

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Climate Change and Energy

Australian National Registry of Emissions Units Act 2011

Australian National Registry of Emissions Unit Rules 2023

Legislative Authority

Section 94A(1) of the *Australian National Registry of Emissions Units Act 2011* (the 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 94A 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 *Australian National Registry of Emissions Units Rules 2023* (the Rules) establish Safeguard Mechanism Credits (SMCs) as ‘eligible international emissions units’, and ensure SMCs are treated the same as Australian Carbon Credit Units (ACCUs) under relevant Commonwealth laws.

These measures support the Government’s reforms to the Safeguard Mechanism, as implemented through the *Safeguard Mechanism (Crediting) Amendment Act 2023* (the Safeguard Mechanism Act), and further associated amendments to delegated legislation.

Background: Australian National Registry of Emissions Units

The Australian National Registry of Emissions Units (the Registry) is an electronic system established in 2009 to enable accurate accounting of the issuance, holding, transfer, acquisition, cancellation, retirement and carryover of emissions units under the Kyoto Protocol.

The *Australian National Registry of Emissions Units Act 2011* (the Act) enabled the modification of the Registry, so it could also be used to track the location and ownership of units issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

The Registry is administered by the Clean Energy Regulator. Organisations and individuals are required to use the Registry if they want to own, transfer, cancel or relinquish eligible emissions units, including ACCUs and SMCs.

Background: Safeguard Mechanism

The Australian Government is reforming the Safeguard Mechanism as part of its whole-of-economy plan to reduce emissions consistent with Australia’s legislated targets. The reforms will support industry to reduce emissions efficiently, helping them maintain competitiveness as the global economy decarbonises.

The Safeguard Mechanism is administered through the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), which 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 applies to facilities with more than 100,000 tonnes of scope 1 (direct) carbon dioxide equivalent (t CO₂-e) emissions each year. These facilities must keep their emissions below a legislated baseline or surrender prescribed carbon units (which include ACCUs) equivalent to any emissions above their baseline.

The reforms to the Safeguard Mechanism incentivise facilities covered by the Safeguard Mechanism to reduce emissions and contribute to Australia's international commitments. The changes will support emissions reductions in the industrial sector, helping to ensure Australian businesses can remain competitive as the world decarbonises.

The Safeguard Mechanism Act provides for SMCs to be issued to facilities whose emissions are below baseline levels. These credits each correspond to a tonne of carbon dioxide equivalent of emissions (or difference in emissions compared to a facility's baseline) 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.

Consultation

The Department conducted extensive consultation on reforms to the Safeguard Mechanism, including changes to the Rules. Feedback from consultations showed significant support for crediting and trading of SMCs to be introduced, and recognition that SMCs would encourage abatement to occur where it was least costly to do so.

The Department released a consultation paper on reforms to the Safeguard Mechanism on 18 August 2022 and submissions were open until 20 September 2022. Over 240 submissions were received and all non-confidential submissions were published on the Department's website. The paper discussed the potential for SMCs to be introduced and traded under the scheme.

An exposure draft of the *Safeguard Mechanism Act* was open for public consultation from 10 October 2022 to 28 October 2022. Submissions from over 50 businesses, industry groups and individuals were received during the consultation period and all non-confidential submissions were published on the Department's website. The exposure draft included amendments to:

- enable SMCs to be included in the Registry;
- establish relevant ownership and transfer arrangements for SMCs, equivalent to those for other existing unit types;
- provide for information on holdings and cancellations of SMCs to be published, consistent with other existing unit types.

On 10 January 2023, a position paper on the Government's proposed design of reforms the Safeguard Mechanism was released, as well as draft subordinate legislation including the Rules, and received submissions until 24 February 2023. This confirmed the intention of enabling crediting and trading of SMCs as part of the reformed Safeguard scheme.

Statement of compatibility with human rights

This Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment A.

Regulatory impact

An Impact Analysis is not required, as the Rules are non-regulatory in nature and have zero regulatory cost. An Impact Analysis has been prepared for the overall Safeguard Mechanism reforms and is attached to the *Safeguard Mechanism Amendment Reforms Rules 2023*.

Commencement

The Rules is a legislative instrument with the meaning of the *Legislation Act 2003*. The whole of the Rules will commence on the day after it is registered on the Federal Register of Legislation.

