



Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) Rule 2022

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

Dated: 31 March 2022

Angus Taylor
Minister for Industry, Energy and Emissions Reduction

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1 Name

This instrument is the *Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) Rule 2022*.

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	8 April 2022	8 April 2022

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 Subsection 4(1)

Insert:

regeneration project means either:

- (a) a project whose applicable methodology determination for the reporting period is the *Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Native Forest—1.1) Methodology Determination 2013* or an earlier version of that determination applicable to the project in accordance with section 125, 126, 127 or 130 of the Act; or
- (b) a project whose applicable methodology determination for the reporting period is the *Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013* or an earlier version of that methodology determination applicable to the project in accordance with section 125, 126, 127 or 130 of the Act.

2 Subsection 9AA(7) (definition of *regeneration project*)

Repeal the definition.

3 At the end of section 13

Insert:

- (4) If the project is a regeneration project whose project area will exceed 15 hectares, the application must also be accompanied by:
 - (a) if the project is a not notifiable regeneration project (within the meaning of section 20C)—a geospatial map of any farms (within the meaning of section 20C) that are wholly or partly within the project area of the project; and
 - (b) if the project is a notifiable regeneration project (within the meaning of section 20C)—the new ERF regeneration notification made in relation to the application.

4 After section 20B

Insert:

20C Excluded offsets project—notifiable regeneration projects

- (1) For paragraph 27(4)(m) and subsection 56(1) of the Act, if the project is a notifiable regeneration project and this section applies to an application under section 22 of the Act—the project is an excluded offsets project if:
 - (a) the project proponent did not make a new ERF regeneration notification meeting all of the following criteria:
 - (i) the new ERF regeneration notification was made in the period beginning 18 months before the date of the application under section 22 of the Act and ending on the day of that application (inclusive);

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- (ii) all of the proposed project area for the project is within the potential project area set out in the new ERF regeneration notification;
 - (iii) the size of the proposed project area does not exceed the maximum project area size set out in the new ERF regeneration notification;
 - (iv) the new ERF regeneration notification has not previously been relied upon in relation to an application under section 22 of the Act that resulted in a declaration of an eligible offsets project under subsection 27(2) of the Act; or
- (b) both of the following apply:
- (i) within 30 days of a new ERF regeneration notification being made the Agriculture Minister has sent the project proponent and the Regulator a written statement:
 - (A) stating that the Agriculture Minister intends to make an adverse impact finding in relation to the notification; and
 - (B) setting out the basis for that finding; and
 - (C) inviting the project proponent to send a written response to the designated email account within 20 days;
 - (ii) one of the following applies:
 - (A) within 30 days of sending the written statement referenced in subparagraph (1)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator stating that no written response to the first statement was sent within the 20 days;
 - (B) within 45 days of sending the written statement referenced in subparagraph (1)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator making an adverse impact finding in relation to the notification.
- (2) For paragraph 27(4)(m) and subsection 56(1) of the Act, if the project is a notifiable regeneration project and this section applies to an application under subsection 23(3)—the project is an excluded offsets project if the effect of the application is to add an area of land to the project area for the project and:
- (a) the project proponent did not make an ERF regeneration expansion notification meeting all of the following criteria:
 - (i) the ERF regeneration expansion notification was made in the period beginning 18 months before the date of the application under subsection 23(3) and ending on the day of that application (inclusive);
 - (ii) all of the proposed additional project area for the project is within the potential additional project area set out in the ERF regeneration expansion notification;
 - (iii) the size of the additional project area does not exceed the maximum additional project area size set out in the ERF regeneration expansion notification;
 - (iv) the ERF regeneration expansion notification has not previously been relied upon in relation to an application under subsection 23(3) that resulted in a variation of the declaration under subsection 23(1); or
 - (b) both of the following apply:

