EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 268

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Regulations 2011

Section 307 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act) provides, in part, that the Governor-General may make regulations required to give effect to the CFI Act.

The CFI Act, together with the *Australian National Registry of Emissions Units Act 2011* (the Registry Act) 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 and forestry sectors to minimise greenhouse gas emissions or maximise carbon storage by altering their agricultural and forestry practices.

The *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Regulations) provide necessary details supporting the administration of the CFI Act.

The sections of the CFI Act which enable the Regulations are set out in Attachment A.

Background information about the CFI and the CFI Regulations is set out in Attachment B.

Details of the Regulations are set out in Attachment C.

Consultation

The CFI Act and Regulations reflect the outcomes of comprehensive consultation with stakeholders between October 2010 and February 2011.

On 1 June 2011 a consultation paper for the positive and negative lists was released and public comment invited. Fifty seven submissions were received.

After reviewing the submissions received and the outcomes of consultation with industry groups, the government released exposure draft regulations on the positive and negative lists in August 2011. The Department received a further 37 submissions from industry, the public and other stakeholders on the exposure draft regulations.

After consideration of the submissions received and after further consultation with other agencies and industry groups, refinements were made to the positive and negatives list consistent with the results of consultation.

The Interim Domestic Offsets Integrity Committee (Interim DOIC) considered the outcomes of consultation and further analysis prepared by the Department in consultation with the Department of Agriculture, Fisheries and Forestry.

The Interim DOIC has provided advice to the Minister that it is satisfied that the proposed activities 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.

The regulation dealing with electronic notices transmitted to the Administrator (regulation 1.10) and the regulations in Division 4.1 of Part 4 correspond to regulation 7 and Division 2.2 of Part 2 of the Registry Regulations respectively. An exposure draft of the Registry Regulations was released on 31 October 2011.

The regulations dealing with the procedures of the Domestic Offsets Integrity Committee (Part 13) are based on the terms of reference for the Interim Domestic Offsets Integrity Committee, which were developed and agreed by that committee.

Consultation was not undertaken on minor, technical regulations or regulations that give mechanical effect to policies that have previously been the subject of stakeholder consultation.

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

Glossary

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

Abbreviation	*Definition*
ABN	Australian business number, a unique number issued by the Australian Business Register
ACCU	Australian carbon credit unit
ACN	Australian company number, a unique number issued by ASIC
Administrator	The Carbon Credits Administrator
ARBN	Australian registered body number, a unique number issued by ASIC
ASIC	Australian Securities and Investments Commission
Authorised representative	An individual who is nominated under the Registry Regulations to be an authorised representative for a particular registry account and act on behalf of the account holder for certain actions
CFI	Carbon Farming Initiative
CFI Act	The *Carbon Credits (Carbon Farming Initiative) Act 2011*
x/CMP.y	Decision number x agreed by the Meeting of the Kyoto Parties at its yth session
Department	The Department administering the CFI Act, at time of passage the Department of Climate Change and Energy Efficiency
DOIC	Domestic Offsets Integrity Committee
Executive officer	In reference to a body corporate, means a director, the chief executive officer (however described), the chief financial officer (however described) or the secretary of the body corporate
Greenhouse Friendly	The Australian Government's Greenhouse Friendly™ initiative
GGAS	The New South Wales Government's Greenhouse Gas Reduction Scheme and the Australian Capital Territory Government's Greenhouse Gas Abatement Scheme
Interim DOIC	The committee that was established under the executive power of the Commonwealth before the commencement of the CFI Act and known as the Domestic Offsets Integrity Committee
Kyoto ACCU	A type of ACCU, defined in section 5 of the CFI Act
Kyoto Protocol	The Kyoto Protocol to the United Nations Framework Convention on Climate Change, under which some developed countries have inscribed emissions target levels
Minister	The Minister administering the CFI Act
Non-Kyoto ACCU	An ACCU other than a Kyoto ACCU
Person	Any of the following: an individual, a body corporate, a trust (meaning a person in the capacity of trustee), a corporation sole, a body politic, a local governing body

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
Proof of identity documentation	Documentation required by the Administrator to prove the identity of a person
Registered holder	In relation to an ACCU or Kyoto unit, means the person in whose Registry account there is an entry for the unit
Registry	Australian National Registry of Emissions Units
Registry Act	The *Australian National Registry of Emissions Units Act 2011*
Registry Regulations	The *Australian National Registry of Emissions Units Regulations 2011*
Regulations	The *Carbon Credits (Carbon Farming Initiative) Regulations 2011*

Attachment A

Sections of the CFI Act supporting the Regulations

The Regulations are supported by the following provisions of the CFI Act:

- section 5, which allows the regulations to:
  - specify Crown lands Ministers for the purposes of the CFI Act;
  - specify a date later than 30 June 2012 as the 'Kyoto abatement deadline';
  - define 'trees' for the purposes of the definition of 'native forest';
  - define the meaning of 'prescribed non-CFI offsets scheme';
  - define 'regional natural resource management organisation';
- subsection 7(2), which allows the regulations to make provision for or in relation to the security and authenticity of notices transmitted to the Administrator by means of an electronic communication;
- paragraphs 23(1)(c) and (h), which allow the regulations to specify the information and documentation that must accompany an application for a declaration of an eligible offsets project;
- subparagraph 23(1)(e)(ia), which allows the regulations to specify the prescribed non-CFI offset schemes in respect of which a request can be made under section 92;
- paragraph 27(3)(b), which allows the regulations to specify the requirements for identifying a project area/s in a declaration of an eligible offsets project;
- paragraph 27(3)(d), which allows the regulations to specify attributes of projects that must be identified in a declaration of an eligible offsets project;
- paragraph 27(4)(l), which allows regulations to specify additional eligibility requirements for a project;
- paragraph 41(1)(a), which allows the regulations to specify a kind of offsets project that passes the additionality test;
- 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;

- paragraphs 61(1)(c) and (d), which allow the regulations to specify the information and documentation that must accompany an application for recognition as an offsets entity;
- paragraph 64(3)(d), which allows the regulations to specify one or more eligibility requirements that must be satisfied by an applicant for recognition as an eligible offsets entity;
- paragraph 65(1)(d), which allows the regulations to specify one or more grounds on which the Administrator may cancel recognition as an offsets entity;
- paragraphs 93(1)(c) and (d), which allow the regulations to specify the information and documentation that must accompany a request under section 92;
- subsection 95(4), which allows the regulations to prescribe the matters with which the Administrator must comply when making a determination under section 95;
- paragraph 109(1)(d), which allows the regulations to specify the information that must accompany an application for endorsement of a methodology determination;
- section 260, which allows the regulations to specify procedures in relation to meetings and resolutions of the Domestic Offsets Integrity Committee;
- section 304, 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 Administrator; 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.

Attachment B

Background information

The 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 farming in a way that increases soil carbon.

Australian carbon credit units (ACCUs) will be issued in respect of abatement generated by these activities. ACCUs can be sold into a variety of domestic markets; Kyoto consistent units can be exchanged for internationally recognised Kyoto units and exported overseas, and will be eligible for surrender under the carbon pricing mechanism.

Abatement activities are undertaken as offsets projects. The processes involved in establishing and operating offsets projects are set out in the 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 covered by an approved methodology;
- the project must satisfy other scheme eligibility requirements, including being listed on the 'positive list';
- the project must be undertaken in accordance with an approved methodology; and
- reports on the conduct of the project must be submitted to the Carbon Credits Administrator.

The CFI Regulations deal with:

- electronic notice requirements;
- declarations of eligible offsets projects;
- the activities that are included in, and excluded from, the CFI (the 'positive' and 'negative' lists);
- classification of projects;
- recognition of offsets entities;

- the transition of projects covered by certain prescribed non-CFI offsets schemes;
- applications for endorsement of a methodology proposal;
- designation of nominee accounts; and
- procedures of the Domestic Offsets Integrity Committee.

