

EXPLANATORY STATEMENT

Carbon Credits (Carbon Farming Initiative) Act 2011

*Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency)
Methodology Variation 2015*

Purpose

The *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Variation 2015* (the Variation) amends the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Determination 2015* (the Determination).

The Variation implements two changes. Firstly, it ensures that the coverage of biomass under the Determination is consistent with the recently amended Renewable Energy Target (RET) scheme. By referencing the RET scheme, the Variation applies that scheme's controls around the use of biomass. Secondly, it introduces two values in the table in subsection 51(5) to ensure that project proponents using sub-method 2 who choose to delay the start of their crediting period are able to calculate *decay factors* for their full crediting period.

Legislative provisions

The Determination was made under subsection 106(1) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act).

The Variation amends the Determination, and is made under subsection 114(1) of the Act, which empowers the Minister to vary, by legislative instrument, a methodology determination.

Background

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.

Emissions reduction activities are undertaken as offsets projects. The process involved in establishing an offsets project is set out in Part 3 of the Act. An offsets project must be covered by, and undertaken in accordance with, a methodology determination.

Subsection 106(1) of the Act empowers the Minister to make, by legislative instrument, a methodology determination. The purpose of a methodology determination is to establish procedures for estimating abatement (emissions avoidance or sequestration) from eligible projects, and rules for monitoring, record keeping and reporting. These determinations help ensure that emissions reductions are genuine—that they are both real and additional to business as usual.

The Determination was made on 25 March 2015, and sets out the detailed rules for implementing and monitoring industrial electricity and fuel efficiency projects.

Operation

The Variation amends sections 5, 11, 13, 51 and 53 of the Determination. The amendments to sections 5 and 11 ensure that the Determination's coverage of biomass is consistent with the RET scheme. These amendments are supported by amendments to the associated application and reporting requirements set out in sections 13 and 53 respectively. The amendment to section 51 includes two further decay coefficients to ensure that decay factors can be calculated where a project proponent chooses to delay the start of their crediting period.

The Variation does not affect projects that are already registered and using the existing Determination. Even after a determination has been varied, an eligible offsets project already registered can continue to use the determination in the form it was at the time the project was registered under section 126 of the Act. The project proponent may also choose to apply to the Clean Energy Regulator for approval to move to the varied determination under section 128 of the Act. All decisions to approve eligible offsets projects after the commencement of the Variation will need to comply with the Determination as varied by the Variation, even if the applications were submitted before the Variation commenced.

Public consultation

The Variation has been developed by the Department of the Environment.

An exposure draft of the Variation was published on the Department's website for public consultation from 5 August 2015 to 19 August 2015. Stakeholders and members of the public who asked to be included on the Emissions Reduction Fund mailing list were notified of the public consultation period. The Technical Working Group and Reference Group involved in the development of the Determination were also notified of the public consultation period. One submission was received. Details of non-confidential submissions are provided on the Department of the Environment website, www.environment.gov.au.

Determination details

Details of the Variation are at [Attachment A](#). Numbered sections and items in this explanatory statement align with the relevant sections and items of the Variation and the Schedule. The definition of terms highlighted in ***bold italics*** can be found in the Variation or the Determination.

For the purpose of subsections 114(2), (2A) and (7B) of the Act, in varying a methodology determination the Minister must have regard to, and agree with, the advice of the Emissions Reduction Assurance Committee (ERAC) that the varied methodology determination complies with the offsets integrity standards and that the varied methodology determination should be made. The Minister must be satisfied that the carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project is eligible carbon abatement from the project. The Minister also must have regard to whether any adverse environmental,

economic or social impacts are likely to arise from the carrying out of the kind of project to which the varied methodology determination applies and other relevant considerations.

A Statement of Compatibility prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* is at Attachment B.

Details of the Variation

1 Name

Section 1 sets out the full name of the Variation, which is the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Variation 2015*.

2 Commencement

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

3 Authority

Section 3 provides that the Variation is made under subsection 114(1) of the Act.

4 Amendment of methodology determination

Section 4 provides that the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Determination 2015* is amended as set out in Schedule 1 of the Variation.

Schedule 1

Amendments of the Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Determination 2015

[1] Section 5

Section 5 of the Determination defines a number terms used in the Determination.

