



## Climate Change (Forestry Sector) Amendment Regulations 2021

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 27th day of September 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 163 and 168 of the Climate Change Response Act 2002—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Climate Change made after complying with sections 3A, 3B, and 163(5) of that Act.

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**Schedule**

**New Schedule 1AA inserted**

**Regulations**

**1 Title**

These regulations are the Climate Change (Forestry Sector) Amendment Regulations 2021.

**2 Commencement**

- (1) These regulations come into force on 1 November 2021.
- (2) However, Part 2 comes into force on 1 January 2022.

**3 Principal regulations**

These regulations amend the Climate Change (Forestry Sector) Regulations 2008.

## Part 1

### Amendments relating to tree weeds

#### 4 Regulation 4 amended (Interpretation)

In regulation 4(1), insert in its appropriate alphabetical order:

**pest management plan** has the same meaning as in section 2(1) of the Biosecurity Act 1993

#### 5 New regulation 4A inserted (Transitional, savings, and related provisions)

After regulation 4, insert:

##### 4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

#### 6 Regulation 23 replaced (Designation of certain trees as tree weeds)

Replace regulation 23 with:

##### 23 Designation of certain trees as tree weeds

- (1) A tree listed in Schedule 7 is a tree weed for the purposes of paragraph (b) of the definition of tree weed in section 4(1) of the Act.
- (2) *See also* paragraph (a) of that definition (which includes a tree defined or designated as a pest in a pest management strategy under the Biosecurity Act 1993).

#### 7 New regulation 23A inserted (Application may be made for any type of tree weed)

After regulation 23, insert:

##### 23A Application may be made for any type of tree weed

An application may be made under section 184 of the Act in respect of any type of tree weed.

#### 8 Regulation 24 amended (Applications for declarations of exempt land)

- (1) In regulation 24, replace “section 184(3)” with “section 184”.
- (2) In regulation 24, delete “, in addition to the information required by section 184(4) of the Act”.
- (3) Revoke regulation 24(d)(i).
- (4) In regulation 24(d)(ii), after “section 183”, insert “or 183B”.

**9 Regulation 25 amended (Further information required in relation to application)**

- (1) In regulation 25, replace “section 184(3)” with “section 184”.
- (2) After regulation 25(1)(e)(iii), insert:
  - (iv) any areas of value on that other land (*see also* regulation 27 for protected areas); and
- (3) After regulation 25(1)(e), insert:
  - (f) any information that affects whether the application should be given priority under regulation 30 (and is not already required by regulation 26 or 27).
- (4) After regulation 25(2), insert:
- (3) In this regulation, **area of value** includes an area with natural, landscape, cultural, historical, economic, or recreational values.

**10 Regulation 26 amended (Information required in relation to land under statutory protection or control)**

Replace regulation 26(1)(a) with:

- (a) a pest management plan; or

**11 New regulations 29 and 30 inserted**

After regulation 28, insert:

**29 Criteria when EPA considers applications**

- (1) The EPA must consider an application made under section 184 of the Act against the criteria in this regulation, in relation to the pre-1990 forest land specified in the application.
- (2) The criteria are—
  - (a) the risk of seed dispersal from the pre-1990 forest land because of—
    - (i) the characteristics of the land, such as its topography, slope, and exposure to wind, and the direction of the prevailing wind; and
    - (ii) the characteristics of the species of tree weed; and
  - (b) the effects that the seed dispersal may have on any other land within 2 kilometres of the boundary of the pre-1990 forest land, in light of—
    - (i) the use of that other land; and
    - (ii) whether that other land contains—
      - (A) a protected area, as defined by regulation 27(3); or
      - (B) any other area of value, as defined by regulation 25(3).

**30 Priorities when EPA considers applications**

The EPA must consider giving priority to an application made under section 184 of the Act that—

- (a) is for pre-1990 forest land covered by—
  - (i) a relevant pest management plan; or
  - (ii) a private or council-designed tree weed management plan; or
- (b) involves a tree weed management programme of central government; or
- (c) actively involves community groups in tree weed management; or
- (d) includes evidence of future funding under a long-term plan under the Local Government Act 2002; or
- (e) is for pre-1990 forest land that has already been cleared but not deforested.

