

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 77**

Issued by the Authority of the Parliamentary Secretary for Climate Change, Industry and Innovation

*Carbon Credits (Carbon Farming Initiative) Act 2011*

*Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)*

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act), together with the *Australian National Registry of Emissions Units Act 2011* and the *Carbon Credits (Consequential Amendments) Act 2011*, implements the Carbon Farming Initiative (the CFI). The CFI is a voluntary scheme that aims to provide incentives for the agricultural, forestry and landfill sectors to minimise greenhouse gas emissions or maximise carbon storage by altering their agricultural, forestry and landfill practices.

Section 307 of the CFI Act provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the CFI Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the CFI Act. The sections of the CFI Act that require or permit the relevant regulations to be made are set out in Attachment A.

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)* (the Regulation) amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) to further support the implementation and administration of the CFI Act. Background information about the CFI Act and the Regulation is set out in Attachment B.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required.

A statement of the Regulation's compatibility with human rights is set out in Attachment C.

Details of the Regulation are set out in Attachment D.

### **Consultation**

The CFI Act, the Principal Regulations and the Regulation reflect the outcomes of comprehensive consultation with stakeholders that has been ongoing since October 2010.

Exposure drafts of the Regulation were released for public comment in two separate tranches. The first – relating primarily to activities for inclusion on the positive list – was released on 8 March 2013 and the second tranche was released for public comment on 26 March 2013. In total, forty-two submissions were received from industry organisations, businesses, government entities and other stakeholders. The second consultation process also included a notification of the Government's intention to make a further regulation extending the Kyoto abatement deadline to the end of the

second Kyoto Protocol commitment period, although no regulation was included in the exposure draft. One submission was received on this topic.

After consideration of the submissions received and after further consultation with other agencies and industry, refinements were made to some of the positive list activities and negative list conditions contained within the Regulation, consistent with the results of consultation. As a result of submissions received, changes were also made to other provisions of the Regulation consistent with the results of consultation. Changes were also made to the explanatory statement to more clearly explain key regulations.

The Domestic Offsets Integrity Committee (DOIC) has provided advice to the Minister that it is satisfied that the positive list activities introduced through this Regulation are suitable for inclusion on the positive list because they are not common practice and meet the requirements of section 41(3) of the CFI Act.

Authority: Section 307 of the *Carbon Credits  
(Carbon Farming Initiative) Act 2011*

## Glossary

The following terms, abbreviations and acronyms are used throughout this explanatory statement.

<i>Abbreviation</i>	<i>Definition</i>
ACCU	Australian carbon credit unit
CFI	Carbon Farming Initiative
CFI Act	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
crediting period	The length of time that an activity can generate credits using an approved methodology. Unless otherwise specified in regulations, a crediting period is seven years, apart from native forest protection projects which have a single (non-renewable) 20 year crediting period.  The Principal Regulations specify that the crediting period for projects to establish forest through seeding or planting is 15 years.
Department	The Department administering the CFI Act. At time of making the Regulation, the Department administering the CFI Act is the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education.
DOIC	Domestic Offsets Integrity Committee
Greenhouse Friendly™	The Australian Government's Greenhouse Friendly™ initiative, which ended on 30 June 2010
Kyoto ACCU	A type of ACCU, defined in section 5 of the CFI Act
Kyoto unit	An assigned amount unit, a certified emission reduction, an emission reduction unit, a removal unit or a prescribed unit issued in accordance with the Kyoto rules
negative list	The list of activities that are excluded from the CFI in circumstances where there is a risk that they will have an adverse impact on the availability of water, the conservation of biodiversity, employment, the local community, or land access for agricultural production.
non-Kyoto ACCU	An ACCU other than a Kyoto ACCU
positive list	The list of activities eligible under the CFI, as prescribed in regulation 3.28 of the Principal Regulations
Principal Regulations	<i>Carbon Credits (Carbon Farming Initiative) Regulations 2011</i> , as amended
project proponent	The person who is responsible for carrying out a project and has the legal right to carry out the project. If the project is a sequestration offsets project, the proponent must also hold the applicable sequestration right in relation to the project area or areas (section 5 of the CFI Act)
Regulation	<i>Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)</i>
Regulator	Clean Energy Regulator
reporting period	The period of time covered by an offsets report. Also likely to be the period for which the project proponent is claiming credits. A reporting period must be between 12 months and five years.

## **Sections of the CFI Act supporting the Regulation**

The Regulation is supported by the following provisions of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act):

- section 5, which allows the regulations to:
  - specify a date later than 30 June 2012 as the ‘Kyoto abatement deadline’;
  - prescribe a unit as a ‘prescribed eligible carbon unit’;
- subsection 13(2), which allows the regulations to provide that a project of a kind specified in the regulations is exempt from the requirement to provide a prescribed audit report with an application for a certificate of entitlement;
- paragraphs 23(1)(c) and 23(1)(h), which allow the regulations to specify information and documents that must accompany an application for the declaration of an offsets project as an eligible offset project;
- subsection 29(1), which allows the regulations to empower the Regulator to vary a declaration made under section 27 of the CFI Act in relation to an offsets project (a declaration) so far as the declaration identifies the project area/s;
- paragraph 29(3)(c) which allows the regulations to specify information that must accompany an application to the Regulator for the voluntary variation of a declaration of an eligible offsets project so far as the declaration identifies the project area/s;
- paragraph 41(1)(a), which allows the regulations to specify kinds of projects that pass part of the additionality test;
- paragraph 41(4A), which allows the regulations to provide that paragraph 41(1)(b) (which provides that an offsets project passes part of the additionality test if the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory) does not apply to a requirement of a kind specified in the regulations;
- paragraph 55(1)(c), which allows the regulations to specify a kind of offsets project that is a Kyoto offsets project;
- subsection 56(1), which allows the regulations to specify a kind of offsets project that is an excluded offsets project;
- subparagraph 69(1)(b)(ii), which allows the regulations to specify a period as the first crediting period for a project that is not a native forest protection project;
- paragraph 70(4)(b), which allows the regulations to specify a period as the subsequent crediting period for a project that is not a native forest protection project;

