

APPLICATION FORM: EMISSIONS RULING

December 2011

Climate Change Response Act 2002

INSTRUCTIONS

IMPORTANT: Please read the following Instructions and Notes carefully before completing this Application for Emissions Rulings.

Unless stated otherwise, any legislative reference is a reference to the Climate Change Response Act 2002.

WHEN DO I USE THIS FORM?

1. Use this form when applying for an emissions ruling to the Environmental Protection Authority in respect of 1 or more of the following matters:
 - > Whether something a person is doing is an activity listed in Schedule 3 or 4.
 - > Whether something a person proposes to do would be an activity listed in Schedule 3 or 4.
 - > Whether the person is a participant in respect of an activity listed in Schedule 3.
 - > Whether the person is eligible to register as a participant in respect of an activity listed in Schedule 4.
 - > The correct application of a provision contained in regulations made under section 163(1)(a) to (c) in relation to a particular matter which you must specify in this application (see section 107).
2. A ruling is binding on the Environmental Protection Authority only in respect of the person(s) applying for the ruling. It cannot be relied on as conclusive evidence by other persons.

ENVIRONMENTAL PROTECTION AUTHORITY'S POWER TO MAKE A RULING (SEE SECTION 108)

3. The Environmental Protection Authority may not make an emissions ruling in respect to a provision that authorises or requires the Environmental Protection Authority:
 - > to impose or remit a penalty, or
 - > inquire into the correctness of any return or other information supplied by any person, or
 - > prosecute any person, or recover any debt owing by any person.
4. The Environmental Protection Authority may not make an emissions ruling if the information submitted with the application raises questions of fact that the Environmental Protection Authority would need to determine in order to make the ruling.
5. The Environmental Protection Authority may decline to make an emissions ruling if:
 - > The Environmental Protection Authority considers the correctness of the ruling would depend on assumptions which were made about a future event or other matter.
 - > The matter on which the ruling is sought is subject to a review or appeal, or is the subject of proceedings, whether in relation to the applicant or to any other person.
 - > The applicant has outstanding unpaid fees relating to an earlier emissions ruling application.
 - > The Environmental Protection Authority considers the application is frivolous or vexatious.
 - > The matter on which the ruling is sought concerns an obligation to surrender units that are already due and payable, unless the application is received before the obligation arises.
 - > An assessment or amendment relating to the same person, activity, and period to which the proposed ruling would apply has been made (unless the application is received before the date an assessment or amendment is made).
 - > In the Environmental Protection Authority's opinion there is insufficient information to make a ruling or it would be unreasonable to make a ruling in view of the resources available to the Environmental Protection Authority.



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WHERE DO I SEND THIS FORM ONCE I HAVE COMPLETED IT?

6. The completed application form on pages 5 to 7, and the required supporting information must be sent to the New Zealand Emissions Trading Registry either by:

- > delivery to the: **Manager, ETS Registry**
New Zealand Emission Unit Register
Private Bag 63002
WELLINGTON 6140
- > or fax to **+64 4 978 3661**
- > or by scanning and emailing it to **climatechange@epa.govt.nz**

7. For questions please call free phone **0800 CLIMATE (0800 254 628)** within New Zealand, or on **+64 3 962 6257** internationally.

PLEASE NOTE: THE ENVIRONMENTAL PROTECTION AUTHORITY WILL NOT BEGIN TO PROCESS YOUR APPLICATION UNTIL THE PRESCRIBED APPLICATION FEE HAS BEEN PAID IN FULL (SEE PARAGRAPHS 11 AND 12 ON PAGE 3).

WHAT SUPPORTING INFORMATION DO I NEED TO PROVIDE?

8. You must provide the following information as a separate attachment to your application form. If you do not provide sufficient information this may significantly delay the processing of your application or may result in the Environmental Protection Authority being unable to make a ruling. The Environmental Protection Authority may request further information that the Environmental Protection Authority considers necessary.

