

STATUTORY INSTRUMENTS

S.I. No. 244 of 2006

Kyoto Protocol Flexible Mechanisms Regulations 2006

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S.I. No. 244 of 2006

Kyoto Protocol Flexible Mechanisms Regulations 2006

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by sections 6 and 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992), and for the purpose of designating the Environmental Protection Agency as the Irish Focal Point pursuant to Article 6, the national registry administrator pursuant to Article 7 and as the Irish National Authority pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the United Nations Framework Convention on Climate Change and the Kyoto Protocol, hereby makes the following Regulations:-

Citation

1. These Regulations may be cited as the Kyoto Protocol Flexible Mechanisms Regulations 2006.

Commencement

2. These Regulations shall come into operation on 15th May 2006.

Interpretation

3. (1) In these Regulations, unless the context otherwise requires—

“the Act” means the Environmental Protection Agency Act 1992;

“the Agency” means the Environmental Protection Agency established under section 19 of the Act;

“Annex I Party” means a Party listed in Annex I to the United Nations Framework Convention on Climate Change that has ratified the Kyoto Protocol as specified in Article 1(7) of the Protocol;

“approval” means, in relation to a proposed project activity, the approval or authorisation, as appropriate, required under Article 6 or Article 12 of the Protocol;

“assigned amount unit” is a unit issued pursuant to Article 3 of the Kyoto Protocol and the decisions adopted pursuant to the Convention and the Protocol;

“certified emission reduction unit” means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“the Convention” means the 1992 United Nations Framework Convention on Climate Change

“the Directive” means Directive 2003/87/EC¹ of the European Parliament and of the Council of 13th October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC², as amended by Directive 2004/101/EC³ of the European Parliament and of the Council of 27th October 2004 in respect of the Kyoto Protocol’s project mechanisms;

“emission reduction unit” means a unit issued pursuant to Article 6 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“host country” means a country which is a Party to the Kyoto Protocol and in which a project activity will take place;

“the Minister” means the Minister for the Environment, Heritage and Local Government;

“person” means any natural or legal person;

“project activity” means a project activity within the meaning of Article 6 or Article 12 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“the Protocol” means the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change;

“the public” means one or more persons and associations, organisations or groups of persons; and

“removal unit” is a unit issued pursuant to Article 3 of the Kyoto Protocol and the decisions adopted pursuant to the Convention and the Protocol.

(2) In these Regulations:-

- (a) a reference to an article or sub-article which is not otherwise identified is a reference to an article or sub-article of these Regulations;
- (b) a letter, word, phrase or symbol which has been assigned a meaning by the Directive, or is used in the Directive, has that meaning where the context requires except where otherwise indicated.

¹ OJ L 275/32 of 25.10.2003

² OJ L 257/26 of 10.10.1996

³ OJ L 338/18 of 13.11.2004

- (3) In these Regulations, a reference to an enactment shall be construed as a reference to that enactment as amended by a subsequent enactment, including these Regulations.

Objective and Scope

4. These regulations provide for:-
- (a) the designation of the Agency as Focal Point and National Authority for the purposes of Articles 6 and 12, respectively, of the Protocol and the decisions adopted pursuant to the Convention and the Protocol;
 - (b) the establishment of a registry, and designation of the Agency as national registry administrator, for the purposes of Article 7 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.

Exclusion

5. These Regulations shall not apply to a proposed project activity to be carried out in Ireland.

Designation of Focal Point and National Authority and establishment of Registry

6. (1) Subject to Article 5, the Agency is designated:-
- (a) the Focal Point for the purposes of Article 6 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol;
 - (b) the National Authority for the purposes of Article 12 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.
- (2) (a) The Agency shall establish and maintain a national registry to ensure the accurate accounting of the issuance, holding, transfer, acquisition, cancellation and retirement of emission reduction units, certified emissions reduction units, assigned amount units and removal units and the carry-over of emissions reduction units, certified emission reduction units and assigned amount units;
- (b) the Agency is designated national registry administrator for the purposes of Article 7 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.

Approval of project activities

7. (1) (a) Any person may apply to the Agency for approval in respect of a proposed project activity;
- (b) Certified emission reduction units or emission reduction units arising from an application under sub-article (2) shall, in the first instance, be registered in the registry provided for in article 6(2)(a).

