

EXPLANATORY STATEMENT

Select Legislative Instrument No. 72, 2014

Issued by the Authority of the Minister for the Environment

Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 1)

made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act), together with the *Australian National Registry of Emissions Units Act 2011*, implements the Carbon Farming Initiative (the CFI). The CFI is a voluntary scheme that aims to provide incentives for the agricultural, forestry and landfill sectors to minimise greenhouse gas emissions or maximise carbon storage by altering their agricultural, forestry and landfill practices.

Section 307 of the CFI Act provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the CFI Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the CFI Act. The sections of the CFI Act that require or permit the relevant regulations to be made are set out in [Attachment A](#).

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 1)* (the Regulation) amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) to further support the implementation and administration of the CFI Act. Background information about the CFI Act and the Regulation is set out in [Attachment B](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

A statement of the Regulation's compatibility with human rights is set out in [Attachment C](#).

Details of the Regulation are set out in [Attachment D](#).

Consultation

The CFI Act, the Principal Regulations and the Regulation reflect the outcomes of comprehensive consultation with stakeholders that has been ongoing since October 2010.

An exposure draft of the Regulation was released for public comment from 11 April 2014 to 2 May 2014. One stakeholder submission was received and considered, which concerned a proposed amendment to an existing positive list activity. Following the consultation period, the Government did not proceed with one amendment that was proposed in the exposure draft.

A number of stakeholders have been involved in the development of the positive list activities for using phytocaps on landfills, sequestering soil carbon in grazing systems, and early finishing of beef cattle. PhytoLink Australia and other representatives from industry and the scientific community were consulted on the positive list inclusion for phytocaps on landfills. Interested stakeholders were consulted on the positive list inclusion of sequestering soil carbon in grazing systems through the

Department's Technical Working Group and Stakeholder Reference Group on soil carbon. These groups consist of farmers, consultants, industry experts and scientific experts on soil carbon. RAMP Carbon and the Department's Livestock Technical Working Group were consulted on the inclusion of early finishing of beef cattle on the positive list.

The New South Wales (NSW) Government was consulted on the amendment to the reference to the NSW Crown lands Minister.

Authority: Section 307 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*

Glossary

The following terms, abbreviations and acronyms are used in this explanatory statement.

<i>Abbreviation</i>	<i>Definition</i>
ACCU	Australian carbon credit unit
CFI	Carbon Farming Initiative
CFI Act	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
crediting period	The length of time that an activity can generate credits using an approved methodology. Unless otherwise specified in regulations, a crediting period is seven years, apart from native forest protection projects which have a single (non-renewable) 20 year crediting period.
Department	The Department administering the CFI Act. At time of making the Regulation, the Department administering the CFI Act is the Department of the Environment.
DOIC	Domestic Offsets Integrity Committee
negative list	The list of activities that are excluded from the CFI in circumstances where there is a risk that they will have an adverse impact on the availability of water, the conservation of biodiversity, employment, the local community, or land access for agricultural production.
positive list	The list of activities eligible under the CFI, as prescribed in regulation 3.28 of the Principal Regulations.
Principal Regulations	<i>Carbon Credits (Carbon Farming Initiative) Regulations 2011</i> , as amended.
project proponent	The person who is responsible for carrying out a project and has the legal right to carry out the project. If the project is a sequestration offsets project, the proponent must also hold the applicable sequestration right in relation to the project area or areas (section 5 of the CFI Act).
Regulation	<i>Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 1)</i>

Sections of the CFI Act supporting the Regulation

The Regulation is supported by the following provisions of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act):

- section 5, which allows the regulations to specify a definition of ‘Crown lands Minister’;
- paragraph 41(1)(a), which allows the regulations to specify kinds of projects that pass part of the additionality test;
- subparagraph 69(1)(b)(ii), which allows the regulations to specify a period as the first crediting period for a project that is not a native forest protection project; and
- paragraph 70(4)(b), which allows the regulations to specify a period as the subsequent crediting period for a project that is not a native forest protection project.

Background information

The Carbon Farming Initiative (CFI) enables crediting of greenhouse gas abatement in the land sector. Greenhouse gas abatement is achieved by:

- reducing or avoiding emissions, for example, through capture and destruction of methane emissions from landfill or livestock manure; or
- removing carbon from the atmosphere and storing it in soil or trees, for example, by growing a forest or sequestering carbon in soil.

Australian carbon credit units (ACCUs) are issued in respect of abatement generated by these activities which can be sold to businesses wishing to offset their emissions.

Abatement activities are undertaken as eligible offsets projects. The processes involved in establishing and operating an eligible offsets project are set out in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act), and include the following requirements:

- the project proponent must satisfy the fit and proper person test and become recognised as an offsets entity;
- the project must be for an activity on the positive list and must be covered by a methodology determination;
- the project must be declared by the Clean Energy Regulator (Regulator) to be an eligible offsets project for the purposes of the CFI Act. The Regulator must not declare that the offsets project is an eligible offsets project unless the Regulator is satisfied that the project meets the criteria specified in subsection 27(4) of the CFI Act;
- the project must be undertaken in accordance with the applicable methodology determination; and
- reports on the conduct of the project must be independently audited and submitted to the Regulator at least every five years and not more than annually.