- paragraph 76(4)(b), which allows the regulations to specify information that must be included in an offsets report about a project for a reporting period;
- subsection 76(5), which allows the regulations to specify a kind of project that is exempt from the requirement to provide a prescribed audit report with an offsets report;
- paragraphs 109(1)(d) and (e), which allow the regulations to specify the information and documentation that must accompany an application for endorsement of a methodology determination;
- paragraphs 117(1)(d) and (e), which allow the regulations to specify the information and documentation that must accompany an application for endorsement of a proposal for the variation of a methodology determination;
- paragraph 157(1)(d), which provides for the regulations to specify conditions to be fulfilled before a Kyoto ACCU may be exchanged for a Kyoto unit;
- subparagraph 168(1)(o)(iii), which provides for the regulations to specify conditions to be fulfilled before information about the environmental or community benefits of a project must be published in the Register of Offsets Projects;
- subsections 177(4) and 178(4), which allow the regulations to specify the conditions under which a transfer of a substitute unit may take place instead of the relinquishment of a Kyoto ACCU or a non-Kyoto ACCU respectively;
- paragraph 177(6)(e), which allows the regulations to prescribe a unit that may be relinquished in place of a Kyoto ACCU;
- subsections 177(8) and 178(8), which allow the regulations to provide that specified units are not eligible to be used as substitute units in place of Kyoto ACCUs and non-Kyoto ACCUs respectively;
- subsection 304(1), which allows the regulations to make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing as in force or existing at a particular time or from time to time;
- section 305, which allows the regulations to make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator; and
- section 307, which allows the Governor-General to make regulations prescribing matters required or permitted by the CFI Act and matters necessary or convenient to be prescribed for carrying out or giving effect to the CFI Act.

## **Background information**

The Carbon Farming Initiative (CFI) enables crediting of greenhouse gas abatement in the land sector. Greenhouse gas abatement is achieved by:

- reducing or avoiding emissions, for example, through capture and destruction of methane emissions from landfill or livestock manure; or
- removing carbon from the atmosphere and storing it in soil or trees, for example, by growing a forest or adding biochar to soil.

Australian carbon credit units (ACCUs) are issued in respect of abatement generated by these activities. ACCUs can be sold into a variety of domestic markets; Kyoto ACCUs can be exchanged for internationally recognised Kyoto units and exported overseas, while all units from Kyoto offsets projects (all Kyoto ACCUs and some non-Kyoto ACCUs) are eligible for surrender under the carbon pricing mechanism. All Kyoto and non-Kyoto ACCUs can also be sold into voluntary markets, for example to businesses or individuals wishing to offset their greenhouse gas emissions.

Abatement activities are undertaken as eligible offsets projects. The processes involved in establishing and operating an eligible offsets project are set out in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act), and include the following requirements:

- the project proponent must satisfy the fit and proper person test and become recognised as an offsets entity;
- the project must be for an activity on the positive list and must be covered by a methodology determination;
- the project must be declared by the Clean Energy Regulator (Regulator) to be an eligible offsets project for the purposes of the CFI Act. The Regulator must not declare that the offsets project is an eligible offsets project unless the Regulator is satisfied that the project meets the criteria specified in subsection 27(4) of the CFI Act;
- the project must be undertaken in accordance with the applicable methodology determination; and
- reports on the conduct of the project must be independently audited and submitted to the Regulator at least every five years and not more than annually.

The Principal Regulations deal with:

- declarations of eligible offsets projects, including the process for applying for declaration as an eligible offsets project, and the variation, revocation and restructure of an eligible offsets project;
- the processes for applying for an ACCU, including the calculation of unit entitlement;

- the activities that are included in, and excluded from, the CFI (the ‘positive’ and ‘negative’ lists);
- ascertaining who holds an ‘eligible interest’ in an area of land;
- classification of projects;
- the recognition of offsets entities;
- crediting periods;
- auditing, reporting, notification and record-keeping requirements;
- the relinquishment of ACCUs;
- the processes for applying for the endorsement of a methodology proposal, the variation of a methodology determination and the application of a varied methodology determination to a project;
- electronic notice requirements;
- designation of nominee accounts;
- the transmission of ACCUs by operation of law;
- the conditions and processes for the exchange of Kyoto ACCUs for Kyoto units;
- how the market value of a Kyoto ACCU is to be ascertained for relinquishment purposes;
- the information and documents that must accompany an application for the reimbursement of the costs of a compliance audit; and
- procedures of the Domestic Offsets Integrity Committee.

This Regulation amends the Principal Regulations by inserting or amending provisions that deal with:

- the issuance of Kyoto ACCUs;
- reporting and auditing requirements;
- information that must accompany an application for a declaration of eligible offsets project;
- the voluntary variation of a declaration of eligible offsets project;
- the activities that are included in, and excluded from, the CFI (the ‘positive’ and ‘negative’ lists);

- circumstances under which a project is deemed to be additional, even if the activity is required by law;
- specifying the length of a crediting period;
- the processes for applying for the endorsement of a methodology proposal or the variation of a methodology determination;
- the conditions under which Kyoto ACCUs may be exchanged for certain Kyoto units;
- the publication of information in the Register of Offsets Projects; and
- the transfer of substitute units instead of the relinquishment of Kyoto or non-Kyoto ACCUs.



## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)**

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)* (the Regulation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) by inserting provisions dealing with, amongst other things:

- reporting and auditing requirements;
- information that must accompany an application for or a variation to a declaration of eligible offsets project;
- the activities that are included in, and excluded from, the CFI (the ‘positive’ and ‘negative’ lists);
- circumstances under which a project is deemed to be additional, even if the activity is required by law;
- specifying the length of a crediting period;
- the processes for applying for the endorsement of a methodology proposal or the variation of a methodology determination;
- the conditions under which Kyoto Australian Carbon Credit Units (ACCUs) may be exchanged for certain Kyoto units;
- the publication of information in the Register of Offsets Projects; and
- the transfer of substitute units instead of the relinquishment of ACCUs.

