Details of the sections in the Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023

1. Name

Section 1 provides that the name of the Amendment Rules is the *Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023*.

2. Commencement

Section 2 outlines the commencement of the Amendment Rules.

The table specifies that the whole of this instrument will commence on the day after the registration of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. It also clarifies that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the instrument.

3. Authority

Section 3 clarifies that the Amendment Rules are made under the Act. In particular, section 308 of the Act provides the Minister with the power to make legislative rules. The power to make rules in section 308 of the Act includes the power to amend rules already 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 Rules would, when made, amend the Principal Rule in the manner set out in the Schedule.

Schedule 1—Amendments

This Schedule sets out amendments to the Principal Rule.

Item 1 – Section 4 (insertion of definitions for covered emissions and designated large facility)

This item inserts the definitions in section 4 for covered emissions and designated large facility, to each have the same meaning as in the NGER Act.

Item 2 – Paragraph 9(5)(a) (updating the use of designated large facility to refer to the inserted definition)

This item removes the reference to NGER Act regarding the use of designated large facility, instead making use of the inserted definition.

Item 3 – Section 11A (Australian carbon credit units purchased by the Commonwealth under carbon abatement contracts)

This item removes the requirement in subsection 11A(2) for the Regulator to cancel ACCUs received through carbon abatement contracts, as soon as practicable. The intent is that ACCUs delivered to the Commonwealth under a carbon abatement contract would no longer be cancelled. This amendment is required to enable the Commonwealth to retain ACCUs delivered under carbon abatement contracts.

Item 4 – Section 20 (eligibility requirements for designated large facilities)

Section 20 sets out eligibility requirements regarding consent to carry out the project from the person with operational control of the facility, when the project involves carbon abatement at a facility that is likely to emit more than 100,000 tonnes of carbon dioxide equivalent of Scope 1 emissions for one or more years in the crediting period.

This item repeals the Section 20 eligibility requirement, and replaces it with a new provision to ensure that an offsets project will not be considered eligible (and declared to be an eligible offsets project) if it is likely to involve the creation of ACCUs solely from carbon abatement of covered emissions from the operation of a designated large facility. The definitions of covered emissions, designated large facility and operation have the same meaning as in the NGER Act.

Projects that reduce both non-covered emissions and covered emissions may still be eligible to be registered as an eligible offsets project. To be eligible, the relevant methodology determination for such projects would need to provide a method for excluding carbon abatement of covered emissions. This would ensure the projects only generate ACCUs attributable to abatement of emissions that are not covered by the Safeguard Mechanism. An example of this is a Coal Mine Waste Gas project that applies as a displacement electricity production project which does not generate ACCUs for the conversion of methane, and is only issued with ACCUs associated with the delivery of electricity to the grid or displacement of scope 2 emissions of the designated large facility (which are not covered by the Safeguard Mechanism).

This item sets out a project registration eligibility requirement that would not apply to eligible offsets projects that have already been declared. This item therefore does not enable retrospective project revocation.

Item 5 – Subparagraph 70(4)(b)(i) (updating the use of designated large facility to refer to the inserted definition)

This item removes the reference to NGER Act regarding the use of designated large facility, instead making use of the definition in section 4 inserted by item 1.

Item 6 – Subparagraph 70(4)(b)(ii) (updating the reference to the NGER Act)

This item replaces the reference to 'that Act' with 'the NGER Act', as a consequential amendment flowing from the amendment to subparagraph 70(4)(b)(i) in item 5.

Item 7 – At the end of Part 29 (Application and transitional provisions relating to the *Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023*)

This item inserts new section 126, which provides for the application of the new section 20. This item ensures the amendments to section 20 apply to applications for declarations for eligible offsets projects that are made on or after the day that the Amendment Rules commence.

The amendments to section 20 do not apply to eligible offsets projects that have already been declared or to applications that have been made (but are not finally determined) before the Amendment Rules commence.

ATTACHMENT B

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 (No. 1) Rules 2023

The *Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023* (Amendment Rules) 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 Carbon Farming Initiative 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 in soil, biomass or organic matter. Participation in the scheme is voluntary.

The Amendment Rules amend the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule).

The Amendment Rules remove the eligibility of new projects that reduce emissions solely covered by the Safeguard Mechanism at designated large facilities as defined in the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) from being declared to be an eligible offsets project under the Carbon Farming Initiative Act. Existing projects are not impacted.

The Amendment Rules also remove the requirement for the Clean Energy Regulator to cancel Australian Carbon Credit Units (ACCUs) as soon as practicable after they are delivered under a carbon abatement contract. This is an internal administrative provision that will support the design of reforms under the Safeguard Mechanism.

Human rights implications

The amendments in the Bill will primarily regulate entities or corporations, which are not covered by human rights treaties, rather than individuals.

The Amendment Rules do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Rules are compatible with human rights because they do 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. Chris Bowen MP
Minister for Climate Change and Energy