**DRAFT EXPLANATORY STATEMENT**

Issued by the Department of the Environment and Energy to inform consideration of government policy

*Carbon Credits (Carbon Farming Initiative) Act 2011*

*Carbon Credits (Carbon Farming Initiative) Amendment Rule 2017 (No. 1)*

**Purpose**

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) Amendment Rule 2017 (No. 1)* (the draft Amendment Rule) details additional minor administrative procedures under the Act, primarily associated with a new methodology determination to credit the storage of carbon in savannas. These include arrangements for project proponents wanting to transfer their project between certain savanna related methodology determinations and a requirement savanna fire management projects obtain the necessary permits under State and Territory bushfire legislation. The draft Amendment Rule also sets out information requirements related to permanence, additional consent requirements for certain large industrial projects, and provides specified values for definitions relating to the permanence period and the risk of reversal buffer in the Act. The draft Amendment Rule also sets out who may act on behalf of a project proponent if they die or are incapacitated. It does this by amending the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule).

The draft Amendment Rule and this explanatory document are being released by the Department of Environment and Energy to inform consideration of government policy. The consultation on these documents and the related methodology determinations will inform whether the amendments will be adopted by the Government and made into law.

**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. The Clean Energy Regulator is empowered under the Act to conduct processes to purchase emissions reductions, and enter into contracts for this purpose.

**Background: Savanna Fire Management**

In Northern Australia, early dry season fire management has been making a significant contribution to reducing greenhouse gas emissions from wildfires in our savannas. There are
currently around 70 eligible offsets projects registered to conduct early dry season burning under the Emissions Reduction Fund, with around 2.4 million credits issued to date. Proponents include both pastoralists and Indigenous groups with native title.

Research has now demonstrated that savanna fire management can also increase the amount of carbon stored in the landscape as well as avoiding the fire emissions. The Department is now finalising a draft methodology determination which will credit both:

- the avoidance of nitrous oxide and methane emissions from fires; and
- the increased carbon stored in the landscape.

Projects covered by the new methodology determination will be ‘sequestration offsets projects’ that are subject to the permanence obligations in relation to the carbon stored by the project.

To appropriately credit the emissions avoidance and sequestration in the projects, a number of legislative rules need to be amended to ensure the determination works as intended and the existing projects can effectively adopt the new methodology determination.

In particular, existing savanna fire management projects which are avoiding greenhouse gas emissions will need to close off their current projects and register a new sequestration offsets project under the Act if they wish to obtain the further benefits that are available under the sequestration determination. The draft Amendment Rule and proposed methodology determination together provide a process which allows for:

- crediting to be finalised for a calendar year under the existing savanna emissions avoidance determination;
- the current project to be revoked; and
- the new project to be declared as a new sequestration offsets project with either a 25 year or 100 year permanence period.

In this transition, the rule requires that evidence of all the eligible interest holder consents for the new project are provided to the Regulator before the savanna emissions avoidance project is revoked and the savanna sequestration project is declared eligible. This is to avoid a possible situation where the Regulator cannot declare a savanna sequestration project eligible because the consent requirements have not been met and, the savanna emissions avoidance project has already been revoked. For example, if the Regulator revokes a savanna emissions avoidance project but later finds that consents cannot be obtained for the savanna sequestration project (and it therefore cannot be declared) the proponent could not in this situation continue with the savanna emission avoidance project, as it will have been revoked. This situation would potentially leave a project proponent without an eligible offsets project and without credits for the period while it was a sequestration offsets project.

The exposure draft Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2017 allows projects transitioning within the first three years from the commencement of the determination to receive a new 25 year crediting period for the sequestration offsets project.

The process for the transition between methodology determinations in section 128 and 130 of the Act will not apply to the move between emissions avoidance and sequestration offsets projects as this process would not effectively allocate the project a 25-year or 100-year
permanence period. It would also have unintended results for the length of the permanence period and credits which would count towards the projects ‘net total number’.

Savanna fire management projects currently need to comply with permits requirements under State and Territory bushfire legislation. A new rule will clarify that non-compliance with such requirements will result in no credits being issued for the relevant reporting period.

