



Ministry for the
Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Hon Simon Watts	Portfolio	Climate Change
Name of package	Approval to Consult: NZ ETS Settings and Annual Regulatory Updates 2024 - proactive release of Cabinet material	Date to be published	27 May 2024

List of documents that have been proactively released		
<i>Date</i>	<i>Title</i>	<i>Author</i>
27 May 2024	<ol style="list-style-type: none"> Approval to Consult: NZ ETS Settings and Annual Regulatory Updates 2024 ECO-24-MIN-0075 Minute Approval to Consult NZ ETS Settings and Annual Regulatory Updates 2024 	Ministry for the Environment
<p>Information redacted YES / NO</p> <p>Any information redacted in the document “Approval to Consult: NZ ETS Settings and Annual Regulatory Updates 2024” is redacted in accordance with the Ministry for the Environment’s policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.</p> <p>No information has been redacted in the document “ECO-24-MIN-0075 Minute Approval to Consult NZ ETS Settings and Annual Regulatory Updates 2024”.</p> <p>Summary of reasons for redaction</p> <p>Some information has been withheld for the reasons of maintaining legal professional privilege and the confidentiality of advice tendered by officials.</p>		

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SENSITIVE**Sensitive**

Office of the Minister of Climate Change

ECO – Cabinet Economic Policy Committee

Approval to Consult: NZ ETS Settings and Annual Regulatory Updates 2024

Purpose

1. I seek Cabinet approval for the Ministry for the Environment to:
 - 1.1 publicly consult on options, including advice from the Climate Change Commission (the Commission), on price and unit volume settings for the New Zealand Emissions Trading Scheme (NZ ETS) regulations to meet requirements of the Climate Change Response Act 2002 (the Act); and
 - 1.2 publicly consult on routine technical changes to other NZ ETS regulations.

Relation to government priorities

2. The proposals in this paper support the coalition agreements between the National Party and our coalition partners: restoring confidence and certainty in the NZ ETS, and strengthening and streamlining Government regulation.
3. This paper also supports fulfilling consultation requirements in the Act.

NZ ETS Overview

4. The NZ ETS helps to reduce emissions by requiring businesses to measure and report on their emissions, and requiring them to surrender New Zealand Units (NZUs) for each tonne of emissions that they emit.
5. There is a cap on NZUs in the NZ ETS. This limits the quantity of emissions that can be emitted, in line with emissions budgets as required by the Act. 9(2)(f)(iv)
6. Businesses who participate in the NZ ETS can buy and sell units from each other. The price for units reflects supply and demand in the scheme. This price signal incentivises businesses to make economically efficient choices about how to reduce emissions.

Summary of Proposals

Consultation on annual updates to unit settings

7. Section 30GB of the Act requires the Government to update regulations for NZ ETS unit settings each year, for the next five years. The Commission has recommended updated NZ ETS settings.
8. The Act sets out a process for updating the regulations:
 - 8.1 Section 30GC of the Act requires that I consider the recommendations of the Commission;

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- 8.2 Section 3B of the Act requires consultation before updating NZ ETS regulations.
9. The Government has no obligation to agree with the Commission's recommendations. The Government will make final decisions on NZ ETS price and volume settings in August 2024. Public consultation supports the statutory requirement for the Minister to consider the Commission's recommendations.
 10. I seek Cabinet approval to release a consultation document with options for updating NZ ETS unit setting regulations for the next five years. Options include continuing with status quo unit settings, changes to unit settings in line with the Commission's recommendations, and other options, including on settings around price. The document does not indicate any preferred option.
 11. The Commission's recommendations include a reduction in NZ ETS auction volumes through to 2028 of 20 million units. This is a 50 per cent reduction of auction volumes but only 7 per cent of total NZ ETS units through to 2028, since 93 per cent of NZ ETS units are privately held or released through other channels (such as industrial allocations, forestry removals, etc.). The proposed reduction in auction volumes is intended to reduce the number of NZUs in private holdings over time. The Commission considers the increase in privately held NZUs is a risk to meeting emission budgets.
 12. If, following consultation and Cabinet decisions, the Commission's recommendation to reduce auction volumes was adopted, that could lead to upward support for the price of NZUs, all other things being equal. This would influence both incentives to reduce emissions and the amount of cash received from auctions.