Item [1] amends section 5 of the Determination by inserting the following two definitions.

Biomass means organic matter other than fossil fuel (e.g. coal, lignite, petroleum or natural gas) and biofuel (e.g. ethanol or biodiesel). Fossil fuels are excluded to avoid any doubt that they are biomass due to the presence of organic matter. Biofuels are excluded because for these processed fuels, often used in transport, it is generally impractical for a proponent to verify the sources of the fuels.

Eligible renewable energy source means an eligible renewable energy source for the purpose of the *Renewable Energy (Electricity) Act 2000*. That concept is defined in section 17 of the *Renewable Energy (Electricity) Act 2000* and is subject to a number of regulations which include additional requirements for whether a particular source is eligible or not under the Renewable Energy Target (RET) scheme.

[2] At the end of subsection 11(3)

Subsection 11(3) of the Determination sets out a list of activities that are not eligible under the Determination. Item [2] amends subsection 11(3) of the Determination by adding the new paragraphs 11(3)(d) and 11(3)(e), as well as the new subparagraphs 11(3)(f)(i) and 11(3)(f)(ii) at the end of subsection 11(3). These amendments add a number of types of activities to this list of ineligible activities in order to ensure consistent coverage of biomass with the RET scheme.

Paragraph 11(3)(d) excludes activities that directly involve the use of biomass as an energy source where the biomass is not an eligible renewable energy source for the purposes of the *Renewable Energy (Electricity) Act 2000*. For example, an activity involving changing the fuel source for a furnace from coal to RET-ineligible biomass is not covered by the Determination.

Paragraph 11(3)(e) excludes activities that relate to the use of off-grid electricity, heat, steam or cooling that is produced using biomass that is not an eligible renewable energy source for the purposes of the *Renewable Energy (Electricity) Act 2000*. Paragraph 11(3)(e) excludes

implementations under which crediting will be sought for a reduction in emissions that comes about by switching from electricity, heat, steam or cooling that is generated from one source, to off-grid electricity, heat, steam or cooling that is generated from RET-ineligible biomass. For example, a project proponent could not establish an activity that involves switching from grid-supplied electricity, to electricity supplied from an off-grid generator that uses RET-ineligible biomass.

Similarly, the new paragraph 11(3)(e) would exclude implementations that seek to reduce emissions by moving from, for example, a gas-generated heat source to the capture and utilisation of waste heat from a device that consumes RET-ineligible biomass.

In this Variation, off-grid electricity means the supply of electricity through a dedicated power line as opposed to the supply of electricity through an interconnected network of generators that are governed by the ordinary market arrangements of the major grids.

Off-grid electricity is intended to cover electricity sourced directly from a generator even if there are other users of the electricity. For example, electricity would be considered off-grid electricity if it were produced at the site of the implementation or at a nearby site.

Subparagraph 11(3)(f)(i) excludes activities that relate to **energy-consuming equipment** if the equipment utilises, as an energy source, a form of biomass that is not considered an eligible renewable energy source for the purposes of the *Renewable Energy (Electricity) Act 2000*. For example, an activity that improves the efficiency of a furnace or boiler fuelled by RET-ineligible biomass would not be an eligible activity under the Determination.

Subparagraph 11(3)(f)(ii) excludes activities that relate to **energy-consuming equipment** that receives off-grid electricity, heat, steam or cooling that is produced using biomass that is not an eligible renewable energy source for the purposes of the *Renewable Energy (Electricity) Act 2000*. For example, an activity that involves upgrading a cooling system for a cold storage facility would not be eligible if electricity or cooling were supplied to the cooling system by a tri-generation unit that consumes RET-ineligible biomass.

These amendments align the Determination's coverage of biomass with the RET scheme. The RET scheme covers a number of forms of biomass, and applies several tests and constraints to limit the risk of adverse impacts in relation to their use. Comparable provisions in other relevant methodology determinations will also align with these requirements.

[3] Subparagraph 13(1)(a)(ii)

Item [3] adds the word 'and' to connect subparagraph 13(1)(a)(ii) and the new subparagraph 13(1)(a)(iii).

