

2023

CARBON CREDITS (CARBON FARMING INITIATIVE) ACT 2011

**CARBON CREDITS (CARBON FARMING INITIATIVE) AMENDMENT (NO. 2)  
RULES 2023**

EXPLANATORY STATEMENT

(Circulated by authority of the Minister for Climate Change and Energy,  
the Hon. Chris Bowen MP)

## Purpose

The *Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) Rules 2023* (the Amendment Rules) amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule).

The Principal Rule sets out criteria for eligible offset projects for the purpose of issuance of Australian carbon credit units (ACCUs). The Amendment Rules add a new criteria to eligible offset projects to prevent issuance of ACCUs for new activities which are added to an existing eligible offset project and that would involve carbon abatement of covered emissions of greenhouse gases from the operation of a designated large facility.

The Amendment Rules remove the ability of the Clean Energy Regulator (the Regulator) to enter into carbon abatement contracts under the Carbon Farming Initiative Act in relation to projects that solely reduce emissions covered by the Safeguard Mechanism at designated large facilities as defined in the *National Greenhouse and Energy Reporting Act 2007* (NGER Act).

The Amendment Rules also enables the Regulator to sell ACCUs in the Commonwealth Emissions Reduction Fund Delivery Account to a responsible emitter for a designated large facility, pursuant to a contract and for the purpose of surrendering the units to meet compliance obligations under the Safeguard Mechanism. The Amendment Rules also set the price of the units to be sold and the associated indexation calculation.

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

## Glossary

Abbreviation	Definition
ACCU	Australian Carbon Credit Unit
Carbon dioxide equivalent	A way of quantifying greenhouse gases to reflect their contribution to climate change compared to a unit of carbon dioxide
Carbon Farming Initiative Act	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
Designated large facility	A facility covered by the Safeguard Mechanism, as defined in section 22XJ of the NGER Act
Facility	An activity or a series of activities that involve greenhouse gas emissions, the production of energy or the consumption of energy, as defined in section 9 of the NGER Act
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>
Regulator	The Clean Energy Regulator, who is responsible for administering the Carbon Farming Initiative Act.

Safeguard Mechanism	A mechanism to ensure the net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility and ensure that aggregate net covered emissions from the operation of designated large facilities decline. The mechanism is established under Part 3H of the NGER Act.
Safeguard Mechanism Act	<i>Safeguard Mechanism (Crediting) Amendment Act 2023</i>
SMCs	An abbreviation of safeguard mechanism credit units, which are established by the Safeguard Mechanism Act

### **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 Carbon Farming Initiative Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Carbon Farming Initiative Act.

The power to make rules in section 308 of the Carbon Farming Initiative 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*.

### **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 also enabled the Australian Government to purchase approved and verified emissions reductions from registered projects. The Regulator is empowered under the Carbon Farming Initiative Act to conduct processes to purchase emissions reductions and enter into contracts on behalf of the Commonwealth. They have done this through regular reverse auctions.

The *Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rule 2023* established the initial amendments to the Principal Rule required for the reforms to the Safeguard Mechanism. This amendment rule removed eligibility for projects that solely reduce emissions covered by the Safeguard Mechanism at designated large facilities as defined in

the NGER Act to be registered, and removed the requirement for the Regulator to cancel ACCUs after they are delivered under a carbon abatement contract.

### **Background: Safeguard Mechanism**

The NGER Act establishes the NGER scheme, 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 NGER Act. Together with the reporting obligations under the NGER 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<sub>2</sub>-e) emissions each year. These facilities must keep their emissions below a legislated baseline or surrender prescribed carbon units 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 safeguard mechanism credit units (SMCs)<sup>5</sup> 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.

To maintain the integrity of Australia's offsets framework under the Carbon Farming Initiative Act, and because facilities covered by the Safeguard Mechanism will be eligible to receive SMCs, the Safeguard Mechanism Act contains amendments to enable eligible offsets projects at Safeguard-covered facilities to be phased out.

In response to stakeholder feedback, the Safeguard Mechanism Act enables rules under the Carbon Farming Initiative Act to provide for the sale of ACCUs from a Government registry account.

