



# **Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects) Rule 2022**

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I, Angus Taylor, Minister for Industry, Energy and Emissions Reduction, make the following rule.

Dated: 30 March 2022

Angus Taylor  
Minister for Industry, Energy and Emissions Reduction

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## 1 Name

This instrument is the *Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects) Rule 2022*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	On the later of the day after the instrument is registered or 1 April 2022.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under section 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *Carbon Credits (Carbon Farming Initiative) Rule 2015*

#### 1 After section 20

Insert:

#### 20AA Excluded offsets projects—general

- (1) For paragraph 27(4)(m) and subsection 56(1) of the Act, the following kinds of project are excluded offsets projects:
  - (a) a project that involves an activity that:
    - (i) was mandatory under a Commonwealth, State or Territory law; and
    - (ii) is no longer mandatory because the law was repealed, or amended to be less onerous, after 24 March 2011;
  - (b) the planting of a species in an area where it is a known weed species;
  - (c) the establishment of a forest under a forestry managed investment scheme for Division 394 of Part 3-45 of the *Income Tax Assessment Act 1997*;
  - (d) the establishment of vegetation on land that has been subject to illegal clearing of a native forest, or illegal draining of a wetland;
  - (e) the establishment of vegetation on land that has been subject to clearing of a native forest, or draining of a wetland (that was not an illegal clearing or draining), within:
    - (i) 7 years of the lodgement of an application for the project to be declared an eligible offsets project; or
    - (ii) if there is a change in ownership of the land that constitutes the project area, after the clearing or the draining—5 years of the lodgement of an application for the project to be declared an eligible offsets project;
  - (f) a project that protects native forest on freehold or leasehold land, for which a clearing consent or harvest approval plan was granted on the basis that the clearing or harvesting of the native forest:
    - (i) would lead to an environmental improvement or benefit, or would maintain an environmental outcome; or
    - (ii) was for fire management purposes.
- (2) Subparagraph (1)(f)(i) does not apply to a project if:
  - (a) the clearing consent or harvest approval plan provides options for vegetation management; and
  - (b) the project provides active and on-going management of the project area in accordance with one of those options.
- (3) In this section:

**2006 IPCC Guidelines for National Greenhouse Gas Inventories** means the report titled *IPCC 2006, 2006 IPCC Guidelines for National Greenhouse Gas Inventories*, prepared by the National Greenhouse Gas Inventories Programme, as in force from time to time.

Note: In 2022 the report is accessible at [www.ipcc.ch/](http://www.ipcc.ch/).

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**clearing** means the conversion, caused by people, of native forest to cropland, grassland or settlements (within the meaning of “cropland”, “grassland” and “settlements” in the 2006 IPCC Guidelines for National Greenhouse Gas Inventories).

**consent** means approval to commence clearing or conversion to a plantation, required by Commonwealth, State or Territory law, issued by the relevant Commonwealth, State, Territory or local regulatory authority responsible for giving the approval.

**forest** means land of a minimum area of 0.2 of a hectare on which trees:

- (a) have attained, or have the potential to attain, a crown cover of at least 20% across the area of land; and
- (b) have reached, or have the potential to reach, a height of at least 2 metres.

**forestry managed investment scheme** has the meaning given by subsection 394-15(1) of the *Income Tax Assessment Act 1997*.

**harvest approval plan** means a plan prepared in accordance with Commonwealth, State or Territory law, that identifies:

- (a) geographic areas of native timber forest scheduled for harvesting; and
- (b) when the harvest will occur; and
- (c) the estimated volume of native timber forest to be harvested.

