Commonwealth Coat of Arms

Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)

Select Legislative Instrument No. 77, 2013

I, Quentin Bryce AC CVO, Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Dated 16 May 2013

Quentin Bryce

Governor‑General

By Her Excellency’s Command

Yvette D’Ath

Parliamentary Secretary for Climate Change, Industry and Innovation

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1 Name of regulation

This regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

This regulation is made under the *Carbon Credits (Carbon Farming Initiative) Act 2011.*

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Carbon Credits (Carbon Farming Initiative) Regulations 2011

1 Subregulation 1.3(1)

Insert:

***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: The report is accessible at www.ipcc.ch/.

***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 for the period from at least 1921 to 2010; and

(ii) processed by the Department; and

(c) published on the Department’s website; and

(d) as in force from time to time.

Note: The map is accessible at www.climatechange.gov.au.

***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***, for Divisions 3.6 and 3.12, 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.

***harvest 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.

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

2 Regulation 1.5

Repeal the regulation, substitute:

1.5 Kyoto abatement deadline

For paragraph (b) of the definition of ***Kyoto abatement deadline*** in section 5 of the Act:

(a) 31 December 2020 is specified in relation to the kinds of project mentioned in regulation 3.35; and

(b) 30 June 2020 is specified in relation to all other kinds of project.

3 After subregulation 1.13(1)

Insert:

(1A) For subsections 13(2) and 76(5) of the Act, a project is specified if:

(a) the project is a specified offsets project mentioned in paragraph 3.28(1)(l) or subregulation 3.28(2); and

(b) a prescribed audit report has been provided for a period of 12 months or more after the diversion of waste.

4 Subregulation 3.1(3)

Omit “or a non‑CFI offsets scheme,”, substitute “or a non‑CFI scheme,”.

5 Subregulation 3.1(4)

Omit “or a non‑CFI offsets project,”, substitute “or a non‑CFI scheme,”.

6 At the end of regulation 3.16

Add:

(4) For paragraph (2)(p), the estimate must only be provided for the transferor offsets project.

7 Regulation 3.27

Repeal the regulation, substitute:

3.27 Definitions

In this Division:

***alternative waste treatment plant*** means an enclosed resource recovery plant that:

(a) accepts and processes mixed solid waste using:

(i) mechanical processing; and

(ii) biological or thermal processing; and

(b) extracts recyclable and organic materials.

***biocover***, for a landfill, means a cover:

(a) consisting of a gravel layer and an overlying layer of a mixture of:

(i) woodchips or shredded wood, or a combination of both; and

(ii) compost; and

(b) placed over waste in the landfill to optimise environmental conditions for microbial methane consumption.

***biofilter***, for a landfill, means a filtration system that:

(a) consists of a flow control system, a gravel layer and an overlying oxidisation layer of a mixture of:

(i) woodchips or shredded wood, or a combination of both; and

(ii) compost; and

(b) receives gas from a landfill through an active gas extraction or passive drainage system; and

(c) is designed to microbially oxidise methane in the gas.

***biosolids*** means a mixture of mainly water and organic materials that:

(a) is entirely produced from the domestic and commercial waste water treatment process; and

(b) has undergone further treatment to significantly reduce disease‑causing pathogens and volatile organic matter; and

(c) has been stabilised for beneficial use.

***conservation land*** means an area that is owned and managed by the Commonwealth, a State or a Territory Government for biodiversity conservation.

***farm*** means:

(a) any tract of land:

(i) which is used by a person for agriculture; and

(ii) for which the person holds an estate in fee simple or a lease over the land; or

(b) multiple tracts of land:

(i) which are used by the same person for agriculture; and

(ii) for which the person holds an estate in fee simple or a lease over each tract of land; and

(iii) to which the same methodology determination is applied, regardless of whether those tracts of land are touching.