### **Operation**

The Amendment Rules add a new eligibility requirement, to prevent new activities that would involve carbon abatement of covered emissions of greenhouse gases from the operation of a designated large facility, and which are added to an existing eligible offset project, from being issued ACCUs. This applies unless the original application for the project to be an eligible offsets project included the new activity or another activity that reduced covered

emissions at the same facility, or the project is only issued ACCUs for the carbon abatement of emissions that are not covered by the Safeguard Mechanism.

The Amendment Rules insert a requirement that prevents a project from being contracted to deliver ACCUs to the Commonwealth if it would generate ACCUs that are attributable to abatement of covered emissions at a Safeguard facility. The requirement applies to contracts that the Regulator is considering entering into, on or after the day that the amended Rule commences, in addition to any contracts that were entered into with the condition that they would be suspended and then terminated by the Regulator following the making of this requirement in the amended Rule. This amendment recognises that designated large facilities face an obligation under the Safeguard Mechanism to reduce emissions, with an incentive to reduce emissions through eligibility to receive SMCs.

The Regulator announced that it would conduct Auction 15 on 13 October 2022. The Government published a draft of the Amendment Rules on 10 January 2023. On 19 January 2023, the Regulator published the Auction 15 guidelines<sup>1</sup> and the contract terms for ACCU Auction 15 which aligned with the provisions in the *Safeguard Mechanism (Crediting) Amendment Bill 2022* (passed as the Safeguard Mechanism Act) and these Amendment Rules in the event that they became law. Under the Code of Common Terms, the Regulator may issue a notice suspending deliveries under the affected contracts. The affected contracts will be terminated 90 days after the suspension notice is issued.

The Amendment Rules also enables the Regulator to sell ACCUs in the Commonwealth Emissions Reduction Fund Delivery Account to a responsible emitter for a designated large facility, pursuant to a contract and for the purpose of surrendering the units to meet compliance obligations under the Safeguard Mechanism. ACCUs will only be able to be purchased by designated large facilities and only if they are in an emissions exceedance situation. The Amendment Rule also sets the price of the units to be sold and the associated indexation calculation. The price has been set at a level to incentivise on-site abatement where feasible. These amendments enable the cost containment measure in the reforms to the Safeguard Mechanism, assisting responsible emitters under the Safeguard Mechanism to meet their compliance obligations, if they are unable to reduce their emissions on-site or source prescribed carbon credit units at a lower price.

### **Detailed description of the Amendment Rule**

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

### **Public consultation**

The Department released a consultation paper on reforms to the Safeguard Mechanism on 22 August 2022 and submissions were open until 20 September 2022. An exposure draft of the Safeguard Mechanism Act was open for public consultation from 10 October 2022 to 28

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<sup>1</sup> <https://www.cleanenergyregulator.gov.au/DocumentAssets/Pages/Guidelines-for-Emissions-Reduction-Fund-auction-15.aspx>, see page 11 “Safeguard changes”.

October 2022. Detailed policy design including draft subordinate legislation was released for public consultation from 10 January 2023 to 24 February 2024.

Many businesses made submissions that raised concerns about the risk of the price of compliance units being too high. To manage this risk, the Amendment Rules would enable the Regulator to sell ACCUs that are held by the Commonwealth. This option is only expected to be accessed by Safeguard facilities in exceptional circumstances, and is in response to stakeholder feedback. In the exceptional circumstances in which this capacity is accessed, funds raised from sale of ACCUs will be used to support additional abatement and decarbonisation to meet Australia's targets.

The revisions to auction guidelines and Code of Common Terms were promoted through a news item on the Clean Energy Regulator's webpage<sup>2</sup> and a campaign to subscribers to the Regulator's mailing list (ERF subscribers).

Following the initial publication, the auction guidelines and Code of Common Terms have remained on the Regulator's website and were referenced in multiple email communications throughout the auction process. The Regulator also individually phoned all applicants with Industrial and Commercial Emissions Reduction projects on 20 March as those projects are likely to be affected by the Amendment Rules.