**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 Clean Energy Regulator.

The Minister is empowered to make legislative rules under section 308 of the Act. The draft Amendment Rule will streamline administrative processes for applicants, and includes amendments that are necessary for the Clean Energy Regulator to administer projects properly.

The primary changes to the legislative rules relate to facilitating the new savanna fire management methodology determinations. In particular, section 30A will provide a process to revoke a current savanna emissions avoidance project and set up a new savanna sequestration project. Section 9A will enable the permanence period discount and risk of reversal buffer to be dealt with inside the methodology determination. Section 23 of the Principal Rule will be amended to clarify how project areas can be moved between projects.

The draft Amendment Rule also extends the current section 20 of the Principal Rule so that consents for designated large facilities are obtained when the operational control of a facility changes. This is through a new subsection 9(5). A new subsection 9(6) requires savanna fire management projects to comply with relevant bushfire legislation permit requirements to receive credits.

Sections 13, 23 and 70 of the Principal Rule are being amended to ensure that the Regulator has information on a project’s intentions for carbon to remain stored in sequestration offsets projects at the beginning, middle and end of a project’s crediting period. This will assist the Regulator target potential compliance activities.

Other minor amendments are made through a new subsection 24(2A) and new section 30B.

**Detailed description of the draft Amendment Rule**

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

**Public consultation**

Public consultation is being undertaken during a six-week period from 11/11/2016 to 19/12/2016 on amendments to the Principal Rule. Details for how to make a submission are provided on the Department’s website, [www.environment.gov.au](http://www.environment.gov.au).

**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 2017 (No. 1)*

1. **Name**

Section 1 provides that the name of the draft Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment Rule 2017 (No. 1)*.

2. **Commencement**

Section 2 provides that the draft Amendment Rule would commence on the day after it is registered.

3. **Authority**

Section 3 provides that the draft Amendment Rule would be made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*. In particular, section 308 of the Act includes the power for the Minister to make legislative rules.

4. **Schedules**

Section 4 provides that the draft 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.

Schedule 1 Amendments.

[1] Subsection 4(1)

This item adds definitions of ‘savanna emissions avoidance project’ and ‘savanna sequestration project’ to the Principal Rule to distinguish between savanna fire management projects that are emissions-avoidance offsets projects and those which are sequestration offsets projects. These definitions are based on the definitions existing in the following draft methods:

- *Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Emissions Avoidance) Methodology Determination 2017*; and


The definitions are needed for sections 9A and 30A of the draft Amendment Rule.

The item also identifies relevant State and Territory bushfire legislation which applies to savanna fire management projects. The relevant savannas for such projects are only present in Western Australia, the Northern Territory and Queensland. This definition is relevant to new subsection 9(6).
[2] After subsection 9(5) (requirement relating to consent and bushfire legislation)

This item inserts two new subsections.

A new subsection 9(5) provides additional consent requirements for proponents of offsets projects being undertaken at designated large facilities, within the meaning of the National Greenhouse and Energy Reporting Act 2007. This reflects the current eligibility requirement in section 20 of the Principal Rule, but ensures that new consents are obtained if the operational control of a facility changes after the declaration of the eligible offsets project.

If an offsets project is being undertaken at a facility that is, or is likely to be, a designated large facility, and the project proponent does not have operational control of the facility, then the proponent will need to obtain consent to carry out the project. This consent must be obtained from the person who has operational control of the facility that is being used to carry out the project immediately before the certificate of entitlement is issued.

The Regulator is not able to issue certificates of entitlement under subsection 15(2) of the Act until such consent has been obtained. That is, the Regulator must be satisfied that the project proponent has consent to undertake the project at the relevant facility from the person who has operational control of the facility.

A note in the subsection provides that consent which satisfied this requirement may already have been obtained by the project proponent in order to satisfy the eligibility requirement for consents in the application for declaration of eligible offsets project under section 20 of the Principal Rule. For instance, if operational control had remained the same as at declaration, the original consent would satisfy this subsection.

Consent of the current operational controller is important to the operation of s 22XK(4) of the National Greenhouse and Energy Reporting Act 2007, which increases a facility’s net emissions number for a financial year if credits are issued in relation to a facility. This consent requirement ensures that the operational controller of a facility at the time credits are issued is aware of the implications of crediting on the operation of the safeguard mechanism and their facility’s net emissions number.

