

# Draft Cabinet paper: NZ ETS and SGG levy regulation changes 2021: Consultation report back

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Security Level	Policy and Privacy In-Confidence	MfE Priority:	Not Urgent

	Action sought:	Response by:
To Hon James SHAW, Minister of Climate Change	Provide feedback. Agree to proactive release. Agree to begin Ministerial consultation following any changes to the paper from feedback on this draft and in response to feedback from agencies.	5 July 2021

Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE.
Number of appendices and attachments 3	<p>Titles of appendices and attachments: Draft Cabinet Paper: CAB-35 - NZ ETS and SGG Levy Regulation Changes 2021: Consultation report back.</p> <p>Appendix 1 Matters that the Minister must consider when recommending limits and price control settings for units</p> <p>Appendix 2 Matters that the Minister must consider recommending the making of an exemption order under section 60</p>



# Ministry for the Environment contacts

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Proactively Released

# **Draft Cabinet paper: NZ ETS and SGG levy regulation changes 2021: Consultation report back**

## **Key Messages**

1. The purpose of this briefing is to seek your feedback on the draft Cabinet paper CAB-35 - NZ ETS and SGG Levy Regulation Changes 2021: Consultation report back.
2. Amendments and updates to New Zealand Emissions Trading Scheme (NZ ETS) and Synthetic Greenhouse Gas Levy (SGG levy) regulations are considered every year. These changes are to meet legislative requirements and to address policy issues that have arisen. Proposed changes were consulted on during April and May 2021.
3. The Cabinet paper seeks policy approval for technical amendments to some existing regulations and drafting of new regulations under the Climate Change Response Act 2002, and authorisation for drafting instructions to be issued for these changes. It also seeks approval of a methodology for updating the electricity allocation factor used in industrial allocation.
4. After receiving your feedback, we will make updates as required and then provide you with another opportunity for feedback before providing you with final drafts on 8 July to enable Ministerial consultation to commence on or before 15 July.
5. The Cabinet paper is due to be lodged with the Cabinet Environment, Energy and Climate (ENV) Committee on 29 July for consideration on 5 August. Provision of drafting instructions to the Parliamentary Counsel Office (PCO) will occur following Cabinet approval on 8 August.

## Recommendations

We recommend that you:

- **Provide** feedback on the attached draft Cabinet paper.
- **Note** that full legal review of the draft Cabinet paper is yet to be completed.
- **Note** that we expect some recommended changes as a result of agency feedback.
- **Note** the need for further Cabinet policy decisions on implementation and parameters for the new electricity allocation factor methodology.
- **Agree** to begin Ministerial consultation following any changes to the paper from feedback on this draft and in response to feedback from agencies. Yes/No
- **Agree** that this briefing and appendices will be released proactively on the Ministry for the Environment’s website within the next eight weeks

Yes/No

## Signature

<p>Lisa Daniell Director – Climate Mitigation</p>	
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<p>Hon James SHAW, Minister of Climate Change</p>	
<p>Date</p>	

## Supporting Material

### Purpose

- The purpose of this briefing is to seek your feedback on the draft Cabinet paper CAB-35 - NZ ETS and SGG Levy Regulation Changes 2021: Consultation report back.

### Context

- Updates to NZ ETS and SGG levy regulations are considered each year. Consultation on proposed changes to NZ ETS and SGG levy regulations took place in April and May 2021.
- The proposed regulation changes for 2021 are more substantial than in previous years. This is because:
  - The appointment of an auction monitor was enabled in the 2020 amendments to the Climate Change Response Act 2002 (the Act). Regulations for the appointment process and function of an auction monitor need to be made.
  - The Act requires particular settings in the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 to be reviewed and updated annually.
  - Some amendment proposals have been carried over from 2020. They were not able to be progressed through NZ ETS regulation update processes in 2020 due to a reprioritisation of Cabinet time to respond to the COVID-19 crisis.

### Analysis and advice

- The proposals are summarised in Table 1 below.

