

Climate Change (Unit Register) Regulations 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 29th day of October 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 50 of the Climate Change Response Act 2002, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

- 1 Title
- 2 Commencement
- 3 Interpretation

Eligibility

- 4 Certain eligible persons may open, operate, or close holding accounts
- 5 Persons must be eligible persons to be account holders or representatives
- 6 Eligible persons
- 7 Logon access to unit register

Opening holding accounts

- 8 Application procedure to open holding accounts
- 9 Appointment, replacement, and removal of representatives
- 10 Account holder declarations
- 11 Joint holding accounts

Registration of transactions

- 12 Application procedure to register transactions

Restrictions on certain transactions

- 13 Temporary certified emission reduction units
- 14 Long-term certified emission reduction units
- 15 Nuclear energy

Closing holding accounts

- 16 Application procedure to close holding accounts
- 17 Holding accounts with units may only be closed if Minister directs Registrar to close them

Updating or correcting information

- 18 Changes in relation to information supplied
- 19 Changes in relation to status as eligible person
- 20 Correction of errors

Regulations

1 Title

These regulations are the Climate Change (Unit Register) Regulations 2007.

2 Commencement

These regulations come into force on 19 November 2007.

3 Interpretation

In these regulations, unless the context otherwise requires,---

account holder means an eligible person who holds, individually or jointly, 1 or more holding accounts

Act means the Climate Change Response Act 2002

crime involving dishonesty has the same meaning as in section 2(1) of the Crimes Act 1961

Crown holding account---

(a) means a holding account that is---

(i) held on behalf of the Crown by the direction of the Minister of Finance under section 6 of the Act; and

(ii) administered by the Registrar for the purposes of meeting New Zealand's obligations under the Convention or the Protocol; and

(b) excludes a holding account held by a government agency or Crown entity in its own right for the purposes of meeting its business or corporate objectives

eligible person means a person who meets the criteria set out in regulation 6(1) or (2)

representative means an individual who meets the criteria of regulation 5(2)

unit register means the register specified in section 18 of the Act.

Eligibility

4 Certain eligible persons may open, operate, or close holding accounts

(1) An individual who is an eligible person and has logon access to the unit register may open a holding account under regulation 8(1).

(2) A representative may---

(a) open a holding account under regulation 8(1):

(b) register transactions with respect to holding accounts under regulation 12:

(c) close a holding account under regulation 16(a):

(d) otherwise operate a holding account.

(3) An account holder who is not a representative may close a holding account under regulation 16(b).

5 Persons must be eligible persons to be account holders or representatives

(1) To be an account holder, a person must be an eligible person.

(2) To be a representative, an individual---

(a) must---

(i) be an eligible person; and

(ii) have logon access to the unit register; and

(iii) be appointed as a representative under regulation 9; and

(b) must---

(i) have the authority to operate a holding account in his or her own right; or

(ii) be authorised by an account holder to operate the account holder's holding account on the account holder's behalf.

6 Eligible persons

(1) An individual is an eligible person if the person---

(a) is 18 years of age or older; and

(b) is not---

(i) an undischarged bankrupt; or

(ii) subject to a property order under the Protection of Personal and Property Rights Act 1988; or

(iii) subject to a personal order under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person's---

(A) competence to manage his or her own affairs in relation to his or her property; or

(B) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care or welfare; or

(iv) prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382,

383, or 385 of the Companies Act 1993; or

(v) a person who has been convicted of---

(A) an offence under any of sections 377 to 380 of the Companies Act 1993; or

(B) a crime involving dishonesty; or

(vi) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993.

(2) A person, other than an individual, is an eligible person if the person---

(a) is---

(i) a New Zealand entity established, registered, or incorporated in New Zealand in accordance with the laws of New Zealand; or

(ii) an overseas company registered in New Zealand in accordance with the Companies Act 1993; and

(b) is not an entity that---

(i) has been, or is being, wound up; or

(ii) is in liquidation; or

(iii) is subject to statutory management under the Corporations (Investigation and Management) Act 1989; or

(iv) has a director or an officer who is not eligible to open a holding account; or

(v) has a shareholder who---

(A) holds more than a simple majority of the shares in the entity; and

(B) is not eligible to open a holding account; or

(vi) has been convicted of---

(A) an offence under any of sections 377 to 380 of the Companies Act 1993; or

(B) a crime involving dishonesty.