#### **Human rights implications**

The Regulation engages Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR). Article 17(1) of the ICCPR provides for the right of every individual to be protected against arbitrary or unlawful interference with the individual’s privacy. The term ‘privacy’ has not been defined by international human rights law but it is generally accepted that it encompasses ‘information privacy’—the right to privacy of information about a particular individual. An interference with an individual’s privacy will not be considered ‘unlawful’ if it is authorised by a law

that complies with the provisions, aims and objective of the ICCPR and specifies in detail the precise circumstances in which such interferences may be permitted. An interference with an individual's privacy will not be considered 'arbitrary' if it is reasonable in the particular circumstances and the law is in accordance with the provisions, aims and objectives of the ICCPR.<sup>1</sup>

The Regulation engages the right to privacy because the Regulation:

- requires a project proponent to keep particular records and provide the Regulator with specified information about the conduct of an eligible offsets project. It is essential to the integrity of the CFI that a project proponent keeps records and provides reports about an eligible offsets project so that the Regulator is able to verify claims made by the proponent about the success of the project.
- authorises the Regulator to publish certain information relating to the environmental or community benefits of a project on the Register of Offsets Projects, if the information meets the requirements set out in the Regulation. The Regulation stipulates that such information must relate to whether the project has received funding under the Australian Government's Biodiversity Fund. This information is published only if the project proponent requests this to be done, and is provided for so that the proponent may have a means to advertise the environmental or community 'co-benefits' of the project to prospective buyers of credits. Credits from such projects may attract a price premium in the market.

These requirements are reasonable and the Regulation is therefore not 'arbitrary' within the meaning of Article 17(1) of the ICCPR.

Furthermore, the Regulation does not authorise an unlawful interference with an individual's privacy because the Regulation adequately specifies the circumstances in which information may be collected or published. Moreover, the Regulator is required to handle all personal information in accordance with the Privacy Act 1988 and is bound by the secrecy provisions in the *Clean Energy Regulator Act 2011*. The Regulation is therefore compatible with Article 17(1) of the ICCPR because it does not unlawfully or arbitrarily interfere with an individual's privacy.

## **Conclusion**

The Regulation is compatible with human rights because it does not limit any human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Parliamentary Secretary for Climate Change, Industry and Innovation

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<sup>1</sup> Human Rights Committee, General Comment 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)

## **Details of the Regulation**

### Section 1 Name of regulation

1. Section 1 provides that the name of the Regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. 1)*.

### Section 2 Commencement

2. Section 2 provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

### Section 3 Authority

3. Section 3 provides that the Regulation is made under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act).

### Section 4 Schedule(s)

4. Section 4 provides that the Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) in the manner set out in Schedule 1.

## **Schedule 1 - Amendments**

### Item [1]: Subregulation 1.3(1) – Definitions

5. This item inserts new definitions into regulation 1.3(1) of the Principal Regulations.

6. The definitions of clearing, consent, harvest plan and plantation are all relevant to the positive list entry relating to avoided clearing where a clearing or harvesting permit was issued before 1 July 2010 (new regulation 3.28(1)(o)), and the related negative list entry (new regulation 3.36(g)) (see items [10] and [17] below). The definition of the 2006 IPCC Guidelines for National Greenhouse Gas Inventories simply clarifies which document is being referenced.

### Item [2]: Regulation 1.5 – Kyoto abatement deadline

7. This item extends the Kyoto Protocol abatement deadline in line with the Australian Government's decision to sign up to a second commitment period under the Kyoto Protocol.

8. The Kyoto abatement deadline for the first commitment period has passed, so owners of Kyoto offset projects are now receiving non-Kyoto rather than Kyoto ACCUs. The carbon price mechanism allows these non-Kyoto ACCUs (from Kyoto offset projects) to be used for compliance purposes. There is potential, however, for confusion in the market about the name of these credits.

This item brings the naming of CFI credits back into line with market expectations and commonly used terminology.

9. The abatement deadline will now be:

- 31 December 2020 for Kyoto-compatible sequestration projects (as listed in CFI regulation 3.35); and
- 30 June 2020 for all other projects.

Item [3]: Regulation 1.13 - Projects exempt from audit report requirements

10. This item amends and adds to regulation 1.13 of the Principal Regulations, which deals with exemptions from audit report requirements.

11. A project proponent must provide a prescribed audit report to the Regulator with an offsets report or an application for a certificate of entitlement unless the project is of a kind that is specified in the regulations as exempt from these requirements (subsections 13(2) and 76(5) of the CFI Act). The audit reports are intended to provide assurance that genuine abatement has occurred during the reporting period.

12. Item [3] exempts waste diversion projects from submitting an audit report if an audit report has already been submitted to cover the first 12 months after the end of the activity for which credits are being sought.

13. Waste diversion projects involve the diversion of organic waste from landfill, avoiding the greenhouse gas emissions that would otherwise have occurred had the waste decomposed in landfill conditions. The CFI covers abatement of emissions from waste that was or would have been accepted by a landfill facility before 1 July 2012. Under the CFI, greenhouse gas emissions avoided by diverting the waste may be eligible for carbon credits net of the emissions that occur in processing the waste in an alternative way.

14. The rates of decay of organic waste and the associated rate of greenhouse gas release from landfill are well understood. Most of the emissions occur in the first few years after waste is deposited followed by a long period of low rates of emissions as the waste continues to decay. An estimation of the emissions that will be avoided by the project (the baseline) can be made from the moment that the waste is diverted from landfill.

15. Under the CFI, credits are issued after and not before the abatement actually occurs. In the case of waste diversion, the emissions are avoided at the time the emissions would have been released from the landfill had the waste not been diverted. This means that, although waste diversion is only an eligible activity until 30 June 2012, those projects will achieve abatement and be eligible to earn credits long after this date.

16. Given that the total abatement and the emissions profile of a waste diversion project can be estimated once the project activity (that is, diversion, processing and disposal or sale of recyclables and by-products) has finished, it is unnecessary to require prescribed audit reports for the remainder of the life of the project.

