

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 Plantation Forestry Projects) Instrument 2024

Background: ACCU Scheme

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) enables the crediting of greenhouse gas abatement from emissions reduction activities across Australia, under the ACCU Scheme. Greenhouse gas abatement is achieved either by reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it, consistent with Australia's international obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement.

The Act is supported by subordinate legislation, including the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rule). The Minister for Climate Change and Energy is empowered to make legislative rules under section 308 of the Act. The Rule details additional administrative requirements supplementing the requirements of the Act.

Background: Alternative assurance projects

Integrity of abatement is a key element of the ACCU Scheme. Since the inception of the scheme, the requirement for audits have been a core integrity and assurance measure for all ACCU Scheme projects.

The number of scheduled audits required for an ACCU Scheme project is set by a combination of the Rule, and the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015* (Audit Thresholds Instrument) which is made by the Clean Energy Regulator (the Regulator). The Rule requires each ACCU Scheme project to be the subject of at least three audits and then empowers the Audit Thresholds Instrument to specify that certain classes of projects are subject to more than three audits if the estimated annual average abatement amount for a project exceeds certain thresholds set out in that instrument.

In 2021, the Rule was amended by the *Carbon Credits (Carbon Farming Initiative) Amendment (Audit) Rule 2021* to create a new category of "alternative assurance projects" which may be subject to fewer or no scheduled audits and enables the Regulator to set requirements for a project to be an alternative assurance project through the Audit Thresholds Instrument. Alternative assurance projects can be projects which are considered to be low risk because of the attributes of the project, combined with other mechanisms to provide appropriate alternative assurance to audits at a lesser cost, or both. Alternative assurance projects may be subject to compliance and other audits covered by sections 214 and 215 of the Act including under the annual assurance program undertaken by the Clean Energy Regulator.

These amendments recognised that, as industry innovates and technologies develop, there are opportunities to recognise alternatives to the 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 2021, the Audit Thresholds Instrument was amended by the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Amendment (Low Risk Environmental Planting Projects) Instrument 2021* to set out the requirements for an initial class of alternative assurance projects to include certain small projects using the *Carbon Credits (Carbon Farming Initiative) (Reforestation by Environmental or Mallee Plantings—FullCAM) Methodology Determination 2014* (the Environmental or Mallee Plantings Method); where a project proponent requests for the project to be an alternative assurance project, and the project meets these requirements, that project will not be subject to any scheduled audits.

Further classes of alternative assurance projects can be added to the Audit Thresholds Instrument by the Regulator through legislative instrument with the intention of reducing the compliance burden on other low risk projects, if appropriate alternate assurance mechanisms can be demonstrated.

Purpose

Stakeholders of the ACCU Scheme have raised audit costs as an impediment to small-scale plantation forestry projects participating in the ACCU Scheme under the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022* (the Plantation Forestry Method).

The proposed amendments under the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Amendment (Low Risk Plantation Forestry Projects) Instrument 2024* (the Amendment Instrument) to the Audit Thresholds Instrument set out the requirements for an additional class of alternative assurance projects, namely ‘Low Risk Plantation Forestry Projects’. In this case, the Regulator considers the relevant attributes to include the size and type of the project, as well as the ability to monitor the project via geo-spatial monitoring. Where a project proponent requests for their project to be an alternative assurance project, and the project meets the criteria to be a Low Risk Plantation Forestry Project under the amended Audit Thresholds Instrument, the project will only be subject to one scheduled audit, being an initial audit under section 74 of the Rule. These projects may be subject to additional compliance audits or other audits under sections 214 and 215 of the Act, including under the annual assurance program undertaken by the Clean Energy Regulator.

Legislative Authority

Subsection 75(4) of the Rule empowers the Regulator to, by legislative instrument (namely, the Audit Thresholds Instrument), set out one or more of certain specified matters, including matters relating to an alternative assurance project under subsection 73(7) of the Rule, and whether the first of the scheduled audits required for an alternative assurance project (if any) is an initial audit.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act) read together with paragraph 13(1)(a) of the *Legislation Act 2003* (Legislation Act), the Regulator’s power under subsection 75(4) of the Rule to make the Audit Thresholds Instrument is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary the Audit Thresholds

Instrument, and therefore extends to making the Amendment Instrument as a legislative instrument.

Compliance with Legislative Conditions

In making the Audit Thresholds Instrument (including making any amendment to it), the Regulator is required by subsection 75(4A) of the Rule 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) of the Rule; 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 Regulator has had specific regard to the matters set out in (a) to (d) for the class of Low Risk Plantation Forestry Projects and considers that the risks for projects in that class are such that the number of scheduled audits required can be reduced to just one scheduled audit, being an initial audit under section 74 of the Rule, for a project in that class. Section 74 of the Rule sets out the scope of an initial audit, which includes whether the project has been carried out in accordance with the declaration under section 27 of the Act that is in operation for the project, the methodology determination used for the project, and the Act. An initial audit must cover either the first reporting period for the project or the first 6 months of the project, whichever is longest.