7 Logon access to unit register

To obtain logon access to the unit register, an individual who is an eligible person must---

- (a) access the Registry's Internet site; and
- (b) complete the logon access registration procedure.

Opening holding accounts

8 Application procedure to open holding accounts

(1) To open a holding account, an individual who is an eligible person must---

- (a) access the Registry's Internet site; and
- (b) complete the application procedure to open a holding account; and
- (c) supply the following information:
 - (i) the name proposed for the holding account; and
 - (ii) the proposed account holder's---
 - (A) full name; and
 - (B) physical address for service in New Zealand; and
 - (C) telephone number; and
 - (D) email address; and
 - (d) provide an online declaration to the effect that---
 - (i) the individual---
 - (A) is an eligible person; and
 - (B) is an individual; and
 - (ii) the individual---
 - (A) has the authority to operate a holding account in his or her own right; or
 - (B) is authorised by an account holder to operate the account holder's holding account on the account holder's behalf; and
 - (iii) the information provided by the individual is true and accurate.

(2) For the purposes of these regulations, a person who opens an account under subclause (1) is to be treated as a representative until the person is replaced or removed as a representative under regulation 9.

9 Appointment, replacement, and removal of representatives

(1) An account holder, or a representative acting on behalf of the account holder,---

(a) must appoint at least 1 but no more than 3 representatives for the account holder's holding account; and

(b) may---

(i) replace the account holder's representatives; and

(ii) remove all but 1 of the account holder's representatives; and

(iii) appoint the account holder as a representative.

(2) To appoint, replace, or remove a representative under subclause (1), an account holder's representative must, access the Registry's Internet site and complete the relevant appointment, replacement, or removal procedure.

(3) If none of the account holder's representatives are able to act under subclause (2), the account holder may submit to the Registrar a written request to appoint, replace, or remove a representative.

(4) For the purposes of an appointment or a replacement of a representative under subclause (2), the account holder or representative making the appointment or replacement must supply the appointed or replacement representative's---

(a) full name; and

(b) physical address for service in New Zealand; and

(c) telephone number; and

(d) email address.

(5) For the purposes of a removal under subclause (2), the account holder or representative making the replacement or removal must supply the full name of the individual who is to be replaced or removed as a representative.

(6) A person appointed as a representative for an account holder under this regulation must provide an online declaration to the effect that---

(a) the person---

(i) is an eligible person; and

(ii) is an individual; and

(b) the person---

(i) has the authority to operate a holding account in his or her own right; or

(ii) is authorised by an account holder to operate the account holder's holding account on the account holder's behalf; and

(c) the information provided by the eligible person is true and accurate.

10 Account holder declarations

(1) Before the Registrar may open a holding account, the proposed account holder must submit an account holder declaration to the Registrar.

(2) To submit an account holder declaration, the proposed account holder must---

(a) access the Registry's Internet site; and

(b) download and complete the account holder declaration form; and

(c) return the completed account holder declaration form to the Registrar.

(3) An account holder declaration must contain a statement from the proposed account holder to the effect that---

(a) the proposed account holder---

(i) is an eligible person; and

(ii) has authorised at least 1 but no more than 3 named representatives to operate the proposed account holder's holding account on the proposed account holder's behalf; and

(b) the information provided by the proposed account holder is true and accurate.

11 Joint holding accounts

(1) Two or more individuals may hold a joint holding account if each person is an eligible person.

(2) Individuals that have a joint holding account are jointly and severally liable regarding any matter arising with respect to the account.

Registration of transactions

12 Application procedure to register transactions

(1) To register a transaction, a representative must---

(a) access the Registry's Internet site; and

(b) complete the application procedure to register a transaction.

(2) For the purposes of subclause (1), the representative must supply the following information:

(a) the holding account identifier of the holding account from which units are to be transferred, cancelled, or carried over; and

(b) if units are to be transferred to another holding account, the account identifier of that account; and

(c) the quantity and type of units to be transferred, cancelled, or carried over; and

(d) if a transaction is a transfer that involves an overseas holding account, the name of the country where that account is held.

Restrictions on certain transactions

13 Temporary certified emission reduction units

A representative may not transfer temporary certified emission reduction units from a holding account to the retirement account unless the Minister responsible for the Registry agrees to accept the transfer.