17. An audit report must therefore accompany any offsets report that covers the period during which eligible waste is diverted and processed, which can occur up to 12 months after the eligible waste has been diverted, but are not required after this time. In other words, an audit report must accompany any offsets report that covers some or all of the period during which the eligible waste diversion activity takes place and the 12 months after the eligible activity ceases, since there may continue to be emissions from processing the eligible waste. For example:

- Mr Pink operated an eligible offsets project that involved the diversion of eligible waste from 1 July 2010 until 30 June 2012. Processing of this waste continued until 31 August 2012. Mr Pink only wants to pay for one audit report and so decides to wait until after 1 July 2013 (12 months after the cessation of eligible waste diversion) to submit an offsets report that covers the whole of the auditable period, from 1 July 2010 to 30 June 2013. Mr Pink plans to submit his next offsets report in October 2014. This will not need to be audited and nor will any subsequent offsets reports because his first, audited offsets report covered the full 12 months after the last eligible waste diversion.
- Mrs Red also diverted eligible waste from 1 July 2010 until 30 June 2012. Mrs Red continued to process this waste until 31 January 2013. Mrs Red wants carbon credits as soon as possible and therefore wants to report on her project as soon as an applicable methodology determination is made. Mrs Red submits an audited offsets report for the period from 1 July 2010 until 30 April 2013. Mrs Red wants to submit her next offsets report as soon as possible (i.e. 12 months) after her first offsets report. As this report also covers the auditable period - that is, the period up until 12 months after the end of the eligible diversion activity or, in this case, the period up to 30 June 2013 - it must be accompanied by an audit report. Mrs Red does not need to obtain an audit report for her third and subsequent offsets reports.

18. See also item [26] (paragraphs 93-97 below), which provides for simplified reporting procedures for certain waste diversion projects.

Items [4] and [5]: Regulation 3.1 - Application for declaration of eligible offsets project – information and documents

19. These items are technical amendments to align the language in subregulations 3.1(3) and (4) of the Principal Regulations with the detailed provisions which set out how abatement is to be accounted for under another offsets scheme.

Item [6]: Regulation 3.16 - Voluntary variation of declaration of eligible offsets project – project area

20. This item amends Regulation 3.16, which empowers the Regulator to vary a declaration in relation to an offsets project so far as the declaration identifies the project area or areas.

21. Project areas or carbon estimation areas may be transferred between projects where an area is removed from one project and is added to another project, or becomes a new, stand-alone project. This improves the flexibility of the CFI. Transfers can be done through a variation to the eligible offsets project declaration.

22. In these cases, the ‘transferor offsets project’ is defined as the project that the relevant area of land is part of before the transfer, while the ‘transferee offsets project’ is the project that receives the area of land.

23. An area will not necessarily be transferred between two projects at the end of a reporting period of the transferor offsets project. To ensure that the obligations to protect this carbon are also transferred, regulation 3.16(2)(p) requires that an application for a restructure must include information on how much abatement remains unclaimed (and therefore uncredited) for the transferring area at the time of the transfer. This gives the Regulator information to allow the varied eligible offsets project determinations to account for the permanence of this abatement as well.

24. Currently, regulation 3.16(2)(p) would apply to both the transferor offsets project and the transferee offsets project. However only the transferor offsets project would have this information about the relevant area at the time of the application, so this amendment limits the application of regulation 3.16(2)(p) to the transferor offsets project.

25. For example: Susan wants to transfer part of her offsets project to Rob. Susan’s project is known as the transferor offsets project and Rob’s is the transferee offsets project. Susan has claimed credits for all the abatement generated by her project up to the end of last year. In October, Susan sells her back paddock to Rob, and applies to the Regulator to have this land excised from her project area. Rob applies to have the area added to his project area. Both project proponents do this through a voluntary variation of their eligible offsets project declaration with respect to their respective project areas (section 29 of the CFI Act).

26. Susan’s application must include an estimate of how many ACCUs the abatement in the back paddock would have earned since she last claimed credits (that is, between January and October this year). This number would be used by the Regulator to calculate Rob’s obligations if there is a reversal of the carbon stored by his project. This number will be updated to reflect actual credits issued during this period once Susan submits a full report for her project, which includes the back paddock for January to October.

Item [7]: Regulation 3.27 – Definitions

27. This item inserts further new definitions into regulation 3.27 of the Principal Regulations. Where appropriate, the use of these terms is explained further below in the context of the positive list entry to which each term relates (see items [8]-[11]).

Items [8]-[11]: Regulation 3.28 – Specified offsets projects

28. Paragraph 41(1)(a) of the CFI Act provides that for the purposes of the CFI Act, an offsets project passes the first part of the additionality test if the project is of a kind specified in the regulations. The Regulator must not declare that an offsets project is an eligible offsets project unless the project passes the additionality test (paragraph 27(4)(d) of the CFI Act). The list of projects that have been specified for the purposes of paragraph 41(1)(a) of the CFI Act is known as the ‘positive list’. These items amend existing activities on the positive list and insert additional activities.

*Human-induced regeneration through the creation of shallow earth banks or furrows to slow water runoff*

29. Forests and other vegetation can be established through seeding and planting and through human-induced regeneration of in situ seed sources and lignotubers. The positive list already includes a number of human-induced methods for establishing vegetation. This item [8] inserts a further method to the list.
30. The use of shallow earth banks or furrows to trap rainfall or slow water runoff is a land management technique that can be used to revegetate scalded soils in rangeland areas. Scalded soils are eroded and unproductive, usually devoid of topsoil and vegetation.
31. There are a number of different techniques that can be used to rehabilitate scalded soils including waterponding, water spreading and contour furrowing. All techniques are designed to slow water run-off and improve soil permeability. This increases the likelihood of natural regeneration of native grasses and shrubs.
32. Contour furrowing means creating furrows in land by mechanical means to catch water flowing over an area. The distance between the furrows is determined by slope and rainfall.
33. Water spreading means using shallow earth walls to divert or delay the movement of water across its natural flow path to increase infiltration of the soil by the water. Contour banks are created with the channel on the downhill side. Each bank has breaks approximately every 100 metres and is designed to slow and spread water as the water flows downslope.
34. Water ponding involves creating shallow horse-shoe shaped earth banks to intercept surface water flow after rainfall, forming a shallow pond which traps soil and promotes growth of groundcover.
35. If no nearby seed source is present, it may be necessary to establish vegetation by broadcasting or sowing seed such as saltbush and local grasses. Sowing seed or planting is covered by the existing positive list activity *the establishment of permanent plantings* (regulation 3.28(1)(a)). The active establishment of vegetation in this way is not included as part of this activity.
36. This activity is only eligible in low rainfall rangeland areas receiving less than 450mm average annual rainfall. Shallow earth banks or furrows in higher rainfall areas may fail and cause increased erosion.

