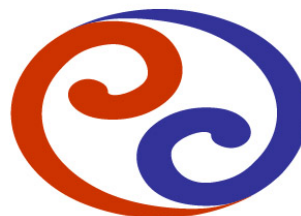


# **Discussion Paper Emissions Trading Scheme**

## **Proposals for Cost Recovery: Emissions Rulings Service**

*Ministry of* **Economic  
Development**



*M a n a t ū   Ō h a n g a*

**December 2009**

**Prepared by the Emissions Rulings Directorate  
Ministry of Economic Development**

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## Making a submission

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The Ministry of Economic Development invites comments on the proposals included in this document by **5.00pm, Monday 1 February 2010**.

Discussion points have been included in the document to assist with preparing submissions. Please reference the relevant discussion point from the document where relevant.

Please include your name, organisation's name (if applicable), and your address (postal and/or email) when making your submission.

Please send your comments in writing by email (preferred option) to:

Email: [climatechange@med.govt.nz](mailto:climatechange@med.govt.nz)

or by post to:

Emissions Rulings Service  
*Emissions Rulings Regulations Development*  
Business Services Branch  
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PO Box 1473  
Wellington 6140

## Posting and Release of Submissions

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The Ministry of Economic Development may post all or parts of any written submission on its website at [www.med.govt.nz/ERS](http://www.med.govt.nz/ERS). We will consider you to have consented to posting by making a submission, unless you clearly specify otherwise in your submission.

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## **No reliance**

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The opinions and proposals contained in this document are for discussion purposes only and do not necessarily reflect Government policy. Readers are advised to seek specific legal advice from a qualified professional person before undertaking any action in reliance on the contents of this publication. The contents of this discussion paper must not be construed as legal advice. The Ministry of Economic Development does not accept any responsibility or liability whatsoever whether in contract, tort (including negligence), equity or otherwise for any action taken as a result of reading, or reliance placed on the Ministry because of having read, any part, or all, of the information in this discussion paper or for any error, inadequacy, deficiency, flaw in or omission from the discussion paper.

## 1.0 Purpose

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A person may apply to the Chief Executive of the Ministry of Economic Development (MED) for an emissions ruling in respect of the operation and administration of the New Zealand Emissions Trading Scheme (NZ ETS) under the Climate Change Response Act 2002 (the Act). Conceptually, this is a similar approach to the provisions for tax rulings under the Part 5A of the Tax Administration Act 1994.

The emissions rulings process is a 'demand driven' service initiated by applicants. The emissions rulings provisions of the Act have been designed to clarify how rules will apply or transactions treated as opposed to a mechanism used to appeal or dispute charges that have been imposed.

Section 167 of the Act anticipates the introduction of regulations to set fees and charges to recover the costs of administering the emissions ruling service.

This discussion document has been prepared by officials from the Emissions Rulings Directorate of the Ministry of Economic Development, as part of a consultation process. It seeks readers' views about proposals to establish fees and charges for the emissions rulings service.

## 2.0 Background

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The Act is the governing legislation for the NZ ETS and contains administrative provisions which anticipate or require implementation through a series of regulations. Administrative powers and responsibilities are vested in a number of different government agencies. These powers and responsibilities include functions such as registering and deregistering participants, specifying the data required to comply with obligations and receive entitlements and the manner in which that data is collected, and administering exemptions to obligations under the NZ ETS.

Under the Act, a person may apply to the Chief Executive of MED for an emissions ruling in respect of 1 or more of the following matters:

- |                                |  |
|--------------------------------|--|
| <i>Activity ruling:</i>        | whether a person's activity or proposed activity falls within the meaning of Schedule 3 (mandatory participation) or Schedule 4 (voluntary participation); |
| <i>Participant ruling:</i>     | whether something a person is doing would be an activity listed in Schedule 3 or 4 or is eligible to be registered as a participant under Schedule 4;      |
| <i>Data collection ruling:</i> | the correct application of data collection requirements;   |
| <i>Methodology ruling:</i>     | the correct application of a methodology for calculating emissions or removals;  |

- Verification ruling:* the correct application of data or other information, or the calculation of emissions or removals that must be verified by a recognised person or organisation;
- Another matter:* specified in regulations prescribed under the Act.

Emissions rulings can only be made under the Act when they are requested, and are binding on the government in respect of the applicant. Emissions rulings will be issued *ex ante* (e.g. a clarification of how rules will be applied or transactions treated) as opposed to appeals/disputes around charges that have been imposed.