14 Long-term certified emission reduction units

(1) No account holder, other than an account holder of a Crown holding account, may hold long-term certified emission reduction units.

(2) No person, other than the Registrar as administrator of a Crown holding account, may transfer long-term certified emission reduction units into or within the unit register.

15 Nuclear energy

(1) No account holder may hold any units that arise from---

(a) joint implementation projects that involve nuclear energy; or

(b) clean development mechanism projects that involve nuclear energy.

(2) If the Registrar is satisfied that units arising from joint implementation projects that involve nuclear energy or clean development mechanism projects that involve nuclear energy are registered or otherwise recorded in the unit register, the Registrar must serve notice on the account holder that---

(a) the units must be transferred out of New Zealand within 30 days after the day on which the notice is served on the account holder; and

(b) the Registrar must cancel any of the units that are not transferred within the period specified in paragraph (a).

Closing holding accounts

16 Application procedure to close holding accounts

To close a holding account,---

(a) a representative must---

(i) access the Registry's Internet site; and

(ii) complete the application procedure to close a holding account; and

(iii) supply the following information:

(A) the name of the account; and

(B) the account identifier; or

(b) an account holder, if not a representative, must---

(i) submit a written request to close the holding account to the Registrar; and

(ii) supply the following information:

(A) the name of the account; and

(B) the account identifier.

17 Holding accounts with units may only be closed if Minister directs Registrar to close them

A holding account with units in it may only be closed if the Minister responsible for the Registry directs the Registrar to close it.

Updating or correcting information

18 Changes in relation to information supplied

(1) This regulation applies if an account holder or the account holder's representative experiences a change in circumstances that renders any information supplied under these regulations inaccurate.

(2) If this regulation applies, the account holder's representative must, within 10 working days of the change in circumstances, log on to the unit register and correct the relevant information.

(3) If none of the account holder's representatives are able to act under subclause (2), the account holder must, as soon as practicable, give notice of the changes in circumstances to the Registrar by providing the following particulars in writing:

(a) a brief description of the relevant changes in circumstances; and

(b) the identification details of the relevant holding account or accounts (if known); and

(c) the information necessary to update the information required under these regulations; and

(d) any other relevant details.

19 Changes in relation to status as eligible person

(1) This regulation applies if--

(a) an account holder, or an account holder's representative, is no longer an eligible person; or

(b) any of the information provided in a declaration made under these regulations is no longer applicable or accurate.

(2) If this regulation applies, the account holder's representative must, within 10 working days of the change in circumstances, log on to the unit register and correct the relevant information.

(3) If none of the account holder's representatives are able to act under subclause (2), the account holder must, as soon as practicable, give notice of the changes in circumstances to the Registrar by providing the following particulars in writing:

(a) a brief description of the relevant changes in circumstances; and

(b) the identification details of the relevant holding account or accounts (if known); and

(c) the information necessary to update the information; and

(d) any other relevant details.

20 Correction of errors

(1) This regulation applies if any person detects an error, other than an error specified in regulation 18 or 19, in the information in the unit register.

(2) If this regulation applies, the person detecting the error may give notice of the error in writing to the Registrar by providing the following particulars:

(a) the reason why a correction is required; and

(b) the identification details of the relevant holding account or accounts (if known); and

(c) if the error relates to a transaction, the following information (if known):

- (i) the unique transaction number; and
- (ii) the date and time of the transaction; and
- (iii) a description of the transaction; and
- (d) the remedy required to correct the error; and
- (e) any other relevant details.

(3) Before deciding whether to correct an error notified under this regulation, the Registrar may request the notifying person to supply evidence that verifies the need for a correction, including (but not limited to) the consent of any affected account holder.

Diane Morcom,
Clerk of the Executive Council.

Explanatory Note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 19 November 2007, set out the various requirements in relation to the Registry established under section 10 of the Climate Change Response Act 2002. The purpose of the Registry is to ensure the accurate accounting of the issue, holding, acquisition, transfer, retirement, and cancellation of all the unit types specified in the Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997 (namely, assigned amount units, certified emission reduction units, emission reduction units, long-term certified emission reduction units, removal units, and temporary certified emission reduction units).

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These regulations are administered by the Ministry of Economic Development.