*Reduction of emissions from the digestive tract of ruminants*

37. Regulation 3.28(1)(i) of the Principal Regulations includes “the reduction of emissions from ruminants by manipulation of their digestive processes” as an eligible activity under the CFI. The Domestic Offsets Integrity Committee (DOIC) did not intend this activity to include improvements to diet through the addition of legumes to pasture, the supply of mineral blocks to livestock or reduction in stocking rates to improve pastures. These practices are common practice in most areas, and thus do not meet the requirement for inclusion on the positive list.

38. Item [9] clarifies that the positive list includes those specific activities that have been assessed by the DOIC as not being common practice.

39. Three different techniques can be used to reduce livestock emissions under this activity. The government is also investigating other techniques to reduce livestock emissions that are not common practice. Assessments of these activities will continue over time.

40. Tannins are found in a wide range of plants and have been shown to have the potential to reduce emissions. Research is still underway to clarify the best way for landholders to use these supplements.

41. Eremophila is a native Australian plant, common name Emu Bush. The incorporation of Eremophila has been shown to have the potential to reduce the amount of methane emitted by ruminant livestock.

42. Feeding fats or oils to dairy cattle that are pasture grazed for more than nine months of the year has the potential to reduce emissions from these livestock. Feed supplements that contain fats and oils and are known to reduce these emissions include canola meal, cold pressed canola oil, hominy meal, dried distiller grain and brewer's grains. The activity is only eligible with respect to dairy cattle that are pasture grazed for at least nine months per year and where fats and oils are not currently fed at all or are fed at an amount that is less than the amount that would maintain or improve productivity while reducing emissions.

#### *Diversion of mixed solid waste to an alternative waste treatment plant*

43. Regulation 3.28(1)(l) of the Principal Regulations, combined with subregulations 3.28(4) and (5), provides for "the reduction of methane emissions before 1 July 2012 by diverting mixed solid waste, which would otherwise have entered a landfill facility, to an alternative waste treatment facility" as an eligible activity under the CFI.

44. Item [7] includes an amended definition of an alternative waste treatment (AWT) plant to clarify that an AWT is a plant using advanced technology to process waste. An AWT is defined as an enclosed resource recovery plant, however where some of the processing activities of the AWT occur outdoors, such operations still meet the definition of an AWT. For example, where a resource recovery plant uses compost windrowing, to be considered an enclosed resource recovery plant, the plant must use other composting processes conducted in an enclosed building.

45. An AWT is also defined as a plant that extracts recyclable and organic materials. This requirement is only applicable to the time when the waste relevant to the CFI project is being diverted – the activity may still be eligible even if the AWT plant is subsequently converted to another use.

46. New paragraph 3.28(1)(l) under item [10] clarifies that the diversion of the waste must have occurred before 1 July 2012. Emissions from that already-diverted waste may occur beyond 1 July 2012 and continue to be eligible for crediting under the CFI.

47. Item [11] provides greater clarity about the eligibility of diversion of particular kinds of waste. The diversion of the kinds of waste listed under new subparagraphs 3.28(4)(a)-(f) away from



landfill has been assessed by the DOIC as being common practice; therefore the avoidance of emissions from these kinds of waste is excluded from being credited under the CFI.

48. A CFI project involving the diversion of waste away from landfill may include the diversion of these types of waste as well as other types of mixed solid waste. However the methodology that covers such a project must ensure that emissions from the types of waste specified in new subparagraphs 3.28(4)(a)-(f) are not eligible to be credited.

49. Commercial and industrial waste is considered to be 'putrescible waste only' if it contains predominantly putrescible waste, and does not cease to be putrescible waste if it is contaminated with a small amount of non-putrescible material. For example, a load of paper sludge that contains a small amount of plastic is considered to be 'putrescible waste only' and is not eligible for crediting.

50. New subregulation 3.28(5) clarifies that waste that is separated at the point of generation may have been separated from general mixed solid waste with some other types of waste. For example, green waste that is separated from the mixed solid waste and placed in a bin together with food waste is not able to be credited.

*Passive oxidation of small landfills through the use of biocovers or biofilters*

51. The CFI covers abatement of emissions from waste that was or would have been accepted by a landfill facility before 1 July 2012 (paragraph 53(1)(b) of the CFI Act). Waste deposited after this date is covered by the carbon pricing mechanism rather than the CFI.

52. New paragraph 3.28(1)(m) under item [10] provides for the passive oxidation of legacy waste emissions from landfill through the use of biocovers or biofilters on landfills as an eligible activity under the CFI.

53. Passive oxidation involves placing a layer of organic material (such as compost or mulch) over the landfill surface to allow organisms that consume methane to oxidise some of the methane coming through the landfill surface to carbon dioxide.

54. These micro-organisms are able to utilise methane in the presence of oxygen as their only energy and carbon source and are able to convert methane to energy, carbon dioxide, water and cell material.

55. In principle, biocovers and biofilters could be used on any landfill that emits methane gas. While passive oxidation is most likely to be practical and cost effective at smaller landfills, there is no threshold above which biofilters may not be used. Generally, at large sites (receiving more than 100,000 tonnes of waste per year) it will be more cost effective to collect and use the methane to generate heat or energy.

56. This activity does not include projects using materials such as wood waste or compost generated from native forest, as this is precluded by subparagraph 27(4)(j) of the CFI Act.