- > Questions to be answered by the Environmental Protection Authority.
You should identify the questions in respect of which the ruling is requested.
- > Issues to be considered by the Environmental Protection Authority.
You should identify the legal and other issues to be considered.
- > A full description of the facts.
You must disclose all relevant facts and documents relating to the matter to which the ruling is sought.
- > State the sections and regulations in respect of which the ruling is sought.
- > State the propositions of law (if any) relevant to the issues raised in this application:
 - The sections of the Act and regulations that are relevant to the application.
 - Legal reasons and authoritative support for the interpretation of the effect of the law specified in the draft ruling.
 - Possible arguments, legal reasons and authoritative support contrary to the interpretation adopted in the draft ruling.
 - Other material or relevant matters or sources of information the Environmental Protection Authority should be made aware of to ensure access to all the pertinent facts and law.
- > Provide your opinion of what the ruling should be in the form of a draft ruling.

HOW LONG WILL IT TAKE?

9. Depending on the complexity of the application and the sufficiency of the information provided, the time taken to provide a ruling will be no less than 4 weeks and possibly much longer.

CAN I APPEAL A RULING OR A DECISION NOT TO MAKE A RULING?

10. If you are not satisfied with an emissions ruling, or a decision to decline to make an emissions ruling, then you may, within 20 working days after notice of the ruling or the decision, appeal to the District Court against the ruling or decision (see section 115).

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ARE THERE ANY FEES FOR AN EMISSIONS RULING?

11. Your application for an emissions ruling will not be considered until the prescribed application fee of \$470 (including GST) has been received by the Environmental Protection Authority. This fee covers the cost of receiving and reviewing the application. After the first four hours spent in processing the application an hourly rate of \$117.50 (including GST) will be charged for additional time spent in processing your application. You will be invoiced for the charges periodically in arrears.
12. You will also be charged for reimbursement of the full costs and reasonable expenses to the Environmental Protection Authority of obtaining advice from third parties. You will be contacted first to ensure that you agree to these costs.
13. You will be provided with an initial estimate of the fee, and advised of any subsequent updates to the estimate. You may also request an update of an estimate at any time.
14. In exceptional circumstances, the Environmental Protection Authority may at their discretion exempt, waive or refund all or part of a fee or charge (see Climate Change (Emissions Rulings: Fees and Charges) Regulations 2010).

HOW DO I PAY THE FEES?

15. The application fee and charges may be paid by cheque, direct credit or online banking. Direct credit and online banking payments must be paid into the Environmental Protection Authority account 03 0502 0085470-00 and must include references to "ETS rulings" and the applicants name (in the particulars code). Cheques must be posted to Manager, ETS Registry, New Zealand Emission Unit Register, Private Bag 63002, WELLINGTON 6140.

CAN I WITHDRAW MY APPLICATION?

16. You may withdraw your application at any time prior to the ruling being made, by giving notice in writing to the Environmental Protection Authority. The withdrawal of the application will not affect your liability for any fees incurred in processing the application up to the date of the withdrawal.

BEFORE MAKING THE APPLICATION WE SUGGEST YOU ASK YOURSELF THE FOLLOWING QUESTIONS

17. Before making an application you should consider the following questions:
 - > Is the answer to the matter for which I seek a ruling available from other sources of information?
 - > Is the Environmental Protection Authority able to make a ruling (see section 107 and 108)?
 - > Is the answer to the matter for which I seek a ruling complex in nature?
 - > Is it necessary to have the formal legal certainty of an emission ruling?
 - > Is it cost effective to seek an emissions ruling?
 - > Do I have enough time to wait for an emissions ruling to be considered?

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NOTES

> Please read the Instructions and these Notes before you complete this application.

PART A APPLICANT DETAILS

- 1 Complete the details of the person(s) applying for this emissions ruling. If this is a joint application, please attach a separate schedule to the back of this form showing the details for each joint applicant.

PART B AGENT DETAILS

- 2 If you are making this application on behalf of one or more applicants, please provide your details. You must have written consent to act on behalf of the applicant(s). The written consent must be supplied to the Environmental Protection Authority with this application.

If the application is made on behalf of an applicant(s), the ruling will be sent to the agent.