A new subsection 9(6) provides an additional eligibility requirement for current and future savanna fire management projects. All such projects are required by State and Territory bushfire legislation to the steps that minimise the risk of bushfires, including obtaining fire permits from a relevant authority at certain times. The new rule makes clear that non-compliance with such permit requirements over a reporting period will result in the Regulator withholding the issuance of credits. This provision is not aimed at inadvertent or trivial compliance issues, but non-compliance that is material to the community safety objectives of that legislation over the relevant reporting period. In particular, if there is a reasonable excuse why a permit was not obtained on a particular occasion, no one was successfully prosecuted for the breach and there is no history of non-compliance, the Regulator is able to issue credits.

[3] After section 9 (permanence period discount number and risk of reversal buffer number)

This item inserts a new section 9A, which provides values for certain definitions relating to savanna sequestration projects being undertaken in accordance with the Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2017.
**Permanence period discount number**

Subparagraph (c)(ii) of the definition of *permanence period discount number* in section 16 of the Act, provides that the legislative rules may specify a percentage for a particular kind of project. The project must have a 25-year permanence period and be of the kind specified in the legislative rules. Further, the specified amount must be included in the legislative rules at the start of the crediting period in which the reporting period is included. The new subsection 9A(2) provides that the value for the definition of permanence period discount number in section 16 of the Act is zero.

This is because the *Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2017* will apply the 20% permanence period discount in the calculation of credits for the carbon stored by the project. There will be no discount for the ‘avoided’ emissions of methane and nitrous oxide from the project, consistent with all other crediting for emissions avoidance. This is because once an emission has been ‘avoided’, that is already a permanent benefit for the atmosphere. Without this rule, the Act would operate to apply the general discount to both sequestration and emissions avoidance crediting under the method, which would be inconsistent with the intent of the Act.

This new subsection has the practical effect of continuing the current 20% discount for 25-year permanence period projects, but ensuring that it is only applicable to the stored or sequestered carbon which is subject to potential reversals in the future.

**Risk of reversal buffer number**

Subparagraph (b)(i) of the definition of *risk of reversal buffer number* in section 16 of the Act, provides that the legislative rules may specify a percentage of the net abatement number for a particular kind of project. The project must be of the specified kind provided for in the legislative rules and the value must be set out in the legislative rules at the start of the crediting period in which the reporting period is included. The new subsection 9A(3) provides that the value for the definition of risk of reversal buffer number in section 16 of the Act is zero.

This is because the *Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2017* will apply the 5% risk of reversal discount in the calculation of credits for the carbon stored by the project, and not the avoided emissions. The same issues arise for this number as for the permanence period discount number, such that without the rule the Act would apply the discount to emissions avoidance as well as sequestration credits.

This new subsection has the practical effect of continuing the current 20% discount for 25-year permanence period projects, but ensuring that it is only applicable to the stored or sequestered carbon which is subject to potential reversals in the future.

The changes to the permanence period discount number and risk of reversal buffer number are necessary because it is not practical for the legislative rule to distinguish between the two sources of crediting that are calculated under the methodology determination. The end result is that a 100-year permanence period project receives 100% of the emissions avoidance credits and 95% of the sequestration credits under the methodology determination. A 25-year permanence period project will receive 100% of the emissions avoidance credits and 75% of the sequestration credits under the methodology determination.
At the end of paragraph 13(1)(o) (information regarding permanence)

This item inserts a new paragraph into subsection 13(1) concerning information that must be provided with an application to declare a project as an eligible offsets project that is a sequestration offsets project. In particular, the application must include an explanation of the steps intended to be undertaken to ensure carbon remains sequestered in the project area for the 25 or 100 year permanence period for the project.

It is important that all projects electing to maintain carbon stores for 100 years after the first credits are issued have a credible plan for how that obligation will be met. The detail and planning needed for ensuring carbon remains stored in a project area will differ depending on the nature of the sequestration offsets projects. For savanna sequestration projects, active management of the project area, including burning activities, will be required for the length of the permanence period to effectively and reliably maintain carbon stores. Proponents would be expected to outline their intentions for how these activities will be supported and funded for the life of the permanence period.

