

Changes to the NZ ETS for forestry

On 8 December 2009 the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 became law with a number of changes to the New Zealand Emissions Trading Scheme (ETS). This fact sheet describes the main changes for the forestry sector.

Changes for other sectors are summarised in www.climatechange.govt.nz/emissions-trading-scheme/participating/index.html

PRE-1990 FORESTRY ALLOCATION PLAN

- › Eligible pre-1990 forest landowners will receive either:
 - 18 units per hectare for Crown forest licence land that has or will be transferred under a Treaty of Waitangi claim settled after 1 January 2008; or
 - 39 units per hectare for land transferred since 31 October 2002; or
 - 60 units per hectare for all other eligible landowners.
- › Eligible landowners will receive 38 percent of their entitlement before 31 December 2012 with the remaining 62 percent expected to be transferred after 2012.
- › There will be a series of determinations over time as eligible landowner's applications are processed. The determinations will state the years in which eligible landowners will receive their units. Units are expected to be transferred on a monthly basis as applications are processed.



- › The Government has signalled it may cancel some, or all, of the second tranche of units to be transferred if offsetting is permitted under international rules in the second commitment period.
- › As a result of feedback received during recent stakeholder consultation on the Forestry Allocation Plan, a late change was made to the allocation plan provisions in the Act. The Act now provides greater flexibility, allowing the Forestry Allocation Plan to define what constitutes a transfer of land, and what constitutes a body corporate, for the purposes of determining eligibility for the 60 units per hectare allocation.

LESS THAN 50 HECTARES EXEMPTION

- › The deadline of 1 July 2010 for "less than 50 hectares" exemption applications has been removed. A closing date is still required to be set – this will be via an Order in Council, and it will be extended.

TREE WEEDS

- › Tree weed exemptions can now be given retrospectively to cover deforestation that has already been undertaken.
- › Tree weed exemptions now include planted or sown tree weeds.
- › MAF will periodically invite applications for tree weed exemptions.
- › A cap can be set on the total emissions that will be covered per commitment period.
- › Clearing of tree weeds on exempt land must commence within 24 months of notification of the exemption, and be completed by the end of the relevant commitment period (or 5-year period).
- › Applicants who wish to register post-1989 forest land in the ETS will have to declare compliance with relevant pest management strategies under the Biosecurity Act 1993.

\$25 PER NZU FIXED PRICE OPTION FOR SURRENDER OBLIGATIONS

- › Participants who have an obligation to surrender NZUs (either to meet an emissions liability or to repay over-claimed NZUs) have the option of meeting part, or all, of that obligation by paying cash at a fixed price of \$25 per NZU due for surrender. This option is available for liabilities incurred up to 31 December 2012.
- › Where a Participant elects the cash option, in practice the NZEUR Registrar will transfer the NZUs into the Participant's holding account and then immediately surrender the NZUs to clear the obligation.
- › Participants cannot buy units under the \$25 cash option for banking or on-selling. The \$25 cash option can only be exercised to meet immediate NZU surrender or reimbursement obligations.
- › Units earned from post-1989 forests, or allocated as part of the Pre-1990 Forestry Allocation Plan, can be exported (provided the New Zealand Government maintains the level of its Assigned Amount Units at or over 90 percent of their 1990 baseline). Units allocated to other sectors can only be traded domestically until 31 December 2012.

CHANGES TO DEFINITIONS OF FOREST LAND AND FOREST SPECIES

- › The definition of forest land now better recognises land-use intent and management practices. Where management practices (such as grazing or periodic clearing) are likely to prevent areas with forest species from ever reaching 30 percent crown cover, the land is not considered forest land. This is better aligned with the definition of forest land under the Kyoto Protocol.
- › Forest species now excludes trees planted and managed predominantly for production of fruit and nut crops.

CLARIFICATION OF DEFORESTATION PRIOR TO 1 JANUARY 2008

- › For areas of exotic forest land established prior to 1 January 1990 that had been harvested but for which land use conversion was not completed prior to 1 January 2008, evidence that deforestation commenced before 31 December 2007 is no longer required.

- › To be exempt from deforestation liabilities, it must be apparent that the forest land is not just temporarily unstocked four years after the date of harvest. The land use conversion must be completed within four years of the harvest date, and the land cannot have received an allocation under the Forestry Allocation Plan.
- › Specifically, deforestation is deemed to have occurred before 1 January 2008 if on 31 December 2007 the land had:
 - no standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or were likely to have, tree crown cover of an average width of less than 30 metres; and
 - no other merchantable timber from exotic forest species; and conversion to land that is not forest land is complete within 4 years of the date of clearing, and no allocation has been made in respect of the land under the pre-1990 forest land allocation plan.