Regulations dealing with:

- the processes for applying for ACCUs;
- the calculation of unit entitlement;
- the variation, revocation and restructure of offsets projects;
- auditing, reporting, notification and record-keeping requirements;
- the processes for applying for the variation of methodology determinations and the application of varied methodology determinations to a project; and
- the transmission of ACCUs by operation of law;

will be made in 2012 following a period of public consultation.

Attachment C

Details of the Regulations

PART 1—PRELIMINARY

1.1 Name of Regulations

1. This regulation provides that the title of the Regulations is the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*.

1.2 Commencement

2. This regulation provides for the Regulations to commence on the same day as section 3 of the CFI Act, which is 8 December 2011.

1.3 Definitions

3. This regulation defines a number of terms used in the Regulations. Other words and expressions are defined in the CFI Act, and have the meaning given by that Act.

4. Three key definitions are:

- 'forest', which refers to a minimum contiguous area of land of 0.2 hectare with potential tree crown cover of more than 20 per cent with trees with the potential to reach a minimum height of 2 metres in maturity in situ;

- 'deforestation', which refers to the conversion of forest to a non-forest land use, such as cropping or grazing, if the land was converted on or after 1 January 1990, and was forest on 31 December 1989; and

- 'reforestation', which refers to the direct human-induced conversion of non-forested land to forest by planting or seeding if the land was non-forested land on 31 December 1989.

5. Deforestation requires the conversion of land from forest to a non-forest land use, e.g. cropping or grazing. This would not include periodic harvesting or cyclical regrowth and clearance.

1.4 Crown lands Minister

6. The Crown lands Minister has an eligible interest in Crown land (subsections 44(4), 44(7), 45(2) and 45(7)), and must provide consent to sequestration projects conducted on Crown land before those projects can be declared eligible. The Crown lands Minister is also required to certify certain matters in relation to sequestration projects on Crown land (paragraph 27(4)(h)), and is entitled to be notified of certain matters (sections 47 and 52).

7. This regulation identifies the Minister of State for each State and Territory who is taken to be the Crown lands Minister for the purposes of the CFI Act.

8. Except in the case of New South Wales and territories other than the Australian Capital Territory and the Northern Territory, the Crown lands Minister is identified by reference to the Minister of State who is currently administering the legislation listed in this regulation. For New South Wales, the Crown lands Minister is the Minister responsible for Primary Industries; in Jervis Bay and all external territories, it is the Commonwealth Minister responsible for Territories.

1.5 Kyoto abatement deadline

9. The Administrator can only issue Kyoto ACCUs for abatement that occurred during the Kyoto commitment period. In order to receive Kyoto ACCUs, the reporting period for the project must finish before the Kyoto abatement deadline. The deadline has been set to allow time for Australia to finalise its Kyoto accounts in time for compliance with its obligations under the Kyoto Protocol.

10. This regulation provides that for the purposes of the CFI Act, the Kyoto abatement deadline for the activities referred to in regulation 3.35 is 31 December 2012.

11. The Administrator must issue non-Kyoto ACCUs if the reporting period for a project finishes after the Kyoto abatement deadline. The Kyoto abatement deadline is intended to ensure that any accounting and crediting of activities under the CFI is consistent with Australia's National Inventory Report and Australia's compliance accounts for the purposes of the Kyoto Protocol.

12. The accounts for the National Inventory Report are for the most part calculated on a financial year basis, since most Australian data is available and collected on this basis. The CFI Act specifies 30 June 2012 as the Kyoto abatement deadline for these activities. Emissions from the activities referred to in this regulation are accounted for on a calendar year basis, to ensure consistency with the accounting of these activities under the Kyoto Protocol (see the Annex to Decision 16/CMP.1). Specifying 31 December 2012 as the Kyoto abatement deadline for these activities aligns CFI crediting with Australia's reporting obligations in relation to these activities.

1.6 Meaning of *tree*

13. This regulation specifies that the definition of the term 'tree' for the purposes of the definition of 'native forest' in the CFI Act has the meaning given in regulation 1.6.

14. A 'native forest', for the purposes of the CFI Act, is an area of land that:

(a) is dominated by trees that:

(i) are located within their natural range;

(ii) have attained, or have the potential to attain, a crown cover of at least 20% of the area of land; and

(iii) have reached, or have the potential to reach, a height of at least 2 metres; and

(b) is not a plantation.

15. For the purposes of this definition, as well as throughout the Regulations, a 'tree' is a perennial plant which has primary supporting structures (such as stems and branches) that consist of secondary xylem (i.e. wood).

16. This definition of 'tree' takes into account the purposes for which the term 'native forest' is defined in the CFI Act. Those purposes are:

- defining the type of project that is subject to 20 year crediting arrangements (native forest protection projects);
- defining the type of project that is eligible to receive upfront crediting (prescribed native forest protection projects); and
- imposing the eligibility requirement that projects not involve the clearing of native forests or the use of materials obtained as a result of the clearing or harvesting of native forests.

1.7 Prescribed non-CFI offsets scheme

17. Projects accredited under other offsets schemes can transition into the CFI. These projects will be subject to special crediting arrangements to ensure no double counting of abatement that has already been credited or used. These arrangements are set out in the regulations for subsections 16(2A), 17(3A) and 18(3) of the CFI Act.

18. This regulation defines Greenhouse Friendly, GGAS and the Verified Carbon Standard as prescribed non-CFI offsets schemes for the purposes of the CFI Act.

19. Projects covered by a prescribed non-CFI offsets scheme must report any abatement credited or otherwise accounted for under the prescribed non-CFI offsets scheme. This is to allow the Administrator to determine the amount of abatement that could be credited under the CFI.

20. Further consultation will be undertaken to determine whether additional offset schemes should be prescribed to avoid double counting of abatement, including:

- programs (government or privately operated) that sold tree planting or other services (rather than quantified amounts of abatement of carbon credit units) with the objective of offsetting greenhouse gas emissions;
- government grant programs where the funding agreement included the transfer of ownership of carbon offsets to or use of the carbon offsets by the government; and
- carbon offset programs that were established to meet state government licensing conditions or development approvals.

3.2 Prescribed non-CFI offsets schemes that are specified

21. The CFI Act includes provisions to facilitate the transition of carbon plantings and waste projects from certain prescribed offsets schemes into the CFI. This regulation defines GGAS and Greenhouse Friendly as specified prescribed non-CFI offsets schemes.

22. To facilitate the transition of carbon sink projects from GGAS and Greenhouse Friendly, and to facilitate the closure of these schemes, the permanence of abatement from these projects will be enforced through the CFI.

23. The number of credits issued under these other schemes for transitioning projects will be added to the project's relinquishment requirements under the CFI. This is achieved through a determination under section 95 of the CFI Act.

24. For landfill legacy emissions avoidance projects, a determination under section 95 will have the effect of exempting the project from the regulatory additionality test in paragraph 41(1)(b) of the CFI Act (paragraph 95(2)(c) of the CFI Act). This removes a potential obstacle to the transition of Greenhouse Friendly and GGAS landfill projects into the CFI. Regulatory additionality will instead be taken into account through the inclusion of a conservative regulatory baseline in the landfill methodology. This will achieve administrative simplicity and certainty for the industry.

1.8 Meaning of *regional natural resource management organisation*

25. One way in which the CFI seeks to ensure local community participation and oversight is by requiring projects to be accompanied by a statement of consistency with the relevant regional natural resource management plan (paragraph 23(1)(g)). Regional natural resource management plans are plans prepared by regional natural resource management organisations and provide a vehicle for regional communities to discuss and make decisions about land use planning and priorities.

26. This regulation provides that the organisations listed in Schedule 1 are 'regional natural resource management organisations' for the purposes of the CFI Act.

