

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Energy and Emissions Reduction

Carbon Credits (Carbon Farming Initiative) Regulations 2011

*Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects)
Regulations 2020*

Purpose and Operation

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.

The Australian Government established the Emissions Reduction Fund (the ERF) by amending the Act in 2014. The ERF is designed to help Australia meet its emissions reduction targets by purchasing approved and verified emissions reductions from registered projects (projects declared under section 27 of the Act).

The *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) define types of projects that are ‘excluded offsets projects’ under section 56 of the Act and cannot be declared ‘eligible offsets projects’ under section 27 of the Act.

By reducing the regulatory burden in the application of the requirements of the Principal Regulations, the *Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects) Regulations 2020* (the Amendment Regulations) are expected to facilitate projects under the ERF.

Definitions

The Amendment Regulations amend the definition of ‘known weed species’ in regulation 3.34 of the Principal Regulations to update references to outdated State legislation. The current State legislation has the same effect.

The definition of known weed species does not incorporate these laws, but merely refers to them to identify the plant species that the definition covers. The reference in the Principal Regulations to these State and Territory laws is governed by section 10A of the *Acts Interpretation Act 1901* such that the references to the repealed laws would be read as referring to the new legislation as in force from time to time even without the amendment. The amendment avoids any confusion on the face of the legislation.

The Amendment Regulations also repeal outdated notes referring to the availability of documents on certain websites.

Ceasing or avoiding harvest of a plantation

The Amendment Regulations remove paragraph 3.36(1)(d) of the Principal Regulations, which excludes ERF projects that cease or avoid harvesting of plantation forests (forests

established for harvest). The paragraph was included at the start of the scheme on the assumption that plantation forests are established for the purpose of harvest and may not be designed to be permanent. The paragraph was intended to avoid potential adverse land management impacts from not harvesting these forests.

All ERF projects must comply with environmental and planning regulations at all levels of government and have all necessary approvals before they can receive credits (section 28 of the Act). Paragraph 3.36(1)(d) of the Principal Regulations provided an additional regulatory check that is no longer needed.

Removing the exclusion would allow projects that cease or avoid harvesting of plantation forests to proceed, subject to development of a new ERF methodology determination for this activity in future. Any remaining risks from such projects can be considered and dealt with in the eligibility requirements for any such method.

Water interception requirements

To participate in the ERF, plantation forestry, farm forestry and other specified tree planting projects in areas that receive more than 600 mm long-term average annual rainfall must comply with regulation 3.37 of the Principal Regulations. Regulation 3.37 contains requirements designed to manage the risk that interception of water by these types of plantings could reduce water availability for other water users. The section includes pathways for projects to demonstrate that they should not be excluded (essentially because they are unlikely to materially impact water availability).

ERF projects must comply with all environmental and planning regulations, including State or Territory regulations pertaining to water interception. Since the Principal Regulations were made in 2011, there have been significant advances in water management in Australia. The Amendment Regulations take these recent developments into account, providing another, generally simpler, pathway for projects to show they are not excluded by the regulation.

It allows projects to be declared if they are located in a region where tree planting is unlikely to have a material adverse impact on the availability of water. These regions are identified in a map published on the website of the Department of Industry, Science, Energy and Resources (www.industry.gov.au). The map is an incorporated document as in force from time to time consistent with the power in section 304 of the Act. It will allow the areas where water interception issues are adequately dealt with to be updated over time to reflect changes in applicable regulatory frameworks and other relevant information.

Authority

This instrument is made under the Act. Section 307 of the Act empowers the making of regulations and section 56 allows for the prescription of excluded offsets projects by regulation or legislative rule.

Consultation

The Australian Government invited written submissions on the proposed changes to the Principal Regulations. Submissions closed on 28 February 2020. The 25 submissions received mostly supported the changes. Consideration of the submissions did not result in any substantive change to the proposed approach.

Regulatory Impact

The Department of Industry, Science, Energy and Resources consulted the Office of Best Practice Regulation (OBPR) on the need for a Regulation Impact Statement (RIS). OBPR advised (ref ID 26266) that a RIS was not required. By updating outdated references and removing or amending requirements, the Amendment Regulations will reduce the regulatory burden for tree planting projects affected by the changes.

Details of the *Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects) Regulations 2020*

Section 1 – Name of Instrument

This section specifies the name of the Amendment Regulations as the *Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects) Regulations 2020*.

