

## **EXPLANATORY STATEMENT**

Issued by the Minister for the Environment

*Carbon Credits (Carbon Farming Initiative) Act 2011*

*Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019*

### **Purpose of amendment rule**

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) enables the crediting of greenhouse gas abatement from emissions reduction activities across the economy. Greenhouse gas abatement is achieved either by reducing or avoiding emissions or by removing carbon from the atmosphere and storing it in soil or trees.

Two methods under the Act support regeneration of native vegetation activities:

- *Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Native Forest—1.1) Methodology Determination 2013* (the Human-Induced Regeneration Method)
- *Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013* (the Native Forest from Managed Regrowth Method).

The *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 2) 2018* (the Previous Amendment Rule) clarified timeframes for the attainment of forest cover and supporting information required for the Human-Induced Regeneration Method. The *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019* (the Amendment Rule) extends coverage of the Previous Amendment Rule to the Native Forest from Managed Regrowth Method.

The Amendment Rule adds further provisions to the Previous Amendment Rule to ensure consistency between approaches and sources used to identify both pre-existing forest cover and forest cover for the purposes of satisfying requirements relating to the attainment of forest cover. The Clean Energy Regulator, which administers the compliance of projects under either Method, has recently co-designed guidelines with project proponents on the stratification of carbon estimation areas (CEAs), the demonstration of ongoing forest potential, and the attainment of forest cover. These guidelines apply to both native forest regeneration methods and the further provisions introduced through this Amendment Rule are intended to complement the approaches supported by the guidelines. The co-design process identified that using consistent approaches to the identification of forest cover at the start and end of a project would provide more certainty that projects continue to only include eligible land and be easier for project proponents to comply with.

The Amendment Rule achieves these changes by amending the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule). Overall the changes made by this Amendment Rule are expected to enhance the integrity of the abatement credited under both native forest regeneration methods.

## **Background: Emissions Reduction Fund**

In 2014, the Australian Government amended the Act with the *Carbon Farming Initiative Amendment Act 2014* (CFI Amendment Act). The CFI Amendment Act established the Emissions Reduction Fund by expanding the crediting of emissions reductions under the Carbon Farming Initiative to non-land based sectors of the Australian economy.

The primary objective of the Emissions Reduction Fund is to assist Australia to meet its greenhouse gas emissions reduction targets, consistent with its international obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

The Emissions Reduction Fund does this by purchasing approved and verified emissions reductions from registered projects (projects declared under section 27 of the Act). The Regulator is empowered under the Act to conduct processes to purchase emissions reductions, and enter into contracts for this purpose.

## **Background: native forest regeneration methods**

Native forest regeneration methods provide opportunities for projects involving changes in land management to regenerate native vegetation to attain forest cover.

The Human-Induced Regeneration Method provides opportunities for regenerating forest on land that has been without forest cover for at least 10 years and does not have forest cover at the start of the project (i.e. does not have pre-existing forest cover). The Native Forest from Managed Regrowth Method provides opportunities for ceasing clearing on pastoral land to support the regeneration of forest. Central to both methods is the regeneration of forest which then attains forest cover on land that did not have pre-existing forest cover. Accordingly, it is appropriate that the requirements for Human-Induced Regeneration projects also apply to projects under the Native Forest from Managed Regrowth Method.

Central to the Previous Amendment Rule was a requirement for a certificate of entitlement such that where requirements for attaining forest cover are not met, crediting is restricted for offsets reports that include the applicable CEA. The Previous Amendment Rule also clarifies the information proponents need to provide to the Regulator to demonstrate they are meeting requirements for CEAs to have forest potential. The Explanatory Statement that accompanied the Previous Amendment Rule provides further details on these changes and is available online at [legislation.gov.au/Details/F2018L01642/Explanatory%20Statement/Text](http://legislation.gov.au/Details/F2018L01642/Explanatory%20Statement/Text).