27. A regional natural resource management organisation is one of the identified regional organisations in the 56 natural resource management regions across Australia. These are the organisations that undertake to plan, coordinate and support natural resource management at the regional level. The boundaries for each of the 56 regions are established in agreement between Commonwealth, state and territory governments.

1.9 Approved forms

28. This regulation empowers the Administrator to approve forms for the purposes of applications made under these Regulations.

1.10 Electronic notices transmitted to Administrator

29. CFI project proponents are required to have an account with the Australian National Registry of Emissions Units (the Registry) into which ACCUs can be issued. Instructions in relation to the transfer of ACCUs held in a Registry account, the exchange of Kyoto ACCUs for Kyoto units and the voluntary cancellation of ACCUs must be given to the Administrator by electronic notice.

30. This regulation sets out the requirements that must be met before the Administrator will act on an electronic notice. This regulation helps to ensure the security and authenticity of notices transmitted to the Administrator.

31. An electronic notice which is not transmitted in accordance with the requirements set out in this regulation is not an 'electronic notice transmitted to the Administrator' for the purposes of the CFI Act, and the Administrator will not give effect to it: paragraph 7(1)(c) of the CFI Act.

32. This regulation provides that electronic notices must be transmitted to the Administrator using the Administrator's website, which allows the Administrator to determine the level of encryption and identification checking required for different actions in order to maintain the integrity of the Registry.

33. This regulation also provides that electronic notices may only be transmitted to the Administrator by specified persons.

- If the account holder is an individual, notices may only be transmitted by the individual or their authorised representative.

- If the account holder is not an individual (i.e. a body corporate, a corporation sole, a trust, a body politic or a local governing body) notices must be transmitted by the account holder's authorised representative.

34. The Registry Regulations contain further details about 'authorised representatives'.

35. Corresponding requirements in relation to electronic notices about Kyoto units are set out in the Registry Regulations.

PART 3—ELIGIBLE OFFSETS PROJECT

Division 3.1—Application for declaration of eligible offsets project

3.1 Application for declaration of eligible offsets project – information and documents

36. This regulation specifies the information and documentation that must accompany an application for a declaration that a project is an eligible offsets project.

37. Under the CFI Act, ACCUs will only be issued in respect of a project which has been declared to be an eligible offsets project. Project proponents must apply to the Administrator for a declaration of eligibility.

38. The application must be in writing and in the approved form; if the project is or was covered by Greenhouse Friendly or GGAS, it must be accompanied by a request to transition to the CFI; if an indigenous land use agreement is relevant to the Administrator's decision, it must be accompanied by a copy of that agreement; if the project area is covered by a regional natural resource management plan, it must be accompanied by a statement about whether the project is consistent with the plan (paragraphs 23(1)(a), (b), (e), (f) and (g)). The application may also include a statement to the effect that the project should be subject to the voluntary automatic unit cancellation regime (subsection 23(4)).

39. The application must identify the project proponent and the project and be accompanied by the information and documentation specified in this regulation (paragraphs 23(1)(c) and (h)). This information and documentation will be collected through the application form and is intended to establish whether or not the criteria for the making of a declaration set out in section 27 have been met, including:

- that the project is to be carried on in Australia (paragraph 27(4)(a));
- that the project is covered by a methodology determination and meets any requirements set out in that determination (paragraphs 27(4)(b) and (c));
- that the project passes the additionality test (paragraph 27(4)(d));
- that the applicant is the project proponent and a recognised offsets entity (paragraphs 27(4)(e) and (f));
- if the project is a sequestration project:
  - that the project area is Torrens system or Crown land (paragraph 27(4)(g) and subsection 27(5));
  - if the project area is on Crown land, that appropriate certification has been obtained from the Crown lands Minister (paragraphs 27(4)(h) and (i)); and
  - that any person with an 'eligible interest' in the project area has consented, in the approved form, to the application (paragraph 27(4)(k) and subsection 27(7));
- that the project does not involve the clearing of native forest or using material obtained from the clearing of such forests (paragraph 27(4)(j));
- that the project meets the eligibility requirements specified in the regulations (paragraph 27(4)(l);
- that the project is not an excluded offsets project (paragraph 27(4)(m));

- that the project area is not subject to a carbon maintenance obligation (subsection 27(10)); and

- that there are no unpaid penalties for failure to comply with a relinquishment requirement in respect of the project area (subsection 27(11)).

40. The Administrator has power to request further information in relation to the application, if necessary, and may refuse to consider an application, or to take any further action on an application, if that further information is not provided (section 24). Any further information requested must be relevant to the application, and the power to request that further information must be exercised in a reasonable way (section 288).

41. If the project is a sequestration offsets project, the application must be accompanied by copies of any Crown certification required under paragraphs 27(4)(h) or (i), any consents required under paragraph 27(4)(k) and a geospatial map of the project area that meets the requirements of the CFI Mapping Guidelines. Those guidelines set out minimum requirements for mapping a project area, and are available on the Department's website at www.climatechange.gov.au. A geospatial map must also be provided for any emissions avoidance offsets project in relation to which it is necessary to determine the size of the project area in order to estimate abatement.

Information about regulatory approvals

42. If all regulatory approvals have not been obtained for the project, the Administrator may make the declaration subject to the condition that the approvals must be obtained before the end of the first crediting period for the project (section 28). Regulatory approval, in relation to a project, means an approval, licence or permit (however described) that:

a) relates to, or to an element of, the project; and

b) is required under a law of the Commonwealth, a State or Territory that relates to:

(i) land use or development; or
(ii) the environment; or
(iii) water.

43. In order for the Administrator to assess whether all such approvals have been obtained, applicants are required to provide information about the approvals that must be obtained for the project (including information about the nature of the approval and the regulatory authority that must issue it), confirmation that the approvals have been obtained or, if the approvals have not been obtained, information about the actions the applicant has or will take to obtain them (for example, whether the applicant has applied for a regulatory approval). The project proponent must also consent to the Administrator contacting the relevant regulatory authority in relation to the relevant approvals. A certified copy of any approval obtained must be supplied if requested by the Administrator.

Information about any previous crediting or accounting of abatement

44. If the project has previously been issued with carbon offsets credits under a non-CFI offsets scheme (whether or not the scheme is a prescribed non-CFI offsets scheme), or if the abatement generated by the project has been sold or otherwise accounted for under such a scheme (for example if abatement has been used to offset emissions elsewhere without credits having been issued), the application must include:

- the name of the scheme;
- information about whether the project continues to be eligible to be credited under that scheme, or information about whether the abatement continues to be able to be accounted for under that scheme, as the case may be;
- documentary evidence of the number of credits issued for the project, or the volume of abatement sold or otherwise accounted for, prior to the application;
- the applicant's authorisation that personal and other information about the applicant, in relation to the applicant's participation in that scheme, may be sought from the administrator of the scheme.

45. Credits issued under a prescribed non-CFI offsets scheme will be deducted from credits issued under the CFI to avoid double-counting of abatement.

46. The Administrator may include this information on the public register of offsets projects to promote transparency and public confidence in the scheme.

47. Further regulations will be forthcoming to outline how this previously credited abatement will be taken into account when calculating the project's unit entitlement under the CFI.

When a declaration takes effect

48. Declarations generally take effect when they are made, but can be backdated to a day not earlier than 1 July 2010 (subsections 27(15) and (16)) if a methodology is determined to have taken effect from that date and the proponent and project meet the eligibility requirements from that date.

49. Applicants who wish to have their declaration backdated must request this and nominate a date no earlier than 1 July 2010. In such cases, applicants will need to confirm that their project was conducted during the backdated period in a manner that is consistent with the applicable methodology and demonstrate compliance with the methodology in their offsets report.

3.3 Declaration of eligible offsets project – project area

50. This regulation sets out how the project area or projects areas are to be identified in a declaration made under section 27. 'Project area', in relation to an offsets project, means 'an area of land on which the project has been, is being, or is to be, carried out'.