### ***Climate Change (Moderated Emissions Trading) Amendment Bill 2009***

The Climate Change Response (Moderated Emissions Trading) Amendment Bill 2009 has recently been passed but (at the time of release of this discussion document) has not received royal assent. The Act will be amended by the Bill the day after the Bill receives royal assent. The amendments to the Act that are relevant for emissions rulings are:

- Creating the ability to charge fees for emissions rulings requested by any person – enabling regulations to prescribe fees and charges.
- Creating the ability to waive fees and charges – a regulation making power that will enable the exemption, waiver and refund of fees and charges.
- Providing that the Chief Executive may not make a ruling that requires him to determine the correctness of factual information submitted in an application.

## **3.0 Charging for Emissions Rulings**

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MED is responsible for administering emissions rulings and coordination of the associated operational processes across other agencies (including the Ministry of Agriculture and Forestry (MAF) and the private sector as required). Some applications are likely to be complex and will require significant time to process. External legal advice (from Crown Law) and expert technical advice may be required in respect of some applications.

At present, there is no ability to recover costs of emissions rulings which presents an operational and fiscal risk in providing a statutory function under the Act. The development of regulations is therefore important to provide for the charging (and waiving of) fees and related processes in accordance with the Act (and anticipated amendments through amendments to the Act).

### ***Objectives***

The overriding objectives of the proposals are to implement and administer the emissions rulings provisions of the Act in a fair and reasonable way, thereby enhancing the credibility and effectiveness of the NZ ETS.

Where cost recovery is preferred, the objectives for establishing fees and charges for the emissions rulings service are considered to be:

- that fees should be set that are fair, reasonable and do not exceed the effort or costs of delivering the service; and

- applicants should have some certainty around the costs of obtaining an emissions ruling to allow them to make decisions on whether to make an application.

### **Discussion points**

1. ***Are the objectives developed for the emissions rulings service, and for setting fees and charges appropriate? Please give reasons for your answers.***

### ***How will the Emissions Rulings Service be funded?***

The Act anticipates the recovery of costs of the emissions ruling service through fees and charges, as opposed to the Government funding the service.

### ***What are the benefits of seeking an emissions ruling?***

There are two key benefits for persons seeking an emissions ruling:

- greater certainty about their business decisions; and
- assistance in knowing how to comply with the Act.

Emissions rulings may provide a second opinion or an additional degree of comfort to advice provided by an applicant's advisors. In that context, assuming the emissions ruling process is operationally effective, charging fees is considered justifiable.

Charging a fee will ensure that applications for emissions rulings on straightforward, everyday matters relating to the Act are limited, and that rulings will tend to be sought on more complex matters, for which generic guidance materials are not sufficient, or are uncertain regarding the circumstances of the applicant.

Based on independent assessment, officials are confident that the benefit accruing to applicants is commensurate with the costs and risks, including the uncertainties of participating in the NZ ETS and the international carbon market. It is expected that potential applicants will consider costs and benefits taking into account their particular situation and objectives before deciding whether or not to seek an emissions ruling.

### ***What are the proposed fees?***

It is proposed that the following fees and charges are prescribed in regulations to recover the actual and reasonable costs of providing the emissions rulings service:

<b>Fee Schedule for Emissions Rulings</b>	
<b>Application filing fee</b> (per application)	\$453.33
GST	\$56.67
<b>Total</b>	<b>\$510.00</b>
<b>Hourly Rate</b> (for considering and processing applications over 4 hours)	\$115.56
GST	14.44
<b>Total</b>	<b>\$130.00</b>
<b>External costs and disbursements</b>	Actual and reasonable costs fully recovered from applicant

It is proposed that the hourly rate will be charged for each hour (or part hour) beyond the first 4 hours spent in consideration of an emissions ruling application; and full reimbursement of the costs and reasonable expenses will be sought from applicants in relation to external advice obtained by the Chief Executive - subject to acceptance of any such estimates by the applicant relating to a particular emissions ruling.

More information about the proposed estimate process is included in section 4.0 Other Administrative Issues.

**Discussion points**

- 2. Are the proposed fees and charges reasonable?**
- 3. What are the implications for you/your business of the proposed fees and charges?**

***Please provide reasons for your answers.***

***What do the fees cover?***

The proposed schedule of fees and charges is designed to recover the direct and indirect costs of the emissions ruling service which include the costs of the following activities:

- Receiving and processing emissions rulings applications; and
- Considering whether to make the ruling, making the ruling, or declining to make the ruling; and
- Providing, operating and maintaining systems; and
- Support functions.

