



Clean Energy Legislation Amendment (International Linking) Regulation 2013

Select Legislative Instrument No. 78, 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 *Australian National Registry of Emissions Units Act 2011*, the *Carbon Credits (Carbon Farming Initiative) Act 2011* and the *Clean Energy Act 2011*.

Dated 16 May 2013

Quentin Bryce
Governor-General

By Her Excellency's Command

Greg Combet AM
Minister for Climate Change, Industry and Innovation

OPC50474 - D

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1 Name of regulation

This regulation is the *Clean Energy Legislation Amendment (International Linking) Regulation 2013*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

This regulation is made under the following Acts:

- (a) the *Australian National Registry of Emissions Units Act 2011*;
- (b) the *Carbon Credits (Carbon Farming Initiative) Act 2011*;
- (c) the *Clean Energy 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Australian National Registry of Emissions Units Regulations 2011

1 Regulation 3

Insert:

European Union Transaction Log means the electronic data system of the European Union for the purpose of checking, recording and registering transactions in the Union Registry, as established under Article 20 of Directive 2003/87/EC of the European Parliament and of the Council, as in force from time to time.

Note: The text of the Directive may be found at: <http://eur-lex.europa.eu>.

2 Regulation 3

Insert:

foreign registry: see regulation 4A.

3 Regulation 3

Insert:

Union allowance deletion account means the account in the Union Registry, however described, to which an allowance can be transferred for the purpose of its final disposal without it being recorded as surrendered for any emissions.

Note: In April 2013, this account was mentioned in Article 63 of Commission Regulation (EU) No 1193/2011, the text of which may be found at: <http://eur-lex.europa.eu>.

Union Registry means the registry established under Article 19 of Directive 2003/87/EC of the European Parliament and of the Council, as in force from time to time.

Note: The text of the Directive may be found at: <http://eur-lex.europa.eu>.

4 After regulation 4

Insert:

4A Meaning of *foreign registry*

For the definition of *foreign registry* in section 4 of the Act, the Union Registry is specified.

5 At the end of regulation 24

Add:

- ; (t) an Australian-issued international units—substitute units—relinquished units account;
- (u) an Australian-issued international units—surrendered units account.

6 At the end of Part 2

Add:

35A Suspension of Registry link with Union Registry

- (1) This regulation applies to the following activities:
 - (a) the issue of Australian-issued international units for European allowance units;
 - (b) the processing of instructions to transfer prescribed international units from foreign accounts into Registry accounts;
 - (c) the processing of instructions to transfer prescribed international units from Registry accounts into foreign accounts.
- (2) The Regulator may temporarily suspend the operation of the Registry in relation to one or more of the activities if the Regulator is satisfied that:
 - (a) the suspension is required so that maintenance can be carried out; or
 - (b) it is prudent to suspend the operation of the Registry in order to:
 - (i) ensure the integrity of the Registry; or

- (ii) prevent, mitigate or minimise abuse of the Registry; or
 - (iii) prevent, mitigate or minimise criminal activity involving the Registry.
- (3) A suspension under subregulation (2) must be for no more than 5 business days.
- (4) If the Regulator suspends the operation of the Registry in relation to one or more activities, the Regulator must, as soon as practicable:
 - (a) publish a notice on the Regulator's website informing the public of the suspension; and
 - (b) tell the European Union Transaction Log.
- (5) If the Regulator suspends the operation of the Registry in relation to one or more activities, the Regulator may defer taking action in relation to the activity until the suspension ends.

Note: See also sections 28 to 28D of the Act.

7 After Part 3

Insert:

Part 4—Prescribed international units

Division 4.1—Australian-issued international units

50 General

This Division is made for sections 48D and 48E of the Act.