### *New farm forestry plantations*

57. New paragraph 3.28(1)(n) under item [10] provides for the establishment of a new farm forestry plantation as an eligible activity under the CFI.

58. This farm forestry activity is for the incorporation of commercial tree growing for harvest of wood products into farming systems. Plantings may take many forms, including timber belts, alleys, and block tree plantings. Farm forestry can provide farmers with an alternative source of income. It can also provide substantial other benefits such as shade and shelter for stock or crops, salinity management and biodiversity benefits.

59. To ensure that the activity is limited to landholders undertaking farm forestry in conjunction with other agricultural activities, the maximum area for this activity has been limited. A limit is also applied because large scale farm harvest plantations have more in common with large scale commercial forestry and are unlikely to have the same barriers to adoption as small scale farm forestry.

60. In rainfall areas that receive 400 mm or more long-term average annual rainfall, this activity has been capped at 100 hectares or 30 per cent of a farm, whichever is smaller in area. In low rainfall areas, farms are generally significantly larger. In the low rainfall areas that receive less than 400mm rainfall, farm forestry is capped at 300 hectares or 30 per cent of a farm, whichever is the smaller area.

61. Consistent with the negative list, a farm forestry plantation cannot be or have been established under a forestry managed investment scheme for Division 394 of Part 3–45 of the *Income Tax Assessment Act 1997* (existing subregulation 3.36(c)). The negative list also specifies that projects cannot be established on land that has been cleared of native forest within the past seven years, or five years if ownership of the property has changed hands (existing subregulation 3.36(f)).

### *The protection of native forest on freehold or leasehold land*

62. New paragraphs 3.28(1)(o) and (p) under Item [10] provide for avoided clearing or conversion to a plantation and avoided harvest in specified circumstances as eligible activities under the CFI.

63. These activities allow crediting under the CFI as an incentive to prevent the clearing or harvesting of areas of native forest on freehold or leasehold land that are at imminent risk of being cut down.

64. In many situations, land managers who have a legal right to clear will not do so for economic and other reasons. For this reason, this activity does not include all areas where there is a ‘legal right’ to clear or to convert to a plantation or to harvest. Instead, new paragraphs 3.28(1)(o) and (p) under item [10] seek to identify circumstances where there can be real and additional abatement from avoided deforestation because trees are genuinely at imminent risk of being cleared.

65. The Government may consider whether there are other circumstances where native forest is at imminent risk of being cleared or harvested and where protecting the native forest is not common practice. These further circumstances could be added to the positive list over time.

66. Under this activity, the project proponent must provide documentary evidence that the following circumstances apply.

- At the time that the clearing or conversion consent or harvest permit was granted, the relevant Commonwealth, State or Territory legislation required that documented consent to clear or harvest be granted before these actions occurred.
- The proponent sought this consent, and received the consent, before 1 July 2010. This will ensure there is no incentive to apply for consent merely for the purposes of the CFI.
- In the case of clearing, the consent to clear would allow a conversion of native forest to grassland, cropland or settlements (see the definition of *clearing* under item [1]). This activity does not include consents to clear that fall short of these kinds of land-use change, for example consent to thin the forest for ecological reasons.
- In the case of conversion to a plantation, the consent would allow the removal of the native forest in order to establish, by seeding or planting, a plantation for harvest of a timber product.
- In the case of harvest, the harvest plan would identify where the harvesting will occur, the timeframe for harvest and the estimated volume of native timber forest to be harvested.
- The consent to clear, convert to a plantation or to harvest remains valid at the time of application to the Regulator for the declaration of the offsets project as an eligible offsets project. Trees are not genuinely at imminent risk of clearing or harvest if a land manager holds a consent that was obtained in 2007 and expired in 2009.
- The documented consent does not require any offsetting of the cleared or harvested area – i.e. where the removal of trees is permitted only if it is compensated for by the rehabilitation of a different area of land. Clearing or harvesting that requires an offset is excluded from this positive list entry because, in the business as usual scenario (where forest is cleared and another forest is established to take its place), there is likely to be no net loss of carbon that could be avoided through a CFI project.
- The consent applies to freehold or leasehold land. Native forest protection projects on other land tenures may be considered by the DOIC in the future.

67. Activities on the positive list may generate minimal abatement in some circumstances, for example reductions in harvesting in native forests may deliver little abatement if the timber would otherwise have been used to produce long lived wood products or if timber harvesting is merely displaced to another part of the forest estate. The amount of abatement an activity generates must be estimated using an approved CFI methodology.

68. This activity is also affected by a new negative list entry (paragraph 3.36(1)(g) and subregulation 3.36(3) of item [17] – see paragraphs 83-85 below).

Item [12]: Regulation 3.29 – Additionality test – requirements under other laws

69. This item inserts a new provision into regulation 3.29 of the Principal Regulations, which deals with the operation of the additionality test.

70. A project will only pass the second part of the additionality test if the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory (paragraph 41(1)(b) of the CFI Act). However, paragraph 41(1)(b) of the CFI Act does not apply to a requirement of a kind specified in the regulations (subsection 41(4A) of the CFI Act).

71. This provision is designed to ensure that land managers cannot receive credits for undertaking activities that are already required. This provision was not intended to prevent governments from undertaking projects that involve the protection of additional areas of native forest through new legislation.

72. Accordingly, item [12] provides that the regulatory additionality requirement does not apply to native forest protection projects if the protection of those forests is required by legislation made after 24 March 2011 that is the outcome of an agreement between the Commonwealth and a State or Territory government for carbon and biodiversity.

73. Even where a native forest protection project on Crown land does not need to pass the regulatory additionality test, such projects must still be covered by an activity on the positive list.

Item [13]: Regulation 3.34 - Definitions

74. Item [13] repeals definitions which have been moved to subregulation 1.3(1) by item [1] above.

Item [14]: Regulation 3.35 – Kyoto offsets projects

75. Regulation 3.35 of the Principal Regulations specifies kinds of project that are Kyoto offsets projects in addition to those listed within the CFI Act (section 55(1)).