Matters dealt with in the Principal Regulations include:

- declarations of eligible offsets projects, including the process for applying for declaration as an eligible offsets project, and the variation, revocation and restructure of an eligible offsets project;
- the processes for applying for an ACCU, including the calculation of unit entitlement;
- the activities that are included in, and excluded from, the CFI (the positive and negative lists);

- the recognition of offsets entities;
- crediting periods;
- auditing, reporting, notification and record-keeping requirements; and
- procedures of the Domestic Offsets Integrity Committee.

This Regulation amends the Principal Regulations by inserting or amending provisions that deal with:

- the person who is the Crown lands Minister in relation to a state or territory;
- the activities that are included in the CFI (the positive list); and
- the length of crediting periods for particular projects.

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 Regulation 2014 (No. 1)

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 1)* (the Regulation) 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 Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* as part of the ongoing implementation of the Carbon Farming Initiative (CFI). It specifies further project types which are eligible for participation under the CFI (using phytocaps on landfills, sequestering soil carbon in grazing systems, and early finishing of beef cattle). The detailed rules for eligible projects are contained in legislative instruments called methodology determinations. The Regulation also extends the crediting period for soil carbon projects and aims to clarify CFI administrative arrangements by updating a reference to the New South Wales (NSW) Crown lands Minister.

Human rights implications

This Regulation does not engage any of the applicable rights or freedoms.

Conclusion

The Regulation is compatible with human rights as it does not raise any human rights issues.

GREG HUNT
Minister for the Environment

Details of the Regulation

Section 1 – Name of regulation

1. Section 1 provides that the name of the Regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 1)*.

Section 2 – Commencement

2. Section 2 provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

3. Section 3 provides that the Regulation is made under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act).

Section 4 – Schedule(s)

4. Section 4 provides that the Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) in the manner set out in Schedule 1.

Schedule 1 - Amendments

Item [1]: Subregulation 1.3(1) – Definitions

5. This item inserts a definition of *Bureau of Meteorology* into regulation 1.3(1) of the Principal Regulations. This definition is relevant for the new positive list activity for early finishing of beef cattle (see explanation below for Item [7] which inserts new paragraph 3.28(1)(u) into the Principal Regulations).

Item [2]: Regulation 1.4 – Crown lands Minister

6. This item updates the reference to the NSW Crown lands Minister to align with current administrative arrangements in NSW and to align with the references to other state and territory Crown lands Ministers.

Items [3] and [4]: Subregulation 3.27(1) - Definitions

7. These items amend and add to regulation 3.27 of the Principal Regulations, which provides definitions for the positive list contained in regulation 3.28.

8. Item [3] makes a minor technical amendment to the formatting of the Principal Regulations.

9. Item [4] inserts definitions of *Australian rangelands* and *tropical or equatorial area of Australia*. These definitions are relevant for the new positive list activity for early finishing of beef cattle (see explanation below for Item [7] which inserts new paragraph 3.28(1)(u) into the Principal Regulations).

10. Item [4] also inserts a definition of *phytocal*. This definition is relevant for the new positive list activity of reducing landfill emissions using phytocal (see explanation below for Item [6] which amends paragraph 3.28(1)(m) of the Principal Regulations).

Items [5] to [7] – Additionality test

11. Paragraph 41(1)(a) of the CFI Act provides that for the purposes of the CFI Act, in order to pass the additionality test, an offsets project must be of a kind specified in the regulations. The Regulator must not declare that an offsets project is an eligible offsets project unless the project passes the additionality test (paragraph 27(4)(d) of the CFI Act). The list of projects that have been specified for the purposes of paragraph 41(1)(a) of the CFI Act is known as the positive list. Items [6] and [7] of the Regulation insert additional activities on the positive list. Item [5] makes a minor technical amendment to the formatting of the Principal Regulations.

12. The Domestic Offsets Integrity Committee (DOIC) has provided advice to the Minister that it is satisfied that the positive list activities introduced through the Regulation are suitable for inclusion on the positive list.

Phytocal on landfills

13. The positive list already includes an entry for projects which reduce emissions from landfill deposited before 1 July 2012 through the use of biocovers or biofilters (paragraph 3.28(1)(m)). Item [6] adds the use of phytocal to this activity.

14. Biocovers, biofilters and phytocal reduce emissions from landfill through passive oxidation. Passive oxidation involves placing a layer of organic material (such as soil, compost or mulch) over the landfill surface. This allows organisms that consume methane (methanotrophic bacteria) to oxidise some of the methane coming through the landfill surface to carbon dioxide, resulting in greenhouse gas abatement.

