

Carbon Credits (Carbon Farming Initiative) Amendment (Variation of Project Proponents) Rule 2020

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

Dated 28 May 2020

Angus Taylor

Minister for Energy and Emissions Reduction

Contents

Part 1 —Preliminary 3

1 Name 3

2 Commencement 3

3 Authority 3

4 Schedules 3

Schedule 1—Amendments 4

Carbon Credits (Carbon Farming Initiative) Rule 2015 4

Part 1—Preliminary

1 Name

This is the *Carbon Credits (Carbon Farming Initiative) Amendment (Variation of Project Proponents) Rule 2020*.

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 day after the instrument is registered. |  |

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Carbon Credits (Carbon Farming Initiative) Rule 2015

1 Section 24

Repeal the section, substitute:

24 Project proponent

When Regulator must vary declaration

(1) On receiving an application under subsection (2), the Regulator may vary a declaration made under section 27 of the Act in relation to an offsets project, so far as the declaration identifies the project proponent for the project, if the Regulator is satisfied that:

(a) any person being identified as project proponent on the declaration is a project proponent of the project within the meaning of the Act; and

(b) if a person is being identified as project proponent on the declaration as a result of the variation (a ***new project proponent***)—that person passes the fit and proper person test; and

(c) if a person identified on the declaration is no longer a project proponent for the project—that person is being removed from the declaration; and

(d) if the applicant is required to give security to the Commonwealth under subsection (3)—the applicant has given the required security to the Commonwealth.

Application to vary declaration

(2) The application must be made by a person satisfying subsection (2A) and must be in the approved form and be accompanied by the following information or documents:

(a) the name and contact details of the applicant, which paragraph of subsection (2A) applies to the applicant and whether the applicant is:

(i) a project proponent; or

(ii) the nominee of multiple project proponents;

(b) the unique project identifier for the project;

(c) the name and contact details of any new project proponent;

(d) if applicable, the nominee of the project proponents;

(e) if there is to be a new project proponent—the information and documents mentioned in Subdivision C of Division 1 of Part 3 (which deals with establishing the applicant’s identity) that would be required to accompany the application if the new project proponent was applying for a declaration of an offsets project as an eligible offsets project;

(f) if there is to be a new project proponent—documents that show that the new project proponent has agreed to become, and has become, the project proponent of the project;

(g) whether any person identified on the declaration as a project proponent for the project is no longer a project proponent for the project;

(h) any information or documents necessary to substantiate that the requirements of subsection (2A) are met in relation to the application;

(i) a signed declaration by the applicant that the information included in, and the information and any documents accompanying the application:

(i) meets the requirements in this subsection; and

(ii) is accurate.

(2A) A person may apply under subsection (1) if they are:

(a) a project proponent for the project identified on the declaration as the project proponent for the project; or

(b) if the person under paragraph (a) is deceased or is incapacitated—that person’s legal personal representative making an application on behalf of that person; or

(c) a person who:

(i) is a project proponent for the project; and

(ii) is applying to be identified as a new project proponent for the project on the declaration; and

(iii) has the written consent of a person identified on the declaration as the project proponent for the project; or

(d) if an application has been made under section 29 or 30 to voluntarily revoke the declaration of the eligible offsets project—a person who is:

(i) a project proponent for the project; and

(ii) applying to be identified as a new project proponent for the project on the declaration; or

(e) if the person identified on the declaration as the project proponent for the project:

(i) no longer exists; or

(ii) has, in the opinion of the Regulator, abandoned the eligible offsets project; or

(iii) is required by a court order to transfer, or arrange the transfer of, the project to the applicant; or

(iv) has been determined by the Regulator, in relation to an application under the Act, not to be a fit and proper person;

a person who:

(v) is a project proponent for the project; and

(vi) is applying to be identified as a new project proponent for the project on the declaration; or

(f) if the Regulator is satisfied:

(i) that the persons identified on the declaration as the project proponents for the project are either an individual who is an insolvent under administration or a body corporate that is a Chapter 5 body corporate; and

(ii) that identifying the applicant as project proponent is appropriate having regard to:

(A) whether the applicant or the current landholder for the project caused, or materially contributed to, the circumstance in subparagraph (i); and

(B) the actions of a person identified as the project proponent on the declaration which caused the circumstance in (i); and

(C) if the project is an area-based offsets project—any impacts of the decision for native title holders of all or part of the project area; and

(D) any other matter the Regulator considers relevant;

a person who:

(iii) is a project proponent for the project; and

(iv) is applying to be identified as a new project proponent for the project on the declaration; or

(g) if the Regulator:

(i) has issued a notice under section 33 of an intention to revoke the project; and

(ii) is satisfied that, unless transferred under this section, the project should be revoked; and

(iii) is satisfied that identifying the applicant as project proponent is appropriate having regard to:

(A) whether the applicant or the current landholder for the project caused, or materially contributed to, the need for the Regulator to revoke the project; and

(B) the actions of a person identified as the project proponent on the declaration which caused the issuance of the notice under section 33; and

(C) if the project is an area-based offsets project—any impacts of the decision for native title holders of all or part of the project area; and

(D) any other matter the Regulator considers relevant;

a person who:

(iv) is a project proponent for the project; and

(v) is applying to be identified as a new project proponent for the project on the declaration; or

(h) if:

(i) the project was declared an eligible offsets project on or after 1 July 2020; and

(ii) the Regulator is satisfied that no person identified on the declaration as the project proponent for the project is a project proponent; and

(iii) the Regulator is satisfied that identifying the applicant as project proponent is appropriate having regard to:

(A) whether the applicant or the current landholder for the project caused, or materially contributed to, the identified project proponents no longer being a project proponent; and

(B) the actions of the persons identified as a project proponent on the declaration which caused them to no longer be a project proponent for the project; and

(C) if the project is an area-based offsets project—any impacts of the decision for native title holders of all or part of the project area; and

(D) any other matter the Regulator considers relevant;

a person who:

(iv) is a project proponent for the project; and

(v) is applying to be identified as a new project proponent for the project on the declaration.

