


Impact Summary: NZ ETS Improvements – Amending Unique Emission Factor Errors from Previous Years

Section 1: General information

Purpose
The Ministry for the Environment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.
Key Limitations or Constraints on Analysis
There are no limitations or constraints on the analysis in this summary.
Responsible Manager (signature and date):
 Matthew Cowie Manager – Climate Change Policy Climate Change Directorate Ministry for the Environment Date: 22/11/18 <i>A Quality Assurance Panel with representatives from the Ministry for the Environment and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment (RIA) "Impact Summary: NZ ETS Improvements – Amending Unique Emission Factor Errors from Previous Years" produced by the Ministry for the Environment and dated November 2018. The panel considers that it meets the Quality Assurance criteria.</i> <i>More detail on the assessment of this and the other RIAs can be found at: [link to be added].</i>

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

An emissions factor is a value given to an activity in the New Zealand Emissions Trading Scheme (NZ ETS) based on how emissions intensive it is. When an emissions return is completed, the emissions factor is multiplied by the amount of product produced in a given period to give an emissions total for that time.

Some NZ ETS participants have the option of using unique emissions factors (UEFs) instead of prescribed default emissions factors when calculating their emissions and removals from the relevant schedule 3 or 4 activity for the purpose of section 62(b) of the Climate Change Response Act 2002 (CCRA).

The methodologies prescribed for the calculation of UEFS are set out in the Climate Change (Unique Emissions Factors) Regulations 2009.

Applications for approval to use UEFs to calculate emissions in relation to a year need to be made to the EPA by 31 January in the following year (ref Reg 4(4) of Climate Change (Unique Emissions Factors) Regulations 2009. UEF applicants must meet a number of requirements within the Regulations, including the need to monitor the accuracy of each UEF by submitting information to a 'recognised verifier'.

The regulator has the power to amend an emissions return if the information within it is incorrect (ref section 120 of CCRA). However, it does not have a similar power to correct errors within the calculation on which the information in the emissions return is based (i.e. the UEF). The only way for the regulator to address an error within an emissions return as a result of a flawed UEF calculation is to revert the participant back to the default emissions factor (even if a correct UEF could be calculated).

The default emissions factor can be significantly different from a UEF. For example, a landfill operators' UEF might be 10% of the default emissions factor.

Other areas of the legislation provide ways to resolve errors with 'make good' provisions (for example, through amendments of emissions returns) and penalties, if appropriate.

The Government seeks the ability to amend returns from previous years (with appropriate time limits as to how many years back the regulator may apply a correction) using corrected UEFs, where an error has been discovered. This would result in more meaningful amendments to emissions returns where UEFs are used, and potentially to penalties being applied, depending on whether the new UEF will result in a surrender obligation or repayment. An amendment to the legislation to address these issues would need to be aligned with process of approval for UEFs within the CCRA and the methodology set out in the Climate Change (Unique Emissions Factors) Regulations 2009.

2.2 Who is affected and how?

Two parties have been affected by this problem:

- NZ ETS participants who have approval to use UEFs to calculate their returns but whose UEFs have been found to be in error, and whose emission returns have been calculated using the default emissions factor. Approximately 20 participants currently use UEFs.
- The regulator, who has been unable to determine an accurate emissions return for a participant with an inaccurate UEF and must elect to correct a return using a default emissions factor rather than a corrected UEF.

2.3 Are there any constraints on the scope for decision making?

There are no constraints on the scope for decision making, or interdependencies or connections, other than that resolution could require amendment to primary legislation.

Section 3: Options identification

3.1 What options have been considered?

Option 1: The status quo, where there is no provision for a UEF found to have been in error to be corrected. An emissions return would revert to using default emissions factors.

Option 2: The option to allow the regulator to amend UEFs which are found to be in error from previous years has been considered and been consulted on.

This would allow the regulator to correct a historic UEF if it has been found in error because of inaccurate data, incorrect use of a formula, or another reason. A revised UEF would then be used to recalculate emissions returns and surrender obligations.

3.2 Which of these options is the proposed approach?

Option 2 which will to allow the regulator to amend UEFs from previous years is preferred to the status quo because it allows for the most appropriate emissions factors to be applied when emissions returns and surrender obligations are to be determined. This is fairer to the participant and improves the integrity and accuracy of the NZ ETS. It is also consistent with other parts of the NZ ETS compliance system that allow amendments to returns and contain 'make good' provisions.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
------------------	--	--

Additional costs of proposed approach, compared to taking no action

Regulated parties	One-off costs to recalculate the historic UEF that is in error and submit an amended emissions return/s	Low
Regulators	One-off costs to assess the corrected emissions return/s, although this is already being incurred through reversion to the default emissions factor	Very low
Wider government	Potentially lower emissions units surrendered if correct UEF is lower than default emissions factor	Low
Other parties		Nil
Total Monetised Cost		Low
Non-monetised costs		Nil

Expected benefits of proposed approach, compared to taking no action

Regulated parties	Reduced NZ ETS costs through improved and accurate emissions calculations and NZ ETS obligations Reduced NZ ETS penalties, where these are based on the difference between total emissions calculated using a default emissions factor and a corrected UEF	Varies, but potentially significant for some participants
Regulators	Increased accuracy in being able to correct errors, in order to ensure more correct emissions factors are being used (rather than the default factor)	Low
Wider government	Improved NZ ETS integrity by ensuring that errors can be corrected, and the most appropriate emissions factors applied	Low
Other parties		Nil
Total Monetised Benefit		Low
Non-monetised benefits		Low

4.2 What other impacts is this approach likely to have?

There will be no other impacts.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Consultation was held on this proposal within a package of planned NZ ETS improvements over August - September 2018. The consultation document sought views on the proposal to allow the regulator to amend inaccurate UEFs from previous years.

While an unbounded retrospective power could create uncertainty for participants, this proposal is unlikely to raise such risks. The regulator already has the ability to make adjustments to emissions returns from previous years under section 120 of the CCRA. This proposal would improve the consistency of the legislation by allowing such an adjustment to be made in an appropriate way for participants whose use of UEFs has been approved. It is expected that such an ability would be subject to the same or similar time bar to that which applies currently to the amendment of emissions returns at section 127 of the CCRA. The proposal improves the calculation of a small subset of emissions returns and surrender obligations and could reduce costs to participants.

No other views were raised in opposition.

Submissions in favour of the proposal noted that it would not affect those correctly meeting their obligations, improves accuracy, and does not impact the ability of the regulator to apply appropriate penalties for incorrect emissions returns.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

This proposal is one of several operational changes that will be carried through to the proposed Climate Change Response Amendment Bill in 2019, and come into effect from 1 January 2021. The regulator would have the ability to correct previous emissions returns by applying a corrected UEF.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The regulator will continue to monitor the emissions reporting and UEF applications and use of eligible participants once the new arrangements are implemented.

7.2 When and how will the new arrangements be reviewed?

No review of the arrangements is planned.