



Ministry for the
Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Hon James Shaw	Portfolio	Climate Change
Name of package	Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 and Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023	Date to be published	25 September 2023

List of documents that have been proactively released

Date	Title	Author
4 September 2023	Cabinet paper: <i>Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 and Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023</i>	Office of the Minister of Climate Change
4 September 2023	Cabinet minute: <i>Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 and Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023</i> [CAB-23-MIN-0416]	Cabinet Office

Information redacted

~~YES~~ **NO**

Summary of reasons for redaction

N/A

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In Confidence

Office of the Minister of Climate Change

Cabinet Business Committee

Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 and Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 and the Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023.
- 2 These regulations are included as an attachment to this paper.

Executive Summary

- 3 This paper seeks Cabinet approval to amend regulations setting limits on the number of New Zealand Units (NZUs) available by auction, and price control settings, for the New Zealand Emissions Trading Scheme ('NZ ETS'). It also seeks Cabinet agreement to two amendments to the regulations:
 - 3.1 Prescribing price control settings for 2023 that split the number of NZUs in the cost containment reserve for that year into two "tiers", with two different trigger prices releasing their corresponding number of NZUs in the tier.

The trigger price for the first tier would be \$173 corresponding with a cost containment reserve of 2.9 million. The trigger price for the second tier would be \$216 corresponding with a cost containment reserve of 5.1 million. The total amount of units available in the cost containment reserve would remain 8 million NZUs.
 - 3.2 Fixing a rounding error in the number of NZUs available by auction in 2024, decreasing it from 21.9 million to 21.8 million.
- 4 This paper also seeks Cabinet approval to amend regulations setting the price of carbon and associated levy rates for the synthetic greenhouse gas levy ('SGG levy').

Policy

- 5 This paper seeks Cabinet approval to amend regulations supporting the operation of the NZ ETS and the SGG levy. These regulations are made under the Climate Change Response Act 2002 ('the Act').
- 6 I propose to:

- 6.1 update the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 ('unit settings regulations') to prescribe unit limits and price control settings for the New Zealand Emissions Trading Scheme
- 6.2 update the price of carbon and the levy rates for imported goods and motor vehicles, and correct minor errors, in the Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013 ('SGG levy regulations')

Updating the unit settings regulations

- 7 The unit settings regulations will prescribe unit settings for NZ ETS auctions from 2023 to 2028.
- 8 New unit settings for 2028 are mandatory under the Act. Following legal action, I have been directed by the High Court in a judgment issued 13 July 2023¹ to reconsider the unit settings for the years 2023 to 2027.
- 9 The unit settings will determine, for each of those years, the number of New Zealand Units (units) that will be available to be sold at auction, a minimum price below which units cannot be sold, a reserve volume of units that will be released in the event prices at auction hit a prescribed trigger price (or prices), and what that trigger price (or prices) will be.
- 10 The settings in the unit settings regulations implement the policy decisions made by Cabinet on 24 July 2023 [CAB-23-MIN-0330].
- 11 As part of the unit settings decisions, Cabinet agreed to implement a two tier cost containment reserve for the years after 2023. The Climate Change Commission (the Commission), in its 2022 advice, also recommended a two tier cost containment reserve for 2023 itself. At the time Cabinet made this decision I was advised that it would not be possible to implement the two tier system for the auction in December 2023.
- 12 I have now received assurances that the auction system will have this functionality available for December 2023. This paper therefore recommends Cabinet agree that tier one should have a trigger price of \$173 with 2.9 million NZUs available, and tier two should have a trigger price of \$216 with 5.1 million NZUs available. This retains a total of 8.0 million NZUs across both tiers.
- 13 Implementing the two tiers for the cost containment reserve will improve accordance with climate change targets, as it reduces the risk of releasing all the reserve units at once.
- 14 The Commission reviewed the recommended settings for 2023-2028, following Cabinet's decisions. The Commission is in general agreement with the settings that Cabinet has agreed, however, they identified a rounding error which would mean 0.1 million more units would be auctioned in 2024 than they recommend.

¹ Lawyers for Climate Action NZ Incorporated v Minister of Climate Change [2023] NZHC 1835

- 15 Fixing this rounding error would reduce the total 2024 volume of NZUs to be auctioned from 21.9 million to 21.8 million. The overall limit will also be adjusted from 28.0 million to 27.9 million.

