



# PROACTIVE RELEASE COVERSHEET: NZ ETS settings LEG paper and accordance assessment

<b>Minister</b>	Hon Simon Watts	<b>Portfolio</b>	Climate Change
<b>Name of package</b>	NZ ETS settings LEG and accordance assessment	<b>Date to be published</b>	Once approved by the Minister

List of documents that have been proactively released		
<b>Date</b>	<b>Title</b>	<b>Author</b>
On approval by Minister	1. Cabinet paper: <i>Amendments to the New Zealand Emissions Trading Scheme (NZ ETS) Regulations</i>	Office of the Minister of Climate Change
	2. Cabinet minute: LEG-24-MIN-0190 <i>Amendments to the New Zealand Emissions Trading Scheme (NZ ETS) Regulations</i>	Cabinet Office
	3. Appendix One: 2025-2029 unit limits and price control settings accordance assessment	Office of the Minister of Climate Change
<b>Information redacted</b> <b>YES / NO</b>  Any information redacted is 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.  <b>Summary of reasons for redaction</b>  Some information has been withheld for the reasons of maintaining legal professional privilege and the confidentiality of advice tendered by officials.		

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<b>Title</b>	<b>Redactions</b>
Cabinet paper: <i>Amendments to the New Zealand Emissions Trading Scheme (NZ ETS) Regulations</i>	N/A
Cabinet minute: LEG-24-MIN-0190 <i>Amendments to the New Zealand Emissions Trading Scheme (NZ ETS) Regulations</i>	N/A
Cabinet paper: <i>New Zealand Emissions Trading Scheme unit limits and price control settings for 2025-2029</i>	Section 9(2)(h) to maintain legal professional privilege Section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials

Office of the Minister of Climate Change

LEG – Cabinet Legislation Committee

## Amendments to the New Zealand Emissions Trading Scheme (NZ ETS) Regulations

### Proposal

- 1 I propose that the Cabinet Legislation Committee authorises the submission to the Executive Council of the following amendment regulations:
  - 1.1 Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2024;
  - 1.2 Climate Change (Liquid Fossil Fuels) Amendment Regulations 2024;
  - 1.3 Climate Change (Other Removal Activities) Amendment Regulations 2024;
  - 1.4 Climate Change (Stationary Energy and Industrial Processes) Amendment Regulations 2024;
  - 1.5 Climate Change (Unique Emissions Factors) Amendment Regulations 2024;
  - 1.6 Climate Change (Unit Register) Amendment Regulations 2024; and
  - 1.7 Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2024.
- 2 These regulations are included as an attachment to this paper.

### Executive summary

- 3 This paper seeks Cabinet approval to amend regulations that set New Zealand Emissions Trading Scheme (NZ ETS) unit limits and price controls.
- 4 It also seeks Cabinet agreement to technical amendments to multiple sets of NZ ETS regulations, including annual amendments that set 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 NZ ETS;
  - 6.2 make technical updates to multiple sets of NZ ETS regulations, including:

- 6.2.1 additional technical amendments to the Unit Settings Regulations;
  - 6.2.2 the Climate Change (Liquid Fossil Fuels) Regulations 2008 ('LFF Regulations');
  - 6.2.3 the Climate Change (Other Removal Activities) Regulations 2009 ('ORA Regulations');
  - 6.2.4 the Climate Change (Stationary Energy and Industrial Processes) Regulations 2009 ('SEIP Regulations');
  - 6.2.5 the Climate Change (Unique Emissions Factors) Regulations 2009 ('UEF Regulations'); and
  - 6.2.6 the Climate Change (Unit Register) Regulations 2008 ('Unit Register Regulations').
- 6.3 update the price of carbon and the levy rates for imported goods and motor vehicles in the Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013 ('SGGL Regulations').

*Updating the Unit Settings Regulations*

- 7 The Unit Settings Regulations will prescribe unit settings for NZ ETS auctions from 2025 to 2029. New unit settings for 2029 are mandatory under the Act.
- 8 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.
- 9 The settings in the Unit Settings Regulations implement the policy decisions made by Cabinet on 19 August 2024 [CAB-24-MIN-0303, CBC-24-MIN-0083 refer].
- 10 As there are differences between the Climate Change Commission's (the Commission) recommendations and what Cabinet agreed to [CAB-24-MIN-0303 refer], a report outlining the reasons for difference is required to be presented to the House and made publicly available under 30GC(7) of the Act.