51. This regulation provides that a project area is to be identified by:

- a brief physical description of the location (such as proximity and direction to major towns);
- street address;
- lot numbers and title descriptions;
- local government area;
- regional natural resource management area.

52. For all sequestration offsets projects, and any emissions avoidance offsets projects for which estimates of abatement require determination of the size of the project area or project areas, the project area must also be identified by reference to a scale map displaying and identifying the project area or areas.

3.4 Declaration of eligible offsets project – project attributes

53. This regulation specifies the attributes of a project that must be identified in a declaration made under section 27.

54. A declaration must identify the crediting period that applies to the project and the applicable methodology for the project. If a project was initiated under a prescribed non-CFI offsets scheme, the declaration must also identify whether the project has been issued with offset credits under that scheme.

3.5 Eligibility requirement for declaration of eligible offsets project

55. This regulation specifies that an additional eligibility requirement for participation in the CFI is that the project area, or any part of it, is not used to meet an obligation under a law of the Commonwealth or a State or Territory to offset or compensate for the adverse impact of an action on vegetation.

56. These projects are ineligible because both carbon and biodiversity values are lost when vegetation is cleared. To compensate for the impact on that vegetation, both carbon and biodiversity values must be replaced. If CFI credits were issued for such projects and used to offset emissions from other sources, the loss of carbon from the vegetation clearing would not be offset. Projects that commence under the CFI could choose to terminate their CFI project by relinquishing credits and take part in a vegetation or biodiversity offsets scheme instead.

57. Examples of legislation that may require action to be undertaken to compensate for the impact of an action on vegetation include:

- the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- the *Environmental Planning and Assessment Act 1979* (NSW);
- the *Threatened Species Conservation Act 1995* (NSW);
- the *Flora and Fauna Guarantee Act 1988* (Vic);
- the *Environment Protection Act 1997* (ACT).

Division 3.6—Additionality test

58. Offsets projects will only generate ACCUs if they meet scheme eligibility requirements. One requirement is that the project passes 'the additionality test' (paragraph 27(4)(d) of the CFI Act). The additionality test is set out in subsection 41(1) of the CFI Act, which provides that an offsets project passes the additionality test if:

a) the project is of a kind specified in the regulations; and

b) the project is not required to be carried out by or under a law of the Commonwealth, a state or a territory.

59. Regulations made for the purposes of paragraph 41(1)(a) constitute the 'positive list'. The positive list identifies activities that are not considered to be common practice within relevant industries or environments. If a project consists of activities listed in the positive list, and is not required to be carried out by law, then the project passes the additionality test. Subject to compliance with other eligibility requirements, the project would be eligible to participate in the CFI.

60. The positive list will grow over time as new abatement activities are identified and determinations are made about activities not being common practice. Anyone can propose a new activity for consideration for the positive list. The process which will be used to determine whether an activity is already common practice is described in the Positive List Guidelines (available at http://www.climatechange.gov.au/government/initiatives/carbon-farming-initiative/activities-eligible-excluded/positive-list.aspx). The adoption rate of the activity will be analysed to determine whether uptake of the activity has reached a 'take-off' point, where the rate of uptake is accelerating. Where adoption has reached the take-off point, the activity will be considered common practice.

61. The Minister will recommend activities be added to the positive list following stakeholder consultation and advice from the DOIC. The DOIC's advice will be publicly available. The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) will provide advice to the DOIC on assessments of common practice for individual activities based on data collected by the Australian Bureau of Statistics and other industry data.

The Minister can also seek advice from other independent experts. Advice has been sought from the Interim DOIC regarding the initial activities included on the positive list.

62. For each of the specified offset projects listed below, the level of uptake for the activity has been estimated to be at 5% or less because:

- the activity is dependent on a new technology that is not yet widely available, or
- there is one or more significant impediments to adoption (e.g. high establishment costs, high ongoing costs or increased technical complexity with little or no commercial benefit).

63. The Australian Government will review the activities on the positive list periodically to ensure that the list takes account of technological developments and the latest scientific research.

64. In determining whether an activity should be removed from the positive list, the effect of the CFI will be factored out. An activity will not be removed from the positive list if it becomes common because of the CFI. Projects will continue to receive credits for the duration of their crediting period, even if the project activity is removed from the list.

65. It is important to note that each CFI project must use an approved methodology that sets out the baseline against which abatement is measured. The baseline is an estimate of what would happen in the absence of the project. Measuring abatement against a baseline ensures that only improvements beyond what would otherwise occur can be credited under the CFI.

3.28 Specified offsets projects

66. The positive list consists of the following kinds of projects:

(a) The establishment of permanent plantings since 1 July 2007

67. For these purposes, permanent plantings are plantings that are not harvested other than

(i) for thinning for ecological purposes; or

(ii) to remove debris for fire management; or

(iii) to remove firewood, fruits, nuts, seeds, or material that is to be used for fencing or as craft materials, if those things are not removed for sale; or

(iv) in accordance with traditional indigenous practices or native title rights.

68. This activity includes the establishment of native and non-native plant species, so long as they are not for harvest other than in the circumstances described.

- Ecological thinning is the removal of some plants to improve the health and condition of the vegetation or vegetation community. For environmental benefit, all ecological

thinning should include the retention of all large standing trees (including dead trees), trees containing hollows and trees with signs of current or recent wildlife occupation.

- Removal of debris for fire management should only be undertaken to protect life, property and community assets from the adverse impacts of fire or to protect Aboriginal sites, historic places and culturally significant features known to exist within the project area or to improve the condition of the vegetation on site. Removal of debris for fire management should be undertaken in accordance with a fire management plan which has been developed for the project.

- Removal of firewood, fencing and craft materials, fruit, nuts and seeds can take place where they are for household use and not for sale.

- Removal of items for traditional Indigenous uses can also take place as part of this activity, and the resulting products can be sold. This is because it is not common to establish plantings for the purpose of growing materials for Indigenous crafts and products, such as the use of plants for food, medicine, tools, utensils, weapons and ceremonial purposes. Traditionally, these products are harvested from naturally occurring bushland rather than planted.

69. The establishment of most types of 'not for harvest' permanent plantings has been determined to be not common practice and eligible for inclusion in the CFI. This is because there are significant establishment costs with no commercial benefit and it is therefore likely that the uptake is very low in most circumstances.

70. 'Permanent plantings' do not include 'landscape plantings'. Landscape plantings are plantings in an urban centre or locality as follows:

(a) in a residential place (for example, in a backyard, park or on a nature strip);

(b) on the grounds of a sporting facility, factory or other commercial facility;

(c) on the grounds of a hospital, school or other institution;

(d) in a car park or cemetery.

71. 'Urban centres' are defined by the Australian Bureau of Statistics as population clusters of 1,000 or more people with a density of at least 200/km^2. A 'locality' is described as containing a non-farm population of 200 - 999 people, with a minimum of 40 occupied non-farm dwellings with a discernible urban street pattern and a discernible nucleus of population. Establishing landscape plantings in urban centres and localities is considered to be common practice.

72. Most commercial plantation activities and certain other types of plantings, such as orchards and plantings for livestock fodder are also common and are not included in the positive list.

(b) The following transitioning carbon offset projects:

(a) a forestry project accredited under the Commonwealth Government's Greenhouse Friendly™ initiative;

(b) until 1 July 2012, a waste diversion project accredited under the Commonwealth Government's Greenhouse Friendly™ initiative;

(c) permanent plantings accredited under:

(i) the New South Wales Government's Greenhouse Gas Reduction Scheme; or

(ii) the Australian Capital Territory Government's Greenhouse Gas Abatement Scheme; and

(d) permanent plantings established before 1 July 2007 for which there is documentary evidence, to the satisfaction of the Administrator, that the primary purpose of the plantings was generation of carbon offsets.