Table 1: List of proposed NZ ETS and SGG levy regulation updates, new regulations, and updates to methodology

Proposed change	Regulations	Reason for change	Summary of consultation feedback
Update unit limit and auction price control settings.	Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020.	Annual update required by legislation.	Diverse feedback received. Some supported making required updates only, others updating all data. No consensus view on updates to price control settings.

Proposed change	Regulations	Reason for change	Summary of consultation feedback
Update the default emissions factors for waste and natural gas to reflect updated data on waste composition.	Climate Change (Waste) Regulations 2010, Climate Change (Unique Emissions Factors) Regulations 2009, Climate Change (Stationary Energy and Industrial Processes) Regulations 2009	Maintain accuracy and avoid administrative costs for participants.	Feedback strongly supportive of making these updates.
Update default emissions factors and other reference data across ETS and SGG Levy regulations based on updated global warming potentials.	Most NZ ETS and SGG Levy regulations.	Consistency with reporting of New Zealand's emissions in the Greenhouse Gas Inventory.	Mixed feedback. Largely supportive of updating the reference data, diversity of views on the timing of such updates.
Update the electricity allocation factor (EAF) methodology used in industrial allocation.	Not applicable at this stage, as an update to methodology does not require change to regulation.	Increase accuracy.	Strong support for the proposed methodology
Improve the NZ ETS treatment of re-disposed waste.	Climate Change (General Exemptions) Order 2009.	Increase accuracy and reduce the risk of NZ ETS cost considerations causing decisions on managing closed landfills that result in poor environmental outcomes.	Feedback strongly in support of addressing this policy problem via a general exemption for re-disposed waste from closed landfills.
Update the schedule of goods covered by the SGG levy.	Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013.	Improve coverage and reduce risk of greenhouse goods being imported in goods but not captured by the levy.	Feedback generally in agreement with proposed updates.
Implement new regulations for an NZ ETS auction monitor.	New regulations.	Enable the appointment of an auction monitor for NZ ETS auctions.	Diverse views on the type of entity that should be appointed as auction monitor. Consensus view that the auction monitor should be independent, and that the functions identified in the Act should be included as functions of the auction monitor.

## Some of the proposed changes are significant

### *Updating NZ ETS unit supply and price control settings*

10. Section 30GB of the Act requires updates to unit supply and price control settings each year to ensure that, at all times, they prescribe unit limits and price control settings for

each of the following five calendar years. This year is the first time these will be updated since they were set in regulation in September 2020.

11. When making recommendations on these settings, you must also consider recommending updating the unit limit and price control settings for 2024 and 2025. You may consider recommending updating the settings for 2022 and 2023, however only if defined special circumstances are met. This is described further in the legal issues section below.
12. When recommending prescribing limits or price control settings you must consider the matters outlined in 30GC. This is described further in Appendix One.
13. The Climate Change Commission has provided advice on price control settings, and on emissions budgets. Emissions budgets are a key input into calculating unit limit settings.
14. You must be satisfied that any updates to these settings are in accordance with the provisional emissions budget (as the first emissions budget is not yet set) and NDC1. These updates do not need to strictly accord with the budgets or contributions as long as you are satisfied that the discrepancy is justified, after considering other matters specified in the Act.
15. We advise that you may recommend updates to settings for 2022 and 2023, and may apply the Commission's advice on emissions budgets in calculating unit supply settings.
16. We advise recommending updates to unit limit settings for years 2024-2026 only, with reference to the Commission's advice on emissions budgets. We also advise updates to price control settings in accordance with the Commission's advice.
17. Analysis in relation to why we recommend applying the Commission's advice on emissions budgets in calculating unit supply settings, as well as how special circumstances apply is provided in the legal issues section below.