PART C GENERAL INFORMATION

> Please record the following information:

- 3 The sector to which the application relates.
- 4 What the applicant is seeking an emissions ruling on.
- 5 In relation to rulings for forestry activities; whether the applicant permits MAF to use imagery held by MAF.
- 6 Whether this application (or similar application) has been lodged previously by any of the applicants, or any of their associated persons.
- 7 Whether or not the application relates to a matter the Environmental Protection Authority can not rule on.

PART D ADDITIONAL INFORMATION REQUIREMENTS AND DRAFT EMISSIONS RULING

- 8 In addition to completing this application form, you must provide the information listed in Part D and a draft emissions ruling, as separate attachments to this application form. This information will be used by the Environmental Protection Authority in considering your application for an emissions ruling.

Use the suggested format below for your DRAFT emissions ruling:

- > PERSON(S) TO WHOM THE RULING APPLIES (THE APPLICANTS)
This ruling has been applied for by [insert name(s)].
- > MATTER IN RELATION TO WHICH THE RULING IS SOUGHT
Clearly set out the matter for which you are seeking an emissions ruling.
- > CLIMATE CHANGE RESPONSE ACT 2002
The ruling applies in respect of [quote sections and regulations to which ruling applies].
- > THE INFORMATION ON WHICH THE RULING IS BASED
Provide a summary of all the relevant facts. Consider this summary of facts the information on which the ruling is based for the purpose of sections 111, 112 and 114.
- > CONDITIONS STIPULATED BY THE ENVIRONMENTAL PROTECTION AUTHORITY
This ruling is made subject to the following conditions [state any conditions you think will need to be imposed].
- > HOW THE CLIMATE CHANGE RESPONSE ACT 2002 APPLIES TO THE MATTER IN RELATION TO WHICH THE RULING IS SOUGHT
The Climate Change laws apply to the Applicant and the activity or matter as follows:
[clearly state the activity or matters on which the Environmental Protection Authority is to rule].

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FORM

IMPORTANT: Please read the Instructions and Notes on pages 1 to 4 before you complete this application (e.g. **1** refers to Note 1 on page 4).

- (a) This form has been prescribed by the Environmental Protection Authority under section 90.
- (b) This form is for use by persons applying for a ruling on a proposed or current activity listed in Schedule 3 or 4, requirement or eligibility to register as a participant for an activity, the correct application of any provision in regulations made under section 163(1)(a) to (c) or any other matters prescribed in regulations under section 168(1)(b).
- (c) The Environmental Protection Authority may only issue a ruling for matters listed in section 107.
- (d) The applicant must notify the Environmental Protection Authority of any material change that is relevant to the application before the emissions ruling is made.
- (e) This form is a writable PDF. You may complete this form online and then print it. You are also able to save it.
- (f) The completed form must be sent to the New Zealand Emissions Trading Registry either by:
 - > delivery to the: **Manager, ETS Registry**
New Zealand Emission Unit Register
Private Bag 63002
WELLINGTON 6140
 - > or fax to +64 4 978 3661
 - > or by scanning and emailing it to climatechange@epa.govt.nz

PART A APPLICANT DETAILS

1 Name of Applicant

Full Legal Names of each Applicant

Participant Holding Account Number – if applicable

Physical Address for service in New Zealand

BUILDING/PROPERTY NAME		
STREET NUMBER	STREET/RURAL ROAD NAME	FLOOR/LEVEL
TOWN/CITY	POSTAL CODE/RD NUMBER	

Postal Address (if different from physical address)

PO BOX/PRIVATE BAG NUMBER	POSTAL CODE
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Email Address

Phone Number

PART B AGENT DETAILS

2 Name of Agent

Address of Agent

BUILDING/PROPERTY NAME		
STREET NUMBER	STREET/RURAL ROAD NAME	FLOOR/LEVEL
TOWN/CITY	POSTAL CODE/RD NUMBER	

Name of Contact Person for Enquiries

Email Address

Phone Number

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PART C GENERAL INFORMATION

3 To what sector or sectors does the application relate? (Please tick)

- | | |
|--|---|
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Stationary energy |
| <input type="checkbox"/> Forestry removal activities | <input type="checkbox"/> Industrial processes |
| <input type="checkbox"/> Other removal activities | <input type="checkbox"/> Agriculture |
| <input type="checkbox"/> Liquid fossil fuels | <input type="checkbox"/> Waste |