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- (i) within 30 days of an ERF regeneration expansion notification being made the Agriculture Minister has sent the project proponent and the Regulator a written statement:
 - (A) stating that the Agriculture Minister intends to make an adverse impact finding in relation to the notification; and
 - (B) setting out the basis for that finding; and
 - (C) inviting the project proponent to send a written response to the designated email account within 20 days;
 - (ii) one of the following applies:
 - (A) within 30 days of sending the written statement referenced in subparagraph (2)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator stating that no written response to the first statement was sent within the 20 days;
 - (B) within 45 days of sending the written statement referenced in subparagraph (2)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator making an adverse impact finding in relation to the notification.
- (3) For the purposes of subsection (1) or (2):
- (a) if a project proponent makes more than one new ERF regeneration notification or ERF regeneration expansion notification relevant to an application, it is the last notification to which those subsections apply; and
 - (b) if a purported notification is incomplete, that notification is invalid and is taken never to have been made.
- (4) If the Agriculture Minister sends the project proponent and Regulator a written statement stating that an earlier written statement covered by subsection (1) or (2) is to be disregarded, the earlier statement is taken never to have been sent.
- (5) If there are multiple project proponents in relation to a project, an ERF regeneration expansion notification or new ERF regeneration notification need only be made by one of those project proponents.
- (6) The Agriculture Minister must arrange for new ERF regeneration notifications and ERF regeneration expansion notifications to be sent to the Regulator along with the date those notifications were made.
- (7) If the Regulator receives an application under section 22 of the Act or subsection 23(3) to which this section applies, the Regulator must not make a decision on whether to make a declaration under section 27 of the Act or decision under subsection 23(1) until:
- (a) if a written statement is sent under subparagraph (1)(b)(i) or (2)(b)(i)—one of the following applies:
 - (i) more than 45 days have passed since that statement was sent;
 - (ii) another written statement is sent under sub-subparagraphs (1)(b)(ii)(A) or (B) or sub-subparagraphs (2)(b)(ii)(A) or (B);
 - (iii) the Agriculture Minister informs the project proponent and Regulator that a written statement will not be sent under sub-subparagraphs (1)(b)(ii)(A) or (B) or sub-subparagraphs (2)(b)(ii)(A) or (B); or

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- (b) otherwise—one of the following applies:
 - (i) more than 30 days have passed since the new ERF regeneration notification or ERF regeneration expansion notification was made;
 - (ii) the Agriculture Minister informs the project proponent and Regulator that a written statement will not be sent under subparagraph (1)(b)(i) or (2)(b)(i).

(8) In this section:

adverse impact finding means:

- (a) in relation to a new ERF regeneration notification—a finding that if the project went ahead there would, in the opinion of the Minister, be a material adverse impact on agricultural production or the local community in the region where the project would be located; or
- (b) in relation to an ERF regeneration expansion notification—a finding that if the project went ahead in the additional project area there would, in the opinion of the Minister, be a material adverse impact on agricultural production or the local community in the region where the additional project area would be located.

Agriculture Minister means:

- (a) the Minister administering the *Agricultural and Veterinary Chemicals Act 1994*; or
- (b) an SES employee, or acting SES employee, delegated responsibilities relating to this section by the Minister covered by paragraph (a).

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

designated email account means the email address published by the Agriculture Minister on their Department’s website for receiving information relevant to this section.

ERF regeneration expansion notification means a notification to the designated email account that:

- (a) states that the project proponent is planning to vary the declaration of an existing eligible offsets project to add an area of land to the project area for the project; and
- (b) attaches a geospatial map of the potential additional project area that could be added to the project, and any farms related to that area, in accordance with the CFI Mapping Guidelines; and
- (c) sets out the maximum additional project area size, in hectares, that will be added to the project area of the project; and
- (d) contains the name, address and contact details of the project proponent, including a nomination of an email account for the receipt of all correspondence relating to the notification; and
- (e) lists the known addresses of land within the potential additional project area; and
- (f) includes the following statements in the form specified in any guidelines relating to this section published by Agriculture Minister on their Department’s website:

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- (i) a statement setting out the previous five years of agricultural land use history within the potential additional project area, including the area, in hectares, of each land use type;
 - (ii) unless a statutory declaration is provided setting out why an agricultural production history is unavailable to the project proponent—a statement setting out the previous five years of agricultural production history of agricultural commodities within the potential additional project area;
 - (iii) a statement assessing the project’s potential impact on agricultural production in the region, that takes into account in any guidelines relating to this section published by the Agriculture Minister on their Department’s website; and
- (g) contains information required by any guidelines relating to this section published by the Agriculture Minister on their Department’s website; and
 - (h) contains any other information relating to the project, such as expected benefits from the project or community support, which the project proponent wishes to include.