***mixed solid waste***—see subregulation 3.28(4).

***new farm forestry plantation*** means a plantation:

(a) established on or after 1 July 2010 for the harvest of wood products; and

(b) occupying land that has been cleared of trees and used for agricultural purposes for at least 5 years prior to the establishment of the plantation; and

(c) in an area that, according to the CFI rainfall map, receives the amount of long term average annual rainfall mentioned in an item in the following table; and

(d) occupies the area mentioned in the item.

| Farm forestry plantations | | |
| --- | --- | --- |
| Item | Rainfall | Area |
| 1 | 400mm or more | No more than the smaller of the following areas:  (a) no more than 100 ha;  (b) no more than 30% of a farm. |
| 2 | less than 400mm | No more than the smaller of the following areas:  (a) no more than 300 ha;  (b) no more than 30% of a farm. |

***putrescible waste*** means the organic matter contained within solid waste which is capable of being decomposed by microorganisms.

***rangeland*** means land:

(a) that, according to the CFI rainfall map, receives average annual rainfall of less than 450mm; and

(b) on which the vegetation is mainly native vegetation including grasses, forbs or shrubs; and

(c) on which agricultural activity, if any, consists of grazing; and

(d) that is not routinely:

(i) fertilised; or

(ii) cultivated for broadacre cropping.

***scalded soil*** means topsoil that has been eroded by wind or water in an area that is usually without vegetation.

***tannin*** means a naturally occurring plant polyphenol that binds and precipitates proteins.

Note: Tannins are common in fruits (such as grapes, persimmons and blueberries), tea, legume forages, legume trees (such as Acacia spp. and Sesbania spp.) and grasses (such as sorghum and corn).

8 At the end of paragraph 3.28(1)(c)

Add:

; or (vi) the rehabilitation of scalded soils on rangeland, by the creation of shallow earth banks or furrows to trap rainfall or slow water runoff;

9 Paragraph 3.28(1)(i)

Repeal the paragraph, substitute:

(i) the reduction of emissions from ruminants by one or more of the following:

(i) feeding tannins to ruminants;

(ii) feeding Eremophila spp. to ruminants;

(iii) feeding fats or oils, or both, to dairy cattle that are pasture grazed for more than 9 months each year;

10 Paragraph 3.28(1)(l)

Repeal the paragraph, substitute:

(l) the diversion, before 1 July 2012, of mixed solid waste, which would otherwise have entered landfill, to an alternative waste treatment plant;

(m) the passive oxidation of emissions from waste, deposited in a landfill before 1 July 2012, using biofilters or biocovers on landfills;

Note: This does not include projects using material obtained as a result of clearing or harvesting of native forest: see paragraph 27(4)(j) of the Act.

(n) the establishment of a new farm forestry plantation;

(o) the protection of native forest on freehold or leasehold land, on or after 1 July 2010, in relation to which:

(i) a Commonwealth, State or Territory law prohibits clearing, or conversion to a plantation, without consent; and

(ii) the landholder received consent, before 1 July 2010, for the clearing or conversion from the relevant Commonwealth, State, Territory or local regulatory authority responsible for giving the consent; and

(iii) the consent mentioned in subparagraph (ii) remains valid at the time of application to the Regulator for the declaration of the offsets project as an eligible offsets project; and

(iv) the consent mentioned in subparagraph (ii) does not require an offset to mitigate any effect from the clearing or conversion to which it relates;

(p) the protection of native forest on freehold or leasehold land, on or after 1 July 2010, in relation to which:

(i) a Commonwealth, State or Territory law prohibits harvest without approval of a harvest plan; and

(ii) the landholder received approval of a harvest plan, before 1 July 2010, from the relevant Commonwealth, State, Territory or local regulatory authority responsible for giving the approval; and

(iii) the approved harvest plan remains valid at the time of application to the Regulator for the declaration of the offsets project as an eligible offsets project; and

(iv) the approved harvest plan does not require an offset to mitigate any effect from the harvest.

