



Australian Government
Clean Energy Regulator

EXPLANATORY STATEMENT

Issued by the Clean Energy Regulator

Carbon Credits (Carbon Farming Initiative) Rule 2015

Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Amendment (Low Risk Environmental Planting Projects) Instrument 2021

Background

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 2014, the Australian Parliament passed the Carbon Farming Initiative Amendment Act 2014, which established the Emissions Reduction Fund (ERF).

Under the ERF, emissions reduction activities are undertaken as offsets projects. Participation in the crediting component of the ERF involves establishment of an offsets project, and Project proponent can apply to the Clean Energy Regulator to declare the project as an eligible offsets project. To be declared the offsets project must be covered by, and undertaken in accordance with, a methodology determination and meet other requirements set out in Part 3 of the Act.

The Act is supported by subordinate legislation, including the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rule) and the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*. The Minister for Energy and Emissions Reduction is empowered to make legislative rules under section 308 of the Act.

The Rule details additional administrative procedures under the Act, including a fit and proper person test for project proponents, procedures for parts of the carbon abatement purchasing process, the length of reporting periods, notification and record-keeping requirements, as well as information on audit requirements for certain project applications and reports.

Subsection 75(4) of the Rule empowers the Clean Energy Regulator to make a legislative instrument (the audit thresholds instrument) that may set out the following six matters:

- (a) audit thresholds for eligible offsets projects
- (b) the number of subsequent audits required for projects meeting each audit threshold
- (ba) matters relating to alternative assurance projects for subsection 73(7)
- (bb) if an alternative assurance project is required to undertake one or more scheduled audits, whether the first of those audits is an initial audit

- (c) a trigger audit threshold, beyond which an eligible offsets project must be subject to a threshold audit, and
- (d) a variance audit threshold, beyond which an eligible offsets period must be subject to a triggered audit under section 78 of the Rule if requested by the Clean Energy Regulator.

The provisions at 75(4)(ba) and (bb) were introduced through a June 2021 amendment to the CFI Rule – they set out the powers of the Clean Energy Regulator in creating and setting out audit obligations for classes of alternative assurance projects.

The ability to determine the contents of the audit thresholds instrument provides the Clean Energy Regulator with flexibility to make adjustments to the audit arrangements to meet evolving needs and adapt to developing risks.

In June 2021 the Rule was amended to introduce ‘alternative assurance projects’ as a new category of eligible offset projects. Prior to these amendments all eligible offsets projects were subject to one initial and a minimum of two subsequent audits, with the number of subsequent audits dependent on the audit threshold met by the project as set out in the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015* (the 2015 Audit Thresholds Instrument).

As a result of the Rule amendment, alternative assurance projects may be subject to fewer audits and in some cases may require no audits.

The Rule was also amended to expand the situations in which the Clean Energy Regulator may vary an audit schedule for pre-existing projects that meet the criteria for alternative assurance projects or change the schedule so that a project becomes an alternative assurance project, after a schedule is set. This includes allowing the removal of one or more audits that would not be required if the project becomes a low risk alternative assurance project.

The changes to the Rule to allow for alternative assurance projects’ needs to be given effect by changes to the Audit Threshold Instrument.

Through the audit thresholds instrument, the Clean Energy Regulator may define the classes of alternative assurance projects that may be subject to fewer audits subject to meeting specified criteria and conditions. However, the application of the class to a specific project will be contingent on the consent of the project proponent (paragraph 73(7)(d) of the Rule).

Where a project changes so that it is no longer an alternative assurance project, or does not meet the conditions of an alternative assurance project, the Rule allows the Clean Energy Regulator to vary the audit schedule to add audits that would have otherwise been required if the project was not an alternative assurance project. This type of decision is a reviewable decision.

The purpose of the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Amendment (Low Risk Environmental Planting Projects) Instrument 2021* (the instrument) is to amend the 2015 Audit Thresholds Instrument to set out the requirements for one class of alternative assurance project – this class is called “Low Risk Environmental Planting projects”.