73. Certain activities covered by non-CFI carbon offset schemes can transition to the CFI.

74. The Australian Government's Greenhouse Friendly™ initiative accredited a number of projects between 2001 and 2010. More information about the Greenhouse Friendly™ initiative can be found on the Department's website at www.climatechange.gov.au/greenhousefriendly/.

75. The NSW Greenhouse Gas Reduction Scheme and the ACT Greenhouse Gas Abatement Scheme (GGAS) have been operating since 2003. More information on these two schemes can be found at http://greenhousegas.nsw.gov.au/.

76. Only land sector and legacy landfill waste Greenhouse Friendly and GGAS projects can transition to the CFI; energy efficiency and other types of projects are not within the scope of the CFI.

77. Greenhouse Friendly waste diversion projects will only be eligible until 1 July 2012 as emissions from waste generated after this date will be covered by the carbon pricing mechanism. Greenhouse Friendly landfill gas flaring projects are dealt with separately under the activity listed as '*the capture and combustion of methane from waste deposited in a landfill facility before 1 July 2012*'.

78. Other plantings have been established specifically for carbon sequestration outcomes, typically in anticipation of participating in Greenhouse Friendly, but were not accredited before the scheme ceased operating. Where there is concurrent documentary evidence that demonstrates that these projects were established primarily for generation of carbon offsets, these projects are also able to transition to the CFI. The evidence must include the registration of carbon rights, show that the plantings were entirely privately funded and may also include contracts for the sale of offsets.

(c) The human-induced regeneration, on or after 1 July 2007, of native vegetation, on land that is not conservation land, by:

(i) the exclusion of livestock; or

(ii) the management of the timing and the extent of grazing; or

(iii) the management, in a humane manner, of feral animals; or

(iv) the management of plants that are not native to the project area; or

(v) the cessation of mechanical or chemical destruction, or suppression, of regrowth;

79. 'Conservation land', for these purposes means an area that is both owned and managed by the Commonwealth, a State or a Territory government for biodiversity conservation, such as a national park (regulation 3.27).

80. Assisted regeneration is an alternative to adding seed or seedlings to a site. Instead, seed stores in the soil or from remnant plants (e.g. trees, shrubs, grasses), and/or rootstock and lignotubers already present at the site, are encouraged to sprout or germinate, usually in areas where regrowth has been routinely suppressed or on cleared areas around existing remnant vegetation. The activity is the management or removal of external pressures that prevent regrowth from occurring.

81. Undertaking these measures in areas that are both owned and managed for biodiversity conservation purposes by the Commonwealth or a state or territory government is excluded from this activity because taking action to encourage regeneration is considered to be common practice in these areas. This exclusion does not apply to areas that are privately or Indigenous owned or managed, as these areas are not commonly managed to promote regrowth.

(d) The restoration on land that is not conservation land, of natural wetlands that had been drained

82. 'Wetlands', for these purposes, are areas of marsh, fen, peatland or water, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.

83. Wetlands, especially peatlands, are a significant store of carbon on land. Carbon accumulates in wetland soils because of high rates of plant productivity and low rates of decomposition in these ecosystems. The draining and degradation of wetlands turns them into a net source of greenhouse gas emissions. The restoration of damaged wetlands can halt emissions of carbon dioxide and even reverse them, causing carbon removal from the atmosphere. Emissions of nitrous oxide and methane can also be reduced or halted by restoration. However, some wetlands also produce methane - a potent greenhouse gas.

(e) The application of biochar to soil

84. Biochar is charcoal created by pyrolysis of biomass. The key chemical and physical properties of a biochar are greatly affected by the type of material being used and the conditions of the pyrolysis process (i.e. temperature and time).

85. When converted to biochar, organic materials that would otherwise emit carbon dioxide as they decompose naturally are oxidised and converted into a stable solid form of carbon – most of which will remain in the soil for at least hundreds of years, resulting in a net decrease of atmospheric carbon.

86. This activity credits the application of biochar to soil. The production of biochar alone is not currently an eligible CFI activity.

(f) The capture and combustion of methane from livestock manure

87. The collection and storage of manure waste in uncovered lagoons leads to the production of methane. This is caused by the anaerobic decomposition of the organic matter in the waste which, in the absence of any abatement activity, is emitted to the atmosphere. This abatement activity is the capture and combustion of methane from the decomposition of livestock manure which would otherwise be released into the atmosphere.

88. Lagoons containing livestock manure waste are covered to prevent release of biogas (containing methane) into the atmosphere; the emitted gas is collected and the methane component of the gas is combusted to convert it to carbon dioxide which is a less potent greenhouse gas. This carbon dioxide is released to the atmosphere.

89. The activity does not cover the capture and combustion of methane from abattoir waste, meat processing waste, or other processing activities.

(g) Early dry season burning of savanna areas greater than 1 km^2

90. Early dry season fires are characterised by low intensity, a high degree of patchiness, a greater propensity to extinguish spontaneously, and reduced total fuel consumption. Late dry season fires are characterised by high intensity, low levels of patchiness, a greater propensity to spread, and high total fuel consumption.

91. The result of a shift from predominantly late to predominantly early dry season fires is a net reduction in fuel consumed per unit area and area burnt. This generates a corresponding reduction in methane and nitrous oxide emissions released by fire per unit area.

92. Burning of patches of savanna of less than one square kilometre is commonly undertaken as asset protection and is not covered by the activity description.

(h) The reduction of methane emissions through the humane management of feral goats, feral deer, feral pigs or feral camels

93. Animals produce methane as a by-product of digesting plant material. Reducing the numbers of feral goats, deer, pigs and camels would result in a reduction of emitted methane.

94. Although hunting of some of these species is common in certain circumstances, for example in hunting reserves, it is not common practice to undertake hunting activities or other management of these species in a manner that will effectively reduce the population. To receive credits, the activity would need to reduce emissions below the baseline determined in accordance with the relevant methodology.

95. The management of feral goats, feral deer, feral pigs or feral camels must be undertaken in a humane manner. In most instances this will be in accordance with a relevant State or Commonwealth code of practice for the humane management of pest species.

(i) The reduction of emissions from ruminants by manipulation of their digestive processes

96. Enteric methane produced during rumen fermentation in ruminants such as sheep and cows accounts for two thirds of Australia's agricultural emissions, and 12% of national emissions. Methane and nitrous oxide are significant greenhouse gases as they are many times more potent than carbon dioxide over a 100 year period.

97. There are a number of new technologies currently under development to reduce methane emitted by ruminants. Depending on research outcomes, this may occur through the use of vaccinations, feed additives and the manipulation of an animal's diet.

(j) The application of urease or nitrification inhibitors to, or with, livestock manure or fertiliser

98. Nitrous oxide emissions can occur from animal manure and urine as well as nitrogenous fertilisers when some of the urea that they contain is lost to the atmosphere. Inhibitors in the form of chemical additives are available to slow the chemical processes driving these emissions and in so doing improve plant uptake and reduce atmospheric loss.

99. Urease inhibitors reduce the initial atmospheric loss of surface applied urea by reducing the conversion of urea to ammonium. Nitrification inhibitors slow the subsequent process of converting ammonium to nitrate, and hence to nitrous oxide in soil which is then released into the atmosphere. Both of these inhibitors can be applied directly to solids, pastures or incorporated into nitrogenous fertilisers to reduce emissions of nitrous oxide from soils.

(k) The capture and combustion of methane from waste deposited in a landfill facility before 1 July 2012

100. Only emissions from waste deposited in a landfill before the commencement of Australia's carbon pricing mechanism on 1 July 2012 (legacy waste) are covered by the CFI. The carbon price will not apply to emissions from waste deposited prior to 1 July 2012 because landfill operators cannot recover the cost of emissions from waste deposited in the past.

101. Landfill gas is passively emitted due to the anaerobic decomposition of the organic components of waste within a landfill. Landfill gas combustion converts the methane component of landfill gas to carbon dioxide, a less potent greenhouse gas.