**12 New Schedule 1AA inserted**

Insert the Schedule 1AA set out in the Schedule of these regulations as the first schedule to appear after the last regulation of the principal regulations.

**Part 2****Amendments relating to residual wood and FMA participants****13 Regulation 4 amended (Interpretation)**

In regulation 4(1), replace the definition of **FMA participant** with:

**FMA participant**, in relation to a mandatory emissions return period, means a post-1989 forest land participant who has 100 or more hectares of registered post-1989 forest land at any time during that period

**14 Regulation 21 amended (Calculation of carbon stock)**

(1) In regulation 21(3), replace the item relating to  $T_{SC}$  with:

$T_{SC}$  is the number of years up to 10 since the trees were cleared, meaning,—

- (a) when calculating  $CS_{opening}$  under regulation 20, the difference between—
  - (i) the year in which the start of the emissions return period falls; and
  - (ii) the year in which the trees were cleared before that;
- (b) when calculating  $CS_{closing}$  under regulation 20, the difference between—
  - (i) the year in which the end of the emissions return period falls (or, if the emissions return period ends on 31 December, the following year); and

(ii) the year in which the trees were cleared before that

(2) In regulation 21(3), after the item relating to  $T_2$ , insert:

**Example for  $T_{SC}$**

Trees are cleared at any time during 2014. An emissions return is submitted for the period that starts on 1 January 2018 and ends on 31 December 2022. When calculating  $CS_{opening}$ ,  $T_{SC}$  is 4 (2018 minus 2014). When calculating  $CS_{closing}$ ,  $T_{SC}$  is 9 (2023 minus 2014).

(3) After regulation 21(3), insert:

(3A) Subclause (3B) applies if—

- (a) the sub-area is an area in which the trees were cleared in one year and then replanted and cleared in a later year or years; and
- (b) the residual wood from each clearing is treated as decaying under regulation 22(h).

(3B) In that case,—

- (a)  $T_2$  must be separately calculated under subclause (1)(a)(ii) for each clearing; and
- (b) those amounts must be added together to give the final  $T_2$ .

**15 Regulation 22 amended (Rules for application of tables in Schedule 6 or participant-specific tables)**

In regulation 22(h), replace “but the land has not been deforested” with “from land while it was post-1989 forest land”.

**16 New regulation 22LA inserted (Extension of deadline to apply for plots and collect FMA information)**

After regulation 22L, insert:

**22LA Extension of deadline to apply for plots and collect FMA information**

- (1) An FMA participant may apply to the EPA to extend the deadline of any requirement to do the following (the **requirement**) by a deadline within, or at the end of, a mandatory emissions return period:
  - (a) if applicable, to apply to the EPA for the allocation of permanent sample plots to be located on the FMA participant’s registered post-1989 forest land;
  - (b) to collect FMA information from permanent sample plots located on the FMA participant’s registered post-1989 forest land.
- (2) The FMA participant may apply for the extension only if, owing to circumstances beyond their control, they are unable to comply with the requirement by the deadline.
- (3) The application must—

- (a) be made at the following time:
    - (i) if the requirement arises from an addition to or a removal from the FMA participant's registered post-1989 forest land, at the same time as any application or notification that relates to the addition or removal; or
    - (ii) if subparagraph (i) does not apply or the FMA participant is unable to satisfy it, as soon as practicable after the circumstances requiring the extension become apparent, but before the end of the mandatory emissions return period; and
  - (b) describe the actions that the FMA participant has taken to attempt to comply with the requirement and state the reasons why the FMA participant has been unable to comply; and
  - (c) be accompanied by evidence that corroborates the information provided under paragraph (b).
- (4) If the EPA grants an extension, it must give a notice to the FMA participant that specifies a new deadline by which they must,—
- (a) if applicable, apply for the permanent sample plots and establish them;
  - (b) collect the FMA information and submit it to the EPA.
- (5) The EPA must—
- (a) allocate permanent sample plots—
    - (i) if the FMA participant applies for them by the new deadline; and
    - (ii) in all other respects, as required by these regulations;
  - (b) produce, and provide to the FMA participant, participant-specific tables—
    - (i) if the FMA participant submits the FMA information by the new deadline; and
    - (ii) in all other respects, as required by these regulations.
- (6) If the FMA information is collected and submitted by the new deadline, regulation 22B applies as if the information were collected in the mandatory emissions return period of the original deadline (so that new FMA information must still be collected in the mandatory emissions return period after that).