In making the instrument, the Clean Energy Regulator is required by subsection 75(4A) to take into account:

- (a) the proportionality of likely audit burden to risks associated with relevant classes of eligible offsets projects; and
- (b) whether particular classes of eligible offsets projects should have more or less scheduled audits or no scheduled audits; and
- (c) the likely effectiveness of any alternative assurance process that may be prescribed or specified for the purposes of paragraphs 73(7)(b) or (c); and
- (d) the principle that any costs for a project proponent of being an alternative assurance project should be less than the costs of audits that would otherwise be conducted; and
- (e) any other matter the Regulator considers relevant.

The Clean Energy Regulator has taken specific regard to the matters set at in (a) to (d) into account for the class of Low Risk Environmental Planting projects and considers that the risks are such that no audits would be necessary for this class of projects. The costs of these projects being alternative assurance projects meeting the criteria in the instrument would generally be less than if audits were conducted.

Where the cost of meeting the criteria is higher, the proponent may choose for the project to continue with a standard audit schedule.

Attachment A outlines and describes the sections in the instrument.

Reasons for amendment

The *2020 Report of the expert panel examining additional sources of low cost abatement* (the King Review), made several recommendations to reduce administrative costs and encourage greater uptake of ERF projects by farmers and small landholders, including:

- Recommendation 6.7 – reducing transaction costs to drive participation from small agriculture projects.
- Recommendation 6.10 – continue efforts to streamline ERF audit requirements at an administrative level and to explore the potential to use alternatives to more traditional audit processes.

Integrity of abatement is a key element of the ERF. Since the inception of the scheme, audit has been a core integrity and assurance measure for all projects. The CFI Amendment Rule and related amendments to the Audit Threshold Instrument recognise that, as industry innovates and technologies develop, there are opportunities to recognise alternatives to the current audit arrangements while still providing a level of assurance that is fit for purpose and does not reduce scheme integrity. Such alternatives can reduce administrative burden for participants and broaden scheme participation, including for small-scale projects for which the audit costs are a barrier, in line with the King Review recommendation.

In addition, the CFI Amendment Rule and amended Audit Threshold Instrument supports the Carbon + Biodiversity Pilot (C+B Pilot) administered by the Department of Agriculture, Water and the Environment (DAWE). The C+B Pilot provides financial support for farmers and landholders to improve on-farm biodiversity together with carbon abatement benefits under the ERF. One of the core elements of the C+B Pilot is that participants register an ERF project using the Carbon Credits (Carbon Farming Initiative) (Reforestation by Environmental or Mallee Plantings—FullCAM) Methodology Determination 2014 (the environmental plantings method). Stakeholders have raised audit costs as an impediment to participation in the C+B Pilot.

Public Consultation

In September 2020, the Clean Energy Regulator undertook a round of public consultation seeking industry's reviews on ways in which audit requirements in the Emissions Reduction Fund could be streamlined to reduce costs while maintaining scheme integrity. This consultation contributed to the proposal to create a new category of eligible offsets projects that would be subject to lower audit obligations.

Joint consultation between the Clean Energy Regulator and the Department of Industry, Science, Energy and Resources on alternative assurance projects was undertaken in May 2021. An exposure draft of the Audit Thresholds Instrument was included as part of the consultation on the Clean Energy Regulator website for comment and feedback. Comments and advice received were taken into account in finalising the audit threshold instrument. XX submissions were received

Regulatory Impact

The Office of Best Practice Regulation considers that the proposal is unlikely to have a more than minor regulatory impact. Therefore, the preparation of a Regulation Impact Statement is not required for the proposal.

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) (Audit Thresholds) Amendment (Low Risk Environmental Planting Projects) Instrument 2021*

1 Name

This section sets out the name of the instrument.

2 Commencement

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

3 Authority

This section sets out the legal authority for the making of the instrument, being subsection 75(4) of the *Carbon Credits (Carbon Farming Initiative) Rule 2015*. The power to amend the existing instrument is confirmed by subsection 33(3) of the *Acts Interpretation Act 1901*.

4 Amendment of instrument

This section references Schedule 1 of the instrument, which sets out the amendments made to the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015*.

Schedule 1—Amendment of the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015*

1 Section 3

The effect of this item is to retain the current two definitions in the previous section 3, and add one new one. This new definition added by this item is:

- ***CFI Rule*** means the *Carbon Credits (Carbon Farming Initiative) Rule 2015*.