The information collected by the Regulator will also be used to inform a regular review of permanence for savanna fire management projects conducted by the ERAC every five years. These reviews would focus on the potential compliance risks associated with savanna fire management sequestration projects and the need for continued carbon sequestration from such projects. In particular, it is proposed that the Secretary for the Department of the Environment and Energy would request ERAC under paragraph 255(c) of the Act undertake a review of both savanna methods and all savanna fire management projects by the end of 2020, and every five years thereafter, in relation to:

- The risks associated with permanence for savanna sequestration projects taking into account project reports and information from the Regulator on the number and types of projects selecting different permanence periods.
- The appropriateness of the discounts in the method for sequestration projects.
- Whether a longer crediting period of up to 100 years for emissions avoidance in both methods is necessary to ensure continued carbon sequestration in the project areas.
- The need for additional policy measures to address the risk of the cessation of savanna fire management after the Emissions Reduction Fund no longer provides an incentive to abate.

These reviews could lead to variations to the methodology determinations or changes to the Act and legislative rules necessary to further limit the long term risks to permanence.

Paragraph 23(1)(c)

This item repeals the current paragraph 23(1)(c) and inserts two new subparagraphs 23(1)(c), and 23(1)(c)(a) which relate to variations to project areas or project area parts identified in declaration of eligible offsets project.

The practical effect of the new subparagraphs is that the Regulator may not vary a declaration under section 27 of the Act (section 27 declaration), without first receiving written consent from eligible interest holders with an interest in the area of land proposed to be added to the scheme. This is more limited than the current paragraph which requires new consents from every eligible interest holder in the project, even where they have already consented to the
project. Under the amended rule, land that is already part of an unconditionally declared sequestration offsets project could be included in another project without new consents being obtained.

The subparagraphs provide that if the application to vary the section 27 declaration would result in an area of land being moved from an area-based emissions avoidance project to a sequestration offsets project, or vice versa, the Regulator must not approve the application.

A section 27 declaration cannot be varied in relation to a project area that is part of a sequestration offsets project to move this area to an emissions avoidance offsets project because of the applicable permanence obligations that attach to the area of land. In particular, moving land between the two types of offsets projects could otherwise be used to avoid the permanence obligations under the Act.

The Regulator must also not approve the application to vary the section 27 declaration for area-based emissions avoidance projects if the project to receive a project area has a longer crediting period than the project which currently includes the project area. This removes any incentive to move land between projects to effectively extend the crediting for that land. Accordingly, if such projects are to be consolidated, they need to be moved into the project whose crediting period will end first. This is similar to the outcome for sequestration projects through section 53 and 54 of the Principal Rule.

**Overview of permanence**

Sequestration is regarded as permanent if it is maintained on a net basis for 25 or 100 years, under section 86A of the Act. However, carbon stored in vegetation and soils can be released back into the atmosphere by man-made or natural events, thereby reversing the environmental benefit of the sequestration project.

For this reason, all sequestration projects are subject to permanence obligations, which maintain carbon stores for which ACCUs have been issued. The permanence obligation means the carbon stored by a project must be maintained for the chosen period, either 25 or 100 years. If a disturbance, such as a cyclone or flood, occurs in the project area during the project, causing a decline in the amount of carbon stored, land management practices must allow the carbon stock to return to previously reported values. Alternatively, ACCUs equivalent to the loss of carbon caused by the disturbance can be returned, or relinquished, to the Regulator.

In contrast, emissions avoidance projects are credited for emissions that have been avoided. There is no ongoing obligation to make these emissions avoidance savings permanent as there is no ability for that saving to be reversed.

Proponents seeking to transfer an area of land from a savanna emissions avoidance project to a savanna sequestration project, and vice versa, will need to make a new application for declaration of a new eligible offsets project under section 22 of the Act. The proponents will also need to make an application to revoke the old project, in accordance with the new section 30A of the draft Amendment Rule (see item 6 below) for savanna emissions avoidance projects and sections 29 or 30 of the Principal Rule for sequestration offsets projects.

[6] After subsection 23(8) (definition)
This item inserts subsection into section 23 providing a definition of the term ‘unconditional eligible offsets project’ used in paragraph 23(1)(c). This term includes a project that never had a condition under subsection 28A(2) and a project that had a condition removed because it had been met.

