



# Annual update to NZ ETS Unit Supply and Price Control settings - timing considerations

Date Submitted:	5 April 2022	Tracking #: BRF-1408	
Security Level	Policy and Privacy In-Confidence	MfE Priority:	Not Urgent

	Action sought:	Response by:
Hon James SHAW, Minister of Climate Change	Agree to recommended actions in this briefing	11 April 2022

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments #	Nil

## Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Dave Hodson		
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Director	Hemi Smiler		

# Annual update to NZ ETS Unit Supply and Price Control settings - timing considerations

## Key Messages

1. The Climate Change Response Act 2002 (the Act) requires you to recommend making of amendment regulations to ensure that, at all times, regulations prescribe NZ ETS unit limit and price control settings for each of the next five calendar years. This means these settings must be updated to include 2027 prior to 31 December 2022.
2. You must consider advice from the Climate Change Commission (the Commission) when making these recommendations. The Commission's advice will not be available until 15 July 2022. The Commission's advice is dependent on being able to consider the finalised emissions budgets and emissions reduction plan.
3. Receiving this advice on 15 July 2022 will result in significant timing pressure to meet statutory deadlines.
4. To meet the statutory deadline for these amendments to take effect, there are two approaches available:
  - a. truncate normal process, including reduced public consultation and ministerial consultation timeline for Cabinet papers
  - b. consult on settings prior to receipt of the Commission's advice, and without the opportunity to reflect their advice during the consultation.
5. We recommend early provision of emissions budgets and the emissions reduction plan to the Commission to support their work.

## Recommendations

We recommend that you:

- a. **Note** that you must recommend making of amendment regulations during 2022 to update NZ ETS unit limit and price control settings (unit settings) in the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020  
**NOTED**
- b. **Note** that you must consider advice from the Climate Change Commission on these settings when making these recommendations  
**NOTED**
- c. **Note** that the Climate Change Commission's advice on unit settings will not be available until 15 July 2022  
**NOTED**

- d. **Note** that you must make these recommendations in sufficient time for amendment regulations to be published in the New Zealand Gazette by 31 December 2022

**NOTED**

- e. **Note** that there are material timing pressures that must be overcome to enable this statutory deadline to be met

**NOTED**

- f. **Note** that these timing pressures will be somewhat lessened if Cabinet delegates a decision on authorising consultation to a subset of Ministers

**NOTED**

- g. **Agree** to instruct officials to support you seeking this Cabinet delegation

**Yes/No**

- h. **Agree** to early embargoed provision of the emissions reduction plan and emissions budgets to the Climate Change Commission to support its preparation of advice on unit settings

**Yes/No**

- i. **Agree** to request a reduced period of five working days if required for all rounds of ministerial consultation required during this process

**Yes/No**

- j. **Agree** in principle to a public consultation of four weeks, with further advice to be provided on a consultation process to mitigate the risk of this reduced period (**recommended option**)

**Yes/No**

**OR**


- k. **Agree** to consulting before the Commission's advice on unit settings is available (**not recommended**)

**Yes/No**

- l. **Note** the indicative timeline for this work

**NOTED**

## Signature

Hemi Smiler Director – Climate Mitigation <b>Climate Change Directorate</b>	
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Hon James SHAW, Minister of Climate Change	
Date	

## Purpose

6. The purpose of this briefing is to inform you of timing pressures in meeting the statutory deadline to extend and update NZ ETS unit limit and price control settings (unit settings) in 2022.
7. Meeting this statutory deadline will only be possible by either consulting prior to receipt of advice from the Commission on these settings or applying a truncated process. An indicative timeline and detail on a recommended truncated process to meet the deadline is provided.

## Context

8. The Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 (Auctioning Regulations) prescribe the following NZ ETS unit limit and price control settings for 2022-2026:
  - a. NZUs available by auction
  - b. approved overseas units used
  - c. overall limit on units
  - d. auction reserve price
  - e. cost containment reserve trigger price
  - f. cost containment reserve trigger volume.
9. Auctioning Regulations must, at all times, prescribe unit limit and price control settings for each of the next five calendar years. Section 30GB(3)(b) of the Act requires you to recommend the making of amendment regulations to ensure that this requirement is met. These settings must be updated to include 2027 prior to 31 December 2022.
10. Once the first emissions budget is set, section 5ZOA of the Act requires the Commission to provide you with recommendations about unit settings. The Commission's recommendations must cover the settings for each year for which updates are being considered, and be in accordance with the emissions budget, NDC, the 2050 target, and consider the other matters listed in section 30GC of the Act.
11. You must consider this advice from the Commission when recommending updates to unit and price control settings. The Commission is required to provide you with this advice "a reasonable time" before you are "required to recommend the making of the regulations"<sup>1</sup>.
12. The Commission's preparation of advice, and the subsequent work on updating unit settings, will occur against compressed timeframes due to the amended legislative deadline for the ERP and emissions budgets. The key legislative changes that relate to time pressures for the 2022 updates to unit settings are summarised in table 1 below.

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<sup>1</sup> Section 5ZOA of the Act

**Table 1: Changes to statutory deadlines that relate to time pressures for 2022 unit settings updates**

Item	Original deadline	Updated deadline	Date deadline changed
Commissions advice on emissions budgets and ERP	1 February 2021	31 May 2021	14 July 2020
Emissions budgets and ERP published	31 December 2021	31 May 2022	3 November 2021
Publish the 2022 amendment regulations to update unit settings in the New Zealand Gazette	30 September 2022	31 December 2022	3 November 2021

## Analysis and advice

13. You are required to consider the Commission's advice on unit settings when recommending updates to these settings.
14. The original emissions budgets and ERP deadlines allowed for the Commission to provide advice on unit settings in reasonable time before you were required to recommend the making of regulations to update these settings. The updated deadlines compress the available time.