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after they are registered.

Section 3 – Authority

This section sets out that the Amendment Regulations are made under the Act, with the relevant section being section 307. The power to make regulations under this section includes the power to amend or revoke regulations that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedules

This section provides for the Principal Regulations to be amended or repealed as set out in the applicable items in the Schedules to this instrument. The intent of changes made through the Amendment Regulations is set out below.

Schedule 1 – Amendments

Items 1A, 1E and 1F – Regulations 1.3 and 3.34

These items repeal outdated notes. The relevant Weeds of National Significance list can be found at www.environment.gov.au/biodiversity/invasive/weeds/weeds/lists/index.html.

Items 1B, 1C and 1D – Regulation 3.34

These items replace references to repealed State weed control legislation with the current legislation in each State. In New South Wales the *Noxious Weeds Act 1993* is now the *Biosecurity Act 2015*. In Queensland the *Land Protection (Pest and Stock Route Management) Act 2002* is now the *Biosecurity Act 2014*. In Western Australia the *Plant Diseases Act 1914* is now the *Biosecurity and Agriculture Management Act 2007*. The relevant State legislation can be found at www.legislation.nsw.gov.au, www.legislation.qld.gov.au and www.legislation.wa.gov.au. The current State legislation has the same effect.

The reference in the Principal Regulations to these State and Territory laws is governed by section 10A of the *Acts Interpretation Act 1901* such that the references to the repealed laws

would be read as referring to the new legislation as in force from time to time even without the amendment. However, the amendment avoids any confusion on the face of the legislation.

Item 1 – Paragraph 3.36(1)(d)

This item repeals paragraph 3.36(1)(d), which defines excluded offsets projects to include projects that cease or avoid harvesting of plantation forests. As a result, such projects are no longer excluded by the Principal Regulations. However, projects will still need to meet requirements of any future applicable methodology determination.

Item 2 – Regulation 3.37

In deciding to recommend that the Governor-General make the Principal Regulation, the Minister had regard to whether there is a material risk that projects might have a material adverse impact on the availability of water, as required by subsection 56(2) of the Act. The purpose of regulation 3.37 is to provide for the circumstance where a ‘specified tree planting project’ could have a material adverse impact on the availability of water and is thus excluded from being declared an eligible offsets project.

The regulation already includes a number of pathways for projects to demonstrate that they should not be excluded. The Amendment Regulations add another, generally simpler, pathway for projects to show they are unlikely to have a material adverse impact on the availability of water and are not excluded by the regulation.

To implement the Amendment Regulations, the Minister has approved a map of regions of Australia where the planting of trees by projects is unlikely to have a material adverse impact on the availability of water. The Minister takes advice from the Department of Industry, Science, Energy and Resources and Department of Agriculture, Water and the Environment in determining these regions.

This advice takes into account the applicable Commonwealth, State and Territory regulatory requirements, such as those under the Commonwealth *Water Act 2007*, and other relevant matters. Projects in these regions do not need to apply through other pathways in the Principal Regulations to demonstrate that they are not excluded. The Amendment Regulations will accordingly reduce the regulatory burden for these projects.

The map is a form of ‘writing’ incorporated into the Principal Regulations as in force from time to time consistent with section 304 of the Act. It is published on the Department of Industry, Science, Energy and Resources website: www.industry.gov.au.

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 (Excluded Offsets Projects) Regulations 2020

These Amendment Regulations are 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) Regulations 2011* (the Principal Regulations) define types of projects that are ‘excluded offsets projects’ under section 56 of the Act and cannot be declared eligible offsets projects under section 27 of the Act.

By reducing the regulatory burden in the application of the requirements of the Principal Regulations, the *Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects) Regulations 2020* (the Amendment Regulations) are expected to facilitate projects to supply credits for purchase by the Government under the Emissions Reduction Fund, or other entities.

The Amendment Regulations update references to State legislation on weeds, removes a requirement relating to the cessation or avoidance of harvest of a plantation and allows for a map to identify regions where projects to plant trees are unlikely to have a material impact on water availability.

Human rights implications

These Amendment Regulations do 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: www.legislation.gov.au/Details/C2014B00129.

Conclusion

These Amendment Regulations are compatible with human rights as it does not raise any human rights issues.

Minister for Energy and Emissions Reduction

The Hon Angus Taylor MP