[7] At the end of paragraph 23(3)(m) (information regarding permanence)

This item inserts a new paragraph into subsection 23(3) concerning information that must be provided with an application to add land to a sequestration offsets project, such that a project area is enlarged or a new project area added to the project. If an area of land is to be added to the project area of a sequestration offsets project, the application must include an explanation of the steps intended to be undertaken to ensure carbon remains sequestered in the additional project area for the permanence period for the project. This complements the information requirement being added to section 13 so that the Regulator has up-to-date information on the intentions of the project proponent to maintain carbon stored by a project.

[8] After subsection 24(2) (legal personal representative applications)

This item inserts a new subsection (24(2A)) which specifies, subject to subsection 24(2), who may make an application on behalf of the current project proponent in the event that they are unable to act on their own behalf.

The new subsection 24(2A) specifically provides that if the current project proponent is deceased or is incapacitated, that the person’s legal personal representative may make an application under subsection 24(2) to vary a section 27 declaration on behalf of the current project proponent.

Under the current subsection 24(2), the only person who can make an application to vary a section 27 declaration is the current project proponent. The new subsection 24(2A) operates to ensure that, should the current proponent be unable to do so because of death or serious illness, there is no confusion as to whether another person may make this application on their behalf.

For example, a project proponent may have executed an enduring power of attorney and then become incapacitated. The person with the power of attorney is then able to transfer the project’s declared project proponent to another person who now has the legal right to carry out the project and is responsible for carrying out the project. This avoids the risk that such a project will need to be revoked because no one is the project proponent for the project.
After section 30 (conditional revocations of declarations)

This item inserts a two new sections, sections 30A and 30B.

Section 30A sets out the process which enables a project proponent to transfer an existing savanna emissions avoidance project onto a determination that also provides credits for sequestration. Section 30B removes any doubt concerning when credits are taken to be issued in relation to eligible offsets projects that have been restructured.

A note to section 30A states that the section enables project proponents to transfer their existing savanna emissions avoidance project to a determination that also provides credits for sequestration and provides a short description of the process.

Accordingly, a project on any of the following savanna emissions avoidance determinations will be able to effectively move their project areas to the new savanna sequestration determination:

- the Carbon Credits (Reduction of Greenhouse Gas Emissions through Early Dry Season Savanna Burning) Methodology Determination 2012;
- the Carbon Credits (Carbon Farming Initiative) (Reduction of Greenhouse Gas Emissions through Early Dry Season Savanna Burning—1.1) Methodology Determination 2013;
- the Carbon Credits (Carbon Farming Initiative—Emissions Abatement through Savanna Fire Management) Methodology Determination 2015; and

In section 30A the new project is the new sequestration offsets project for which an application is being made under section 22 of the Act. The former project is the current emissions avoidance offset project which is to be revoked. The section uses the defined term section 27 declaration from section 4 of the Principal Rule. The draft Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2017 will include a requirement that for a transitioning project area to be part of the new sequestration offsets project, the application process in section 30A must be used to close off the old project. This ensures continuity of crediting and reporting is maintained.

Application of this section

Subsection 30A(1) provides that section 30A will apply if the Regulator receives a request to act in accordance with the section along with a number of accompanying documents. Paragraph 30A(1)(a) sets out that an application to revoke a section 27 declaration in relation to a former project (which includes the additional information specified in subsection 30A(4)), must be accompanied by the request for the Regulator to act in accordance with section 30A (the request).
Paragraph 30A(1)(b) specifies that the request must also be accompanied by a new application under section 22 of the Act (section 22 application) for declaration of eligible offsets project in relation to a savanna sequestration project with one or more project areas that were project areas under a former project. That is, a section 22 application must be sought for the new project where the project areas under the former project are identical to the project areas under the new project.

Paragraph 30A(1)(c) sets out that the request must also be accompanied by a statement that the applicant wishes the declaration in relation to the former project to only be revoked if the new project is declared an eligible offsets project. That is, a statement that indicates that the applicant does not want the section 27 declaration for the former project to be revoked until the new project is to be declared an eligible offsets project.