**known weed species** means a plant species which:

- (a) is on the Weeds of National Significance list produced by the Australian Government for the purpose of identifying weeds; or
- (b) is declared under any of the following Acts:
  - (i) the *Biosecurity Act 2015* of New South Wales;
  - (ii) the *Catchment and Land Protection Act 1994* of Victoria;
  - (iii) the *Biosecurity Act 2014* of Queensland;
  - (iv) the *Biosecurity and Agriculture Management Act 2007* of Western Australia;
  - (v) the *Agriculture and Related Resources Protection Act 1976* of Western Australia;
  - (vi) the *Natural Resources Management Act 2004* of South Australia;
  - (vii) the *Weed Management Act 1999* of Tasmania;
  - (viii) the *Pest Plants and Animals Act 2005* of the Australian Capital Territory;
  - (ix) the *Weeds Management Act 2001* of the Northern Territory.

Note: In 2022 the Weeds of National Significance list is accessible at <https://weeds.org.au/>

**native forest** means an area of land that:

- (a) is dominated by trees that:
  - (i) are located within their natural range; and
  - (ii) have attained, or have the potential to attain, a crown cover of at least 20% of the area of land; and
  - (iii) have reached, or have the potential to reach, a height of at least 2 metres; and
- (b) is not a plantation.

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**plantation** means a forest established for harvest.

**tree** means a perennial plant that has primary supporting structures consisting of secondary xylem.

**wetlands** are areas of marsh, fen, peatland or water:

- (a) that are either temporary or permanent; and
  - (b) which have water that can be static or flowing, fresh, brackish or salty;
- and includes areas of marine water the depth of which at low tide is not more than 6 metres.

## **20AB Excluded offsets projects—specified tree planting**

- (1) For paragraph 27(4)(m) and subsection 56(1) of the Act, specified tree planting is an excluded offsets project unless it is mentioned in subsections (2) to (6) or subsection (9).
- (2) Specified tree planting is not an excluded offsets project if the planting is a permanent planting that is also an environmental planting.
- (3) Specified tree planting is not an excluded offsets project if the project proponent demonstrates that the planting contributes to the mitigation of dryland salinity in accordance with the Salinity Guidelines.
- (4) Specified tree planting is not an excluded offsets project if the project area is in a region in relation to which the Water Department has determined that the commitments by the relevant State or Territory government under the National Water Initiative to manage water interception by plantations have been adequately implemented.
- (5) Specified tree planting is not an excluded offsets project if the project area is in a region specified in writing that:
  - (a) specifies one or more regions each of which:
    - (i) is within an area that, according to the CFI rainfall map, receives more than 600 mm long-term average annual rainfall; and
    - (ii) is a region in which the planting of trees is unlikely to have a material adverse impact on the availability of water; and
  - (b) is published on the Department’s website;as the writing exists from time to time.
- (6) Specified tree planting is not an excluded offsets project if the project proponent holds a water access entitlement that:
  - (a) grants or confers an entitlement to water in the project area; and
  - (b) relates to either groundwater or surface water, or both, depending on the water resource management arrangements applicable in the project area; and
  - (c) is held from the date that is no later than 2 years after the forest is first planted for the duration of the project; and
  - (d) provides a long-term average yield, per year, of at least 90% of the volume of water required as an offset, calculated in accordance with the formula in subsection (8).



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- (7) However, subsection (6) does not apply if the water to which the water access entitlement relates is held, taken, intercepted, stored or used for any purpose other than to offset the water intercepted by the forest.
- (8) The volume of water (in megalitres) required as an offset per year for the life of the project is to be calculated using the following formula:

$$A \times 0.9 + B \times 1.2 + C \times 1.5 + D \times 1.8 + E \times 2.1$$

where:

**A** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 600–700 mm long-term average annual rainfall;

**B** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 700–800 mm long-term average annual rainfall;

**C** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 800–900 mm long-term average annual rainfall;

**D** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 900–1 000 mm long-term average annual rainfall;

**E** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives more than 1 000 mm long-term average annual rainfall.

Note: The figures in the formula are based on the following volumes of water required as an offset per hectare per year in each of the areas of long-term average annual rainfall as indicated by the CFI rainfall map:

0.9 ML of water—600–700 mm of rain

1.2 ML of water—700–800 mm of rain

1.5 ML of water—800–900 mm of rain

1.8 ML of water—900–1 000 mm of rain

2.1 ML of water—greater than 1 000 mm of rain.

- (9) Specified tree planting is not an excluded offsets project if:
- (a) the project area is in a region in which it is not possible to obtain a water access entitlement; and
  - (b) the Regulator, after seeking the advice of the relevant State or Territory agency that manages the water resource and other expert advice as necessary, is satisfied that there is no material impact on water availability, or on the reliability of existing water access entitlements, in or near the project area, for the duration of the project.
- (10) However, paragraph (9)(a) does not apply to a project in relation to which it is not possible to obtain a water access entitlement because the relevant catchment is fully allocated.

