



PROACTIVE RELEASE COVERSHEET

Minister	Hon Simon Watts	Portfolio	Climate Change
Name of package	Amendment regulations for industrial allocation in the emissions trading scheme December 2024	Date to be published	20/03/2025

List of documents that have been proactively released

Date	Title	Author
12 December 2024	LEG-24-SUB-0263 – Amendment regulations for industrial allocation in the emissions trading scheme	Ministry for the Environment
12 December 2024	LEG-24-MIN-0263 – Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024	Cabinet Office
16 December 2024	CAB-24-MIN-0505 Report of the Cabinet Legislation Committee Minute	Cabinet Office
Information redacted	NO	

CLASSIFICATION

Office of the Minister of Climate Change

Chair, Cabinet Legislation Committee

Amendment regulations for industrial allocation in the emissions trading scheme

Proposal

- 1 I propose that the Cabinet Legislation Committee authorises the submission to the Executive Council of the *Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024*.

Executive Summary

- 2 This paper seeks Cabinet approval to amend regulations that set emission unit allocations to firms in the New Zealand Emissions Trading Scheme (NZ ETS). These regulations will improve the accuracy of the NZ ETS, reduce the fiscal costs of the scheme, and support NZ ETS market credibility.
- 3 New Zealand's industrial allocation system protects firms in certain industries from facing the full costs that the NZ ETS would otherwise place on them. The purpose of industrial allocation is to reduce the risk of industrial activity reducing or closing in New Zealand and production moving elsewhere in the world.
- 4 Industrial allocation "baseline" settings – that is, emissions per product unit – have not been updated since they were first set in 2010 and consequently are out of date. The attached amendment regulations update those settings. They will first be applied to 2024 allocations.
- 5 Cabinet considered the implications of this update to industrial allocation on 25 September 2024 when it authorised the Minister of Climate Change to make decisions and issue drafting instructions for amendment regulations.

Policy

- 6 This paper seeks Cabinet approval to amend the Climate Change (Eligible Industrial Activities) Regulations 2010 supporting the operation of the NZ ETS. These regulations are made under the Climate Change Response Act 2002 ('the Act').
- 7 Allocations of emission units are provided every year to firms undertaking eligible industrial activities. These allocations reduce the risk that emission costs from the NZ ETS will drive production offshore. Currently, allocations are based on decade-old data and descriptions of activities, resulting in allocations that are either too large or too small for the policy purpose.
- 8 Data from 2016/17 to 2020/21 was collected to support the updates in the amendment regulations. This process was part of implementing reform legislation from 2023.

- 9 Calculating the new baselines was technical in nature and no substantive policy decisions were needed. Allocative baselines are solely based on emissions and production data from firms and are determined using a formula in the Act and are set in regulations.
- 10 There are three sets of changes to the regulations. Cabinet delegated policy decision-making powers to the Minister of Climate Change on 25 September for each of these matters [CAB-24-MIN-0381]. Cabinet also considered the implications of these updates.
- 11 The first set is the updates to allocative baselines, which estimate emissions resulting from production in each industrial activity. Allocative baselines in the amendment regulations result from data collected over 2023 for the financial years 2016/17 to 2020/21.
- 12 The allocative baselines include the 2024 electricity allocation factor notified by the Electricity Authority under section 161FA of the Act. The 2024 electricity allocation factor is 0.554 tonnes of carbon dioxide equivalent per megawatt hour and is prescribed in the amendments. The electricity allocation factor measures the impact of the NZ ETS on the costs of electricity production. The 2024 value is a very small increase on the value currently in regulations (0.537 tCO₂e/MWh).
- 13 The second set involves changes to the activity descriptions for the production of carbamide (urea) and the production of protein meal, which will not materially affect their allocations. These changes will ensure the descriptions accurately reflect inputs and outputs of the activities. A firm must be carrying out the activity and producing the products as described in the regulations to be eligible for industrial allocation. The amendments make two updates to activity descriptions.
- 13.1 A new product, liquid urea, has been added to the regulation for producing carbamide (urea).
- 13.2 Tallow has been added as a co-product to the production of protein meal.
- 14 The third set results from finding no firms have been or are intending to produce gelatine or newsprint in New Zealand. Consequently, I have decided to revoke industrial allocation eligibility for these activities following the minimum two year stand down period. The Act allows new entrants to seek eligibility should any firm wish to restart either activity.
- 15 When delegating policy decisions to me on the above three matters on 25 September 2024, Cabinet also agreed the changes will enter into force on 1 January 2025 and impact allocations made for 2024 [CAB-24-MIN-0381]. The amendment regulations are consistent with that decision and with Cabinet's direction that the policy decisions are consistent with the emissions information that was obtained.