76. Item [14] provides that a project undertaking human induced regeneration in rangelands through the creation of shallow earth banks or furrows to trap rainfall or slow water runoff on lands that have been subject to deforestation would be recognised as a Kyoto offsets project, and thus eligible to earn compliance credits.

Items [15]-[17]: Regulation 3.36 – Excluded Offsets Projects

77. Offsets projects are not eligible to generate ACCUs if they are ‘excluded offsets projects’ (paragraph 27(4)(m) of the CFI Act). A project is an excluded offsets project if it is of a kind specified in regulations made under subsection 56(1) of the CFI Act. These regulations are known as the ‘negative list’.

78. The negative list identifies activities that are ineligible in circumstances where there is a material risk that the activity will have a material adverse impact on the availability of water, the

conservation of biodiversity, employment, the local community, and/or land access for agricultural production. Items [15]-[16] and new subregulation 3.36(2) contained in item [17] amend an existing negative list provision. New paragraph 3.36(1)(g) and new subregulation 3.36(3) contained in item [17] insert new conditions onto the negative list.

*3.36(1)(a) and 3.36(2) Projects already required by law*

79. Existing regulation 3.36(a) specifies that projects that were required by law at 24 March 2011, when the *Carbon Credits (Carbon Farming Initiative) Bill 2011* was introduced to the Parliament, are on the negative list to remove the incentive to repeal legal requirements in order to circumvent this part of the additionality test.

80. Item [16] extends this provision so that projects that were required by law at 24 March 2011 are excluded from the CFI even if the legal requirements have only been relaxed, rather than removed entirely. This removes the incentive to make legal requirements less onerous in order to qualify for a greater number of CFI credits or to allow participation in the CFI.

81. These exclusions do not apply to activities that are undertaken as a result of an intergovernmental agreement to establish new reserves or to reduce annual native forest harvest, where that agreement recognises the potential for carbon offset opportunities for the area in question (new paragraph 3.29(1)(c)): such activities are still eligible for recognition under the CFI (new subregulation 3.36(2) contained in item [17]).

*3.36(1)(g) and 3.36(3) The protection of native forest on freehold or leasehold land*

82. This negative list entry is related to the positive list entry for native forest protection where a clearing or harvesting permit was issued before 1 July 2010 (new paragraphs 3.28(1)(o) and (p) contained in item [10], see paragraphs 62-69 above).

83. New paragraph 3.36(1)(g) (contained in item [17]) provides that the protection of native forest is excluded from the CFI where permission has been given to clear or harvest the native forest on the basis that this would lead to an environmental benefit, maintain an environmental outcome or manage fire risks. This ensures that the CFI will not create incentives to avoid managing environmental problems such as fire risks and problems associated with invasive native species. For example, some clearing consents are given on the basis that the native vegetation is regenerating densely or invading grassland ecosystems and clearing or thinning the regrowth vegetation would lead to an environmental benefit.

84. An exception to the exclusion (new subregulation 3.36(3) contained in item [17]) is where the clearing consent or harvest approval plan is granted because it would benefit or maintain environmental outcomes, and the consent provides for different options for vegetation management. For example, the clearing consent may provide for a range of vegetation management options from broadscale clearing to selective thinning to remedy the environmental problems identified. A CFI project must involve management actions specified in at least one of the options described in the consent. This means that the project must involve ongoing management to achieve the environmental outcome for which the consent was granted. The eligible positive list activity does not include the mere avoidance of clearing or harvest (sometimes referred to as ‘shutting the gate’).

Items [18]-[21]: Regulation 5.1 – First crediting period

85. These items amend existing regulation 5.1, which provides for a first crediting period other than the standard 7 year crediting period for a project other than a native forest protection project (paragraph 69(1)(b) of the CFI Act).

86. The crediting period for a project provides certainty that a project will remain eligible under the CFI for a period of time, subject to eligibility requirements being met. This means that a project can continue to operate for the remainder of its crediting period, even after a methodology determination has been revoked or amended, or the kind of project has been removed from the ‘positive list’, and would therefore not pass the additionality test.

87. These amendments provide for a 100 year crediting period for a waste diversion project, as long as the waste diversion project is not one that is eligible for up-front crediting as a transitional measure from another scheme (as outlined in item [25] – see paragraph 94 below). Furthermore, the abatement that is to be covered by the project (whether this was under the same or a different project name), must never have been previously credited under the CFI. This prevents the possibility of the project’s abatement being credited twice.

88. The provision of a longer crediting period is justified for these projects because waste in landfill continues to decay and emit methane for very long periods of time.

89. These projects will also be covered by simplified auditing and reporting procedures – see item [3] (paragraphs 10-18) above and item [26] (paragraphs 93-97) below.

Items [22] to [25]: Regulation 5.2 – Subsequent crediting period

90. These items amend regulation 5.2 of the Principal Regulations, which provides for a subsequent crediting period other than the standard 7 year crediting period for projects other than native forest protection projects (paragraph 70(4)(b) of the CFI Act).

91. If the *Carbon Credits (Carbon Farming Initiative) (Conservative Estimates, Projections or Assumptions) (Greenhouse Friendly<sup>TM</sup> Initiative Transitional Crediting Calculation (Alternative Waste Treatment)) Determination* applies to the methodology that is used by a project, then all eligible abatement for the project will have been credited during the first crediting period. In order to avoid double-crediting that abatement, these projects are not eligible for a subsequent crediting period.

Item [26]: Regulation 6.5 - Information and documentation for offsets reports

92. This item inserts a new provision which allows for simplified reporting requirements for certain waste diversion projects.

93. As outlined in paragraphs 10-18 above, waste diversion projects involve the diversion of organic waste from landfill, avoiding the greenhouse gas emissions that would otherwise have continued to occur over long periods of time.

94. Paragraph 76(4)(b) of the CFI Act provides that an offsets report about a project for a reporting period must set out the information specified in the regulations. Regulations 6.2 and 6.3 of the Principal Regulations already specify certain information for this purpose.