Details of the Legislative Instrument

1. Name

Section 1 provides that the name of the Rules is the *Australian National Registry of Emissions Units Rules 2023*.

2. Commencement

Section 2 outlines the commencement of the 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 Rules are made under section 94A(1) of the Act, which provides the Minister with the power to make legislative rules. The power to make rules in section 94A 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. Definitions

Section 4 provides definitions for key terms that appear in the Rules. It specifies that 'Act' refers to the *Australian National Registry of Emissions Units Act 2011*. It introduces the terms 'transferee' and 'transferor' and specifies that they have the same definition as they do in subsection 48E(1) of the Act. Subsection 48E(1) of the Act refers to the transferor as the person which already has a safeguard mechanism credit unit in a registry account, and the transferee as the person which is receiving the unit.

This section also instructs that other terms used in the Rules have the meaning defined in the Act. These terms include 'registry account', 'regulator', 'safeguard mechanism credit unit' and 'transfer'.

5. Specified 'eligible international emissions unit'

Section 5 specifies that SMCs are 'eligible international emissions units' as defined in section 4 of the Act.

This helps ensure treatment of SMCs under other Commonwealth laws is equivalent to the treatment of ACCUs.

- The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* would apply to these units in the same way it does to ACCUs.
- The units will also be financial products under the *Australian Securities and Investments Commission Act 2001* and *Corporations Act 2001*.
- The units will also have the same treatment as ACCUs under the *A New Tax System (Goods and Services Tax) Act 1999*.

6. Unilateral closure of Registry accounts etc.

Section 6 of the Rules provides for any SMCs in an account to be closed under subsection 16(1) to be cancelled. This action is provided for in subsection 16(5) of the Act.

This helps ensure consistency with similar provisions for ACCUs and Kyoto units in sub-regulations 28(4) and 28(5) of the ANREU Regulations.

7. Transmission of safeguard mechanism credit units by operation of law etc

The provisions in section 7 of the Rules mirror similar provisions for ACCUs and help to ensure consistent treatment of SMCs and ACCUs.

Subsection 7(1) of the Rules specifies that the transferee must give the Regulator a certified copy of a document that shows transmission of the title to the SMC units to the transferee. Subsection 48E(3)(b) of the Act provides for legislative rules to be made that specify evidence of transmission that must be given by the transferee to the Regulator within 90 days of transmission.

Subsection 48E(4) of the Act provides for a declaration of transmission to be made in accordance with legislative rules.

Subsection 7(2) of the Rules specifies that a declaration of transmission must:

- be made in writing;
- identify the serial numbers of the SMC units transmitted;
- set out the name, address and Registry account number of the transferor;
- set out the name, address and Registry account number (if any) of the transferee;
- include a brief description of the circumstances that resulted in the transmission;
- be signed by the transferee.

Statement of Compatibility with Human Rights

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

Australian National Registry of Emissions Unit Rules 2023

The *Australian National Registry of Emissions Unit Rules 2023* (the Rules) are 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 Australian National Registry of Emissions Units (the Registry) is an electronic system established in 2009 to enable accurate accounting of the issuance, holding, transfer, acquisition, cancellation, retirement and carryover of emissions units under the Kyoto Protocol.

The *Australian National Registry of Emissions Units Act 2011* (the Act) enabled the modification of the Registry, so it could also be used to track the location and ownership of units issued under the Carbon Farming Initiative Act.

The *Safeguard Mechanism (Crediting) Amendment Act 2023* was passed by both houses of Parliament on 30 March 2023. It amended the Act to:

- enable SMCs to be included in the Registry;
- establish relevant ownership and transfer arrangements for SMCs, equivalent to those for other existing unit types;
- provide for information on holdings and cancellations of SMCs to be published, consistent with other existing unit types.

It also introduced provisions into the Act allowing the Minister to make rules, by legislative instrument, in relation to matters required or permitted by the Act.

Accordingly, the Rules introduce provisions to:

- enable SMCs to be included under the definition of ‘eligible international emissions units’;
- when Registry accounts are being closed, enable any SMCs in that account to be cancelled, consistent with other units including ACCUs;
- specify evidence and declaration requirements for transmission of SMCs from one party to another, consistent with other units including ACCUs.

Human rights implications

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

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

Conclusion

The 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