Updating the SGG levy regulations

- 16 The carbon price and levy rates prescribed in the SGG levy regulations are updated each year using the methodology specified in regulations. As these amendments are routine and formulaic they do not require Cabinet policy approvals (see paragraph 7.95(d) of the Cabinet Manual).
- 17 SGGs are contained in goods including air-conditioning units, refrigerators and motor vehicle air conditioning units. These gases have high global warming potentials (GWP), which are released into the atmosphere as the product is used, serviced, and disposed of. Importers of bulk SGGs and domestic manufacturers of SGGs are mandatory participants in the NZ ETS.
- 18 Importers of goods containing SGGs, and those who first register motor vehicles containing SGGs, are not mandatory participants in the NZ ETS. Instead, they pay a levy linked to the amount and type of SGG in the item, and the price of carbon.
- 19 The price of carbon is set using a mandatory formula set out in the SGG levy regulations². The price in 2024 will increase to \$71.97 per tonne of carbon dioxide equivalent (CO₂-e). This is an increase of 6 per cent from \$67.63 for 2023. The price of carbon determines the SGG levy rates for each regulated good or motor vehicle containing SGGs according to a formula set out in the Act.
- 20 These proposed amendments to the SGG levy regulations also correct minor errors in the SGG levy good schedule, so that the schedule aligns with the categorisation of imported goods in the New Zealand Working Tariff Document.

Timing and 28-day rule

- 21 Section 30H(3) of the Act provides that the unit settings regulations must come into force at least 3 months after their publication under the Legislation Act 2019 unless, under section 30H(3)(b) of the Act, I consider it is in the national interest that they be made more urgently.
- 22 I recommend that the unit settings regulations come into force on 1 January 2024 in relation to the unit settings for 2028.
- 23 However, the unit settings for 2023 must be in place before the last auction of the year on 6 December 2023. This is necessary in order to ensure that the auction can proceed, and the NZ ETS can continue to function properly.
- 24 I consider the unit settings for 2024-2027 should also come into force sooner than 1 January 2024 so as to correct promptly the errors in the regulations

² the weekly average of the market price of New Zealand Units for the twelve months from 1 July 2022 to 30 June 2023.

identified by the High Court. This is important for regulatory certainty and to ensure that there are validly-made settings in place as soon as practicable.

- 25 Due to this necessity, I am satisfied that early commencement for the years 2023-2027 is in the national interest. I recommend that the unit settings regulations relating to these years come into force on 1 November 2023. This date ensures that the auction operator can publish the auction notice 30 days ahead of the December 2023 auction with the updated settings information (as required by law)³.
- 26 Section 246(4) of the Act provides that the SGG levy regulations must come into force at least 3 months after the date of their publication under the Legislation Act 2019. I recommend the SGG levy regulations commence on 1 January 2024.

Compliance

- 27 All proposed amendments described in this paper are consistent with:
- 27.1 the principles of the Treaty of Waitangi. In developing the NZ ETS unit settings proposed in this paper, the interests, and impacts of the proposals on Māori were considered throughout analysis. During public consultation, the Ministry asked if there were any negative impacts on Māori missed through analysis, and invitations to the public webinars were sent to iwi/Māori NZ ETS stakeholders for input;
 - 27.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 27.3 the principles and guidelines set out in the Privacy Act 2020;
 - 27.4 relevant international standards and obligations;
 - 27.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 28 The annual updating of the unit settings regulations is a statutory requirement under section 30GB(3)(b) of the Act.
- 29 Before recommending the making of the unit settings regulations I must first consider the matters set out in section 30GC(5) and (6) of the Act ('the statutory matters') and then be satisfied that the settings are either: in accordance with emissions budgets, New Zealand's Nationally Determined Contribution under the Paris Agreement ('NDC'), and the 2050 target under the Act; or, if not strictly in accordance with an emissions budget or the NDC, that the discrepancy is justified (with reference to the statutory matters).
- 30 I have complied with these requirements. See Appendix 3 of CAB-23-MIN-0330 for further details.

³ Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020, Regulation 16.

- 31 The annual updating of the SGG levy regulations by calculating levy rates for leviable goods or motor vehicles is a statutory requirement under section 223(1) of the Act.
- 32 Before recommending the making of the SGG levy regulations I must take into account matters set out in section 30W(2) of the Act and have regard to international climate change obligations relating to synthetic gases in accordance with section 246(2) of the Act. I have complied with these requirements.
- 33 Before recommending the unit settings regulations or the SGG levy regulations, under sections 3A(b) and 3B(1) of the Act I must also consult, or be satisfied that the chief executive of the Ministry for the Environment has consulted, the representatives of iwi and Māori that appear likely to have an interest in the regulations, and also any persons or their representatives that appear likely to be substantially affected by the regulations. I have complied with these requirements.