95. Similar to item [3] which provides for simplified auditing obligations after the diversion of waste has occurred, this item provides for simplified reporting obligations for the same projects for the same time period.

96. The combined effect of items [3] and [26] is that a waste diversion project must provide an audit report and full offsets report for the period which includes at least 12 months after the waste diversion for which credits are being sought. After this has been provided, the project proponent may submit a shorter, unaudited offsets report and still be eligible to receive credits, providing the Clean Energy Regulator is fully satisfied with all other project requirements.

Items [27]-[29]: Regulations 9.1 and 9.2 - Application for endorsement of a proposal for or variation of a methodology determination

97. These items are technical amendments to align the language in regulations 9.1 and 9.2 of the Principal Regulations with the name of the guidance document. This document is known as the *Guidelines for Submitting a Methodology Proposal*.

Items [30]-[32]: Regulation 11.5 – Exchange of Kyoto Australian carbon credit units - conditions

98. These items make technical amendments to regulation 11.5 of the Principal Regulations, which sets out the conditions that must be fulfilled before a Kyoto ACCU may be exchanged for a Kyoto unit.

99. The CFI Act provides for Kyoto ACCUs to be exchanged for units created under the Kyoto Protocol (section 157 of the CFI Act). This enables internationally recognisable abatement to be exported, giving abatement providers access to a larger carbon market.

100. The intention behind these provisions is to allow a Kyoto ACCU to be exchanged for a Kyoto unit where the abatement has resulted in the generation of the relevant Kyoto unit in Australia's national accounts under the Kyoto Protocol. Kyoto units include assigned amount units, which are issued equal to Australia's Kyoto target; removal units, which are generated for land sector abatement; and emission reduction units, which are generated from approved Joint Implementation projects.

101. Subparagraph 11.5(1)(b)(i) of the Principal Regulations specifies that a Kyoto ACCU must have been issued in relation to a sequestration offsets project in order for that ACCU to be able to be exchanged for a removal unit. This wording would allow a removal unit to be obtained for an avoided deforestation project, however avoided deforestation does not result in the generation of removal units in Australia's registry under the Kyoto rules. Item [30] amends this provision so that a removal unit can only be obtained for abatement that generates a removal unit in Australia's national accounts.

102. Related to this is the exchange of a Kyoto ACCU for an emission reduction unit. An emission reduction unit is created for abatement from an approved Joint Implementation project, which involves participants (either governments or private sector) from both a host country and an investor country. An emission reduction unit is created by converting either an assigned amount unit or a removal unit. An emission reduction unit must be created from the appropriate unit that corresponds to the activity that was undertaken. For example, if the activity results in the creation of a removal unit in Australia's national accounts, then the emission reduction unit must be created from a converted removal unit, not an assigned amount unit.

103. Item [31] and [32] make similar amendments to item [30], in that they ensure that an emission reduction unit is created by converting the appropriate Kyoto unit (assigned amount unit or removal unit respectively) to which the original abatement activity relates.

Item [33]: Part 12 of the Principal Regulations – Publication of information

104. This item inserts new Part 12, which deals with the publication of information on the Register of Offsets Projects, into the Principal Regulations.

## **PART 12—PUBLICATION OF INFORMATION**

### *12.5 Entries in the register*

105. Section 168(1) of the CFI Act requires the Regulator to publish certain information on the Register of Offsets Projects, an electronic register of information about CFI projects which is published on the Regulator's website. In particular, section 168(1)(o) requires the publication of information provided by the project proponent about the environmental or community benefits (the 'co-benefits') of a project, if the information meets the requirements set out in the regulations.

106. The Regulator will not judge the validity of any claim made by a project proponent in relation to the co-benefits generated by a project. Rather, the Regulator will require proof from knowledgeable third parties that such claims are true.

107. For example, item [33] specifies that, in order to be published on the Register of Offsets Projects, this information must demonstrate whether the project has received funding under the Australian Government's Biodiversity Fund.

108. Only projects that are able to provide the particular co-benefits specified in the regulations, and wish to have this information recorded on the Register of Offsets Projects, are required to declare whether they meet the specified requirements.

109. This list is expected to grow over time. Additional acceptable standards, such as those relating to co-benefits for indigenous communities or other environmental benefits, will be specified at a later date.



Item [34]: Part 15 – Relinquishment of Australian carbon credit units

110. This item inserts new regulations 15.2 and 15.3 into the Principal Regulations, dealing with the use of certain substitute units instead of the relinquishment of Kyoto and non-Kyoto ACCUs respectively.

111. Section 177 of the CFI Act provides that a person may transfer to the Commonwealth an equal number of substitute units, in place of the relinquishment of Kyoto ACCUs. Section 178 of the CFI Act makes a similar allowance in place of the relinquishment of non-Kyoto ACCUs.

112. The CFI and the carbon pricing mechanism are linked through the provision in the *Clean Energy Act 2011* to accept ‘eligible Australian carbon credit units’ for use against carbon pricing mechanism obligations. The *Clean Energy Act 2011* allows international units to be used for compliance purposes only during the flexible charge years (1 July 2015 onwards). Allowing international units to be used for compliance purposes under the CFI before they are allowed to enter the market via the carbon price would be inconsistent and potentially distort the carbon market.

113. New subregulations 15.2(1) and 15.3(1) will address this by allowing certain international units (the same as those allowed under the carbon pricing mechanism) to enter the CFI only when these units are also allowed to enter the carbon pricing mechanism.

114. New subregulations 15.2(4) and 15.3(2) will ensure that only those international units that are accepted under the carbon price will be accepted under the CFI as well.

115. Subsection 177(6) of the CFI Act provides for certain internationally recognised units, issued under the Kyoto Protocol, to be relinquished instead of Kyoto ACCUs. Paragraph 177(6)(e) of the CFI Act allows the regulations to prescribe further units for this purpose, whether or not they were issued in Australia.

116. New subregulations 15.2(2) and (3) provide that non-Kyoto ACCUs that are accepted under the carbon pricing mechanism may be relinquished at any time instead of Kyoto ACCUs.