51 When Australian-issued international units may be issued—conditions

- (1) The following conditions are specified for the issue of an Australian-issued international unit that is issued for a European allowance unit:
 - (a) the Commonwealth has opened a Commonwealth foreign registry account in the Union Registry and that account is operational;

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- (b) a person (the *transferor*) has made a request to an administrator of the Union Registry for a European allowance unit in an account in the Union Registry to be transferred to the Commonwealth foreign registry account so that an Australian-issued international unit may be issued;
 - (c) the transferor has specified a Registry account in which the corresponding Australian-issued international unit is to be issued;
 - (d) the Regulator and the European Union Transaction Log have validated the transfer in accordance with subregulation (3);
 - (e) at the time of the issue, no international arrangement that allows the direct transfer of the European allowance unit from the Union Registry into a Registry account is operational.
- (2) The Regulator must issue the Australian-issued international unit as soon as practicable after the transfer is validated.
- Note: At this stage the European Union Transaction Log and the Union Registry will complete the transfer of the corresponding European allowance unit to the Commonwealth foreign registry account in the Union Registry.
- (3) A transfer is validated if:
- (a) the Regulator has verified that the specified Registry account in which the Australian-issued international unit is to be issued is open and that:
 - (i) the operation of the Registry is not suspended under section 28 of the Act or regulation 35A; and
 - (ii) the Registry account is not subject to any conditions under section 28C of the Act prohibiting, restricting or limiting the transfer of units to the account; and
 - (iii) the Registry account is not suspended under section 28D of the Act; and
 - (b) the European Union Transaction Log has confirmed that the European allowance unit will be transferred from the transferor's account in the Union Registry to the Commonwealth foreign registry account.

52 Requirement following issue of Australian-issued international units

The Regulator must, as soon as practicable after an Australian-issued international unit is issued, tell the European Union Transaction Log that the unit has been issued.

53 Requirement following cancellation of Australian-issued international units

- (1) If a Registry account is closed and an Australian-issued international unit is consequently cancelled in accordance with subregulation 28(6), the Regulator must:
 - (a) as soon as practicable after the unit is cancelled, tell the European Union Transaction Log that the unit has been cancelled; and
 - (b) within 12 months after the unit is cancelled, arrange for a European allowance unit in the Commonwealth foreign registry account in the Union Registry to be transferred to the Union allowance deletion account.
- (2) A transfer under paragraph (1)(b) must be made in accordance with any direction given under subsection 86A(4) of the Act.

Division 4.2—Ownership of prescribed international unit

54 Legal ownership

For subsection 49A(1) of the Act, the registered holder of a prescribed international unit:

- (a) is the legal owner of the unit; and
- (b) may, subject to the Act and these regulations, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.

Division 4.3—Transfers of prescribed international units**55 Outgoing international transfers of Australian-issued international units**

- (1) For paragraph 52(2)(b) of the Act, the account number of the foreign account is specified.
- (2) For paragraph 52(3)(b) of the Act, the condition is that a person (the *transferor*) has requested that an Australian-issued international unit be cancelled and a European allowance unit be transferred from the Commonwealth foreign registry account in the Union Registry to a foreign account.
- (3) For subsection 52(3) of the Act, if the Regulator is satisfied that the condition in subregulation (2) has been met, the Regulator must:
 - (a) decide if the transfer can be validated in accordance with paragraph (4)(a) and, if the transfer cannot be validated, tell the transferor that the transfer is declined; and
 - (b) if the transfer can be validated, send information about the transfer to the European Union Transaction Log, including:
 - (i) the number of Australian-issued international units instructed to be cancelled; and
 - (ii) the account in the Union Registry to which an equivalent number of European allowance units are to be transferred; and
 - (c) if the transfer cannot be validated by the European Union Transaction Log in accordance with paragraph (4)(b), tell the transferor that the transfer is declined; and
 - (d) if the transfer is validated by the European Union Transaction Log, cancel the Australian-issued international units and remove the entries from the person's Registry account; and
 - (e) advise the European Union Transaction Log that the Australian-issued international units have been cancelled; and
 - (f) arrange for an equivalent number of European allowance units to be transferred from the Commonwealth foreign

registry account in the Union Registry to the nominated account in the Union Registry.