Consultation on technical updates to NZ ETS regulations

13. I seek Cabinet approval to release a second document on other technical and operational updates to the NZ ETS. These annual updates are routine. Their purpose is to maintain the efficiency and accuracy of the NZ ETS.
14. The proposed technical changes cover the following matters:
 - 14.1 Updating default emissions factors (DEFs) and/or unique emissions factors (UEFs) for geothermal, natural gas, and liquid fossil fuels;
 - 14.2 Making clarifications and corrections to several regulatory issues introduced in past drafting, in particular those that impact the waste sector;
 - 14.3 Resolving ambiguity on several operational matters, such as definitions and formulae.
15. As with unit settings, no decisions are being sought on the technical updates now, only approval to publicly consult.
16. I seek Cabinet delegation to authorise me to issue drafting instructions post-consultation on purely technical matters, to reduce pressure on the key drafting window for unit settings. This includes: routinely updating DEFs and UEFs (provided there are no changes to how participants report their emissions, or any significant economic or other implications); correcting errors in the NZ ETS regulations; and similar minor or technical changes consistent with Government policy.
17. However, two technical items may have non-minor impacts:

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- 17.1 'Updating DEFs and UEF methodologies for geothermal activities,' which would change how geothermal participants report their emissions based on suggestions from this sector;
- 17.2 'Updating DEFs for liquid fossil fuels,' which, while the proposal is purely technical, may result in changes to fuel prices.
- 18. I will return to Cabinet for policy decisions on these two matters alongside unit settings post-consultation.
- 19. In addition, Cabinet will have an opportunity to consider all updates, including technical items proposed for delegation, once drafting has been complete, to approve publication of the new regulations no later than 30 September 2024.


Next steps

- 20. I propose that the Ministry for the Environment publicly consult on the appended consultation documents from early May to mid-June 2024. Consultation on both documents needs to begin shortly so that decisions on NZ ETS unit settings can be made in early August (at the latest) to ensure they can be drafted as regulations and approved by the 30 September 2024 deadline required by section 30H of the Act.
- 21. I will return to Cabinet following consultation to seek approval on policy decisions.

Impacts on emissions reductions

- 22. Approving consultation has no emissions impacts.
- 23. Emissions impacts will be further described when I seek policy decisions post-consultation.

Impacts on other work programmes

- 24. There are several work programmes underway that have some relationship with emission unit prices and the functioning of the NZ ETS, and therefore on how submitters and stakeholders may view and respond to the proposals in these consultation documents. These include the following:
 - 24.1 Work on limiting whole-farm conversions to exotic forestry on high and medium-quality land from registering in the NZ ETS;
 - 24.2 9(2)(f)(iv) 
- 25. Policy impacts on other work programmes will be further described when I seek policy decisions post-consultation.

Proposal to consult

- 26. I have appended two consultation documents that describe options for updates to NZ ETS unit settings and to other regulations that govern the NZ ETS respectively:

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- 26.1 Annual Updates to the New Zealand Emissions Trading Scheme Limits and Price Control Settings for Units 2024;
- 26.2 Proposed Changes to New Zealand Emissions Trading Scheme Regulations 2024.
- 27. I propose to consult on these papers from mid-May to mid-June 2024.
- 28. Due to the legal requirement to publish unit settings updates before the end of September 2024, the timeframes only allow for less than the standard six weeks of public consultation (currently proposed for just over four weeks).

Cost-of-living implications

- 29. There are no cost-of-living implications of approving consultation.
- 30. Cost-of-living implications will be further described when I seek policy decisions post-consultation.

Financial implications

- 31. There are no financial implications of approving consultation.
- 32. Financial implications of proposed updates will be further described when I seek policy decisions post-consultation.