Regulations Review Committee

- 34 I do not consider that there are grounds for the Regulations Review Committee to draw these regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 35 The draft regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 36 The annual update to the carbon price and associated SGG levy is not subject to the RIA requirements. This is under the authority of clause 7.95(d) of the Cabinet Manual, on the basis that these changes being a routine update to secondary legislation that do not require new policy decisions.
- 37 A Regulatory Impact Statement was prepared to inform Cabinet's policy decisions on the NZ ETS unit settings [CAB-23-MIN-0330 refers].

Publicity

- 38 The Ministry for the Environment and the Environmental Protection Authority will initiate follow-up communications to NZ ETS participants and agencies affected by the regulations.
- 39 The Ministry for the Environment will also work with New Zealand Customs and the New Zealand Transport Agency to ensure the levy rate changes and other changes to the levy schedules are understood by persons subject to the levy.

Proactive release

- 40 I intend to proactively release this paper on the Ministry for the Environment's website subject to any redactions as appropriate under the Official Information Act 1982.

Consultation

- 41 The Ministry published a discussion document for public consultation on the updates to the NZ ETS settings. Public webinars occurred as part of this consultation process.
- 42 This paper was circulated with agencies for feedback on 8 August. The agencies consulted included Ministry of Primary Industries, Ministry of Transport, Ministry of Foreign Affairs and Trade, Ministry of Business Innovation and Employment, Department of the Prime Minister and Cabinet, Treasury, Environmental Protection Authority, New Zealand Transport Association, Te Puni Kōkiri and Customs New Zealand.

Recommendations

The Minister of Climate Change recommends that the Cabinet Business Committee:

- 1 **note** that on 24 July 2023 Cabinet agreed to unit limits and price control settings for auctions to sell New Zealand units under the New Zealand Emissions Trading Scheme for the years 2023-2028 [CAB-23-MIN-0330];
- 2 **note** that Cabinet originally agreed to implement price control settings for 2023 consisting of only a single trigger price of \$173 and a cost containment reserve of 8.0 million NZUs due to uncertainties about whether a two-tier approach to the cost containment reserve could be implemented on the auction platform for 2023;
- 3 **note** that the Minister of Climate Change now confirms that the auction platform will be able to implement a two tier approach to the cost containment reserve for the 6 December 2023 auction;
- 4 **note** that implementing the two tier cost containment reserve improves accordance with New Zealand's climate change targets by reducing the risk of releasing all the reserve units at once;
- 5 **agree** that the price controls for 2023 should implement a two tier approach, with the first tier having a trigger price of \$173 and a cost containment reserve volume of 2.9 million NZUs, and the second tier having a trigger price of \$216 and a cost containment reserve volume of 5.1 million NZUs;
- 6 **note** the Climate Change Commission identified a rounding error in the 2024 auction volumes agreed by Cabinet, which means 0.1 million more units would be auctioned in 2024 than it recommends;

- 7 **agree** to fix the rounding error for 2024 settings by reducing the auction volume from 21.9 million to 21.8 million, and the overall limit from 28.0 million to 27.9 million;
- 8 **note** that the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 will give effect to the decisions referred to in recommendation 1;
- 9 **note** that before making the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 the Minister of Climate Change is required to comply with sections 3A(b), 3B(1), 30GC(2), 30GC(3), 30GC(5), 30GC(6), and 30H(3)(b) of the Climate Change Response Act 2002;
- 10 **note** that the Minister of Climate Change advises that the requirements in recommendation 9 have been met;
- 11 **authorise** the submission to the Executive Council of the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023;
- 12 **note** that the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2023 will come into force on 1 January 2024 for the 2028 settings, and will come into force on 1 November 2023 for the settings for the years 2023-2027;
- 13 **note** that the Minister of Climate Change recommends making the Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023 to:
- 13.1 prescribe the price of carbon for the 2024 calendar year; and
- 13.2 prescribe the levy rates for levy goods and motor vehicles using the updated price of carbon for 2024; and
- 13.3 correct minor errors;
- 14 **note** that under these regulations the price of carbon for 2024 will be \$71.97 per tonne of carbon dioxide equivalent;
- 15 **note** that before recommending the making the Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023 the Minister of Climate Change is required to comply with sections 3A(b), 3B(1), 30W(2), and 246(2) of the Climate Change Response Act 2002;
- 16 **note** that the Minister of Climate Change advises that the requirements in recommendation 15 have been met;

- 17 **authorise** the submission to the Executive Council of the Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023;
- 18 **note** that the Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2023 will come into force on 1 January 2024.

Authorised for lodgement

Hon James Shaw

Minister of Climate Change