2 Section 4

This item adds '(other than alternative assurance projects)' into the paragraph. This text was added to clarify that the audit thresholds in the table under this section do not apply to alternative assurance projects.

3 Section 5

This item adds '(other than alternative assurance projects)' into the paragraph. This text was added to clarify that alternative assurance projects are not subject to the number of subsequent audits set out in the table under this section.

4 Section 7

This item adds a new section to the instrument that sets out the requirements an eligible offset project must meet to be classified as an alternative assurance project. It also sets out the number and type of audits required for specific classes of alternative assurance projects. The requirements an eligible offset project must meet are:

- a. Have its applicable methodology determination prescribed by column 2 of the table below; and
- b. meet the criteria prescribed by column 3 of the table below; and
- c. meet conditions on the project proponent related to the operation or reporting for the project specified by column 4 of the table below.

The following table sets out the specific requirements for each class of alternative assurance projects.

Class of project	Prescribed methodology determination (CFI Rule paragraph 73(7)(a))	Project related criteria that must be met (CFI Rule paragraph 73(7)(b))	Conditions related to operation, monitoring, or reporting for the project that must be met (CFI Rule paragraph 73(7)(c))	Number/type of audits (CFI Rule paragraph 73(2)(d) and 75(4)(bb))
Low Risk Environmental Planting projects	<i>Carbon Credits (Carbon Farming Initiative) (Reforestation by Environmental or Mallee Plantings— FullCAM) Methodology Determination 2014</i> (whether applied as in force from time to time or applied under sections 125, 126 or 127 of the Act)	1. The project proponent, or nominee of multiple project proponents, must be a freehold title holder, leaseholder, or native title holder or registered native title body corporate for all project areas of the project. 2. The anticipated and reported carbon estimation area for the project must be no more than 200	Nil	Zero

		<p>hectares.</p> <p>3. The project must be modelled as a mixed species block planting using the generic calibration in FullCAM.</p> <p>4. The project is subject to geospatial tool monitoring by the Clean Energy Regulator (within the meaning of the prescribed methodology determination).</p>		
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The *Carbon Credits (Carbon Farming Initiative) (Reforestation by Environmental or Mallee Plantings—FullCAM) Methodology Determination 2014* is a methodology determination made under section 106 of the Act and a legislative instrument registered on the Federal Register of Legislation. It allows for the creation of eligible offsets projects for which abatement can be credited for project proponents who undertake environmental plantings in accordance with the methodology.

The first criteria relates to who is declared as the project proponent for the project. Only direct landholders, such as title holders and leaseholders, are included for the project area and not third parties such as carbon service providers. However carbon service providers can be agents for the projects,

The second criteria relates to the size of the area that will be credited for environmental plantings under the methodology determination and provides an upper limit of 200 hectares.

The third criteria relates to the way in which the project’s abatement is modelled. FullCAM is the Government’s Full Carbon Accounting Model, which is defined in the methodology determination. FullCAM is currently available at www.industry.gov.au, and in the event of changes the Administrative Arrangements Order can be reasonably expected to be found on the website of the Department administered by the Minister responsible for the Act.

The fourth criteria relates to GIS (Geographic Information System) monitoring, such as the use of satellite imagery to monitor the progress of the plantings.

There are no conditions for Low Risk Environmental Planting projects set out in the instrument.

Low Risk Environmental Planting projects are subject to no audits.

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) (Audit Thresholds) Amendment Instrument 2021

The Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Amendment Instrument 2021 (the 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) 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) Rule 2015* details additional administrative procedures under the Act, including information and audit requirements for project applications and reports, the fit and proper person test for participants, procedures for parts of the carbon abatement purchasing process, the length of reporting periods, and notification and record-keeping requirements. It also sets out certain audit requirements for eligible offsets requirements, and provides for a head of power for the Clean Energy Regulator to create an audit thresholds instrument discussed below.

Amongst other matters, the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015* (the 2015 Audit Thresholds Instrument) details the number of audits to which an eligible offsets project is subject.

The instrument amends the 2015 Audit Thresholds Instrument by creating a class of “alternative assurance projects” that are subject to different audit requirements than other eligible offsets projects with the same forward abatement estimate.

Human rights implications

The instrument does not engage any of the applicable rights or freedoms.

Conclusion

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