Note: Division 4.5 modifies paragraphs 50(1)(c) and (d) of the Act as to what constitutes the transfer of an Australian-issued international unit to a foreign account.

- (4) A transfer is validated if:
- (a) the Regulator has verified that the specified Registry account from which the Australian-issued international unit is to be cancelled is open and that:
 - (i) the operation of the Registry is not suspended under section 28 of the Act or regulation 35A; and
 - (ii) the Registry account is not subject to any conditions under section 28C of the Act prohibiting, restricting or limiting the transfer of units from the account; and
 - (iii) the Registry account is not suspended under section 28D of the Act; and
 - (b) the European Union Transaction Log has confirmed that the European allowance unit will be transferred from the Commonwealth foreign registry account to the nominated foreign account in the Union Registry.

56 Incoming international transfers of prescribed international units

For paragraph 53(1)(b) of the Act, the following conditions are specified:

- (a) at the time the instruction is received, an international arrangement is operational;
- (b) the transfer of the prescribed international unit from the foreign account to the Registry account is in accordance with the arrangement.

Division 4.4—General provisions about prescribed international units

57 A registered prescribed international unit is personal property for certain purposes

The following purposes are prescribed for paragraph 54(2)(d) of the Act:

- (a) the purposes of the *Personal Property Securities Act 2009*;
- (b) the purposes of the *Proceeds of Crime Act 2002*.

58 Transmission of prescribed international units by operation of law

Evidence of transmission

- (1) For paragraph 56(2)(b) of the Act, the transferee must give the Regulator a certified copy of a document showing the title to the prescribed international units has been transmitted to the transferee.

Example: If a prescribed international unit has been transmitted on the making of an order by a court, including a sequestration order, the evidence of the transmission would be a certified copy of the order.

Declaration of transmission

- (2) For subsection 56(3) of the Act, a declaration of transmission must:
 - (a) be made in writing; and
 - (b) identify the serial numbers of the prescribed international units; and
 - (c) set out the name, address (if relevant) and Registry account number of the transferor; and
 - (d) set out the name, address and Registry account number (if any) of the transferee; and
 - (e) include a brief description of the circumstances that resulted in the transmission; and
 - (f) be signed by the transferee.

Note: If the transferee does not already have a Registry account, the transferee must request that a Registry account be opened in the transferee's name: see subsection 56(4) of the Act.

Division 4.5—Modification of Division 3 of Part 4 of the Act for Australian-issued international units

59 General

This Division is made for subsection 57(2) of the Act and applies to Australian-issued international units issued for European allowance units.

60 Modification of Act

Paragraphs 50(1)(c) and (d) of the Act are modified in their application to an Australian-issued international unit by substituting the following:

- “(c) the *transfer* of an Australian-issued international unit from the first Registry account to a foreign account kept by another person consists of:
- (i) the cancellation of the Australian-issued international unit; and
 - (ii) the removal of the entry for the Australian-issued international unit from the first Registry account; and
 - (iii) the transfer of a European allowance unit from the Commonwealth foreign registry account to the foreign account kept by the other person; and
- (d) the *transfer* of an Australian-issued international unit from the first Registry account to a foreign account kept by the first person consists of:
- (i) the cancellation of the Australian-issued international unit; and
 - (ii) the removal of the entry for the Australian-issued international unit from the first Registry account; and
 - (iii) the transfer of a European allowance unit from the Commonwealth foreign registry account to the foreign account kept by the first person.”.

8 Part 5 (after the heading)

Insert:

65 Information about prescribed international units

For section 59A of the Act, the class of prescribed international units that are Australian-issued international units is specified.

9 Regulation 50

Renumber as regulation 66.