*Technical updates to NZ ETS regulations*

- 11 Multiple sets of regulations under the Act support and govern the NZ ETS. It is important to regularly review and update these regulations to maintain the efficiency and accuracy of the NZ ETS.
- 12 The amendments to these regulations implement the policy decisions made by Cabinet on 19 August 2024 [CAB-24-MIN-0303, CBC-24-MIN-0084 refer], as well as the decisions made by the Minister of Climate Change under the delegation provided by Cabinet on 13 May 2024 [CAB-24-MIN-0156, ECO-24-MIN-0075 refer].
- 13 The draft regulations for Cabinet's approval include the following amendments:
  - 13.1 The Unit Settings Regulations are amended to include an improved formula for calculating the collateral that auction participants must submit, better aligning

the amount submitted with the amount paid if successful, potentially reducing upfront costs to participants;

- 13.2 The LFF Regulations are amended with new default emissions factors (DEFs), reflecting the chemical composition of fuels consumed in New Zealand, in particular after the closure of Refining NZ's Marsden Point Oil Refinery. In addition, references in these regulations to the tariff and excise duties tables (managed by NZ Customs) are corrected;
- 13.3 The ORA Regulations are amended to clarify that SGGs destroyed domestically can be recognised and awarded with units;
- 13.4 The SEIP Regulations are amended with new DEFs for both the geothermal and natural gas sectors, based on recent data from those sectors;
- 13.5 The UEF Regulations are amended with new methodologies for recognising the reinjection of "non-condensable gases" back into the geothermal reservoirs, avoiding the emission of these gases to the atmosphere.
- 13.6 In addition, three error corrections/clarifications are made relating to the waste sector in the UEF Regulations, including to:
  - 13.6.1 the reference to the waste DEF in the Climate Change (Waste) Regulations 2010;
  - 13.6.2 the historical waste composition values for reporting emissions from waste over time; and
  - 13.6.3 the ability for offsite destruction of landfill gases to be recognised.
- 13.7 The Unit Register Regulations are amended with clarifications to the definition of a qualified person, and how this definition is used in subsequent clauses, to mitigate the risk of unsuitable individuals being allowed to manage holding accounts in the New Zealand Emissions Trading Register (the Unit Register).

#### *Updating the SGGL Regulations*

- 14 The carbon price and levy rates prescribed in the SGGL 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 [paragraph 7.95(d) of the Cabinet Manual refers].
- 15 Synthetic greenhouse gases (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.
- 16 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.
- 17 The price of carbon is set using a mandatory formula set out in the SGGL Regulations, based on a weekly average of NZU values from the previous 12 months. The price in

2025 will decrease to \$62.32 per tonne of carbon dioxide equivalent. This is a change of approximately 13 per cent from the 2024 price of carbon (\$71.97).

- 18 The price of carbon is then used to calculate the SGGL rates for each regulated good or motor vehicle containing SGGs according to a formula set out in the Act. Some penalties under the Act also refer to the price of carbon.

### Timing and 28-day rule

- 19 Section 30H(3) of the Act provides that the Unit Settings Regulations must come into force 3 months after their publication under the Legislation Act 2019, or on any later date specified in the regulations.

### Compliance

- 20 All proposed amendments described in this paper are consistent with:
- 20.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 20.2 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;
  - 20.3 the principles and guidelines set out in the Privacy Act 2020;
  - 20.4 relevant international standards and obligations;
  - 20.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 21 The annual updating of the Unit Settings Regulations is a statutory requirement under section 30GB(3)(b) of the Act.
- 22 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).
- 23 I have complied with these requirements. See Appendix 1 – Assessment of Accordance 2024 for further details.
- 24 The annual updating of the SGGL Regulations by calculating levy rates for leviable goods or motor vehicles is a statutory requirement under section 233(1) of the Act.
- 25 Before recommending the making of the SGGL Regulations I must take into account matters set out in section 30W(2) of the Act:

- 25.1 The price of units used to calculate revenue from the NZ ETS in the Crown annual financial statements in the preceding 12 months;
- 25.2 The price of units sold by auction in the preceding 12 months;
- 25.3 Any changes to the operation of the NZ ETS that have affected the price of the units surrendered, or may do so before the end of the next levy year.
- 26 I have been advised on these three matters and have complied with this requirement.
- 27 Before recommending the Unit Settings Regulations and other regulations that govern the NZ ETS, under sections 3A(b) and 3B of the Act I must also consult, or be satisfied that the Chief Executive of the Ministry for the Environment has consulted any persons or their representatives that appear likely to be substantially affected by the regulations, and also the representatives of iwi and Māori that appear likely to have an interest in the regulations. I have complied with these requirements by consulting with the public from 15 May to 14 June 2024 on two consultation documents, Annual updates to New Zealand Emissions Trading Scheme limits and price control settings for units 2024 and Proposed changes to New Zealand Emissions Trading Scheme regulations 2024.