- (11) In this section:

**Bureau of Meteorology** means the Commonwealth Bureau of Meteorology.

**CFI rainfall map** means the map:

- (a) that shows long-term average annual rainfall; and
- (b) that uses data that is:
  - (i) collected by the Bureau of Meteorology; and
  - (ii) processed by the Department; and

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- (c) published on the Department’s website; and
  - (d) as in force from time to time.

Note: In 2022 the map is accessible at [www.industry.gov.au](http://www.industry.gov.au)

***dryland salinity*** means a build-up of salt in soil occurring on land not subject to irrigation.

***environmental planting*** means a planting that consists of species that:

- (a) are native to the local area of the planting; and
- (b) are sourced from seeds:
  - (i) from within the natural distribution of the species; and
  - (ii) that are appropriate to the biophysical characteristics of the area of the planting; and
- (c) may be a mix of trees, shrubs, and understorey species where the mix reflects the structure and composition of the local native vegetation community.

***forest*** means land of a minimum area of 0.2 of a hectare on which trees:

- (a) have attained, or have the potential to attain, a crown cover of at least 20% across the area of land; and
- (b) have reached, or have the potential to reach, a height of at least 2 metres.

***landscape planting*** means a planting in an urban centre or locality as follows:

- (a) in a residential place (for example, in a backyard, park or on a nature strip);
- (b) on the grounds of a sporting facility, factory or other commercial facility;
- (c) on the grounds of a hospital, school or other institution;
- (d) in a car park or cemetery.

***locality*** means a population cluster of at least 200 people.

***National Water Initiative*** means the Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory, as amended from time to time.

Note: In 2022 the agreement is available at <https://www.awe.gov.au/water/policy/policy/nwi>

***natural distribution***, for a species of vegetation, means the areas within which that species would naturally occur.

***permanent planting*** means a planting:

- (a) that is not harvested other than:
  - (i) for thinning for ecological purposes; or
  - (ii) to remove debris for fire management; or
  - (iii) to remove firewood, fruits, nuts, seeds, or material used for fencing or as craft materials, if those things are not removed for sale; or
  - (iv) in accordance with traditional indigenous practices or native title rights; and
- (b) that is not a landscape planting.

***plantation*** means a forest established for harvest.

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**Salinity Guidelines** means the guidelines, published on the Department’s website as in force from time to time, to assist project proponents to determine whether the planting of trees is an excluded offsets project for subsection 56(1) of the Act.

Note: In 2022 the guidelines are accessible at [www.industry.gov.au](http://www.industry.gov.au)

**specified tree planting** means the planting of trees in an area that, according to the CFI rainfall map, receives more than 600 mm long-term average annual rainfall.

**tree** means a perennial plant that has primary supporting structures consisting of secondary xylem.

**water access entitlement** means an entitlement to water held in accordance with the relevant law in the jurisdiction in which the project area is located.

**Water Department** means the Department of State that deals with water policy and resources and that is administered by the Minister administering the *Water Act 2007*.

**water interception** means the interception of surface water or ground water that would otherwise flow, directly or indirectly, into a watercourse, lake, wetland, aquifer, dam or reservoir.

## 2 After section 124

Insert:

### 125 Application of excluded offsets project requirements to existing applications

If the Regulator is considering an application under section 22 of the Act or section 23 on the commencement of this section, the excluded offsets project definition in the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* as in force immediately before 1 April 2022 applies to that application instead of sections 20AA and 20AB.