Timing and 28-day rule

- 16 A waiver of the 28-day rule for notifying regulations in the *Gazette* is sought to allow the regulations to come into force on 1 January 2025. If the waiver is not granted, there would be a period in January where firms could apply using data in the current regulations. This would defeat the purpose of the secondary legislation, being to require the use of new data for applications for final 2024 allocations. A waiver is appropriate as early commencement is necessary to avoid the purpose of the secondary legislation being defeated (paragraph 7.101 of the Cabinet Manual).

- 17 There has been extensive communication with impacted businesses regarding these updates, including that the updates will apply to final 2024 allocations. Waiving the 28-day rule will not be unfair to businesses given that communication of Cabinet's policy decisions including their proactive release.

Compliance

- 18 The regulations comply with each of the following:
- 18.1 the principles of the Treaty of Waitangi;
 - 18.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 18.3 the principles and guidelines set out in the Privacy Act 2020;
 - 18.4 relevant international standards and obligations;
 - 18.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 19 Section 161A(4A) of the Act allows the making of regulations prescribing an electricity allocation factor only if that factor was reported to the Minister under section 161FA. I confirm that test is met with my receipt of the Electricity Authority's report on 25 July 2024.
- 20 Section 161A(3) of the Act allows the Minister to make regulations that remove an activity from the regulations if the Minister is no longer satisfied the activity is moderately or highly emissions intensive, or trade exposed, or both. I consider this test is met for the production of gelatine and newsprint. I obtained no data on historic or future production of the relevant products and therefore cannot be satisfied of the emissions intensity of their production.
- 21 Section 161A(5)(a) of the Act requires regulations that revoke an activity's eligibility to come into force two years after publication or at a later date set by the regulations. The revoking of eligibility for producing gelatine and newsprint will consequently come into force from 1 January 2027.

Regulations Review Committee

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

Certification by Parliamentary Counsel

- 23 The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 24 The Ministry for Regulation has determined that the amendments to industrial allocation regulations were exempt from the requirement to provide a Regulatory Impact Statement on the grounds that the government has limited statutory decision-making discretion or responsibility for the content of proposed delegated legislation.

Publicity

- 25 The Ministry for the Environment and the Environmental Protection Authority will work together to contact NZ ETS industrial allocation participants affected by the regulations.

Proactive release

- 26 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

- 27 This paper was circulated with agencies for feedback on 4 November 2024. The agencies consulted included the Treasury, Ministry of Primary Industries, Ministry of Foreign Affairs and Trade, and the Ministry of Business Innovation and Employment.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 25 September 2024 the Cabinet Economic Policy Committee authorised the Minister of Climate Change to make decisions and issue drafting instructions for amendment regulations to the Climate Change (Eligible Industrial Activities) Regulations 2010 in accordance with the emissions information obtained and the decisions under ECO-24-SUB-0201 [ECO-24-MIN 0201];
- 2 **note** that at that same meeting, the Committee agreed the amendment regulations for all updates will enter into force on 1 January 2025 and impact allocations made for 2024;
- 3 **note** the *Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024* will give effect to the decisions referred to in recommendations 1 and 2 above and those made by the Minister of Climate Change;
- 4 **note** that Section 161A(3) of the Climate Change Response Act 2002 (the Act) allows the Minister to make regulations that remove an activity from the regulations if the Minister is no longer satisfied the activity is moderately or highly emissions intensive, or trade exposed, or both;
- 5 **note** that Section 161A(5)(a) of the Act requires regulations that revoke an activity's eligibility to come into force two years after publication or at a later date set by the regulations;
- 6 **note** that Section 161A(4A) of the Act allows the making of regulations prescribing an electricity allocation factor only if that factor was reported to the Minister under section 161FA;
- 7 **note** the advice of the Minister of Climate Change that the requirements in recommendations 4, 5 and 6 above have been met;
- 8 **authorise** the submission to the Executive Council of the *Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024*;