The initial audit will provide the Regulator with assurance that the project is being undertaken in accordance with the legislative framework and that the settings in FullCAM are calibrated correctly to calculate abatement. Initial audits will provide a sound basis of integrity on which further assurance can be conducted by the Regulator using geospatial monitoring tools and other compliance checks for scheme reporting and crediting of ACCUs.

The costs for a project proponent of a Low Risk Plantation Forestry Project being an alternative assurance project would generally be less than the cost of audits that would otherwise be conducted. Where the cost of the project being an alternative assurance project is higher, the project proponent may choose for the project to continue with a standard audit schedule.

Alternative assurance projects will still be subject to obligations in relation to triggered audits covered by sections 77, 78 and 79 of the Rule, and compliance and other audits covered by sections 214 and 215 of the Act. Under these provisions, the Regulator can require a range of audits as appropriate. There are also a range of assurance measures the Regulator can undertake in addition to geospatial monitoring. This may include audits of alternative assurance projects under the annual assurance program funded by the Regulator.

Details and operation

The Amendment Instrument is a legislative instrument within the meaning of the Legislation Act. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Details of the Amendment Instrument are set out in **Attachment A**.

Incorporated material

The Audit Threshold Instrument, as amended by the Amendment Instrument, incorporates material from the Environmental or Mallee Plantings Method and the Plantations Forestry Method, which are accessible from the Federal Register of Legislation.

Public consultation

In April 2024, the Regulator released a public consultation paper seeking stakeholder views on the proposed alternative assurance arrangements for Low Risk Plantation Forestry Projects. An exposure draft of the Audit Thresholds Instrument, with proposed amendments, was included as part of the consultation documents on the Regulator's website for comment and feedback. The public consultation was communicated to stakeholders via a news item published on the Regulator's website on 2 April 2024. The consultation paper was also published on the Regulator's online Consultation Hub and an email was sent to ACCU Scheme subscribers and project proponents of registered projects under the Plantation Forestry Method. Comments received in response to the public consultation were taken into account in finalising the proposed amendments to the Audit Thresholds Instrument.

10 submissions were received. The submissions reflected overwhelming support for the proposed inclusion of Low Risk Plantation Forestry Projects as an additional class of alternative assurance projects, and that the integrity of such projects can be achieved under the proposed reduced audit requirements.

The submissions provided feedback on the proposed project related criteria that must be met for the purposes of paragraph 73(7)(b) of the Rule, particularly proposed criteria 1 and 2, and the proposed requirement for one scheduled audit, being an initial audit under section 74 of the Rule.

Proposed criteria 1: The project must be a plantation forest project which is covered only by paragraph 8(1)(a) of that determination.

A majority of the submissions received proposed extending criteria 1 to also include projects covered by paragraphs 8(1)(a) – (d) of the Plantation Forestry Method. While the Regulator has considerable data to inform the risk profile of projects covered by paragraphs 8(1)(a) (project involving establishment of new plantation forest) and 8(1)(b) of the Plantation Forestry Method (project involving conversion of a short rotation plantation forest to a long rotation plantation forest) (around 120 projects out of a total of about 125 projects under the Plantation Forestry Method are covered by these paragraphs as at July 2024), the Regulator has relatively limited data to inform the risk profile of projects covered by paragraphs 8(1)(c) (project involving continuing existing plantation forests); and 8(1)(d) (project involving transition of an existing plantation forest to permanent plantings) of the Plantation Forestry Method with far fewer projects covered by these paragraphs (around 5 projects as at July 2024). In addition, the Regulator is of the view that projects covered by paragraph 8(1)(b) of

the Plantation Forestry Method are of a similar risk and integrity profile as projects covered by paragraph 8(1)(a) of the Plantation Forestry Method. As such, the Regulator is comfortable extending criteria 1 to cover plantation forest projects covered by paragraph 8(1)(b) of the Plantation Forestry Method. That is, the Regulator is extending the proposed criteria 1 to a plantation forestry project (within the meaning of the Plantation Forestry Method) which is covered only by either paragraph 8(1)(a) or 8(1)(b) or only by both paragraphs 8(1)(a) and 8(1)(b) of the Plantation Forestry Method.

As this revision of the proposed criteria 1 is in response to comments received from public consultation, and the other changes to the exposure draft Audit Thresholds Instrument that are reflected in the Amendment Instrument (including the amendment to section 4 of the Audit Thresholds Instrument) support the operation of the principal instrument and clarify the applicable heads of power, the Regulator is satisfied that the requirement under section 17 of the Legislation Act is met, namely that the consultation undertaken in April 2024 is considered by the Regulator to be appropriate and reasonably practicable to undertake in relation to the amendments proposed by the Amendment Instrument.

Proposed criteria 2: The anticipated and reported carbon estimation area for the project must be no more than 200 hectares.