15. A phytocal is a layer of soil planted with vegetation which covers landfill and provides favourable conditions for methanotrophic bacteria. Soils covering landfill contain large amounts of these bacteria and under the right conditions can significantly reduce greenhouse gas emissions from landfill.

16. Item [4] defines *phytocal*. A phytocal reduces but does not prevent rainwater percolation, slowing the decomposition rate of the waste below. A phytocal does not contain a compact clay, geosynthetic clay or geomembrane layer. These materials are used in traditional landfill caps and seek to create a ‘dry tomb’; a sealed chamber with minimal permeability simultaneously preventing leachate and rainwater percolation.

17. The use of phytocal to reduce landfill gas emissions is a new technique in Australia, and few full-scale phytocal have been constructed.

Sequestering carbon in soil in a grazing system

18. Item [7] adds new paragraph 3.28(1)(t) to the Principal Regulations. This item adds an entry to the positive list for projects that aim to remove carbon dioxide from the atmosphere by sequestering carbon in soil in a grazing system.

19. Soil carbon levels are generally either stable or declining across Australia's agricultural lands. Soil carbon stocks are a function of the balance between soil carbon inputs and losses. Inputs are affected by factors that control plant growth, and the deposition and subsequent conversion of plant biomass into soil organic matter. Losses are affected by factors that control the rate at which soil organic material is decomposed and returned to the atmosphere as carbon dioxide.

20. There is potential to build soil carbon in grazing systems by improving pasture production and managing grazing pressure to increase inputs of plant biomass in the soil. Strategies to build soil carbon in grazing systems could include pasture improvement through fertilisation, irrigation or species selection and managing the timing, intensity and frequency of grazing. Permanent destocking is not a form of managing grazing systems.

21. In addition to removing carbon from the atmosphere, sequestering carbon in agricultural soils can increase farm productivity through improved soil structure, water-holding capacity and fertility.

22. The activity is broadly expressed on the positive list due to the difficulty of identifying particular management strategies that build soil carbon stocks across a range of environments. To be confident that carbon is being sequestered in soil, temporal variations in site-specific soil carbon stocks and their associated uncertainty will need to be measured or, for those activities for which there is a demonstrated link between the activity and soil carbon response, modelled under methodology determinations developed for soil carbon activities.

Early finishing of beef cattle

23. Item [7] also adds new paragraph 3.28(1)(u) to the Principal Regulations. This item adds an entry to the positive list for reducing the time taken for beef cattle to reach market weight.

24. Early finishing for beef cattle in northern Australia can reduce methane and nitrous oxide emissions because higher quality feed results in lower emissions, and younger cattle emit less methane than older cattle.

25. There are significant barriers to uptake of the activity, and it is not common practice to feedlot beef cattle in the Australian rangelands or in tropical or equatorial Australia, or to finish these cattle with supplements such as grains, oils and nitrates.

26. The beef cattle must be fed rations or supplements, for example grains or sorghum, that have a higher energy and protein content than the pasture that the cattle have been grazed on.

27. The beef cattle must have been grazed on pasture in the Australian rangelands or in a tropical or equatorial area of Australia. The majority of cattle in Australia's tropical north are grazed on pasture which is subject to seasonally-driven variability in availability and quality. As a result, beef cattle in these regions often require three to seven years before they are ready for market.

28. Item [4] inserts a definition of *Australian rangelands* which provides that the rangelands are the area specified on a map to be published on the Department's website. The map defining the rangelands areas will be underpinned by a dataset developed by the Australian Collaborative Rangelands Information System (currently available at: www.environment.gov.au).

29. Similarly, Item [4] inserts a definition of *tropical or equatorial area of Australia* which provides that these areas are defined on a map to be published on the Department's website. The map defining the tropical and equatorial areas will be underpinned by a dataset that defines the key climate groups developed by the Bureau of Meteorology (currently available at: www.bom.gov.au). Item [1] defines *Bureau of Meteorology* as the Commonwealth Bureau of Meteorology.

Items [8] and [9]: Regulation 5.1– First crediting period and Regulation 5.2 – Subsequent crediting period

30. These items amend regulations 5.1 and 5.2 in the Principal Regulations. Regulation 5.1 specifies first crediting periods that are different lengths than the standard 7 year crediting period for a project (paragraph 69(1)(b) of the CFI Act). Regulation 5.2 specifies subsequent crediting periods that are different lengths than the standard 7 year subsequent crediting period for a project (paragraph 70(4)(b) of the CFI Act).

31. The setting of a crediting period for a project in the Principal Regulations provides certainty that a project will remain eligible under the CFI for a period of time. This means that a project can continue to operate for the remainder of its crediting period, even after a methodology determination has been revoked or amended, or the kind of project has been removed from the positive list, and would therefore not pass the additionality test.

32. Items [8] and [9] provide for a 15 year crediting period for projects to remove carbon dioxide from the atmosphere by sequestering carbon in soil in a grazing system. The provision of a longer crediting period is appropriate for soil carbon projects because the effects of a change in management practices on soil carbon stocks can take many years to become evident.