- (2) (a) An application for approval in respect of a proposed project activity shall be made in such form and shall contain such information as the Agency may require.
 - (b) As a minimum, an application should contain:-
 - (i) a description of the proposed project activity, including a project design document;
 - (ii) a declaration signed by the applicant that participation by all parties to the project is voluntary and that the information supplied as part of the application is complete and accurate;
 - (iii) a letter of approval from the designated Focal Point or National Authority, as appropriate, for the host country.
- (3) An application under sub-article (2) shall be accompanied by the fee payable in accordance with Article 10.
- (4) As soon as practicable after receipt of an application in accordance with sub-articles (2) and (3), the Agency shall respond in writing to the applicant indicating either that:
 - (a) approval is granted, with or without conditions, or
 - (b) approval is refused and the reason for the refusal.
- (5) For the purposes of determining an application under sub-article (2), the Agency shall satisfy itself that:-
 - (a) in accordance with Article 11b(1) of the Directive, in respect of a project activity to be undertaken in a country which has signed a Treaty of Accession with the European Union, the baseline used for determining the emissions reductions from the project activity complies with all legislation of the European Union, subject only to any temporary derogations set out in that Treaty;
 - (b) participation in the proposed project activity is consistent with Ireland's obligations under Article 11b(5) of the Directive
 - (c) in accordance with Article 11b(6) of the Directive, relevant international criteria and guidelines will be respected during the development of hydroelectric power production project activities with a generating capacity exceeding 20MW.
- (6) An application under sub-article (2) may be withdrawn at any time before it is determined.

- (7) The Agency shall not issue an approval in respect of a proposed project activity where certified emissions reduction units or emission reduction units are generated from a nuclear facility.

Power of the Agency to request further information

8. (1) The Agency may, in the case of an application under Article 7(2), request the applicant to provide further information on the proposed project activity.
- (2) A request for further information under sub-article (1) shall be made in writing, and shall state the reason for the request and the time within which the further information is to be provided.

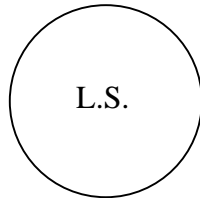
Access to information

9. The Agency shall make available to the public, information on project activities that it has approved, in accordance with the provisions of the European Communities Act 1972 (Access to Information on the Environment) Regulations 1998 (S.I. No. 125 of 1998).

Fees for letters of approval

10. (1) Each application for approval under Article 7 shall be accompanied by a fee of €1 for every 100 certified emission reduction units or emissions reduction units anticipated to accrue from the proposed project activity, subject to a minimum fee of €500 and a maximum fee of €5,000 per application.
- (2) An application in respect of which the full fee has not been paid may, after giving notice in writing to the applicant and allowing a reasonable period for a response, be deemed invalid by the Agency and returned to the applicant together with any part of the fee paid.
- (3) Where an application is withdrawn in accordance with article 7(6), the Agency may, at its discretion, refund all or part of the application fee.
- (4) The Agency may require any information included in an application, or further information submitted pursuant to a request from the Agency, to be independently verified to enable it to properly assess the application. A requirement under this provision may include a requirement for verification to be provided by a person designated by the Agency and for the applicant to defray or contribute towards the cost of any such verification.
- (5) Notwithstanding any other provision of these Regulations, the Agency shall have an absolute discretion to refund or waive all or any part of a the fee payable in respect of a particular application where it is satisfied that the payment in full of the fee would not be just and reasonable in the particular circumstances of the application or the proposed project activity.

Given under the Official Seal of the
Minister for the Environment, Heritage
and Local Government this 9th day of
May 2006.



Dick Roche, T.D.,
Minister for the Environment, Heritage
and Local Government.

EXPLANATORY NOTE

(This note is not part of the Regulations and does not purport to be a legal interpretation)

These Regulations designate the Environmental Protection Agency as Focal Point for the purposes of Article 6 of the Kyoto Protocol and National Authority for the purposes of Article 12 of the Kyoto Protocol. In this capacity, any person in Ireland may apply to the Agency for approval in respect of a project activity under the Joint Implementation or Clean Development Mechanisms respectively provided for under Article 6 and 12 of the Kyoto Protocol.

The Regulations stipulate that, as a minimum, applications should contain a project design document for the proposed project activity, a declaration by the applicant that information submitted is complete and accurate, and a letter of approval from the Focal Point or National Authority for the host country. The Regulations allow the Agency to require additional information to be submitted with applications.

The Regulations do not apply to a proposed project activity to be carried out in Ireland. The Regulations prohibit the Agency from approving a proposed project activity where certified emission reduction units or emission reduction units will be generated from a nuclear facility.

Each application shall be accompanied by a fee, which will be proportionate to the emissions reductions expected to be achieved by the project, subject to a minimum fee of €500 and a maximum fee of €5,000. This fee shall be payable to the Agency and is intended to defray the costs of the Agency's activities as Focal Point and National Authority.

The Regulations also provide for the establishment of a registry for the purposes of Article 7(4) of the Protocol and the decisions adopted pursuant to the Convention and the Protocol, in particular Decision 19/CP.7 of the Conference of the Parties to the Convention which requires each Party included in Annex I to the Convention to establish and maintain a registry to ensure accurate accounting of emission reduction units (ERUs), certified emission reduction units (CERs), assigned amount units (AAUs) and removal units (RMUs).