### *There are timing pressures on meeting statutory deadlines*

15. A step to address this time pressure was taken in November 2021. The requirement to publish 2022 amendment regulations in the New Zealand Gazette three months prior to the date they come into force was removed. Additional steps are needed to expedite the process.
16. The Commission's advice on unit settings will not be available until 15 July 2022, due to the Commission needing finalised emissions budgets and the ERP as key inputs to its advice. We have engaged with the Commission on what can be done to make this date as early as possible. We continue this work with the Commission, including on whether it can change its scheduled board meetings to consider advice on unit settings at short notice if any of the input materials become available earlier than anticipated.

17. In your Cabinet paper on setting emissions budgets<sup>2</sup>, you anticipate sharing information on emissions budgets with the Commission ahead of public release. We recommend an embargoed copy of the ERP is provided to the Commission as soon as it is available.
18. There are only 21 weeks between the Commission's advice being provided on 15 July 2022 and the last Cabinet meeting at which amendment regulations can be confirmed and published in the New Zealand Gazette. During these 21 weeks the following steps must occur:
  - a. preparation of material for public consultation, including a discussion document
  - b. a Cabinet process for approving public consultation
  - c. public consultation
  - d. policy analysis and recommendations
  - e. a Cabinet process for making policy decisions
  - f. drafting of amendment regulations
  - g. a Cabinet process for approving amendment regulations.
19. There are two main approaches available that will enable statutory deadlines to be met:
  - a. consult on updates to unit settings prior to receiving the Commission's advice
  - b. run a truncated process.

*Consultation could occur prior to receiving the Commission's advice*

20. One possible approach to address timing pressures would be to consult on updates before the Commission's advice is available. This would not enable analysis of the Commission's advice to be included in consultation materials.
21. This approach could result in the public consultation period overlapping with the Commission releasing its advice. We anticipate that this would disrupt and detract from the public consultation process.
22. This approach risks public perception that effective consultation will not have occurred. Recommendations made after considering consultation feedback and the Commission's advice could be different from those proposed in the discussion document.

*Using a truncated process can deliver the work to meet statutory requirements*

23. Effective consultation on unit settings cannot occur until after the Commission's advice has been received. Without shortening public consultation and ministerial consultation time for this work, the legislative requirement to update settings and publish amendment regulations in the New Zealand Gazette by 31 December 2022 will be very difficult to meet. Table 2 below shows an indicative truncated timeline that would enable the requirement to be met.

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<sup>2</sup> Setting emissions budgets for 2022-2025, 2026-2030 and 2031-2035



**Table 2: Indicative timeline for the 2022 update to unit limit settings, based on 1 week of Ministerial consultation for Cabinet papers and public consultation of four weeks duration**

Process	Milestone	Milestone date
Commission advice	Settings advice from Commission	15 July
Preparation for public consultation	Consultation material ready for agency review	25 July
Cabinet process for approving public consultation	Commence Ministerial consultation	10 August
Cabinet process for approving public consultation	Approval to consult	29 August
Public consultation	Finish four weeks of consultation	27 September
Final policy analysis and recommendations	Policy recommendations circulated for agency review	6 October
Cabinet process for policy decisions	Commence Ministerial consultation	18 October
Cabinet process for policy decisions	Policy decisions approved by Cabinet	14 November
Drafting of amendment regulations	Amendment regulations drafted and reviewed	21 November
Cabinet process for approving amendment regulations	Commence Ministerial consultation	22 November
Cabinet process for approving amendment regulations	Amendment regulations confirmed by Cabinet	12 December

24. You will need to engage with the Prime Minister's Office (PMO) to seek permission for shortened Ministerial consultation for these Cabinet papers.
25. Another approach could be to seek early authorisation from Cabinet to consult prior to the consultation materials being drafted. If this is possible, it would likely involve Cabinet delegating this decision to a subset of Ministers e.g. Ministers of Climate Change, Forestry, and Finance. We will explore this approach further if it is something that you wish to pursue.
26. There will likely be high public interest in these settings due to NZ ETS auction results and the release of emissions budgets and the ERP. A decision on whether to shorten the public consultation timeframe will be needed early to ensure officials can communicate the timeframes and content expectations to the public.

## Other considerations

### *Consultation and collaboration*

27. We have engaged with the Department of the Prime Minister and Cabinet (DPMC) for input into suggestions around timing and the proposed truncated process.
28. We have worked closely with the Commission to help its staff identify the earliest possible provision of its advice on unit settings, including any steps possible to support and accelerate its processes. The outcome of this work is its commitment to provide advice on 15 July.
29. The Commission is carrying out targeted consultation with stakeholders during the development of their recommendations.

### *Risks and mitigations*

30. There are timeline risks of meeting your statutory deadline for the unit settings work for 2022. If the requested truncation of Ministerial consultation and public consultation is approved, the timeline for this work is achievable but remains tight.
31. If emissions budgets and the ERP are not available by 31 May, then achieving the statutory deadline for unit settings work is unlikely to be achievable.
32. To further mitigate timeline risks and alleviate impacts of a potentially shortened public consultation period, officials will communicate the duration and expected dates of public consultation in advance to the public.

s 9(2)(g)(i)




s 9(2)(h)





s 9(2)(h)



### *Financial, regulatory and legislative implications*

39. There are no financial implications associated with the proposals in this briefing note.

40. As noted above, amendment regulations are required to be made by 31 December 2022. Sufficient time needs to be provided following consultation for these regulations to be drafted and reviewed prior to Cabinet consideration.

### **Next steps**

41. We will work on preparing all materials and products to the extent possible in advance of decisions or information being available.