*Updating default emissions factors and other reference data to take into account new global warming potentials*

18. The interpretation section of the Act defines 'emissions' as the carbon dioxide equivalent emissions of greenhouse gases from an activity. Further this section defines 'carbon dioxide equivalent' and requires it to be calculated in accordance with international climate change obligations. This means that non-carbon dioxide (CO<sub>2</sub>) greenhouse gases reported in the New Zealand Emissions Trading Scheme (NZ ETS) and the Synthetic Greenhouse Gas Levy (SGG levy) use the global warming potential relative to CO<sub>2</sub> over a 100-year time horizon (known as GWP<sub>100</sub>) in line with our international climate change obligations.
19. The purpose of the Act (section 3) requires that the NZ ETS and SGG levy assist New Zealand to meet its international obligations, 2050 target and emissions budgets. To achieve this, the NZ ETS and SGG levy should reflect the same reference data as these obligations, budgets, and targets. Emissions factors and reference data in the NZ ETS and SGG levy use GWP<sub>100</sub> values from the Fourth Assessment Report (AR4). New Zealand's first nationally determined contribution (NDC1) under the Paris Agreement was also submitted using AR4 metrics.

20. New Zealand's official annual estimate of greenhouse gas emissions and removals (the Inventory) is currently reported using AR4 metrics. However, emissions from 2021 onwards (which will not be published until 2023 in the Inventory) will be required to use AR5 metrics.
21. The Commission recommended updating New Zealand's Nationally Determined Contribution and setting New Zealand's first emissions budget with reference to updated global warming potential data for greenhouse gases.
22. If an emissions budget or updated NDC uses AR5 GWP<sub>100</sub> data, we recommend making amendment regulations to update NZ ETS and SGG Levy settings to reflect AR5 data.
23. Due to the number of changes to be made, the number of regulations to be updated, and the complexity and time required to confirm calculations of updated values, there will be a delay involved in implementing any update to NZ ETS and SGG levy regulations to reflect AR5 data.
24. Even if a decision was taken to update regulations when only the inventory is using AR5 data, such changes would not be able to be implemented until 1 January 2023. While retrospective application of these NZ ETS regulation amendments is allowed under the Act, this is not practical in this case. Participants would have to re-determine NZ ETS emissions and be unable to recover those new costs from customers for already completed transactions.
25. Updating the default emissions factors and other reference data will require changes to the following regulations:
  - Climate Change (Liquid Fossil Fuels) Regulations 2008
  - Climate Change (Other Removal Activities) Regulations 2009
  - Climate Change (Stationary Energy and Industrial Processes) Regulations 2009
  - Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013
  - Climate Change (Unique Emissions Factors) Regulations 2009
  - Climate Change (Waste) Regulations 2010
26. These regulations are made under sections 163, 164, 245, and 246 of the Act. Sections 60, 166 and 247 of the Act require you to apply the consultation requirements described in sections 3A and 3B when making regulations and orders under these sections. The consultation section below describes how this requirement has been met.
27. When making regulations under sections 163 you must also have regard to international climate change obligations. Regard to consistency with international obligations relating to targets and reporting are among the reasons for this change being made.
28. When making regulations under section 246 you must also have regard to international climate change obligations relating to synthetic greenhouse gases. There is no inconsistency between this update and the Kigali Amendment to the Montreal Protocol.

*Updating the electricity allocation factor methodology and value used in industrial allocation*





