

17 March 2022

Submission to the Department of Industry, Science, Energy and Resources— Carbon Credits (Carbon Farming Initiative) Rule 2015: proposed amendments to excluded offsets projects

About ACF

ACF is Australia's national environmental organisation. We represent a community of more than 700,000 people who are committed to achieving a healthy environment for all Australians. For more than 50 years ACF has been a strong advocate for Australia's forests, rivers, people and wildlife. ACF is proudly independent, non-partisan and funded by donations from our community.

Submission overview and recommendation

Thank you for the opportunity to provide feedback on potential changes to the Carbon Credits (Carbon Farming Initiative) Regulations 2011 (the Regulations) and the Carbon Credits (Carbon Farming Initiative) Rule 2015 (the Rule).

We strongly support the continued exclusion of the project types currently listed in the Regulations from participation in the Emissions Reduction Fund (ERF). These exclusions are essential to ensure that ERF projects do not have unintended adverse social, environmental or economic impacts. There are strong reasons for continuing to exclude the listed projects, particularly projects on land or wetlands that have been illegally cleared, or recently cleared, as well as projects involving planting of weed species. In particular, these exclusions ensure that the Carbon Credits (Carbon Farming Initiative) Act 2011 (CFI Act) does not provide any perverse incentive to plant weed species or clear land, including both legal and illegal clearing activities.

Current provisions

The Regulations currently set out projects which are excluded from participating in the ERF in order to ensure that ERF projects do not have unintended adverse social, environmental or economic impacts (excluded offsets projects). These projects are excluded under section 56 of the CFI Act. Section 56 allows certain types of projects to be specified in either regulations or legislative rules as 'excluded offsets projects', having regard to whether there is a material risk that the kind of project will have a material adverse impact on one or more of the following:

- (a) the availability of water;
- (b) the conservation of biodiversity;
- (c) employment;



- (d) the local community;
- (e) land access for agricultural production.

Currently, the Regulations specify the following types of projects which are 'excluded offsets projects' for the purposes of section 56:

- Projects involving an activity that was mandatory under a Commonwealth, State or Territory Law and is no longer mandatory because the law was repealed or became less onerous after 24 March 2011
- The establishment of vegetation in certain circumstances including:
 - where the species being planted are known weeds in that area
 - where the forest is to be established under a specific forestry managed investment scheme
 - on land where native forest has been illegally cleared or wetland illegally drained
 - on land that has been subject to clearing or draining that was not illegal, within 7 years of application for registration of a project (or 5 years where land ownership has changed)
 - certain circumstances where a clearing consent or harvest approval plan was granted on the basis that clearing or harvesting would contribute to an environmental benefit or was for fire management and
 - specified tree planting (that may have a material adverse impact on the availability of water due to its location in a specified region).

Proposed changes

The consultation paper advises that the changes would remake the Regulations as sections of the Rule, 'with some minor drafting changes to ensure the amendments are fit for purpose'. The consultation paper states:

The proposed changes would streamline the ERF scheme's regulatory framework by removing the need for the Regulations, while maintaining important protections against potential adverse environmental, social and economic impacts. As with the Regulations the Rule will continue to be subject to oversight by the Parliament.

According to the consultation paper, the commencement of the amendments to the rule would coincide with the sunset of the Regulations on 1 April 2022, ensuring there is no overlap in the effect of the provisions.

The Department has invited comments on the following questions:

1. Is it still necessary to exclude these project types from participation in the ERF?
2. Are the exclusions and relevant definitions appropriately drafted and fit for purpose?
3. Is the Rule the most appropriate instrument to manage adverse impacts of ERF projects?
4. Are there any alternatives to manage unintended adverse impacts of ERF projects?



Exclusions are still necessary

Given the limited time that has been made available for public consultation (14 days), this submission is focussed on the first question above. We note the Department's statement on Twitter that:

The proposal is not to remove the excluded offsets projects list, but to relocate these regulations with other excluded project types in the legislative rules. If a rule amendment is made, it will be subject to the same parliamentary scrutiny as other legislative instruments.

If the intention is not to remove the excluded offsets projects list, but simply to move the list from the Regulation into the Rule, it is not clear why the Department is even asking whether it is still necessary to exclude these projects.

We consider that it is both necessary and essential to exclude the listed project types from participation in the ERF. We also strongly support the retention of these clauses to exclude certain activities from eligibility as offset projects under the CFI Act. There are strong reasons to continue to exclude these projects. For example, projects involving planting of weed species will have adverse environmental impacts and should be excluded. Similarly, we strongly support the exclusion of projects on land where native forest has been illegally cleared or wetland illegally drained, as well as on land that has been subject to clearing or draining that was not illegal, within 7 years of application for registration of a project (or 5 years where land ownership has changed). These exclusions are absolutely essential to ensure that the CFI Act does not provide any perverse incentive to clear land, including both legal and illegal clearing activities. In particular, it is not appropriate for illegally cleared land to subsequently be eligible to receive government incentives to restore that land, which would essentially be rewarding this illegal behaviour.

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