4 What does the applicant seek a ruling on? (Please tick)

- Whether something the applicant is doing is an activity listed in Schedule 3 or 4 of the Act.
- Whether something the applicant proposes to do would be an activity listed in Schedule 3 or 4 of the Act.
- Whether the applicant is a participant in respect of an activity listed in Schedule 3 of the Act.
- Whether the applicant is eligible to register as a participant in respect of an activity listed in Schedule 4 of the Act.
- The correct application of a provision specified in regulations made under section 163(1)(a) to (c) in relation to the matter specified in this application.

5 For forestry activities (Please tick)

- NO, I do not permit MAF to use imagery held by MAF in relation to this application.
- YES, I permit MAF to use its imagery.
- Please send me a copy of any imagery MAF would use in relation to the application area for my review before I give my approval.

6 Has this application (or a similar application) been lodged by, or on behalf of, the applicant(s) (or associated person of the applicant(s))?

- NO
- YES, please print below the applicant(s) name, the date of the relevant correspondence and the reference quoted on the response.

Applicant Name

Correspondence date Reference quoted

7 Is this application (wholly or in part) in respect to a provision that authorises or requires the Environmental Protection Authority to:

- > impose or remit a penalty; or
- > inquire into the correctness of any return or other information supplied by any person; or
- > prosecute any person; or
- > recover any debt owing by any person
- > determine a question of fact that is raised

YES NO (please tick)

If the answer is YES, the Environmental Protection Authority must decline to make the ruling.

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PART D APPLICATION INFORMATION REQUIREMENTS AND DRAFT EMISSIONS RULING

- 8** Please provide the following information as a separate attachment to your application form. If you do not provide sufficient information this may significantly delay the processing of your application or may result in the Environmental Protection Authority being unable to make a ruling. The Environmental Protection Authority may request further information that the Environmental Protection Authority considers necessary.
- > Questions to be answered by the Environmental Protection Authority.
You should identify the questions in respect of which the ruling is requested.
 - > Issues to be considered by the Environmental Protection Authority.
You should identify the legal and other issues to be considered.
 - > A full description of the facts.
You must disclose all relevant facts and documents relating to the matter to which the ruling is sought.
 - > State the sections and regulations in respect of which the ruling is sought.
 - > State the propositions of law (if any) relevant to the issues raised in this application:
 - The sections of the Act and regulations that are relevant to the application.
 - Legal reasons and authoritative support for the interpretation of the effect of the law specified in the draft ruling.
 - Possible arguments, legal reasons and authoritative support contrary to the interpretation adopted in the draft ruling.
 - Other material or relevant matters or sources of information the Environmental Protection Authority should be made aware of to ensure access to all the pertinent facts and law.
 - > Provide your opinion of what the ruling should be in the form of a draft ruling.

PART E DECLARATION**Declaration by applicant**

I declare that the details contained in this application are true and correct.

Signature of applicant

Date

Signature of applicant

Date

Signature of applicant

Date

Signature of applicant

Date

OR declaration by agent where application is made on behalf of an applicantThe details contained in this application are true and correct and I am authorised to act on behalf of the applicant(s) set out in this application form.
I hold written consent of the applicant(s).

Signature of agent

Date

CHECKLIST

Before faxing or emailing the scanned application to the Environmental Protection Authority, please ensure the following has been done:

- Declaration has been signed by the applicant(s) or the agent
- All sections of the form have been completed
- All supporting information is attached
- Draft emissions ruling is attached
- The names of all other relevant parties to the activity/participant/application have been provided
- The signed written consent of the applicants, if this application has been made on behalf of an applicant(s)
- The application fee is enclosed or has been deposited into the designated bank account.