102. Waste continues to decompose and emit greenhouse gas for many years after being deposited in landfill. Landfill operators can continue to earn CFI credits after 2012 for reducing emissions that are attributable to legacy landfill waste.

Division 3.12—Types of projects

3.35 Kyoto offsets projects

103. This regulation specifies kinds of offsets projects that are Kyoto offsets projects for the purposes of the CFI Act.

104. If a project is a Kyoto offsets project, and the reporting period ends before the Kyoto abatement deadline, then any ACCUs issued in relation to the project will be Kyoto ACCUs. Kyoto ACCUs can be exchanged for Kyoto units (section 157). They will also be eligible for surrender under the carbon pricing mechanism.

105. Only certain anthropogenic emissions sources and carbon storage is counted towards Australia's emissions reduction commitment under the Kyoto Protocol. Eligible activities are identified in the Annex to Decision 16/CMP.1 of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol. This regulation, together with the activities recognised in paragraphs 55(1)(a) and (b), reflects this decision.

106. This regulation provides that the following types of projects are Kyoto offsets projects:

- the direct human-induced conversion of non-forested land to a forest through planting or seeding if the land was not forest on 31 December 1989. This does not extend to cyclical natural regrowth on the land;
- avoiding deforestation; and
- establishing a planting on land that was subject to deforestation through seeding, planting or assisted regeneration.

107. Other types of Kyoto offsets projects are referred to in paragraphs 55(1)(a) and (b) of the CFI Act.

3.36 and 3.37 Excluded offsets projects

108. 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'.

109. 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 one or more of the following: the availability of water; the conservation of biodiversity; employment; the local community; and land access for agricultural production.

110. The potential for adverse impacts from projects is mitigated under the CFI through several mechanisms, including the negative list. The negative list is designed to address residual risks that are not addressed through existing regulations and planning regimes.

111. Projects must also comply with environmental, water and planning regulations at all levels of government and have all necessary approvals before they can receive credits under the CFI. Furthermore, project proponents must take account of regional natural resource management (NRM) plans. The Government's Clean Energy Future Plan will provide $44 million over 5 years to help regional NRM organisations to develop plans to a consistently high standard. Regional NRM plans will be used to provide guidance to landholders about the type and location of carbon farming projects that could deliver environmental and social benefits.

112. Like the positive list, the negative list will grow over time as new methodologies are developed and risks are identified. Some activities will not pose risks when undertaken by only a few landholders, but would have impacts when undertaken on a broad scale. Activities such as these may not be included on the list when first approved, but would be added before they reached that threshold where adverse impacts could occur.

113. Anyone can propose the addition of an activity to the negative list, the removal of an activity from the negative list or the modification of an activity on the negative list. Further information on the proposal process is available on the Department of Climate Change and Energy Efficiency website.

114. The negative list consists of the following activities:

(a) Projects that were mandatory at 24 March 2011

115. Activities that are specifically mandated by government regulations are not additional (paragraph 41(1)(b)). Projects that were required by law at 24 March 2011, when the CFI Bill 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.

116. The CFI can credit abatement from activities that go beyond what is required by law, for example flaring more landfill gas than is required to meet license conditions and comply with local government regulations. If legal requirements are eased or repealed after 24 March 2011, the CFI will still only credit abatement beyond what was required before that date. This is to remove any perverse incentive to weaken regulation of landfill facilities.

(b) Planting a species in an area where it is a known weed species

117. Planting weed species will have adverse environmental impacts and will be excluded from participation in the CFI. The regulations define known weed species with reference to existing weed lists (regulation 3.34).

(c) Establishment of a forest as part of a forestry managed investment scheme

118. This provision excludes from the CFI the establishment of new forests as part of a forestry managed investment scheme.

119. Division 394 of the *Income Tax Assessment Act 1997* sets out the rules about tax deductions for contributions to forestry managed investment schemes. The aim of this Division is to encourage the expansion of commercial plantation forestry in Australia through the establishment and tending of new plantations for felling.

120. These types of projects are excluded to ensure the additive effect of the forestry managed investment scheme incentives and the CFI does not have adverse impacts on access to agricultural land, communities and employment.

(d) Cessation or avoidance of harvest of a plantation forest

121. Plantation forests are established for the purpose of harvest and are not designed to be permanent plantings. Retention of these forests will not be eligible to earn credits under the CFI.

(e) and (f) Establishment of vegetation on land subject to clearing of native forest or draining of a wetland:

- *within 7 years of application as an eligible offsets project; or*
- *within 5 years of the application as an eligible offsets project where there is a change in land ownership since the event; or*
- *under any circumstances, where the clearing of native forest or draining of a wetland was illegal.*

122. This exclusion is to remove the incentive to clear existing forest to make way for new carbon planting projects. The 7-year period is intended to provide a disincentive to clear land for carbon projects, but also to recognise that landholders may clear land for other purposes but then wish to convert back to forested land. The shorter 5-year period is to ensure new land owners who wish to undertake a project on land that was cleared or drained by the previous land owner are not penalised. The provision also excludes projects on land that was illegally cleared or drained, regardless of the time since that event to ensure that the CFI provides no incentive for illegal land clearing.

123. The continued suppression of regrowth by grazing, after the original clearing event, is generally not considered to be clearing of native forest.

124. ‘Native forest’ is defined in the CFI Act. This means that projects established on land that has been cleared of weeds or of a harvest plantation are not excluded from the scheme. Methodologies will contain rules for calculating project baselines, including the circumstances in which pre-existing vegetation must be deducted from abatement estimates.

125. The clearing of other types of vegetation may be included on the negative list in the future as detailed information about location and condition of those vegetation types becomes available.

Planting trees in an area that receives more than 600mm long-term average annual rainfall, except when:

- *the project is a permanent planting that is also an environmental planting; or*
- *the project contributes to the management of dryland salinity; or*
- *the project occurs in an area where the relevant jurisdiction has been determined by the National Water Commission as meeting its National Water Initiative commitment to manage interception by plantations; or*
- *the project holds a suitable water access entitlement for the life of the project; or*
- *where it is not possible to obtain a water access entitlement, and the CFI Administrator is satisfied that the project causes no material impact on water availability.*

126. Forests established in high rainfall areas can have adverse impacts for other water users and environmental flows due to the amount of water they intercept.

127. Long-term average annual rainfall is determined by using the CFI rainfall map. This map shows long-term average annual rainfall using data collected by the Bureau of Meteorology for the period from at least 1921 to 1995 as processed by the Department, and is available at http://ncat.climatechange.gov.au/cfirefor/.

128. Projects that establish environmental plantings or contribute to the mitigation of dryland salinity are not excluded by this provision. Salinity Guidelines, setting out the requirements for demonstrating that a project will help to mitigate dryland salinity, are available on the Department's website at www.climatechange.gov.au. Information provided in accordance with the Guidelines must be verified by either the Chief Executive Officer of the relevant regional NRM organisation or an appropriately qualified, registered Greenhouse and Energy Auditor.

129. Projects that are in an area where the National Water Commission is satisfied that the relevant State or Territory government has adequately implemented its National Water Initiative commitment to manage water interception by plantations are not excluded. The project would need to meet all other scheme eligibility requirements, including being compliant with the State or Territory provisions to manage water interception by plantations. If the National Water Commission does not continue beyond June 2012, then this provision will be amended or a new provision will be put in place.

130. If a project is in an area where the National Water Commission is not satisfied with how the relevant State or Territory is managing water interception by plantations, then the project proponent will need to hold a water access entitlement to offset the water intercepted by the

forest. This water access entitlement will need to be held from two years after the trees were planted for the life of the project. This is because for the first two years after a plantation is established, the trees do not intercept as much water as they do after this time.