## **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. The first of these is proposed to be conducted in 2026-27.

## **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 at [Attachment B](#).

## **Regulatory impact**

An Impact Analysis is not required, as the Amendment 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.

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<sup>2</sup> “We strongly recommend auction applicants with an emissions avoidance project understand the legislative changes proposed and included in the auction 15 guidelines and latest Code of Common Terms”  
<https://www.cleanenergyregulator.gov.au/About/Pages/News%20and%20updates/NewsItem.aspx?ListId=19b4efbb-6f5d-4637-94c4-121c1f96fcfe&ItemId=1187>

## **Commencement**

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

## **Details of the Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) Rule 2023**

### 1. Name

Section 1 provides that the name of the Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) Rule 2023*.

### 2. Commencement

1. Section 2 would provide for the commencement of the Amendment Rule. The table under section 2 would provide for the commencement for each provision of the instrument as specified.
2. The table specifies that the whole of this instrument would commence on the day after the registration of this instrument.
3. 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 Rule is made under the Carbon Farming Initiative Act. In particular, section 308 of the Carbon Farming Initiative Act provides the Minister with the power to make legislative rules. The power to make rules in section 308 of the Carbon Farming Initiative 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 draft Amendment Rule 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 – After subsection 9(7)**

This item amends section 9 of the Principal Rule, which sets out eligibility requirements for issuing certificates of entitlement. Certificates of entitlement are what enable eligible offsets project to be issued with ACCUs.

The *Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023*, which commenced on 12 January 2023 prevents projects from being declared to be eligible offsets projects if they are likely, during the crediting period for the project, to involve carbon abatement of covered emissions of greenhouse gases from the operation of a designated large facility for a financial year, unless the conditions specified in subsection 20(2) added by that instrument are met.

Applications for declaration of projects as eligible offsets projects are made under section 22 of the Carbon Farming Initiative Act. Such applications include specifying the activities in the description of the project in accordance with paragraph 13(1)(b) of the Carbon Farming Initiative Rules. The description may specify the activities to occur at particular sites, which may include designated large facilities. Applications for certificates of entitlement may include new activities, including new activities at different sites.

This item adds a new eligibility requirement that would apply to projects that have or will be declared to be eligible offsets projects. This item prevents eligible offsets projects from being issued ACCUs for undertaking a new activity that results in carbon abatement of covered emissions from the ‘operation’ of a designated large facility. A new activity is one that the project proponent began to undertake after the commencement of this subsection, being the day after registration of this Amendment Rule.

‘Operation’ has the same meaning as in the NGER Act.

This item does not apply if one of the three cases set out in subsection 9(9) are met.

The first of these cases is if the new activity that is to be issued ACCUs for covered emissions reduction was described in the application for declaration as an eligible offsets project. It is intended that the particular new activity would need to be described in the application and that the application could not simply list general activities that may be undertaken as part of the eligible offsets project. For example, some applications for eligible offsets projects under the Industrial and Commercial Emissions Reduction method simply list all of the eligible activities under the method rather than listing a particular activity at a particular location.

The second case is where the project had undertaken another ‘old activity’ that was described in the application for declaration as an eligible offsets project that resulted in carbon

abatement of covered emissions from the operation of the same designated large facility as the new activity.

This third case is where the project is only issued ACCUs for the carbon abatement of emissions other than covered emissions, even if it may also result in a reduction of covered emissions. The methodology determination that covers the project must provide a method to calculate the net abatement amount that does not include covered emissions, and this method must be used to calculate the net abatement amount for the project.

### **Item 2 – After section 10**

Item 2 inserts section 10A regarding criteria for eligible offsets projects likely to involve carbon abatement of covered emissions, which is made for the purposes of subsection 20C(3) of the Carbon Farming Initiative Act.

The provision inserted by this item ensures that an eligible offsets project is not eligible for a carbon abatement contract if it is likely to involve the creation of ACCUs 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 for carbon abatement contracts. 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 combustion 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 would not apply to carbon abatement contracts that have already been entered into, however, contracts entered into from Auction 15 include terms whereby those contracts will be suspended and then terminated by the Clean Energy Regulator.