29. Some firms in industrial activities receive allocations of emissions units to manage the risk of emissions leakage. This considers the pass-through of NZ ETS cost, some of which is due to their electricity use. The impact of the NZ ETS on electricity prices is measured by the EAF, and this is a component of allocative baselines in the Climate Change (Eligible Industrial Activities) Regulations 2010. This is one part of the 2021 review of industrial allocation policy.
30. The requirements of the Act mean that any update to the EAF cannot be used to directly update allocative baselines without going through a gazette notice call for data from persons carrying out the industrial allocation activities.
31. Consultation considered several methodological options for updating the EAF. The primary consideration is whether to use an ex-post (i.e. using modelled and actual data from past years) or ex-ante (i.e. using only modelled data for future years) approach to calculating EAF. Feedback received via submissions is consistent with our own analysis which sees significant advantages in applying an ex-post methodology.
32. On the basis that an ex-post approach is to be taken, the next consideration is whether to make annual updates based on a single year's data, or to apply a rolling average over several years.
33. There is a risk that variation in hydrology or other conditions in a particular year would result in very high or very low EAF values in some years, because of exceptional hydrology or one-off events like plant shutdowns, which would materially impact the emissions intensity of electricity in that year.
34. A rolling average of the last three years would reduce the impact of any exceptional year while still making use of the most up to date information available to keep the EAF current and accurate.
35. Our assessment is that establishing a process to update the EAF annually, based on ex-post assessment rather than forward projections, will best meet the objective of accurately reflecting cost pass-through. Further, applying a rolling average approach has the added benefit of increased certainty and stability for recipients of industrial allocation with only very minor loss of accuracy.
36. No regulations are being amended for this change.
37. As indicated above, to incorporate an updated EAF into the allocative baselines used for calculating industrial allocation requires a process including a gazette call for information. This occurs annually to allow the allocative baseline for the New Zealand Aluminium Smelter to take into account variations in electricity use, and means that their allocative baseline will be able to reflect changes to the EAF once a new EAF is prescribed in regulation.
38. To update the allocative baselines for activities other than aluminium smelting requires a call for information including calculations of emissions and currently requires that the data provided relates to years 2006-2009. Cabinet decisions will be needed on the implementation of the new methodology and its parameters given its fiscal impact. We

anticipate providing you with a draft Cabinet paper by October 2021, including delegation of policy decisions.

## **Other proposed changes are less significant**

39. Other proposed changes will:

- address risks relating to waste from closed landfills
- Result in administrative efficiencies for regulators and participants through adjustments to default emissions factors
- improve coverage of the SGG levy
- Making new regulations for an auction monitor

40. These other changes are less significant and have clearly preferred options supported by both our analysis and the majority of submissions on these topics.

### *Addressing risks relating to waste from closed landfills*

41. The preferred option to address risks relating to waste from closed landfills is the making of an order under Section 60 exempting any person carrying out the activity of operating a disposal facility from being a participant under the Act in respect of the redisposal of waste from closed landfills. This will amend the Climate Change (General Exemptions) Order 2009. In determining whether to recommend the making of such an order, you must have regard to a number of matters. This is described further in Appendix Two.

42. When making an order under Section 60, there are consultation requirements under sections 3A and 3B of the Act. These requirements, and how they have been met, are described in the consultation section below.

### *Updating natural gas and waste default emissions factors*

43. Updating these emissions factors will require updating the following two sets of regulations:

- Climate Change (Stationary Energy and Industrial Processes) Regulations 2009
- Climate Change (Waste) Regulations 2010

44. Regulations for default emissions factors for natural gas and waste are made under section 163. When making regulations under section 163, you are required to apply the consultation requirements described in sections 3A and 3B. The consultation section below describes how this requirement has been met.

45. When making regulations under sections 163 you must also have regard to international climate change obligations. Updating the default emissions factors improves accuracy and is not inconsistent with international climate change obligations.

### *Updating the synthetic greenhouse gas levy*

46. To add new products requires an update to the working tariff document to create these new tariff items that are currently grouped together in “containing SGG – other” categories.
47. This will require updates to the Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013. These regulations are made under sections 245 and 246 of the Act.
48. This requires you to apply the consultation requirements described in sections 3A and 3B when making regulations and orders under these sections. The consultation section below describes how this requirement has been met.
49. When making regulations under section 246 you must also have regard to international climate change obligations relating to synthetic greenhouse gases. There is no inconsistency between this update and the Kigali Amendment to the Montreal Protocol.
50. The New Zealand Customs Service is carrying out work in relation to the World Customs Organisation’s update of the Harmonised Tariff, the international document used to classify goods. The timing of this work, and the stage it is at, means that these new items will not be able to be added in time to enable the drafting of regulations to extend the coverage of the SGG Levy from 1 January 2022. We are working with the New Zealand Customs Service to ensure that drafting can be completed to take effect from 1 January 2023.