## **Operation**

The Act is supported by subordinate legislation, including the Principal Rule, and the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Regulations). The Principal Rule and Regulations provide detailed explanations of the way in which the Act is administered by the Regulator.

The Minister for the Environment is empowered to make legislative rules under section 308 of the Act. The Amendment Rule supports the operation of the Human-Induced Regeneration Method and the Native Forest from Managed Regrowth Method.

The primary changes to the Principal Rule extend to all projects under the Native Forest from Managed Regrowth Method the application of provisions in the Previous Amendment Rule that clarify reporting requirements to ensure the Regulator has the necessary information to administer the Human-Induced Regeneration Method, and clarify timeframes for land under the method to attain forest cover in order to obtain further carbon credits.

Further changes, to section 9AA primarily, ensure consistency between approaches and sources used to identify both pre-existing forest cover and forest cover for the purposes of satisfying requirements relating to the attainment of forest cover.

Transitional provisions are included in a new Part 29 to the Principal Rule. They ensure the Amendment Rule does not impact applications for a certificate of entitlement or offsets reports already received by the Regulator or received within 28 days of the Amendment Rule's commencement.

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

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

### **Public consultation**

This Amendment Rule applies the same requirements to projects under the Native Forest from Managed Regrowth method as the requirements applied by the Previous Rule Amendment to projects under the Human-Induced Regeneration method. Consultation on these combined amendments commenced in July 2018 with directly affected stakeholders. This was supported by a public consultation process from 23 August 2018 to 13 September 2018 on the changes as they applied to projects under the Human-Induced Regeneration method. Direct consultation with proponents of projects under the Native Forest from Managed Regrowth method continued over late 2018 and early 2019.

Public consultation on an Exposure Draft for this Amendment Rule was undertaken from 28 February to 14 March 2019. People were invited to make written submissions or to call or email the Department of the Environment and Energy to provide comments. Submissions and feedback received have been taken into account in the Amendment Rule.

### **Regulatory impact**

In accordance with the *Australian Government Guide to Regulation*, the Department of the Environment and Energy certified the Emissions Reduction Fund White Paper as a Regulation Impact Statement for initial decisions on the Emissions Reduction Fund. The decisions included the Emissions Reduction Fund crediting and purchasing arrangements, Carbon Farming Initiative arrangements incorporated into the Emissions Reduction Fund, and coverage of the Emissions Reduction Fund safeguard mechanism. These minor amendments will not materially impact the regulatory impact of the scheme.

### **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 Rule (No. 1) 2019***

**1. Name**

Section 1 provides that the name of the Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019*.

**2. Commencement**

Section 2 provides that the Amendment Rule would commence on the day after it is registered. Transitional provisions are included in a new Part 29 to the Principal Rule to ensure the Amendment Rule does not impact applications for a certificate of entitlement or offsets reports already received by the Regulator or received within 28 days of the Amendment Rule's commencement.

**3. Authority**

Section 3 provides that the Amendment Rule would be made under section 308 of the Act. Section 304 of the Act also allows such rules to apply, adopt or incorporate matters in any instrument or writing as in force from time to time.

**4. Schedules**

Section 4 provides that the Amendment Rule would, when made, amend the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) in the manner set out in the schedules. 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*.

**Schedule 1—Amendments**

**1 – 8 Amendments to section 9AA—Issue of certificate of entitlement—eligibility requirements for regeneration projects**

Section 9AA of the Principal Rule sets out eligibility requirements for obtaining a certificate of entitlement applicable when a project's CEAs past their forest cover assessment date are included in an offsets report for the relevant reporting period.