### **Item 3 – After section 11A**

This item adds section 11AB regarding the sale of ACCUs that are purchased by the Commonwealth under carbon abatement contracts, and section 11AC regarding the indexation of their price.

Section 11AB enables the Regulator to sell ACCUs received through carbon abatement contracts that have been held in the Commonwealth Emissions Reduction Fund Delivery Account. The ACCUs may only be purchased by a responsible emitter under a contract with the Regulator and must be immediately surrendered to ensure that an excess emissions situation does not exist for a facility.

The definitions of ‘excess emissions situation’, ‘net emissions number’ and ‘responsible emitter’ have the same meaning as in the NGER Act.

The operation of this item works like a price ceiling for compliance under the Safeguard Mechanism, because the sale of these units means it is unlikely that the price of ACCUs or SMCs will be higher than this price. This adds certainty regarding prices and liquidity in the ACCU and SMC markets. The intent is that responsible emitters will only use this provision should they be unable to reduce their emissions on-site or source ACCUs or SMCs at a lower price.

Any funds received from this measure will be allocated to the Powering the Regions Fund to support additional abatement to meet Australia’s targets.

An updated section 11AC sets out the indexation price of ACCUs which could be sold by the Regulator under section 11AB. The price is to be indexed from 1 July 2024, and in subsequent financial years by a rate calculated by reference to the increase in the weighted average of eight capital cities of the All Groups Consumer Price Index (CPI), plus 2 per cent. In 2023, the CPI could be accessed from <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

Section 304 of the Carbon Farming Initiative Act enables legislative rules to make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, as in force or existing at a particular time, or as in force or existing from time to time. This instrument refers to the All Groups CPI number itself (however it has been published), and does not refer to or purport to determine matters by reference to any particular instrument or other document.

An example of the reference and base quarters is for the financial year 2024-25, the reference quarter is the period March 2024 and base quarter is March 2023.

While the CPI is commonly expressed as a percentage, this section makes use of a measure of the CPI that can be thought of as that number obtained by taking that percentage and adding the number 1. For example, if the CPI for a particular period was 3 per cent, the CPI when measured in this way would be 1.03 for that period, and the indexation factor would be 1.05 for that period.

For example, for the indexation year 2022-23, the March 2022 quarter is the reference quarter. The index number (weighted average of eight capital cities and in reference to 2011–12 = 100.0) for the March 2022 period (reference quarter) was 123.9 and the March 2021 period (base quarter) was 117.9. The indexation factor would therefore be calculated as  $123.9/117.9 + 0.02 = 1.07$ , calculated using the formula given in subsection 11AC(2) and rounded to 2 decimal places as per subsection 11AC(3).

Alternatively, this could be calculated using the more commonly presented statistics which state that over the twelve months to March 2022 the CPI rose 5.1 per cent. The indexation factor could therefore be taken as  $1 + 5.1/100 + 0.02 = 1.07$ .

## 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. 2) Rules 2023***

The *Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) Rules 2023* (Amendment 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 *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 add a new eligibility requirement to eligible offset projects, to prevent issuance of Australian Carbon Credit Units (ACCUs) for new activities added to an existing eligible offset project that would involve carbon abatement of covered emissions of greenhouse gases from the operation of a designated large facility.

The Amendment Rules remove the ability of the Clean Energy Regulator (the Regulator) to enter into carbon abatement contracts under the Carbon Farming Initiative Act in relation to projects that solely reduce emissions covered by the Safeguard Mechanism at designated large facilities as defined in the *National Greenhouse and Energy Reporting Act 2007* (NGER Act).

The Amendment Rules also enables the Regulator to sell ACCUs in the Commonwealth Emissions Reduction Fund Delivery Account to a responsible emitter for a designated large facility, pursuant to a contract and for the purpose of surrendering the units to meet compliance obligations under the Safeguard Mechanism. The Amendment Rules also set the price of the units to be sold and the associated indexation calculation.

#### **Human rights implications**

The Amendment Rules 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 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. Chris Bowen MP**

**Minister for Climate Change and Energy**