Legal implications [legally privileged]

9(2)(h)



9(2)(h)



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9(2)(h)

Legislative implications

40. Amendments to a number of regulations under the Act may be required. Drafting approval for these would be sought at the time of policy decisions mid-year.
41. I seek Cabinet's delegation to issue drafting instructions post-consultation for some of the technical updates (not including any unit settings or technical updates with more-than-minor economic or cost-of-living impacts). These drafting instructions would be issued in June and July 2024, allowing the Parliamentary Counsel Office (PCO) to draft purely technical amendments sooner, reducing pressure on the key drafting period for unit settings, to support their busy drafting schedule.

Impact analysis*Regulatory Impact Statement (RIS)*

42. Regarding regulatory impact analysis of proposals relating to **unit settings**:
43. *A quality assurance panel comprising members from the Ministry for the Environment has reviewed this consultation document and considers it **partially meets** the Treasury's quality assurance criteria. The NZ ETS unit settings objectives are well explained, and the consultation document clearly articulates its options, including by reference to the Commission's role and recommendations, while still leaving scope for submitters to call for alternatives.* 9(2)(g)(i)
44. For **other proposals** for NZ ETS regulations, requirements varied across updates:
- 44.1 The majority of updates proposed in the consultation document on other regulatory updates are purely technical and operational. Officials at the Ministry

9(2)(g)(i)

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for the Environment and the Treasury have agreed that a set of these proposals are **exempt** from regulatory impact analysis requirements.

- 44.2 Three updates presented in this consultation document are likely to have more-than-minor impacts or involve decisions on policy intent. Regarding impact analysis of these three updates:

*A quality assurance panel comprising members from the Ministry for the Environment has reviewed the consultation document for the above regulatory proposals. The panel considers that it **meets** the Quality Assurance criteria. The consultation document clearly sets out the context for the issues. The language used in the document is appropriate for the technicality and the audience of the consultation document. Due to the nature of the document, the consultation criterion has not been taken into consideration as part of the quality assurance process. Overall, the quality assurance panel considers it to be convincing, and will support informed and effective consultation.*

Climate Implications of Policy Assessment (CIPA)⁴

45. Regarding CIPA requirements for proposals relating to **unit settings**:

*The CIPA team has been consulted and confirms that the CIPA requirements **do not apply** to this proposal as the threshold for significance is not met. However, it is expected that there will be emissions impacts as a result of further decisions required following consultation. Any emissions impacts will be reassessed and disclosed to Cabinet as appropriate.*

46. Regarding CIPA requirements for **other proposals** to NZ ETS regulations:

*The CIPA team has been consulted and confirms that the CIPA requirements **do not apply** to this proposal as the impacts are indirect. This proposal is not able to be meaningfully quantified and it is unclear if it would have any impact on emissions; however, it is expected to improve the functioning of the NZ ETS and therefore to lead to improved emissions reductions outcomes over time. Likely emissions impacts will be reassessed and disclosed to Cabinet as further decisions are required following consultation.*

Population implications

47. There are no population implications for approving consultation. Population implications of any updates proposed will be further described when I seek policy decisions post-consultation.

Te Tiriti o Waitangi implications

48. There are no Te Tiriti implications for approving consultation. The Act requires the Minister to consult with representatives of iwi and Māori likely to have an interest in proposed changes to NZ ETS regulations.
49. Māori have a significant interest in climate change action. Consultation allows me to seek feedback on specific impacts on Māori from the proposals.

⁴ The Climate Implications of Policy Assessment is a requirement for central government agencies to estimate and disclose the greenhouse gas emissions implications when certain types of proposals are presented to Cabinet, alongside regulatory impact analysis. See the Cabinet Office circular CO(20)3.