10 After Part 5

Insert:

Part 6—Voluntary cancellation of prescribed international units**68 Voluntary cancellation of Australian-issued international units**

- (1) For subsection 66(3) of the Act, if the Regulator receives a notice to cancel an Australian-issued international unit, the Regulator must:
 - (a) cancel the unit; and
 - (b) as soon as practicable after the unit is cancelled, tell the European Union Transaction Log that the unit has been cancelled; and
 - (c) within 12 months after the unit is cancelled, arrange for a European allowance unit in the Commonwealth foreign registry account in the Union Registry to be transferred to the Union allowance deletion account.
- (2) A transfer under paragraph (1)(c) must be made in accordance with any direction given under subsection 86A(4) of the Act.

Part 6A—Cancellation of Australian-issued international units

70 Cancellation of Australian-issued international units for European allowance units

- (1) For paragraph 66A(1)(b) of the Act, the following conditions are specified:
- (a) at the time the Australian-issued international units are cancelled, an international arrangement that allows the direct transfer of European allowance units from the Union Registry into a Registry account is operational;
 - (b) the arrangement ensures that the cancelled Australian-issued international units are replaced with the same number of European allowance units (*replacement units*);
 - (c) the replacement units are able to be transferred from the Commonwealth foreign registry account in the Union Registry to the person's Registry account no more than 3 business days after the cancellation of the Australian-issued international units.
- (2) In this regulation:

business day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

Part 6B—Relinquishment of Australian-issued international units

72 How Australian-issued international units are relinquished

- (1) For paragraph 66D(3)(c) of the Act, if an Australian-issued international unit is relinquished, the Regulator must:
- (a) as soon as practicable after the unit is relinquished, tell the European Union Transaction Log that the unit has been relinquished; and

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- (b) within 12 months after the unit is relinquished, arrange for a European allowance unit in the Commonwealth foreign registry account in the Union Registry to be transferred to the Union allowance deletion account.
- (2) A transfer under paragraph (1)(b) must be made in accordance with any direction given under subsection 86A(4) of the Act.

73 Transfer of certain units instead of relinquishment of Australian-issued international units

For subsection 66E(4) of the Act, the substitute units must be transferred to the Australian-issued international units—substitute units—relinquished units account.

Note: For *substitute unit*, see subsection 66E(7) of the Act.

Carbon Credits (Carbon Farming Initiative) Regulations 2011

11 After regulation 11.1

Insert:

11.2 Outgoing international transfers of Australian carbon credit units

For subsection 154(3) of the Act, the Regulator must:

- (a) take the following steps:
- (i) confirm that, at the time the instruction is received, an international arrangement that allows the direct transfer of the Australian carbon credit unit from the Registry account to the foreign account is operational;
 - (ii) ensure that the transfer of the unit from the Registry account to the foreign account is in accordance with the arrangement; or
- (b) if either of the steps in paragraph (a) cannot be taken, notify the person who gave the instruction that the instruction is declined.

Clean Energy Regulations 2011

12 Before regulation 6.1

Insert:

6.1A How eligible international emissions units are surrendered

- (1) For paragraph 122(11)(a) of the Act, if an Australian-issued international unit is surrendered, the Regulator must:
 - (a) transfer the unit to the Australian-issued international units—surrendered units account and then cancel the unit; and
 - (b) as soon as practicable after the surrender, tell the European Union Transaction Log that the unit has been surrendered; and
 - (c) within 6 months after the day for surrender of the unit, arrange for a European allowance unit in the Commonwealth foreign registry account in the Union Registry to be transferred to the Union allowance deletion account.
- (2) In this regulation:

Commonwealth foreign registry account has the same meaning as in the ANREU Act.

day for surrender of the unit is the last day on which the unit may be surrendered to avoid liability for unit shortfall charge in the financial year in relation to which the unit is surrendered.

European Union Transaction Log has the same meaning as in the ANREU Regulations.

Union allowance deletion account has the same meaning as in the ANREU Regulations.

Union Registry has the same meaning as in the ANREU Regulations.