- 9 **note** that a waiver of the 28-day rule is sought on the ground that it is necessary to avoid the purpose of the secondary legislation being defeated (paragraph 7.101 of the Cabinet Manual);
- 10 **agree** to waive the 28-day rule so that the regulations can come into force on 1 January 2025;
- 11 **note** that the *Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024* come into force on 1 January 2025 and will apply to allocations made for 2024, consistent with the decision of the Committee in recommendation 2 above.

Authorised for lodgement

Hon Simon Watts

Minister of Climate Change



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024

Portfolio Climate Change

On 12 December 2024, the Cabinet Legislation Committee:

- 1 **noted** that in September 2024, the Cabinet Economic Policy Committee (ECO) authorised the Minister of Climate Change to make decisions and issue drafting instructions for amendment regulations to the Climate Change (Eligible Industrial Activities) Regulations 2010 in accordance with the emissions information obtained and the decisions under ECO-24-SUB-0201 [ECO-24-MIN-0201];
- 2 **noted** that at that same meeting, ECO agreed the amendment regulations for all updates will enter into force on 1 January 2025 and impact allocations made for 2024;
- 3 **noted** the Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024 will give effect to the decisions referred to in paragraphs 1 and 2 above and those made by the Minister of Climate Change;
- 4 **noted** that Section 161A(3) of the Climate Change Response Act 2002 (the Act) allows the responsible Minister to make regulations that remove an activity from the regulations if the Minister is no longer satisfied the activity is moderately or highly emissions intensive, or trade exposed, or both;
- 5 **noted** that Section 161A(5)(a) of the Act requires regulations that revoke an activity's eligibility to come into force two years after publication or at a later date set by the regulations;
- 6 **noted** that Section 161A(4A) of the Act allows the making of regulations prescribing an electricity allocation factor only if that factor was reported to the Minister under section 161FA;
- 7 **noted** the advice of the Minister of Climate Change that the requirements in paragraphs 4,5 and 6 above have been met;
- 8 **authorised** the submission to the Executive Council of the Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024 [PCO 26828/6.0];
- 9 **noted** that a waiver of the 28-day rule is sought on the ground that it is necessary to avoid the purpose of the secondary legislation being defeated;

- 10 **agreed** to waive the 28-day rule so that the regulations can come into force on 1 January 2025;
- 11 **noted** that the Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024 come into force on 1 January 2025 and will apply to allocations made for 2024, consistent with the decision of the Committee in paragraph 2 above.

Tom Kelly
Committee Secretary

Present:

Hon Simeon Brown (Chair)
Hon Shane Jones
Hon Paul Goldsmith
Hon Todd McClay
Hon Tama Potaka
Hon Casey Costello
Hon Nicole McKee
Hon Simon Watts
Hon Chris Penk
Hon Andrew Bayly
Hon Scott Simpson, MP
Jamie Arbuckle, MP
Todd Stephenson, MP

Officials present from:

Official's Committee for LEG



Cabinet

Minute of Decision

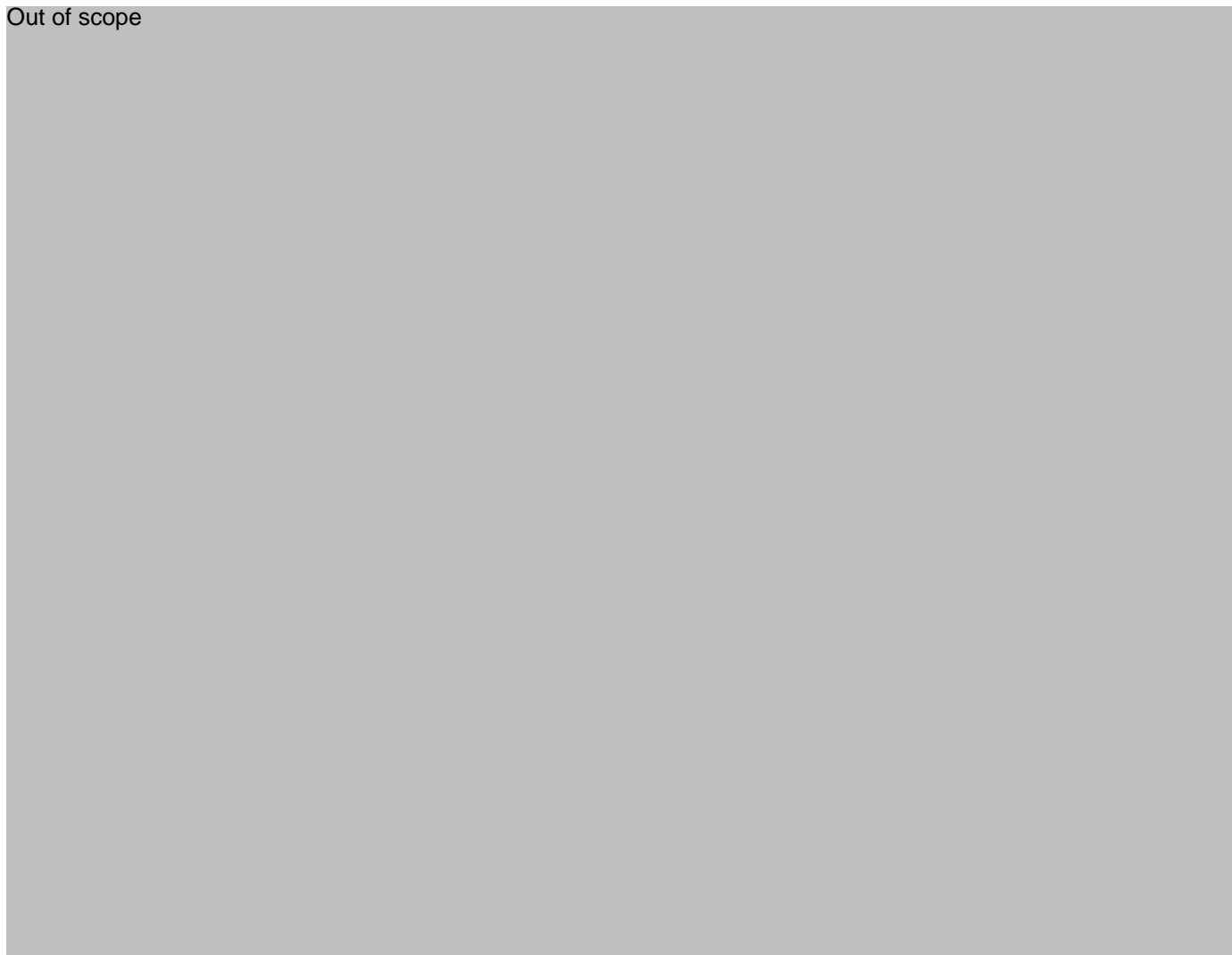
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Report of the Cabinet Legislation Committee: Period Ended 14 December 2024

On 16 December 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 14 December 2024:

LEG-24-MIN-0263 **Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2024** CONFIRMED
Portfolio: Climate Change

Out of scope



Rachel Hayward
Secretary of the Cabinet