Note: The new project proponent must also satisfy the fit and proper person requirements under paragraph (1)(b) and the requirements of subparagraphs (2A)(f)(ii), (g)(iii) and (h)(iii) are not intended to limit the matters considered in this assessment or the discretion provided in subsection (1).

(2B) If the project is an area-based offsets project for which a registered native title body corporate holds an eligible interest in some or all of the project area—before making a decision under subsection (1) the Regulator must:

(a) take all reasonable steps to notify the registered native title body corporate of the application; and

(b) invite the registered native title body corporate to make a submission about the application by a date at least 28 days after the date of the notice.

(2C) If an application under subsection (2) is made by a person under paragraph (2A)(d), (e), (f), (g) or (h), the Regulator must take all reasonable steps to consult, in accordance with subsection (2D), any persons identified on the declaration as the project proponent for the project before making a decision under subsection (1).

(2D) For subsection (2C), the Regulator must:

(a) give each person identified on the declaration as the project proponent for the project written notice of the proposed decision under subsection (1); and

(b) invite the person to make a submission about the proposed decision by a date at least 28 days after the date of the notice.

Regulator may require applicant to give security

(3) If the project is a sequestration offsets project, the Regulator may require the applicant to give security to the Commonwealth in relation to the fulfilment by the applicant of any requirements to relinquish Australian carbon credit units that may be imposed on the applicant under Part 7 of the Act in relation to the project.

Timing

(4) The Regulator must take all reasonable steps to ensure that a decision is made on the application by the later of the following:

(a) 90 days after the application was made;

(b) if the Regulator requested the applicant to give further information under section 26 in relation to the application—90 days after the applicant gave the Regulator the information;

(c) if a registered native title body corporate is notified under subsection (2B)—90 days after the date included in the notice under paragraph (2B)(b);

(d) if a registered native title body corporate notified under subsection (2B) objects to the variation—90 days after the objection is made;

(e) if a person consulted under subsection (2C) objects to the variation—90 days after the objection is made.

Notification

(5) If the Regulator varies the declaration, the Regulator must, as soon as practicable after varying the declaration, give a copy of the variation to:

(a) the applicant; and

(b) if the varied declaration relates to a sequestration offsets project—the relevant land registration official for the project; and

(c) if a person is being removed from the declaration—that person.

Refusal

(6) If the Regulator refuses to vary the declaration, the Regulator must give the applicant written notice of the decision and the reasons for the decision.

When variation takes effect

(7) A variation to the declaration takes effect:

(a) when the variation to the declaration is made; or

(b) on an earlier day, after the day the declaration was made, if:

(i) the Regulator makes a written determination specifying the day; and

(ii) the person who made the application for the variation consents to the determination of the earlier day; and

(iii) if a person is being removed from the declaration—the day is no earlier than the day that person ceased to be a project proponent for the project.

2 At the end of subsection 29(1)

Add:

; and (c) before the Regulator revokes the declaration, the applicant is not removed from being identified on the declaration as the project proponent for the project under section 24.

3 After paragraph 29(2)(e)

Insert:

(ea) an explanation of whether any other person is likely to consider themselves eligible to be the project proponent for the project and the contact details of any such persons;

4 After subsection 29(2)

Insert:

(2A) If the Regulator considers that the landholder or another person may want to be considered a project proponent for the project, the Regulator must take reasonable steps to inform that person of the application.

5 After subsection 29(3)

Insert:

(3A) However, the Regulator may delay making a decision on the application if another person has made, or is considering making, an application under section 24.

6 Subsection 30(1)

Repeal the subsection, substitute:

When Regulator must revoke declaration

(1) On receiving an application under subsection (2), the Regulator must revoke a declaration made under section 27 of the Act in relation to an offsets project to which no Australian carbon credit units have been issued if:

(a) the Regulator is satisfied that no Australian carbon credit units have been issued in relation to the project; and

(b) before the Regulator revokes the declaration the applicant is not removed from being identified on the declaration as the project proponent for the project under section 24.

7 After paragraph 30(2)(ca)

Insert:

(ca) an explanation of whether any other person is likely to consider themselves eligible to be the project proponent for the project and the contact details of any such persons;

8 After subsection 30(2)

Insert:

(2A) If the Regulator considers that the landholder or another person may want to be considered a project proponent for the project, the Regulator must take reasonable steps to inform that person of the application.

9 After subsection 30(3)

Insert:

(3A) However, the Regulator may delay making a decision on the application if another person has made, or is considering making, an application under section 24.

10 At the end of subsection 33(1)

Add:

; and (c) if the Regulator considers that the landholder or another person may want to be considered a project proponent for the project, the Regulator must take reasonable steps to inform that person of the proposed revocation.