131. The regulations specify that the volume of water required to offset the water intercepted by the forest is to be calculated using a formula in the regulations. This formula is based on the table below. The regulations also specify the characteristics that the water access entitlement must have. The water access entitlement must be for water in the project area, and the water to which the water access entitlement relates cannot be used for any other purpose other than to offset the water intercepted by the forest. This means it cannot be used to irrigate the forest or be stored by the project proponent.

Long-term average annual rainfall	Volume of water required as an offset per hectare per year for the life of the project
600-700mm	0.9 ML
700-800mm	1.2 ML
800-900mm	1.5 ML
900-1000mm	1.8 ML
greater than 1000mm	2.1 ML

132. In some areas of Australia it is not possible to obtain a water access entitlement because the relevant State or Territory has no framework in place to issue one. If a project is established in one of these areas, then the project will not be excluded by the negative list if the CFI Administrator is satisfied that there is no material impact on water availability for existing users.

PART 4—RECOGNISED OFFSETS ENTITIES

Division 4.1—Application for recognition as an offsets entity

Subdivision 4.1.1 General

4.1 Definitions

133. This regulation includes a number of definitions of terms used in Division 4.1 of the Regulations. These definitions are also used in the Registry Regulations and have the same meaning they have in those Regulations.

4.2 Information and documents for offsets entity applications

134. This regulation provides that an application for recognition as an offsets entity must be accompanied by the documentation set out in this Division.

135. This documentation is sought to enable the Administrator to be satisfied of the identity of the applicant. The documentation requirements mirror the proof of identity requirements in the Registry Regulations and are based on the customer identification regime set out in Chapter 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1)*.

136. All proof of identity documents must be current. Certified copies of original documents, rather than the original document itself, must be provided. A certified copy is one that has been certified as a true copy by a person mentioned in Schedule 2 to the *Statutory Declarations Regulations 1993*. If the application is made from overseas, the copy must be certified as a true copy by:

- an Australian embassy, Australian High Commission or Australian consulate (other than a consulate headed by an honorary consul); or

- by a competent authority under the Hague Convention Abolishing the Requirement for Legalisation for Foreign Public Documents done at The Hague on 5 October 1961.

137. Information about 'competent authorities' can be found at www.hcch.net.

4.3 When documents need not be given under this Division

138. This regulation provides that an applicant does not need to provide a proof of identity document if the entity is registered under the *Renewable Energy (Electricity) Act 2007* or the *National Greenhouse and Energy Reporting Act 2007* and has already submitted the document to the Department as part of that process.

139. Similarly, a person does not need to provide a proof of identity document if the document has been provided to the Administrator as part of an application to open a Registry account.

4.4 English translation of documents

140. This regulation provides that where a person is required to provide a proof of identity document, and the document is not written in English, the person must provide an English translation of the document that has been prepared and certified as a true copy by a translation service accredited by the National Accreditation Authority for Translators and Interpreters.

Subdivision 4.1.2 Information to accompany offsets entity applications

4.5 Information to accompany applications

141. This regulation sets out the information that must accompany an application made by a person to be recognised as an offsets entity.

142. A person (an individual, a body corporate, a trust, a corporation sole, a body politic or a local governing body) must be recognised as an offsets entity in order to receive ACCUs for an

eligible offsets project. The criteria for recognition as an offsets entity are set out in section 64 of the CFI Act and regulation 4.11.

143. The information set out in this regulation deals with identity and contact details of the applicant and, for an applicant which is not an individual, other information relevant to the creation, registration and operations of the applicant, such as the applicant's ABN, ACN, ARBN or other unique registration number (if any), and the jurisdictions in which the applicant operates. This information will be captured through the application form.

144. If the application is in relation to a proprietary or private company, the applicant must include the name and address of any beneficial owner of the company (i.e. any person who owns, through one or more share holdings, over 25% of the issued capital in the company). This requirement does not apply if the company is publicly listed in Australia, or is a majority owned subsidiary of such a company, or if the company is licensed and subject to the regulatory oversight of a Commonwealth statutory regulator in relation to its activities as a company (for example, because the company has an Australian financial services licence and is regulated by ASIC). In these circumstances, information about beneficial ownership would already have been provided to the relevant regulator as part of the licensing process.

145. If the application is in relation to a trust, the applicant must include the names of the beneficiaries of the trust or, if the beneficiaries are identified by reference to membership of a class, details about the class. This requirement does not apply if the trust is registered and subject to the regulatory oversight of a Commonwealth statutory regulator (such as ASIC, the Australian Prudential Regulatory Authority or the Australian Taxation Office), or if the trust is a Commonwealth, State or Territory government superannuation fund established by legislation.

Subdivision 4.1.3 Documents to accompany applications—individuals

4.6 Documents for individuals

146. This regulation sets out the proof of identity documents that must be provided in relation to individuals. This documentation must be provided in relation to individuals seeking to be recognised as an offsets entity. Where an applicant is a body corporate with no ABN, this documentation must be provided for up to 3 executive officers of the body. Where the applicant is a trust, this documentation must be provided for any trustee who is an individual.

147. Three documents are required with at least one document being a certified copy of a birth certificate, passport, a national identity card or a citizenship certificate.

148. If the individual has changed his or her name, documentary evidence of this change must be supplied. This could include a copy of a marriage certificate, deed poll or other government-issued certificate that recognises the change.

4.7 Aboriginal persons or Torres Strait Islanders

149. This regulation provides that an Aboriginal person or a Torres Strait Islander who wishes to be recognised as an offsets entity, but is unable to meet the proof of identity document

requirements for individuals, must give the Administrator a reference by an authorised referee that confirms the individual's identity.

150. An authorised referee includes the chairperson, Secretary or chief executive officer of an incorporated indigenous organisation, the individual's employer, a school principal or school counsellor, a minister of religion, a medical practitioner, a treating health professional or a manager in an Aboriginal Medical Service, and a person who has been a Commonwealth or State or Territory public servant for at least 5 years. The authorised referee must not be the individual's parent, grandparent, sibling, child or grandchild, and may confirm the individual's identity from records within the referee's keeping.

151. This regulation is modelled on the approach adopted by Centrelink in relation to Aboriginal or Torres Strait Islander people who lack conventional identification documentation.

Subdivision 4.1.4 Documents to accompany applications—entities

4.8 Scope of this Subdivision

152. This regulation, together with regulations 4.9 and 4.10, sets out the proof of identity documents that must be provided in relation to non-individuals. These requirements, together with the 'fit and proper person' test and other provisions, help to minimise the risk of fraud and dishonest conduct.

4.9 Applicant that is a body corporate

153. This regulation sets out the proof of identity documents that must be provided in relation to a body corporate, including companies, incorporated associations, registered co-operatives, corporations sole and statutory corporations.

154. Bodies corporate must provide a copy of the body's certificate of incorporation and certificate of registration with ASIC or, if the body is not registered in Australia, its certificate of registration with a registry established under foreign legislation. If there is no certificate of incorporation or registration, a document of similar effect must be given. In addition:

- if the body corporate is an incorporated association or a registered cooperative, it must supply other documentary evidence of its existence, such as a copy of its constitution or an annual report;

- if the body corporate is a local governing body, it must supply other documentary evidence that it is a local governing body, such as a copy of its annual report;

- if the body corporate has no ABN, it must supply proof of identity documentation for up to 3 executive officers, unless it is a foreign public company, in which case proof of identity documentation will be required for one executive officer (who is not also the applicant's authorised representative).

4.10 Applicant that is a trust

155. This regulation sets out the documents that must be provided in relation to a trust.

156. A copy of the trust deed, or an extract that identifies the trustees and beneficiaries (or classes of beneficiaries) must be provided. If there is no trust deed, a document with similar effect, or a copy of the certificate of registration as a trust, must be supplied.

157. Appropriate proof of identity documents for the trustees must also be supplied.

Division 4.2—Additional eligibility requirements and grounds for cancellation

4.11 Recognition as an offsets entity—additional eligibility requirements

158. This regulation sets out additional criteria the Administrator must be satisfied of before recognising a person as an offsets entity. These requirements, together with other provisions, help to minimise the risk of fraud and dishonest conduct.

