

Policy and Privacy

Sensitive

Office of the Minister of Climate Change

LEG - Cabinet Legislation Committee

Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2022

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 2022.
- 2 These regulations are included as an attachment to this paper.

Policy

- 3 I propose updating the regulations for New Zealand Emissions Trading Scheme limits and price control settings for units (NZ ETS unit settings) in the way agreed by Cabinet on 28 November 2022 [CAB-22-MIN-0533].
- 4 The Climate Change Commission provided advice on NZ ETS unit settings, and this advice is something that I must consider when recommending these updates to regulations. The Commission recommended two adjustments to the calculation of auction volumes, which would have had material flow-on impacts on limits for units. One of these two adjustments is being implemented. The net result is a small reduction in auction volumes compared to the status quo.
- 5 The Commission advised significant increases to the price control settings. The Commission's recommendations on price control settings have not been accepted. Instead, status quo price control settings are being extended and updated to account for rates of inflation.
- 6 The regulations contain NZ ETS unit settings for 2027 to comply with the statutory requirement that they always cover each of the next five calendar years. Additionally, the updates to regulations:
 - 6.1 address the existing 'stockpile' of privately held New Zealand Units.
 - 6.2 adjust the supply of units via auction to ensure that units sold at auction do not include units outside emissions budgets.

Timing and 28-day rule

- 7 I seek a waiver of the 28-day rule, which requires that regulations must not come into force until at least 28 days after they have been notified in the New Zealand Gazette for these regulations. It is a statutory requirement that NZ ETS unit settings are at all times in place for each of the next five calendar years. To comply with this statutory requirement, these regulations must come into force on or before 1 January 2023.
- 8 Given the timing of Cabinet decisions on NZ ETS settings, it is not possible to allow for 28 days before implementation of the updates and meet the statutory requirement they come into force on or before 1 January 2023.

Compliance

- 9 Amendments to regulations described in this paper are consistent with:
 - 9.1 the principles of the Treaty of Waitangi. In developing the proposals 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 webinars were sent to iwi/Māori NZ ETS stakeholders for input into the proposals;
 - 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 9.3 the principles and guidelines set out in the Privacy Act 2020;
 - 9.4 relevant international standards and obligations;
 - 9.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 10 These amendment regulations are made under section 30GB of the Climate Change Response Act 2002 (the Act). The consultation processes described under this section and sections 3A and 3B of the Act were followed, and I am confident that consultation requirements have been met.
- 11 Section 30GB and clause 7 of Schedule 1AA of the Act detail the circumstances under which settings that are able to be updated. The proposed changes in these regulations are consistent with this.
- 12 Matters that must be considered when making regulations about NZ ETS unit settings are detailed in sections 30GB and 30GC of the Act. I have considered these matters.
- 13 I am satisfied that all statutory requirements, including consultation requirements, for the making of these regulations have been met.

Regulations Review Committee

- 14 I do not consider that there are grounds for the Regulations Review Committee to draw the regulations described in this paper to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

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

Impact Analysis

Regulatory Impact Statement

- 16 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approval was sought of the policy relating to the regulations [CAB-22-MIN-0533 refers].

Publicity

- 17 I intend to announce the updates to NZ ETS limits and price control settings implemented by these regulations on or around 13 December 2022.

Proactive Release

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

Consultation

- 19 The Ministry published a discussion document for public consultation on the updates to NZ ETS limits and price control settings for units. Public webinars occurred as part of this consultation process.
- 20 Ministerial and agency consultation has not been able to take place for this Cabinet paper due to the time constraints resulting from the need to have amendment regulations in place to take effect on 1 January 2023. However, Ministerial and agency consultation did take place ahead of policy decisions relating to these regulations [CAB-022-MIN-0533 refers].

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 28 November 2022 Cabinet agreed to update and extend the New Zealand Emissions Trading Scheme limits and price control settings for units [CAB-22-MIN-0533];

- 2 note that the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2022 will give effect to the decisions referred to in paragraph 1 above;
- 3 note that I am required to comply with statutory requirements described in sections 3A, 3B, 30GB, and 30GC of the Climate Change Response Act 2002;
- 4 note the advice of the Minister of Climate Change that those requirements have been met
- 5 authorise the submission to the Executive Council of the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2022;
- 6 note that a waiver of the 28-day rule is sought:
 - 6.1 so that the regulations can come into force on 1 January 2023;
 - 6.2 on the grounds that it is a statutory requirement that NZ ETS unit settings are at all times in place for each of the next five calendar years;
- 7 agree to waive the 28-day rule so that the regulations can come into force on 1 January 2023;

Authorised for lodgement

Hon James Shaw

Minister of Climate Change