#### *Making new regulations for an auction monitor*

51. These regulations are made under section 30GD of the Act.
52. When making these regulations, there are consultation requirements under sections 3A and 3B of the Act. These requirements, and how they have been met, are described in the consultation section below.
53. It is unclear whether we have sufficient detail and policy decisions in the Cabinet paper to allow these regulations to be drafted. We are working through this and will provide updates to the draft Cabinet paper as required.

## **Consultation and Collaboration**

54. The Ministry for the Environment published a discussion document for public consultation on the proposed updates to regulations in May and June 2019.
55. Thirty-eight submissions were received. Submitters ranged from individuals through to large companies and industry groups. Views of submitters are summarised in Table 1 above, and described in more detail in the regulatory impact statements for each of these changes.
56. Public consultation in April and May 2021 gave effect to your statutory obligation to consult on changes to these regulations as described in sections 3A and 3B of the Act.
57. Section 3A of the Act requires that before making a recommendation for making regulations or orders, you must consult, or be satisfied that the Chief Executive has consulted, representatives of iwi and Māori that appear to be likely to have an interest in the regulations or orders. It was considered that representatives of iwi and Māori did

not have an interest in these regulations that was separate to those parties who were identified and consulted with the proposed amendments.

58. Section 3B of the Act requires you to be satisfied that you or the Chief Executive has consulted the persons (or representatives of those persons) that appear likely to be substantially affected by making any regulations or orders in accordance with the recommendations to make regulations or orders under sections 60, 163, 164, and 246 of the Act. The parties likely to be affected were consulted.
59. Regulatory changes that were not consulted on but are expected to be drafted in 2021 were noted in the consultation document. These include:
- implementation of infringement regulations
  - the annual update to the price of carbon used in calculation of the SGG levy and NZ ETS administrative penalties
  - prescribing the allocative baseline for producing refined petroleum products
  - the annual update to SGG levy rates.
60. Agency feedback is not yet finalised. In preparing the Cabinet paper and regulatory impact statements we are consulting with the Environmental Protection Authority, Ministry of Foreign Affairs and Trade, The NZ Customs Service, Ministry for Primary Industries, Ministry of Business, Innovation and Employment, Te Puni Kōkiri, the Electricity Authority, the Department of the Prime Minister and Cabinet, and the Treasury.

## **Risks and mitigations**

61. The key risk remains timing. Some of these regulations need to be gazetted by 30 September to take effect from 1 January 2022.
62. As advised in our weekly update for the week of 8 June 2021, the number and complexity of regulatory updates this year imposes timeline pressures. We have been working with PCO on a timeline for drafting updates to existing regulations and orders and the creation of new regulations. Priority has been given to regulations that need to be updated or in place by 30 September 2020. For example, the updates to unit supply and auction price settings. The timing is less critical for several of the proposals that were consulted on. For example, there is no legal requirement to have auction monitor regulations in place by 1 January 2022.

## **Legal issues**

63. Many of the legal requirements associated with making the proposed changes are described and addressed in the preceding sections.
64. Additionally, more context to the legal requirements associated with updating unit limit and price control settings is provided below and in Appendix 1.

## Updating NZ ETS unit supply and price control settings

65. The CCRA prescribes the process and requirements for updating unit limits and price control regulations. These considerations establish the scope of options that can be considered by the Government.
66. There are two key considerations for updating unit limits and price controls:
- The emissions budget used for calculating unit limits
  - The years that regulations can be updated within the five-year rolling period.

### *The emissions budget used for calculating unit limits*

67. An emissions budget is used to calculate unit limits using a methodology agreed in 2020. Under section 30GC(2) of the Act, the Minister must be satisfied that unit limits and price control settings are in accordance with emissions budgets, the nationally determined contribution and the 2050 target.
68. The PEB remains the applicable budget for calculating unit limits for this year, as the first emissions budget has not been set. However, to calculate unit limits for the 2022-2026 period an input value for 2026 in accordance with the PEB is required.
69. Section 30GC(3) stipulates the limits and price control settings do not need to strictly accord with the budgets as long as the Minister is satisfied the discrepancy is justified after considering the other matters under this section. A discrepancy in the base emissions budget is necessary to include a 2026 input value for the PEB so that unit limits can be calculated for that year.
70. A discrepancy is also justified given the Commission's recommended budget is currently considered a better proxy for New Zealand's first emissions budget than the current PEB, when considering the matters listed in s 30GC(5). The Commission's recommended budget better aligns with the projected trends for New Zealand's greenhouse gas emissions in the next five years and the forecast availability and costs of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets.