[4] After subparagraph 13(1)(a)(ii)

Section 13 of the Determination sets out the requirements for information that must be included in an application for declaration of a project. Item [4] amends section 13 of the Determination by inserting the new subparagraph 13(1)(a)(iii) after subparagraph 13(1)(a)(ii).

The new subparagraph 13(1)(a)(iii) requires that, if biomass will be, or is likely to be, used in *implementation equipment* as an energy source, or used to produce off-grid electricity, heat, steam or cooling that will be used by implementation equipment, a proponent must include a declaration that the biomass will satisfy the definition of eligible renewable energy source. This information assists assessment of the application in relation to whether the biomass meets the eligibility requirements set out in the new paragraphs 11(3)(d) and 11(3)(e), as well as subparagraphs 11(3)(f)(i) and 11(3)(f)(ii).

[5] Subsection 51(5)

Under sub-method 2 of the Determination, net abatement for an implementation is determined using an operating emissions model. Decay factors are applied to the abatement calculations to account for the fact that reporting period energy use and associated emissions levels are modelled as opposed to directly measured. These factors also account for the gradual reduction in the efficiency of equipment and processes.

Under section 51 of the Determination, decay factors can be calculated using either the default *decay coefficients* in the table in subsection 51(5) of the Determination, or through the use of a *persistence model tool* published by the Department of the Environment. The table in subsection 51(5) covers seven *decay coefficient years* and provides a corresponding decay coefficient for each year. In a very limited set of circumstances, a project could go beyond the seven year period covered by the table by up to 18 months at the end of its crediting period.

This would occur only if all of the following circumstances arise:

- sub-method 2 is used;
- the persistence model tool is not used to calculate decay factors;
- the proponent starts their crediting period after the start of their *operating measurement period*; and
- the proponent does not update their operating emissions model in order to reset the decay coefficient year to 1.

The period within which a proponent may not be able to source decay coefficients from the table in subsection 51(5) of the Determination is limited to 18 months. This is because the crediting period of a project is required to start within 18 months of the project being declared an eligible offsets project, while the operating measurement period, which sets the start date of the first decay coefficient year, could start as soon as the project is declared an eligible offsets project. This means that, should a project proponent start the operating measurement period on the day of project declaration, and delay the start of the crediting period by 18 months, the project would be without decay coefficients for the last 18 months of its crediting period.

To enable calculation of decay factors under all circumstances, item [5] amends subsection 51(5) to include two further decay coefficient years—years eight and nine—and two corresponding decay coefficient values. The value used for year eight—0.125—is consistent with the decrease in decay coefficients in years one to seven, and is held constant in the ninth year.

As a result of this amendment, the table in subsection 51(5) will appear as follows:

Decay coefficients		
Item	Decay coefficient year	Decay coefficient
1	1	1.000
2	2	0.875
3	3	0.750
4	4	0.625
5	5	0.500
6	6	0.375
7	7	0.250
8	8	0.125
9	9	0.125

[6] At the end of subsection 53(2)

Further to the general requirements set out under the Act, including legislative rules made under it, section 53 of the Determination sets out specific additional information that must be included in an offsets report. Item [6] amends section 53 by adding new subparagraphs 53(2)(d)(i) and 53(2)(d)(ii) at the end of subsection 53(2). This amendment adds new requirements for information provided in an offsets report.

These new subparagraphs require that if biomass was used as an energy source during the reporting period in implementation equipment, or if biomass was used to produce off-grid electricity, heat, steam or cooling that was used in implementation equipment, the proponent must include in the offsets report a declaration that the biomass used in the reporting period complied with the definition of eligible renewable energy source.

This required information assists assessment of compliance with the requirements for the use of eligible biomass.

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—Industrial Electricity and Fuel Efficiency) Methodology Variation 2015

This Legislative Instrument 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—Industrial Electricity and Fuel Efficiency) Methodology Variation 2015* (the Variation) amends the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Determination 2015* (the Determination). The Variation ensures the Determination applies the same principles to the coverage of biomass fuel sources and biomass-derived energy as those under the Renewable Energy Target (RET) scheme. The Variation also applies in the Determination two further decay coefficient years and decay coefficients to ensure that decay factors can be calculated where a project proponent chooses to delay the start of their crediting period.

Human rights implications

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

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Greg Hunt, Minister for the Environment