



Safeguard Mechanism reform consultation - factsheet 9

January 2023

Legislative changes

What are the overall proposed changes to the Safeguard Mechanism?

The Safeguard Mechanism will be reformed to ensure Australia's largest industrial emitters remain competitive in a decarbonising global economy and contribute to meeting our national climate goals. The proposed changes include reducing Safeguard facilities' emission baselines on a steady and predictable path towards net zero, and enabling Safeguard facilities that stay below their baselines to generate tradable credits, known as Safeguard Mechanism Credits (SMCs).

What are the changes to primary legislation?

The Safeguard Mechanism (Crediting) Amendment Bill 2022 establishes the crediting element of the reforms. The detailed implementation will be done through subordinate legislative rules. Following public consultation in October 2022, the Bill was introduced into Parliament on 30 November 2022.

The Bill amends the **National Greenhouse and Energy Reporting Act 2007** (NGER Act). It provides for Safeguard rules to be made on details such as SMC application processes, how to determine the number of units issued, and any rights of review. The Bill also adds a new objective to the NGER Act to ensure net aggregate covered emissions from Safeguard facilities decline. The Bill strengthens the compliance regime by including a provision to stop businesses restructuring themselves to avoid obligations and updating penalties for non-compliance.

The Bill also amends the **Australian National Registry of Emissions Units Act 2011** to establish how SMCs are included in Australia's National Registry of Emissions Units, and ensure SMCs are treated the same as ACCUs. The Bill amends the **Income Tax Assessment Act 1997** so that SMCs receive the same tax treatment as ACCUs.

The reformed Safeguard Mechanism will be the primary driver of emissions reductions at Safeguard facilities. The Bill allows rules to be made to reset the interactions between the Safeguard Mechanism and creation of ACCUs. It also allows for legislative rules to enable the proposed Safeguard cost containment measure, which involves the sale of units from a government registry.

What are the changes to subordinate legislation?

Many of the details of the Safeguard Mechanism are within the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (the Safeguard rules).

The draft **National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023** implements the reformed Safeguard Mechanism as set out in the position paper. Key provisions include baseline setting arrangements for existing and new facilities, declining baselines over time so that Safeguard facilities contribute their proportional share of the national emissions reduction task, flexible compliance options including below-baseline crediting, interactions with ACCU projects and tailored treatment for trade-exposed facilities. The government is seeking feedback on these draft rules.

The ***Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023*** prevents the registration of new ACCU projects that would solely credit reductions in covered emissions from Safeguard facilities. This means that in future, ACCU projects can only be registered if they reduce emissions not covered by the Safeguard Mechanism, such as scope 2 emissions. These rules also allow the Clean Energy Regulator to hold rather than cancel ACCUs purchased through carbon abatement contracts, which is necessary to support the proposed price containment approach. Following consultation on draft rules in October 2022, these rules were made on 9 January 2023.

The draft ***Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) Rules 2023*** prevents new government contracts for purchase of ACCUs from projects that solely credit abatement of covered emissions from Safeguard facilities. These rules also enable the proposed cost containment measure by allowing the regulator to sell ACCUs that have been purchased by the Commonwealth, and setting the price at which ACCUs would be sold. The government is seeking feedback on these draft rules.

The draft ***Australian National Registry of Emissions Units Rules 2023*** would establish Safeguard Mechanism Credits as 'eligible international emissions units'. This helps ensure SMCs are treated the same as ACCUs under other Commonwealth laws, such as GST. The government is seeking feedback on these draft rules.

In addition, some technical amendments to regulations will be needed to support the operation of the Safeguard reforms. Draft regulations will be released for consultation shortly. These relate to:

- The ***National Greenhouse and Energy Reporting Regulations 2008***, to require that production information and estimates of SMCs to be issued are reported for all Safeguard facilities, and to remove civil penalties for excess emissions situations as, through the Bill amendments, these will now be set out in the NGER Act.
- The ***Australian National Registry of Emissions Units Regulations 2011***, to ensure that closure of registry accounts is consistent with the ANREU Act as amended by the Bill.

More information

Learn more about the Safeguard Mechanism position paper at

<https://consult.industry.gov.au/safeguard-mechanism-reform-consultation-paper>.