11 Subregulations 3.28(4) and (5)

Repeal the subregulations, substitute:

(4) For paragraph (1)(l), ***mixed solid waste*** means waste from sources such as offices, community organisations, sporting facilities, households, retail and catering businesses and institutions (including schools, hospitals and prisons), but excludes the following:

(a) recyclable paper, paperboard, glass, metal or plastic that has been separated at the point of generation;

(b) green waste or wood waste, including waste from gardens or parks, that has been separated at the point of generation;

(c) biosolids;

(d) organic waste from the livestock industry, such as straw bedding and manure mixes;

(e) commercial and industrial waste comprising only putrescible waste when it is received by an alternative waste treatment plant;

(f) construction and demolition waste.

(5) For subregulation (4), a type of waste is separated at the point of generation even if it is separated into a container that may contain some other types of waste.

12 At the end of subregulation 3.29(1)

Add:

; (c) a requirement under State or Territory law that is made after 24 March 2011 and that implements an agreement between the Commonwealth and a State or Territory Government:

(i) to establish new reserves or reduce annual native forest harvest; and

(ii) that recognises the potential for carbon offset opportunities for areas protected by the agreement.

13 Regulation 3.34 (definitions of *CFI rainfall map*, including the note, and *plantation*)

Repeal the definitions.

14 At the end of subregulation 3.35(2)

Add:

; or (f) an activity mentioned in subparagraph 3.28(1)(c)(vi).

15 Regulation 3.36

Before “The”, insert “(1)”.

16 Paragraph 3.36(a)

Repeal the paragraph, substitute:

(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;

17 At the end of regulation 3.36

Add:

; (g) 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)(a) does not apply to a project to which paragraph 3.29(1)(c) also applies.

(3) Subparagraph (1)(g)(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.

18 Regulation 5.1 (after the heading)

Insert:

(1) This regulation is made for subparagraph 69(1)(b)(ii) of the Act.

19 Regulation 5.1

Before “For”, insert “(2)”.

20 Regulation 5.1

Omit “For subparagraph 69(1)(b)(ii) of the Act, the”, substitute “The”.

21 At the end of regulation 5.1

Add:

(3) The period of 100 years is specified for a project if:

(a) the project is a specified offsets project mentioned in paragraph 3.28(1)(l) or (2)(b); and

(b) the *Carbon Credits (Carbon Farming Initiative) (Conservative Estimates, Projections or Assumptions: Greenhouse FriendlyTM Initiative Transitional Crediting Calculation (Alternative Waste Treatment)) Determination 2012* does not apply to the applicable methodology determination for the project; and

(c) no Australian carbon credit units have been issued in relation to the diversion of mixed solid waste that is eligible for crediting under the project.

22 Regulation 5.2 (after the heading)

Insert:

(1) This regulation is made for paragraph 70(4)(b) of the Act.

23 Regulation 5.2

Before “For”, insert “(2)”.

24 Regulation 5.2

Omit “For paragraph 70(4)(b) of the Act, the”, substitute “The”.

25 At the end of regulation 5.2

Add:

(3) The period of 0 years is specified for a project if:

(a) the project is a specified offsets project mentioned in paragraph 3.28(2)(b); and

(b) the *Carbon Credits (Carbon Farming Initiative) (Conservative Estimates, Projections or Assumptions: Greenhouse FriendlyTM Initiative Transitional Crediting Calculation (Alternative Waste Treatment)) Determination 2012* applies, or has ever applied, to the methodology determination that is, or has ever been, the applicable methodology determination for the project; and

(c) Australian carbon credit units have been issued in relation to the diversion of mixed solid waste that is eligible for crediting under the project.

26 At the end of Division 6.1

Add:

6.5 Information and documentation for offsets reports—particular waste diversion projects

(1) This regulation applies to a project mentioned in subregulation 1.13(1A).

(2) After an offsets report has been submitted for a period of 12 months or more after the diversion of mixed solid waste, a subsequent offsets report for the project does not need to comply with the requirements mentioned in paragraphs 6.2(e), (h), (j) and (k), and regulations 6.3 and 6.4.