CONSULTATION WITH MĀORI

- › Additional provision for consultation with iwi and Māori has been added for:
 - the Forestry Allocation Plan;
 - changes to methodologies or verifiers (such as carbon stock measurement regulations);
 - unique emissions factors (not applicable to forestry);
 - a review of the ETS;
 - emissions targets.

DATE CHANGES

- › The last day for submitting emissions returns is now 31 March of each year – changed from 30 March.
- › The final date for surrendering units for liabilities is now 31 May each year – changed from 30 April;
- › The dates for surrendering units for liabilities relating to deforestation from 1 January 2008 to 31 December 2009 is now from 1 January 2011 to 31 May 2011 – changed from 30 April 2011.

UNINCORPORATED BODIES

- › Previous provisions relating to “joint activities” for post-1989 forest land have been replaced by the new concept of



“unincorporated bodies”. So instead of the parties individually being registered as the participant (each and every trustee, partner, joint landowner etc.), they are now registered collectively as an unincorporated body.

- › An unincorporated body includes:
 - a partnership, joint venture or the trustees of a trust, or
 - three or more persons jointly owning post-1989 forest land (or jointly holding a registered forestry right or registered lease, or jointly parties to a Crown conservation contract).
- › This means:
 - Persons jointly carrying out an activity must be registered as an unincorporated body.
 - They must choose a name for their unincorporated body.
 - Existing joint participants must transition to the unincorporated body regime. MAF will contact them about this. The members of unincorporated bodies have joint and several liability, and entitlements, for activities under the ETS.

CARBON ACCOUNTING AND EMISSIONS RETURNS

- › A transmission of interest under the ETS is:
 - a sale of post-1989 forest land;
 - a transfer or issue a forestry right, lease or conservation contract over post-1989 forest land; or
 - the expiry or termination of a forestry right, lease or conservation contract over post-1989 forest land;
 - a change of more than 60 percent in the membership of an unincorporated body.

In this case the transferor and the transferee must within 20 working days notify the chief executive of the transmission of the interest and the transferor must submit an emissions return within 20 working days of the date of transfer, registration, expiry or termination, or as soon as practicable if the transaction occurred by operation of law.

- › A participant who is considering selling or transferring ownership of post-1989 forest land may submit an emissions return prior to the sale or transfer occurring, irrespective of when in the year this occurs. This allows any outstanding entitlements or obligations to be clarified and settled prior to the sale or transfer.
- › Participants may redefine carbon accounting areas (CAAs) by withdrawing the land from the ETS, surrendering any associated NZUs; then re-registering the exactly the same land back into the ETS with a different CAA arrangement. An emissions return is required within 20 working days of withdrawal. If the same area is re-registered and a special emissions return submitted within the same 20 working days, the participant should receive the claimed units before they have to surrender any units.
- › The calculation of the unit balance of a CAA has been slightly revised to better specify the balance to be carried over between mandatory reporting periods.

- › Calculation of the unit balance for part of a CAA when selling or transferring is now also fully specified (based on pro-rata of the unit balance by area). The details of the calculation methodology are provided in revisions to the Climate Change (Forestry Sector) Regulations 2008.

CONSOLIDATED GROUPS

- › There are a number of technical changes to the rules affecting the formation of, and filing of emissions returns for consolidated groups.
- › The changes include consequential changes to the Climate Change (Unit Register) Regulations 2008, which now specify:
 - the Registrar can update the identity of the account holder of a consolidated group where the consolidated group changes its nominated entity; and
 - account holders are able to appoint up to five primary representatives.

OFFENCE PROVISIONS

- › There are new offence provisions for providing false or misleading information relating to the forestry allocation, and not keeping adequate records – including for the forestry allocation.

FOR MORE INFORMATION

To view the Minister for Climate Change Issues' press releases on the new Act, visit www.beehive.govt.nz/minister/nick+smith

To view a copy of the revised Act, visit www.legislation.govt.nz

For information on forestry and agriculture in the ETS, contact MAF:

- › Website: www.maf.govt.nz/sustainable-forestry
- › Email: sustainableforestry@maf.govt.nz
- › Phone: **0800 CLIMATE (254 628)**

To speak to a MAF forestry adviser, contact one of the regional offices:

- › Whangarei 09 430 7850
- › Gisborne 06 986 8691
- › Rotorua 07 921 3400
- › Wanganui 06 348 7312
- › Nelson 03 543 9183
- › Christchurch 03 943 3700
- › Dunedin 03 951 4725