The application for, and assessment of, whether a project is eligible for a certificate of entitlement for a reporting period has always been separate from the declaration of a project and its applicable methodology determination. Since the Act commenced in 2011 paragraph 15(2)(h) of the Act has required the Regulator to be satisfied of any eligibility requirements in subordinate legislation before issuing a certificate of entitlement. Section 9AA is one such requirement. However, whether or not section 9AA is satisfied for a reporting period does not affect the declaration of the project, whether the project complies with the applicable methodology determination, any credits already issued for the project or whether a certificate of entitlement will be issued for a subsequent reporting period. New Part 29 inserted by item 18 ensures the requirements for a certificate of entitlement do not have any retrospective impact on applications for a certificate of entitlement already received or received within 28 days of the commencement of the Amendment Rule. Section 9AA does not vary

requirements project proponents have to apply under their applicable methodology determinations.

The heading of Section 9AA is amended to remove ‘human-induced’ before ‘regeneration projects’ and references to ‘human-induced regeneration project’ within the section have been replaced with ‘regeneration project’ (Items 1, 2, 3 and 7).

The new subparagraph (4)(a)(ii) adds that where demonstrating that carbon estimation areas have attained forest cover in accordance with paragraph (4)(a), it is also a requirement that the version of the maps used does not identify any pre-existing forest cover in the carbon estimation area, taking into account any guidelines published by the Regulator (Item 4). This provision reflects that updates to the National Inventory Report maps are provided as sets covering the complete timespan from 1972, and each set features a consistent approach to identifying forest cover within it. Use of the same set for both objectives is required to ensure consistent approaches to identifying forest cover for both exclusion of pre-existing forest cover and for demonstrating attainment of forest cover. A consistent approach ensures there is no bias towards a data source that detects relatively less or more forest cover to suit the objective. Relevant guidelines can be found on the Clean Energy Regulator’s website at: <http://www.cleanenergyregulator.gov.au/ERF/Forms-and-resources/Regulatory-Guidance/sequestration-guidance> and are incorporated as in force from time to time consistent with section 308 of the Act.

The new paragraph (5)(aa) is also designed to ensure approaches taken to exclude pre-existing forest cover and to demonstrate forest cover has been attained in accordance with paragraph (4)(b) are as consistent as possible (Item 5). It requires that the assessment of 0.2 hectare portions for a CEA under paragraph (4)(b) must use data sources and data processing approaches that the Regulator is satisfied are the same as, or equivalent to, those relied upon to demonstrate that the carbon estimation area did not have any pre-existing forest cover. It also provides that, where use of the same data sources and data processing is no longer possible, the data sources and data processing approaches must be consistent with or comparable to those data sources and data processing approaches.

Subparagraph (5)(aa)(ii) requires that the data sources and data processing approaches used are approved by the Regulator on a list published on its website or are otherwise approved by the Regulator in writing. Subparagraph (5)(aa)(ii) provides that in doing this the Regulator will primarily have regard to the requirements subparagraph (5)(aa)(i). A decision to refuse to issue a certificate of entitlement is a reviewable decision under Part 24 of the Act and the merits of any approval decision relevant to a refusal could be considered as part of that review process.

Subsection (5A) provides that where an approval under subparagraph (5)(aa)(ii) has been relied upon in an offsets report covering the relevant carbon estimation area and no subsequent approval has been relied on, that approval remains relevant to the carbon estimation area despite any subsequent revocation or variation of that approval by the Regulator (Item 6). For a project proponent to continue to use those data sources and data processing approaches that were the subject of the approval, they must still meet the requirements of subparagraph (5)(aa)(i) to the satisfaction of the Regulator. Proponents should be aware that this may not be possible if the data sources or approaches that satisfied the Regulator under (5)(aa)(i) are no longer available. In this case, the approval granted under subparagraph (5)(aa)(ii) can not be relied upon.

The definition of ‘human-induced regeneration project’ at subsection (7) has been substituted with a definition for ‘regeneration project’, which means all projects with either the Human-

Induced Regeneration Method or the Native Forest from Managed Regrowth Method as their applicable methodology determination, or an earlier version of those methods in accordance with sections 125, 126, 127 or 130 of the Act (Item 8).