It is also proposed that the Chief Executive recover the full costs of services from third parties that will be required for some applications. However, there will also be the ability for the Chief Executive to exempt, waive or refund fees and charges in some cases.

**Discussion points**

4. ***Are there other factors that should be considered in recovering the costs of the emissions rulings service?***
5. ***Should there be circumstances where an exemption, waiver or refund could be provided? If so, in what circumstances would you consider would be appropriate?***

***Please provide reasons and information to support your answers.***

***Were other options considered?***

Two high level options were considered: to charge fees or to not charge fees.

In terms of charging fees, an alternative approach considered was a fixed application fee.

The **no fees option** would completely remove cost recovery fees as a potential barrier to obtaining emissions rulings under the NZ ETS. However, this would require the Crown to forego potentially significant amounts in recovery of direct costs. This option is not recommended as it would be inconsistent with recommended regulatory practices.

The **fixed application fee option** provides for a fixed, one-off, application fee. Because of the difficulty in predicting the volume, complexity and when applications may be received, and therefore what fees will actually be paid to cover the fixed costs of the service, this option is not recommended. A fixed application fee option may not allocate scheme costs equitably across applicants, presenting an unacceptable risk of under recovery through fees and charges.

The **preferred option**, as proposed, is one that will meet the objectives and ensure that each applicant meets the actual costs related to their application through the setting of fees and charges.

**Discussion points**

6. ***Are there other feasible options that should be considered?***
7. ***Are there other costs or benefits that should be considered, particularly in light of participating in the NZ ETS and the international carbon market?***

***Please provide reasons and information supporting your answers.***

### ***Will the fees increase?***

The fees proposed have been calculated to recover the costs of providing the emissions ruling service over a 3 year period, based on a 'supply-driven' approach. If there are significant changes in labour requirements e.g. staffing requirements, or capacity within the government agencies considering the applications, the fees may need to be adjusted.

The fees and charges will be reviewed periodically to ensure they are appropriate. This could result in changes to the level of fees.

## **4.0 Other Administrative Issues**

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MED is responsible for administering emissions rulings and coordination of the associated operational processes across other agencies as required. The Director Emissions Rulings will make rulings on applications under delegated authority from the Chief Executive of MED. The Director is also responsible for maintaining the independence, robustness and integrity of the rulings process which will be delivered through a team based in MED and other agencies. A quality assurance process has been developed that will ensure consistency and focus in terms of considering the issues raised in an application.

To ensure applicants receive certainty in the costs and time within which an emissions ruling may be provided, it is proposed to include provisions in regulations that:

- require the Chief Executive to provide an estimate of fees payable (if any) in excess of the application fee to the applicant; and
- enable the Chief Executive to revise the estimate if necessary, with notice provided to the applicant; and
- where the Chief Executive considers that it will take longer than 4 weeks to issue a ruling, the Chief Executive must provide the applicant with the Chief Executive's estimate of the likely date by which a ruling is expected to be issued.

It is proposed that emissions ruling applications will be processed and considered subject to acceptance of any estimates of fees by the applicant.

### **Discussion points**

- 8. Are these proposed administrative requirements reasonable?***
- 9. Are these proposed requirements sufficient to provide incentives to minimise the fees to which an applicant is liable in respect of a ruling?***
- 10. Are there other requirements that should be considered for inclusion in regulations?***

***Please provide reasons for your answers.***

## 5.0 Summary of Discussion Points

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1. ***Are the objectives developed for the emissions rulings service, and for setting fees and charges appropriate? Please give reasons for your answers.***
  
2. ***Are the proposed fees and charges reasonable?***
  
3. ***What are the implications for you/your business of the proposed fees and charges?***  
  
***Please provide reasons and information to support your answers.***
  
4. ***Are there other factors that should be considered in recovering the costs of the emissions rulings service?***
  
5. ***Should there be circumstances where an exemption, waiver or refund could be provided? If so, in what circumstances would you consider would be appropriate?***  
  
***Please provide reasons and information to support your answers..***
  
6. ***Are there other feasible options that should be considered?***
  
7. ***Are there other costs or benefits that should be considered, particularly in light of participating in the NZ ETS and the international carbon market?***  
  
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10. ***Are there other requirements that should be considered for inclusion in regulations?***  
  
***Please provide reasons for your answers.***