Although a majority of the submissions were generally supportive of this proposed criteria, some suggested the anticipated and reported carbon estimation area for the project be increased to up to 500 hectares. The Regulator decided not to make any changes to the proposed criteria 2 because:

- increasing the size of the anticipated and reported carbon estimation area would be increasing the risk profile, and
- the anticipated and reported carbon estimation area of almost 30% of all the projects under the Plantation Forestry Method do not exceed 200 hectares.

The proposed requirement for one scheduled audit, being an initial audit

A minority of the submissions proposed removal of this requirement for one scheduled audit. However, the Regulator considers that the proposed one scheduled audit, being an initial audit, is important to ensure integrity of the abatement and compliance with the legislative requirements. The Regulator further considers that reducing the audit requirements to only one scheduled audit will still reduce the cost barrier and thereby increase participation.

Regulatory Impact

The Office of Impact Analysis (OIA) has determined that a detailed Impact Analysis is not required as the proposed amendments only seek to reduce audit requirements for Low Risk Plantation Forestry Projects that meet the requirements set out in the Audit Thresholds Instrument under the ACCU Scheme.

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 Plantation Forestry Projects) Instrument 2024*

1 Name

This section sets out the name of the Amendment Instrument.

2 Commencement

This section provides that the Amendment 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 Amendment Instrument, being subsection 75(4) of the *Carbon Credits (Carbon Farming Initiative) Rule 2015*. The Amendment Instrument relies on subsection 33(3) of the Acts Interpretation Act read together with paragraph 13(1)(a) of the Legislation Act for authority to amend the Audit Thresholds Instrument.

4 Schedules

This section states that each instrument that is specified in a Schedule to the Amendment 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. The Amendment Instrument only has one schedule (Schedule 1).

Schedule 1 – Amendments

Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015

1 Section 4

This item omits “(other than alternative assurance projects)” from section 4 of the Audit Thresholds Instrument. This enables Low Risk Plantations Forestry Projects to have audit thresholds and therefore enables the Audit Thresholds Instrument to prescribe that they should be subject to an initial audit as defined by section 74 of the CFI Rule.

2 Section 7

This item repeals section 7 of the Audit Thresholds Instrument, and substitutes a new section 7 in its place.

The new section 7 retains the previous class of alternative assurance projects, called Low Risk Environmental Plantings Projects, and adds a new class called Low Risk Plantation Forestry Projects and sets out the specific requirements for this new class.

The prescribed methodology determination for Low Risk Plantation Forestry Projects is the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022* (the Plantation Forestry Method) made under section 106 of the Act. The Plantation Forestry Method is a legislative instrument registered on the Federal Register of Legislation.

The project related criteria that must be met, for the purposes of paragraph 73(7)(b) of the Rule, include:

1. The project must be a plantation forestry project (within the meaning of the Plantation Forestry Method) which is covered only by either paragraph 8(1)(a) or 8(1)(b) or only by both paragraphs 8(1)(a) and 8(1)(b) of that determination.
2. The anticipated and the reported carbon estimation area for the project must be no more than 200 hectares.
3. The project must be subject to geospatial tool monitoring by the Regulator, such as the use of satellite imagery to monitor the progress of the project.

There are no conditions for Low Risk Plantation Forestry Projects set out in the instrument for the purposes of paragraph 73(7)(c) of the CFI Rule.

Low Risk Plantation Forestry Projects are subject to one scheduled audit, which is the initial audit under section 74 of the CFI Rule.

If the project changes so that it is no longer an alternative assurance project or does not meet the requirements to be an alternative assurance project, the Regulator may vary the audit schedule for the project under paragraph 73(5)(ab) of the CFI Rule to require one or more audits that would have been required if the project was not an alternative assurance project. This is acknowledged in the note at the end of the table in section 7.

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 (Low Risk Plantation Forestry Projects) Instrument 2024

The *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Amendment (Low Risk Plantation Forestry Projects) Instrument 2024* (the Amendment 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, under the ACCU Scheme. Greenhouse gas abatement is achieved either by reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it.

The Act is supported by subordinate legislation, including the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rule). The Rule details additional administrative requirements supplementing the requirements of the Act.

The number of scheduled audits required for an ACCU Scheme project is set by a combination of the Rule, and the *Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015* (Audit Thresholds Instrument), made by the Clean Energy Regulator (the Regulator). The Rule requires each ACCU Scheme project to be the subject of at least three audits and then empowers the Audit Thresholds Instrument to specify that certain classes of projects are subject to more than three audits if the estimated annual average abatement amount for a project exceeds certain thresholds set out in that instrument.

In 2021, the Rule was amended by the *Carbon Credits (Carbon Farming Initiative) Amendment (Audit) Rule 2021* to create a new category of “alternative assurance projects” which may be subject to fewer or no audits and enables the Regulator to set requirements for a project to be an alternative assurance project through the Audit Thresholds Instrument.

The proposed amendments to be made by the Amendment Instrument to the Audit Thresholds Instrument set out the requirements for an additional class of alternative assurance projects, namely Low Risk Plantation Forestry Projects.

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.