27 Subregulation 9.1(2) (including the note)

Omit “*Guidelines for Submitting Methodologies*” (wherever occurring), substitute “*Guidelines for Submitting a Methodology Proposal*”.

28 Paragraph 9.2(2)(c)

Omit “*Guidelines for Submitting Methodologies*”, substitute “*Guidelines for Submitting a Methodology Proposal*”.

29 Subregulation 9.2(2) (note)

Omit “*Guidelines for Submitting Methodologies*”, substitute “*Guidelines for Submitting a Methodology Proposal*”.

30 Subparagraph 11.5(1)(b)(i)

Omit “a sequestration offsets project”, substitute “abatement from a sequestration offsets project that would result in the issue of a removal unit to the relevant Commonwealth holding account”.

31 Subparagraph 11.5(1)(c)(iii)

Omit “for an emissions avoidance project”, substitute “for an emissions avoidance project, or abatement from a sequestration offsets project that would not result in the issue of a removal unit to the relevant Commonwealth holding account”.

32 Subparagraph 11.5(1)(c)(iv)

Omit “a sequestration offsets project”, substitute “abatement from a sequestration offsets project that would result in the issue of a removal unit to the relevant Commonwealth holding account”.

33 After Part 11

Insert:

Part 12—Publication of information

12.5 Entries in the Register

For subparagraph 168(1)(o)(iii) of the Act, the requested information must meet the following requirements:

(a) the requested information must state whether the project has received funding under the Australian Government’s Biodiversity Fund;

(b) the requested information must be supported by evidence that demonstrates that the information is accurate, such as a copy of the funding agreement under the Biodiversity Fund.

34 Before regulation 15.4 of Part 15

Insert:

15.2 Transfer of certain units instead of relinquishment of Kyoto Australian carbon credit units

(1) For subsection 177(4) of the Act, the transfer of a substitute unit (other than a substitute unit mentioned in paragraph 177(6)(e)) may only occur during a flexible charge year.

(2) For subsection 177(4) of the Act, the transfer of a substitute unit mentioned in subregulation (3) may occur at any time.

(3) For the definition of ***prescribed eligible carbon unit*** in section 5 of the Act, a non‑Kyoto Australian carbon credit unit is a prescribed eligible carbon unit for paragraph 177(6)(e) of the Act, only if the non‑Kyoto Australian carbon credit unit meets paragraph (b) or (c) of the definition of ***eligible Australian carbon credit unit*** in the *Clean Energy Act 2011*.

(4) For subsection 177(8) of the Act, each of the following is not a substitute unit:

(a) a certified emission reduction mentioned in subregulation 6.1(1) of the *Clean Energy Regulations 2011**,* to which subregulation 6.1(2) of those regulations applies;

(b) an emission reduction unit mentioned in subregulation 6.1(1) of the *Clean Energy Regulations 2011,* to which subregulation 6.1(2) of those regulations applies.

(5) In this regulation:

***flexible charge year*** has the same meaning as in the *Clean Energy Act 2011*.

15.3 Transfer of certain units instead of relinquishment of non‑Kyoto Australian carbon credit units

(1) For subsection 178(4) of the Act, the transfer of a substitute unit (other than a substitute unit mentioned in paragraph 178(6)(a)) may occur only during a flexible charge year.

(2) For subsection 178(8) of the Act, each of the following is not a substitute unit:

(a) a certified emission reduction mentioned in subregulation 6.1(1) of the *Clean Energy Regulations 2011,* to which subregulation 6.1(2) of those regulations applies;

(b) an emission reduction unit mentioned in subregulation 6.1(1) of the *Clean Energy Regulations 2011,* to which subregulation 6.1(2) of those regulations applies.

(3) In this regulation:

***flexible charge year*** has the same meaning as in the *Clean Energy Act 2011*.