

Process for developing New Zealand Emissions Trading Scheme regulations

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The Emissions Trading Group is developing regulations for the implementation of the New Zealand Emissions Trading Scheme (NZ ETS). This bulletin outlines the regulation-making process that is being followed alongside the passage of legislation for the NZ ETS. It also discusses how engagement will occur with NZ ETS participants and stakeholders on the regulations.

Climate Change (Emissions Trading and Renewable Preference) Bill

The Climate Change (Emissions Trading and Renewable Preference) Bill was tabled in Parliament on 4 December 2007. Parliament has referred the Bill to the Finance and Expenditure Committee for consideration.

The Committee has called for written submissions on the Bill to be made by 29 February. Following this, oral hearings will be scheduled and then the Committee will deliberate and consider the Bill, before reporting back to Parliament on its recommendations for the Bill.

The principal features of the NZ ETS, including obligations on participants, will be provided for in the primary legislation, via the Bill. Secondary legislation is also needed to support the entry of sectors into the NZ ETS. The distinction between primary and secondary legislation is often regarded as the division between principle and detail, or between policy and its implementation.

There will be two principal uses for secondary legislation under the NZ ETS:

- regulations containing technical matters where it is expected that the detail will be updated reasonably frequently (eg, as the science of measuring greenhouse gas emissions develops)
- Orders in Council for the issuance of allocation plans detailing the free allocation of New Zealand Units.

Regulations

The principal regulation making power for the NZ ETS is contained in proposed section 148 of the Climate Change Response Act 2002 (CCRA) (inserted by clause 43 of the Bill). Regulations are required for a number of matters, including:

- the information and data that participants are required to collect and keep about their activities, including the mechanism or method by which data or information must be collected
- the methodology for calculating emissions and removals from an activity, including default methodologies and any specific amendments to a default methodology relating to a participant or class of participants
- matters that require third-party verification.

Forestry regulations

Forestry is the first sector to enter the NZ ETS, from 1 January 2008. Owners of pre-1990 exotic forest land who deforest pre-1990 forests between 1 January 2008 and 31 December 2009 must register as participants, and submit an emissions return for that period by 31 March 2010. Emissions returns will also be required in future years during which deforestation occurs. Participants will need to collect information about forest age, species, region, forest area and other relevant information for the calculation of deforestation emissions.

Although forestry participants do not have to account for their 2008–09 emissions and removals until 2010, the government wishes to give forestry participants as much time as possible to consider the content of the forestry

regulations before the end of the compliance period (31 December 2009). The government therefore intends to develop the forestry regulations as soon as possible. Ministry of Agriculture and Forestry officials are developing "look-up tables" to assist owners of pre-1990 forests with assessing the size of their potential deforestation liability. Similar tables are being developed for use by owners of post-1989 forests who may wish to get credits for these forests. These tables are expected to be available early next year.

Officials are also developing carbon sampling methodologies for post 1989 forests – this is more complex work and may take a little longer. Initial methodologies should be available by mid-2008, with a full web-based calculation system in place by 2009.

Liquid fossil fuels (transport) regulations

Liquid fossil fuels (transport) participants enter the NZ ETS from 1 January 2009 and, like forestry participants, will have reporting and surrender obligations from 1 January 2010. It is also desirable to give transport participants as much certainty and time as possible before 1 January 2009 to assess their obligations as determined by both the primary legislation and accompanying regulations, and to adapt their reporting systems as necessary to achieve compliance.

Process for developing regulations

While primary legislation establishes the main obligations of the NZ ETS participants, regulations are also critical for determining precisely how participants are to meet their obligations. In order to give as much certainty to participants as possible, the government proposes to release drafts of regulations for forestry and liquid fossil fuel (transport) sectors prior to the close of submissions on the Bill (29 February 2008). The purpose of making drafts available is to provide forestry and transport participants with an opportunity to consider and comment on the proposed content of the regulations. The government proposes to engage on the content to ensure that the finalised regulations are technically correct and workable.

Early release of the draft regulations will also assist the Committee (and submitters) in considering whether a proper balance has been struck between the content of primary and secondary legislation within the NZ ETS. As part of its consideration of the Bill, the Committee may address the scope of the regulation-making powers. The release of the draft

regulations cannot pre-empt the Committee's consideration of whether, or in what form, the regulation-making power should be enacted. Nonetheless, it could assist the Committee by providing more tangible examples of the likely scope of those powers. Any final regulations will ultimately be based on the powers provided for in the Bill as enacted.

Timing for forestry and liquid fossil fuels (transport) regulations

Following release of the forestry and liquid fossil fuels (transport) regulations (intended for early February), the government will engage on the proposed content, before further developing the regulations. The government's intention is for these regulations to come into force at the same time as, or shortly after, the Bill is enacted.

Process for regulations for other sectors and for allocation plans

The development of regulations necessary to support the entry for the stationary energy, industrial processes, agriculture and waste sectors can occur more slowly, since those sectors do not enter the NZ ETS until later. Also, the government has a programme of engagement with stakeholders in these sectors, including the establishment of two Technical Advisory Groups (for industry and for agriculture), to address matters likely to be implemented through secondary legislation.

More information about the process for developing regulations applying to these other sectors, as well as information about the process for developing allocation plans, will be released in the New Year.

Where to go for more information

- For information on the select committee process, including calls for submissions on the Bill and a copy of the Bill, visit www.parliament.nz/en-NZ/SC
- For more information on the NZ ETS and Bill, including the factsheet 'A Guide to the Climate Change (Emissions Trading and Renewable Preference) Bill', visit www.climatechange.govt.nz

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