### **Regulations Review Committee**

- 28 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**

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

### **Impact analysis**

- 30 A Regulatory Impact Statement (RIS) was prepared to inform Cabinet's policy decisions on the NZ ETS unit settings [CAB-24-MIN-0303 refers].
- 31 The technical regulatory updates, along with the price of carbon and SGG levy rates, are not subject to the RIS requirements. This is under the authority of clause 7.95(d) of the Cabinet Manual, on the basis that these changes are a routine update to secondary legislation that does not require new policy decisions.

### **Publicity**

- 32 The Ministry for the Environment and the Environmental Protection Authority will collaborate to initiate follow-up communications to NZ ETS participants and agencies affected by the regulations.
- 33 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 SGG levy.

## Proactive release

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

## Consultation

- 35 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.
- 36 This paper was circulated with agencies for feedback on 23 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 Agency, Te Puni Kōkiri, Te Arawhiti and Customs New Zealand.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that, on 19 August 2024, 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 2025–2029 [CAB-24-MIN-0303 refer];
- 2 **note** that Cabinet agreed to update limits for units and maintain the current price control settings, including the cost containment reserve volumes, with minor changes made to reflect Treasury Budget 2024 inflation forecasts, and to extend the price control settings to 2029;
- 3 **note** that the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2024 will give effect to the decisions referred to in recommendation 1;
- 4 **note** that before making the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2024 the Minister of Climate Change is required to comply with sections 3A(b), 3B, 30GC(2), 30GC(3), 30GC(4), 30GC(5), 30GC(6), and 30H(3)(b) of the Climate Change Response Act 2002;
- 5 **note** that the Minister of Climate Change advises that the requirements in recommendation 4 have been met;
- 6 **authorise** the submission to the Executive Council of the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2024;
- 7 **note** that the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2024 will come into force on 1 January 2025
- 8 **note** that the Minister of Climate Change recommends making the following amendment regulations under the delegation provided by Cabinet on 13 May 2024 [CAB-24-MIN-0156, ECO-24-MIN-0075 refer]:



**IN CONFIDENCE**

- 8.1 make the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2024 to include an improved formula for calculating the collateral that auction participants must submit;
  - 8.2 make the Climate Change (Other Removals Activities) Amendment Regulations 2024 to clarify that SGGs destroyed domestically can be recognised and awarded with NZUs;
  - 8.3 make the Climate Change (Stationary Energy and Industrial Processes) Amendment Regulations 2024 to prescribe new DEFs for the natural gas sector;
  - 8.4 make the Climate Change (Unique Emissions Factors) Amendment Regulations 2024 to correct or clarify:
    - 8.4.1 the reference to the waste DEF in the Climate Change (Waste) Regulations 2010;
    - 8.4.2 the historical waste composition values for reporting emissions from waste over time; and
    - 8.4.3 the recognition of offsite destruction of landfill gases;
  - 8.5 make the Climate Change (Unit Register) Amendment Regulations 2024 to clarify the definition of a qualified person, and clarify the uses of this definition in subsequent clauses relating to managing holding accounts in the Unit Register;
- 9 **note** that, on 19 August 2024, Cabinet agreed to updates to regulations affecting the geothermal and liquid fossil fuel sectors [CAB-24-MIN-0303, CBC-24-MIN-0084 refer], including to:
- 9.1 make the Climate Change (Liquid Fossil Fuels) Amendment Regulations 2024 to prescribe new DEFs for obligation fuels, and to update cross-references to the tariff and excise duties tables;
  - 9.2 make the Climate Change (Unique Emissions Factors) Amendment Regulations 2024 to include new methodologies for recognising the reinjection of “non-condensable gases” back into the geothermal reservoirs.
- 10 **note** that the Minister of Climate Change recommends making the Climate Change (Synthetic Greenhouse Gas Levies) Amendment Regulations 2024 to:
- 10.1 prescribe the price of carbon for the 2025 calendar year to be \$62.32 per tonne of carbon dioxide equivalent; and
  - 10.2 prescribe the levy rates for levy goods and motor vehicles using the updated price of carbon for 2025.
- 11 **note** that the Minister of Climate Change advises that the requirements of sections 3A, 3B, 30G, 30GA, 30H, 30W, 163, 164, 166, 168, 244, 245, and 246 of the Act have been met in relation to updating the amendment regulations listed in recommendations 8, 9 and 10;

**I N C O N F I D E N C E**

- 12 **authorise** the submission to the Executive Council of the amendment regulations listed in recommendations 8, 9 and 10;
- 13 **note** that the amendment regulations listed in recommendations 8, 9, and 10 will come into force on 01 January 2025.

Authorised for lodgement

Hon Simon Watts

Minister of Climate Change