Note: The potential additional project area could be a precise project area on which the additional project area is to be located or the boundaries of an area the project proponent is looking to define a smaller additional project area in up to the maximum size provided under paragraph (c). Applicants need not have acquired any of the land in the potential additional project area before making an ERF regeneration expansion notification.

farm means:

- (a) any tract of land:
 - (i) which is, or has been in the previous 5 years, used for agriculture; and
 - (ii) for which one or more persons hold an estate in fee simple or a lease over the land; or
- (b) multiple tracts of land:
 - (i) which are, or have been in the previous 5 years, used for agriculture; and
 - (ii) for which one or more persons hold an estate in fee simple or a lease over each tract of land; and
 - (iii) for which the agricultural activities have contributed to a single business enterprise, regardless of whether those tracts of land are touching.

incomplete, in relation to a new ERF regeneration notification or ERF regeneration expansion notification, includes a notification which does not include the information or documents required by the definition of that notification.

new ERF regeneration notification means a notification to the designated email account that:

- (a) states that the project proponent is planning to seek the declaration of a regeneration project as an eligible offsets projects; and
- (b) attaches a geospatial map of the potential project area for the project, and any farms related to the potential project area, in accordance with the CFI Mapping Guidelines; and

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- (c) sets out the maximum project area size, in hectares, for all of the proposed project areas of the project; and
 - (d) contains the name, address and contact details of the project proponent, including a nomination of an email account for the receipt of all correspondence relating to the notification; and
 - (e) lists the known addresses of land within the potential project area; and
 - (f) includes the following statements in the form specified in any guidelines relating to this section published by Agriculture Minister on their Department's website:
 - (i) a statement setting out the previous 5 years of agricultural land use history within the potential project area, including the area, in hectares, of each land use type;
 - (ii) unless a statutory declaration is provided setting out why an agricultural production history is unavailable to the project proponent—a statement setting out the previous five years of agricultural production history of agricultural commodities within the potential project area;
 - (iii) a statement assessing the project's potential impact on agricultural production in the region, that takes into account in any guidelines relating to this section published by the Agriculture Minister on their Department's website; and
 - (g) contains information required by any guidelines relating to this section published by the Agriculture Minister on their Department's website; and
 - (h) contains any other information relating to the project, such as expected benefits from the project or community support, which the project proponent wishes to include.

Note: The potential project area could be a precise project area on which the project area is to be located or the boundaries of an area the project proponent is looking to define a smaller project area in up to the maximum size provided under paragraph (c). Applicants need not have acquired any of the land in the potential project area before making a new ERF regeneration notification.

notifiable regeneration project means a regeneration project whose proposed project area, at the time of application under section 22 of the Act or subsection 23(3):

- (a) is greater than 15 hectares; and
- (b) if the project area only covers, whether wholly or partly, one farm—covers, with any pre-existing project areas for regeneration projects covering (whether wholly or partially) that farm, more than one third of the area of that farm; and
- (c) if the project area covers, whether wholly or partly, two or more farms—covers, with any pre-existing project areas for regeneration projects covering (whether wholly or partially) any of those farms, more than one third of the area of at least one of those farms; and
- (d) is not wholly, or substantially, exclusive possession native title land, land rights land or conservation land.

5 After subsection 23(4)

Insert:

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- (4A) If the project is a regeneration project whose proposed project area will exceed 15 hectares after the variation, the application must also include:
- (a) if the project is a not notifiable regeneration project (within the meaning of section 20C)—a geospatial map of any farms (within the meaning of section 20C) that are wholly or partly within the proposed project area of the project; and
 - (b) if the project is a notifiable regeneration project (within the meaning of section 20C)—the ERF regeneration expansion notification made in relation to the application.

6 At the end of subsection 70(3A)

Add:

- ; (d) a statement that during the reporting period the project proponent and other relevant land holders for the project area have taken reasonable steps to comply with requirements relating to the management of weeds and pests in the project area imposed by or under applicable State, Territory or local government laws.

7 Subsection 70(6) (definition of *regeneration project*)

Repeal the definition.

8 Subsection 79A(5) (definition of *regeneration project*)

Repeal the definition.

9 After section 122

Insert:

123 Application of requirements for new regeneration projects

- (1) Section 20C only applies to applications submitted under section 22 of the Act or subsection 23(3) after the commencement of this section.
- (2) However, a notification submitted to ERFnotification@agriculture.gov.au which complies with section 20B before the commencement of this section and indicates that it is in respect of a regeneration project is taken to be an ERF regeneration notification or new ERF regeneration notification under section 20C.
- (3) For notifications submitted before the commencement of this section, the 30 day period in subparagraphs 20C(1)(b)(i), (2)(b)(i) and (7)(b)(i) is taken to be 45 days.

124 Application of requirements for information that must be set out in offsets reports

Paragraph 70(3A)(d) only applies to offsets reports for reporting periods that end after the commencement of this section.