Paragraph 30A(1)(d) provides that the applicant must also submit, along with their request, evidence that all persons holding an eligible interest in the project area of the new project have consented to the section 22 application for the new project. The intent of this provision is to avoid the circumstance where consents cannot be obtained and there is no ability to move back to the original savanna emissions avoidance determination. Conditional declarations are still available for new savanna sequestration projects that are not transferring projects.

How the Regulator is to act

Subsection 30A(2) sets out how the Regulator must act after receiving the request, in a sequential order.

Paragraph 30A(2)(a) sets out a number of conditions that must be satisfied before the Regulator can proceed with the request:

- the project proponent must have submitted an offsets report for the former project that covers the most recent full calendar year of the former project (subparagraph 30A(2)(a)(i));

- any certificates of entitlement arising from the offsets report for the former project must have been issued (subparagraph 30A(2)(a)(ii));

- the Australian carbon credit units accounted for in the certificate of entitlement, if any, must have been issued to the holder of the certificate of entitlement (subparagraph 30A(2)(a)(iii));

- there must be sufficient time remaining in the calendar year for the new project to be declared an eligible offsets project before 1 December of that year and for the crediting period for the new project to begin (subparagraph 30A(2)(a)(iv)). That is, the Regulator cannot proceed with the request until there is enough time left in the remaining calendar year for the new project to be formally declared an eligible offsets project before 1 December of the relevant year. For example, if credits are not issued until 30 November of a year, there would not be sufficient time for the Regulator to approve a declaration to take effect before 1 December and offsets reports and crediting for the following year would need to be completed before the application was approved. A note to subparagraph 30(2)(a) sets out the process that the Regulator
must follow if there is not enough time in the calendar year for the new project to be declared eligible.

Paragraph 30A(2)(b) provides that once the conditions set out in paragraph 30A(2)(a) have been satisfied, the Regulator must decide whether or not to declare the new project eligible under a section 27 declaration. This requirement is simply whether or not the project should be declared eligible or not and does not constitute a section 27 declaration being made.

Paragraph 30A(2)(c) sets out the process the Regulator must follow if the decision has been made to declare the new project eligible. Subparagraph 30A(2)(c)(i) provides that the Regulator must first revoke the section 27 declaration for the former project. Subparagraph 30A(2)(c)(ii) provides that immediately after the Regulator has revoked the section 27 declaration under subparagraph 30A(2)(c)(i), the Regulator must make the section 27 declaration for the new project. This would prevent the applicant from being in a situation where there is a gap between their former project being revoked and their new project being declared eligible or overlap between the two projects.

Subsection 30A(3) sets out the process the Regulator must follow if the Regulator:

- decides that the new project should not be declared eligible under paragraph 30A(2)(c) (paragraph 30A(3)(a));

- decides that the requirements in relation to the application under subsection 30A(1) have not been met (paragraph 30A(3)(b)); or

- cannot proceed with the request in a sequential order within 12 months under paragraph 30A(3)(c) (ie there is longer than 12 months from the original application to a final decision under the section).

If any of the paragraphs in subsection 30A(3) apply then the application to revoke the section 27 declaration of the former project is taken to be withdrawn. This prevents the applicant from being in a position where the new project has not been declared eligible for whatever reason and the former project has been revoked. In other words, without an eligible offsets project.

**Application to revoke declaration in relation to former project**

Subsection 30A(4) provides that the application to revoke the section 27 declaration in relation to the former project must be in the approved form and accompanied by the information set out in the subsequent paragraphs.

Paragraph 30A(4)(a) sets out that the name and contact details of the applicant is required to be provided along with the application for revocation. Subparagraphs 30A(4)(a)(i) and (ii) also require information as to whether the applicant is the project proponent or the nominee of the proponent to be provided along with the application for revocation in relation to the former project.

Paragraph 30A(4)(b) sets out that the unique project identifier for the former project is required to be provided along with the application for revocation in relation to the former project.
Paragraph 30A(4)(c) sets out that a signed declaration by the applicant that the information provided along with the application, including the information included in the application itself, meets the requirements in subsection 30A(4) and is accurate in accordance with subparagraphs 30A(4)(c)(i) and (ii).