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50. There are no inconsistencies between these proposals and the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Use of external resources

51. No external resources were contracted for the development of this paper.

Consultation

52. The Treasury, the Department of Prime Minister and Cabinet, the Ministry of Foreign Affairs and Trade (MFAT), the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Environmental Protection Authority, the Ministry of Transport, the Ministry of Social Development, Waka Kotahi New Zealand Transport Agency, Te Arawhiti, and Te Puni Kōkiri were consulted on this paper.
53. Where I received feedback, it has been considered and incorporated as appropriate.

Communications

54. Notification of consultation will be sent to NZ ETS stakeholders the day before the consultation is launched. Consultation documents will then be published on the Ministry for the Environment (MfE) website prior to market opening the following day.
55. A range of stakeholders that are specifically affected by routine technical regulatory updates have been engaged throughout the development of those proposals. These stakeholders expect public consultation to form part of the ongoing regulatory update process prior to Cabinet approving amendments.

Proactive release

56. I propose to proactively release this paper on the MfE website in the first week of consultation, subject to appropriate redactions under the Official Information Act 1982.

Recommendations

The Minister of Climate Change recommends that the Committee:

1. **note** that the Minister of Climate Change (the Minister) must be satisfied that consultation has occurred before Cabinet makes policy decisions on updates to New Zealand Emissions Trading Scheme (NZ ETS) regulations, including the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020;

Updates to NZ ETS unit settings

2. **note** that each year the Minister is required by the Climate Change Response Act 2002 (the Act) to update NZ ETS regulations to determine unit settings for the following five-years;
3. **note** that the Climate Change Commission (the Commission) has recommended updates to the Minister;
4. **note** that the Minister has a statutory obligation to consider the Commission's recommendations;

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5. **note** that publicly consulting on the Commission's recommendations helps to demonstrate compliance with the statutory requirement to consider the Commission's recommendations;
6. **note** that the consultation document includes options for unit limit and auction price control settings, including advice provided by the Commission, alongside other options including the status quo;
7. **note** the Government will need to make final policy decisions on NZ ETS unit settings in August 2024 to meet legislated deadlines;
8. **note** the Government is not obliged to agree with the Commission's recommendations when it makes final policy decisions;

Updates to other NZ ETS regulations

9. **note** that the regulations governing the NZ ETS require regular updates to maintain the integrity of the scheme, and that such updates are expected by NZ ETS participants;
10. **note** that the majority of updates proposed are technical and operational, requiring no policy decisions other than whether or not to progress the update;
11. **note** that items not considered minor or technical will return to Cabinet for policy decisions alongside unit settings following consultation, including any items that impact fuel prices, or have more-than-minor economic or cost-of-living impacts;

Delegation of technical updates

12. **agree** that the Minister is authorised to make post-consultation decisions on the purely technical matters, including to issue drafting instructions under clause 7.95(d) of the Cabinet Manual, this year and in future years;
13. **agree** that 'purely technical matters' refers to: routinely updating default and unique emissions factors (provided there are no changes to how participants report their emissions, or any significant economic or other implications); correcting errors in the NZ ETS regulations; and similar minor or technical changes consistent with Government policy;
14. **note** that the Minister will seek Cabinet approval of the amended regulations, once they have been drafted, no later than 30 September 2024, including the drafted regulations for any updates where the authority to issue drafting instructions has been delegated;

Consultation

15. **approve** the Minister to direct officials to carry out public consultation of the two sets of updates proposed to NZ ETS regulations;
16. **agree** to release the attached documents to support consultation on these updates:
 - 16.1 Annual Updates to the New Zealand Emissions Trading Scheme Limits and Price Control Settings for Units 2024;

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16.2 Proposed Changes to New Zealand Emissions Trading Scheme Regulations 2024;

17. **note** that the consultation period will start before the end of the week in which Cabinet approves the release of these documents, and run for a minimum of four weeks;
18. **agree** that the Minister can make minor design, editorial, and technical changes to the consultation documents as needed prior to their release;
19. **note** that the Minister will seek policy decisions and Cabinet approval to issue drafting instructions for amendment regulations no later than 1 August 2024.

Authorised for lodgement

Hon Simon Watts

Minister of Climate Change