## **17 Schedule 1AA amended**

In Schedule 1AA, after clause 2, insert:

### **3 Collection of information by post-1989 forest land participants**

On and from the commencement of this clause, information must be collected under regulation 19 in accordance with these regulations as amended, even if it relates to a period before the commencement.

**4 Calculation of carbon stock changes by post-1989 forest land participants**

- (1) This clause applies to an emissions return submitted on and from the commencement of this clause.
- (2) Any carbon stock change must be calculated under regulation 20 in accordance with these regulations as amended, even if it relates to a period before the commencement.



**Schedule**  
**New Schedule 1AA inserted**

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**Schedule 1AA**  
**Transitional, savings, and related provisions**

r 4A

**Part 1**  
**Provisions relating to Climate Change (Forestry Sector) Amendment**  
**Regulations 2021**

**1 Interpretation**

In a clause in this Part, **as amended** means as amended on and from the commencement of that clause.

**2 Existing applications for tree weed exemptions**

- (1) This clause applies if, immediately before its commencement,—
  - (a) an application has been made under section 184 of the Act; but
  - (b) the EPA has not made a decision on the application.
- (2) The EPA must consider, and make a decision on, the application in accordance with these regulations as amended.

Michael Webster,  
Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations amend the Climate Change (Forestry Sector) Regulations 2008. The amendments in *Part 1* relate to tree weeds and come into force on 1 November 2021. The amendments in *Part 2* relate to residual wood in the calculation of carbon stock changes and to FMA participants, and come into force on 1 January 2022.

*Part 1—Amendments relating to tree weeds*

Regulation 23 is amended so that the designation of species as tree weeds refers to the relocated definition of tree weed in the Climate Change Response Act 2002 (the **Act**).

*New regulation 23A* provides that an application for pre-1990 forest land to be declared exempt land (in relation to deforestation) may be made in respect of any type of tree weed.

Regulation 24 is amended to update its references to provisions of the Act.

Regulation 25 is amended to require an application to include—

- information about any areas of value on other land within 2 kilometres of the land applied for, which may be relevant to the risk of seed dispersal from the land applied for; and
- any information that affects whether the application should be given priority under *new regulation 30*.

*New regulations 29 and 30* prescribe the criteria and priorities that the EPA must consider an application against.

#### *Part 2—Amendments relating to residual wood and FMA participants*

In regulation 4, the definition of FMA participant is clarified.

Regulation 21 requires the carbon stock of a sub-area (of a carbon accounting area) to be calculated. Regulation 21(3) covers the part of the carbon stock from residual wood from cleared trees. It is amended so that the calculation of  $T_{SC}$ , the variable for the number of years since the trees were cleared, is correct whether either the opening or closing carbon stock is being calculated under regulation 20. New subprovisions say what happens if a sub-area contains residual wood from multiple clearances.

Regulation 22(h) is amended to treat land as containing residual wood if trees were cleared from it while it was post-1989 forest land (rather than requiring that it was not deforested).

Under *new regulation 22LA*, an FMA participant may apply to the EPA to extend the deadline for the FMA participant—

- to apply for the allocation of permanent sample plots on their registered post-1989 forest land;
- to collect FMA information from permanent sample plots on their post-1989 forest land.

The applicant must be unable to comply with the requirement by the original deadline because of circumstances beyond their control.

#### **Regulatory impact statement**

The Ministry for Primary Industries produced a regulatory impact statement on 4 May 2018 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of the regulatory impact statement can be found at—

- <https://www.mpi.govt.nz/legal/regulatory-impact-statements/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

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**Climate Change (Forestry Sector) Amendment  
Regulations 2021**

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These regulations are administered by the Ministry for the Environment.

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