159. The Administrator cannot recognise an applicant as an offsets entity unless satisfied that the applicant is a fit and proper person, having regard to the matters listed in paragraph 64(3)(a) of the CFI Act, and is not an 'insolvent under administration' or an 'externally-administered body corporate' (paragraphs 64(3)(b) and (c) of the CFI Act). This enables the Administrator to exclude from the CFI persons with a track record of dishonest conduct, insolvency, breaches of the scheme legislation or other relevant matters, including, in relation to bodies corporate, where key personnel have such a track record.

160. Applicants may be based in Australia or overseas. This regulation requires the Administrator to take into account whether the applicant (including its key personnel) has been convicted of an offence, or has had an order made against it, under a foreign law that corresponds to any of the domestic laws mentioned in subsection 64(3) of the CFI Act, and whether the applicant is subject to external administration under foreign law. The purpose of this regulation is to ensure that the Administrator takes into account relevant overseas conduct of applicants.

4.12 Cancellation of recognition

161. This regulation sets out an additional ground for the cancellation of a person's recognition as an offsets entity.

162. The Administrator may cancel the recognition of a person as an offsets entity if satisfied that the applicant is not a fit and proper person, having regard to the matters listed in paragraph 65(1)(a) of the CFI Act, or is an 'insolvent under administration' or an 'externally-administered body corporate' (paragraphs 65(1)(b) and (c) of the CFI Act). This enables the Administrator to exclude from the CFI persons who engage in dishonest conduct, are insolvent, or have breached the scheme legislation, including, in relation to bodies corporate, where key personnel have engaged in such conduct.

163. This regulation specifies that it is a ground for cancellation of recognition if the Administrator is no longer satisfied that a person is able to meet the eligibility requirement specified in regulation 4.11. That is, if the Administrator is no longer satisfied that the person is fit and proper having regard to relevant overseas conduct of the person.

PART 7—REQUIREMENTS TO RELINQUISH AUSTRALIAN CARBON CREDIT UNITS

7.1 Transition of offsets projects from prescribed non-CFI offsets schemes—request for determination

164. This regulation specifies the information that must accompany an application for the transition of Greenhouse Friendly and GGAS projects into the CFI.

165. The purpose of this regulation is to enable the Administrator to make a determination under section 95 of the CFI Act. A section 95 determination increases a sequestration offset project's relinquishment requirements by the number specified in the determination. This number reflects the number of credits issued for the project under Greenhouse Friendly or GGAS prior to CFI coverage.

166. If the project is a landfill legacy emissions avoidance project, the determination will have the effect of exempting the project from the regulatory additionality test in paragraph 41(1)(b) of the CFI Act (see paragraph 95(2)(c) of the CFI Act). This removes a potential obstacle to the transition of Greenhouse Friendly and GGAS landfill projects into the CFI. Regulatory additionality will instead be taken into account in landfill methodologies by assuming a specified percentage of emissions from landfill are reduced for regulatory purposes. This will achieve administrative simplicity and certainty for the industry.

167. This regulation enables the Administrator to obtain information about the number of tonnes of sequestration, by project or sub-project as defined by the respective geographical area, for which carbon credits have been issued under Greenhouse Friendly or GGAS, in order to determine the appropriate number of ACCUs that will need to be relinquished if the project is later revoked or the carbon storage is reversed.

7.2 Determination

168. This regulation provides that the number specified in a section 95 determination must be equal to the number of credits issued under Greenhouse Friendly or GGAS prior to CFI coverage in respect of the project area. This number is added to the maximum number of ACCUs that will need to be relinquished if the project is later revoked or the carbon storage is reversed

169. This regulation ensures that carbon credits issued under Greenhouse Friendly and GGAS continue to represent permanent abatement.

PART 9—METHODOLOGY DETERMINATIONS

9.1 Application for endorsement of proposal for methodology determination

170. This regulation specifies the information that must accompany an application to the DOIC for endorsement of a methodology proposal.

171. Methodology determinations establish procedures for estimating abatement and project specific rules for monitoring, record keeping and reporting on abatement. Methodologies must meet the offset integrity standards set out in section 133 of the CFI Act and the other eligibility criteria set out in section 106.

172. Methodology determinations are made by the Minister. The Minister, however, must not make a methodology determination unless the methodology has been assessed and endorsed by the DOIC.

173. Any person may apply to the DOIC for endorsement of a methodology proposal, including an individual, body corporate, trust, corporation sole, body politic or a local governing body. A person does not need to be a recognised offsets entity to apply.

174. Applications for endorsement must be in the approved form, available on the Department's website. Guidelines for submitting applications are also published on the Department's website at www.climatechange.gov.au/cfi, and should be followed when submitting proposals. Applications must include the information and documentation specified in those guidelines.

175. The purpose of this regulation is to ensure that the DOIC receives the necessary information to enable it to assess whether the proposed methodology is consistent with the offsets integrity standards.

176. The DOIC has power to require further information, if appropriate, and may refuse to consider an application for endorsement if this information is not provided (section 110).

PART 10—MULTIPLE PROJECT PROPONENTS

10.1 Designation of nominee account

177. This regulation specifies information that must be provided to the Administrator in order to designate a nominee account. Information is required about the nominee and the project.

178. Multiple project proponents for an eligible offsets project may request the Administrator to open a Registry account under subsection 10(1) of the Registry Act in the name of their nominee, and to designate that account as the nominee account for the eligible offsets project. The Administrator cannot issue units to multiple project proponents for an eligible offsets project unless there is a nominee account (section 140 of the CFI Act).

179. The purpose of this regulation is to ensure that the Administrator has sufficient information to properly designate the Registry account as the nominee account for the eligible offsets project.

PART 13—DOMESTIC OFFSETS INTEGRITY COMMITTEE

13.1 to 13.5 Procedural requirements for DOIC meetings

180. The DOIC is an independent expert panel established to evaluate and endorse proposals for methodologies. The DOIC is established in order to provide additional confidence in the integrity of offsets methodologies and the value of ACCUs. It is intended that this Part accords the DOIC sufficient flexibility to regulate its proceedings in order to provide timely and independent advice to the Minister. Accordingly, these regulations prescribe that:

- meetings may occur as necessary for the efficient performance of the DOIC's functions and may be held face-to-face or via teleconference;
- meetings must be presided over by the Chair of the DOIC, and minuted by the DOIC Secretariat;
- three members constitute a quorum;
- the DOIC may resolve to appoint an acting Chair from its present members for the duration of a given meeting if the Chair cannot attend and the Minister has not appointed a member to act as the Chair; and
- the resolution of any question arising at a DOIC meeting to be determined by resolution.

181. Subject to subsection 260(4) of the CFI Act, a resolution is taken to have been passed if more than half of the present and voting members vote for the resolution and all members were informed of the proposed resolution, or reasonable efforts had been made to inform all members of the proposed resolution.

182. A meeting convened and conducted in accordance with these regulations will be taken to be a formal meeting.

SCHEDULE 1—REGIONAL NATURAL RESOURCE MANAGEMENT ORGANISATIONS

183. This schedule lists the organisations that are considered to be 'regional natural resource management organisations' for the purposes of the CFI Act.

184. Some organisations are identified by reference to legislation under which they are established. Other organisations are listed by name and reference to an ABN.

SCHEDULE 2—DOCUMENTS FOR IDENTIFYING AUSTRALIAN CITIZENS OR RESIDENTS

185. This schedule lists the documents that can be used to prove the identity of an individual who is an Australian citizen or resident.

SCHEDULE 3—DOCUMENTS FOR IDENTIFYING AUSTRALIAN CITIZENS OR RESIDENTS

186. This schedule lists the documents that can be used to prove the identity of an individual who is a foreign person.