When the revocation takes effect

Subsection 30A(5) provides that the revocation under subparagraph 30A(2)(c)(i) of the former project’s section 27 declaration will take effect when it is made by the Regulator. Subparagraph 30A(2)(c)(ii) requires that the Regulator make a new section 27 declaration for the new project immediately after revoking the section 27 declaration for the former project. This subsection 30A(5) ensures that there is no gap between the revocation of the former project’s section 27 declaration and the new project being declared as an eligible offsets project.

Notification

Subsection 30A(6) provides that the Regulator must provide the applicant with the section 27 declaration for the new project and the revocation in relation to the former project, if the Regulator makes the revocation in relation to the former project.

New subsection 30B clarifies when Australian carbon credit units are taken to be issued in respect of a project. This will clarify whether section 29 of the Principal Rule or subsection 30 of the Principal Rule should apply to an eligible offsets project.

The subsection provides that for the purposes of subsections 29(1) and 30(1) of the Principal Rule, a ‘project for which one or more Australian carbon credit units have been issued in accordance with Part 2 of the Act’ includes an eligible offsets project with a net abatement amount that is more than zero.

If an eligible offsets project has accrued a net abatement amount above 0, then Australian carbon credit units are taken to have been issued in respect of that project. Under section 52 of the Principal Rule, a project which has land added to it can have a net total number greater than zero before any offsets reports are submitted in relation to the project. This can occur when a land is added to a project and that additional land has previously had credits issued in relation to it. Section 30B makes it clear that section 29 of the Principal Rule should be applied to such a project and not section 30 of the Principal Rule.

[10] At the end of paragraph 70(2)(k) (compliance with bushfire permit requirements)

This item inserts a new paragraph into subsection 70(2) so that evidence of compliance with the permit requirements under State and Territory bushfire legislation is provided in each offsets reports for savanna fire management projects. This would ordinarily consist of evidence that fire permits covered the relevant burning carried out as part of the project. If paragraph 9(6)(d) was being relied upon, the offsets report would be expected to outline why all the criteria of that paragraph were satisfied. In particular:

- Why there was a reasonable excuse for permits not being obtained;
- Whether any court proceedings had commenced or been finalised in relation to the failure to obtain a permit; and
The projects compliance history since declaration such that there is not history of a failure to obtain the necessary permits for burning activity.


This item inserts a new subsection (70(4A)) which specifies additional information to be set out in offsets reports for sequestration offsets projects. The first offsets report to be submitted after the start of the 8th and 24th year of a sequestration offsets project’s crediting period must set out information about the project proponents intentions for the permanent storage of carbon. In particular, the offsets report must set out an explanation of the steps undertaken, and intended to be undertaken, to ensure carbon remains sequestered in the project area for the permanence period for the project. This mirrors the information required at declaration under the additions to section 13, but ensures that this information is provided during the middle and end of the project’s crediting period. This will assist the Regulator target compliance activities to ensure that permanence is maintained.

[12] At the end of paragraph 80A(1)(c) (continued reporting for savanna sequestration projects)

This item inserts a new paragraph to make clear that to end offsets reports for a savanna sequestration project, the project must have reached the end of the 25 year or 100 year permanence period for the project. This is because such projects need to maintain fire management activities for the life of the permanence period, which is best demonstrated by continued offset reporting and monitoring. Under the current legislative rule the Regulator would most likely have not approved the cessation of offsets reporting before this date. The amendment makes this expectation clear to proponents considering the method.
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 2017 (No. 1)

The Carbon Credits (Carbon Farming Initiative) Amendment Rule 2017 (No. 1) (the draft 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 draft Amendment Rule details additional minor administrative procedures under the Act. These include arrangements for project proponents wanting to transfer their project between certain methodology determinations. The draft Amendment Rule also sets out information requirements related to permanence, additional consent requirements for certain projects, and provides specified values for definitions relating to the permanence period and the risk of reversal buffer in the Act. The draft Amendment Rule also sets out who may act on behalf of a project proponent in certain situations and provides some additional definitions, which are relevant to recently made methodology determinations. It does this by amending the Carbon Credits (Carbon Farming Initiative) Rule 2015 (the Principal Rule).

Human rights implications

The draft Amendment Rule does not engage any of the applicable rights or freedoms.


Conclusion

The draft 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.