A new definition is added to subsection (7) for ‘pre-existing forest cover’, which means, for a carbon estimation area, the forest cover that existed at the time, or within the time period, specified for the applicable methodology determination under paragraphs (a) to (c).

#### 10 – 13 Amendments to section 70—Information that must be set out in offsets reports

Section 70 of the Principal Rule specifies the information that must be set out in an offsets report about an eligible offsets project for a reporting period. The Previous Amendment Rule added further requirements for a ‘human-induced regeneration project’. These requirements now apply to a ‘regeneration project’, as defined at Subsection 9AA(7).

Subparagraph (3A)(a)(v) has been amended to clarify that applicable offsets reports are required to set out an explanation of how the stratification, as well as the boundaries, of the carbon estimation area meet the requirements of the applicable methodology determination (Item 12). The ‘stratification’ of the carbon estimation area is a technical concept in the methodology determination for how the boundaries of an area are mapped.

References within section 70 to a ‘human-induced regeneration project’ have been amended to ‘regeneration project’, to reflect the replacement of definitions at subsection 9AA(7) (Items 10, 11 and 13).

Section 70 is made in accordance with paragraph 76(4)(b) of the Act which allows legislative rules to require additional information to be included in offsets reports.

#### 14 Amendments to section 71—Documents that must accompany offsets reports

The reference at section 71 to a ‘human-induced regeneration project’ has been amended to ‘regeneration project’, to reflect the replacement of definitions at subsection 9AA(7). Section 71 is made in accordance with paragraph 76(4)(d) of the Act which allows legislative rules to require additional documents to be included in offsets reports.

#### 15 - 17 Amendments to section 79A—Forest cover audits of regeneration projects

The heading of section 79A and subsection 79A(1) have been amended to replace ‘human-induced regeneration project’ with ‘regeneration project’, to reflect the replacement of definitions at subsection 9AA(7) (Items 15 - 17). Section 79A is made in accordance with paragraph 76(4)(c), (ca) and (cb) of the Act which allows legislative rules to require audit reports to accompany offsets reports.

#### 18 Application and Transitional Provisions

This item inserts a new Part 29 to provide application and transitional provisions relating to the Amendment Rule. It is also intended to contain any application and transitional provisions relating to future amendments to the Principal Rule. The numbering of the Part has been designed to follow on from the Parts in the Act.

Section 120 ensures that applications for a certificate of entitlement received before the Amendment Rule commenced or within 28 days of the commencement are determined under the existing rules.

Section 121 ensures that offsets reports need not include additional information or documents required by amendments to section 70 or 71 if they are received before commencement or within 28 days of commencement.

These provisions ensure that existing rights to certificates of entitlement are not impacted by the Amendment Rule. Future applications after the 28 day period need to comply with the requirements of the Amendment Rule and it was always the case that additional requirements could be imposed on existing declared projects during their crediting period.

**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 Rule (No. 1) 2019***

The *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019* (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 Amendment Rule extends provisions concerning the eligibility requirements for the issuance of certificates of entitlement to carbon credit units, and information required in certain offsets reports, from applying to only human-induced regeneration projects to applying to all native forest regeneration projects. This ensures that projects with the applicable methodology determination of either the Human-Induced Regeneration Method or the Native Forest from Managed Regrowth Method are subject to the same such requirements under the Rule. The Amendment Rule also provides that consistent data sources and data processing approaches are used between identifying forest cover for the purpose of excluding pre-existing forest cover from regeneration projects, and for the purpose of demonstrating that forest cover has been attained. Transitional arrangements are included to ensure the requirements to not impact existing applications or offsets reports.

It does this by amending the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the ***Principal Rule***).

**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*: <http://www.environment.gov.au/system/files/pages/7aef9f12-8ba1-4d9a-bf6a-1bc89a0bd6f5/files/cfi-amendment-bill-explanatory-memorandum.pdf>.

**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*.