### *The years that unit limit and price controls can be updated within the five-year rolling period*

71. Under section 30GB, updates to unit limits and price control regulations take place on a five-year rolling basis.
72. The current settings for 2021 are fixed and cannot be changed. The settings for 2022 and 2023 are also set – however, they can be adjusted under special circumstances. There is more flexibility for updating 2024 and 2025. In those years the settings are announced but must be reviewed and can be adjusted. The settings for 2026 must be made.
73. Section 30GB(5), 30GC(5) and 30GC(6) clarifies the special circumstances where settings for 2022 and 2023 can be updated. You must be satisfied that the updates are justified by the specified special circumstances.
74. We assess that the circumstances in sections 30GB(5)(a), 30GB(5)(b)(ii) and (iii) have not occurred. However, some of the circumstances described in sections 30GB(5)(b)(i) (that

a change has significantly affected a matter you were required to consider under s 30GC) have been met; specifically:

- 30GC(5)(d) the forecast availability and cost of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets for the reduction of emissions. The Commission has provided new forecasts for costs of reducing emissions. These forecasts have a significant effect due to the materiality of changes in assumptions around these costs.
  - 30GC(5)(f) any other matters that the Minister considers relevant. The Commission's advice on emissions budgets and price controls are matters the Minister considers relevant. This advice has had a significant effect due to material divergence between the current settings and those recommended by the Commission, and considered necessary to meet targets. Consultation included reference to the recommended price settings in the Commission's draft advice, these recommendations remained the same in the Commission's final advice.
75. Furthermore, 30GC(6) allows for price controls in the upcoming two years to be changed if you are satisfied the change is justified because there has been a change that has significantly affected the matters you must consider when setting the price controls. We consider such a change has occurred, specifically the level and trajectory of international emissions prices (including price controls in linked markets). Specifically, since price controls were set in 2020, there have been significant changes in the level and trajectory of prices in the EU ETS. European Union Allowance (EUA) prices have more than doubled in less than a year.
76. As a result of these significant changes to the matters identified above, we consider the proposed changes to the price controls for 2022/2023 are justified because they will better allow the settings to support New Zealand to meet its domestic and international targets.
77. As indicated earlier, commentary on each of the matters that must be considered when making these settings is provided in Appendix 1.

## **Financial, regulatory and legislative implications**

### **Financial implications**

*Updating unit limit and auction price control settings*

78. The proposed updates to unit limit settings will leave auction volumes unchanged for 2022 and 2023. Although the auction volumes for later years will change as a result of these settings, these settings will be subject to change next year after the first emissions budget has been set by Government. Updates to unit limit settings thus have no



anticipated financial implications for 2022 and 2023, and it is premature to assess financial implications in relation to later years.

79. Updating the price control settings has no financial implications. The price floor and trigger price for selling units from the cost containment reserve describe a pathway within which the NZ ETS auction clearing price can move. These values do not directly affect NZ ETS auction clearing price, nor NZU prices in the NZ ETS secondary market.
80. It is important to note that the updates to the price floor out to 2026 keep the auction price floor below the current market price over that time, which means that it is unlikely to affect the auction clearing price.
81. There are no financial implications associated with updating these settings.

*Updating the electricity allocation factor methodology used in industrial allocation*

82. Updating the methodology for calculating the EAF used in industrial allocation has no direct financial implications. The implementation of the updated EAF in calculating allocative baselines will impact both the industrial allocation of NZUs transferred to NZ ETS account holders and the amount of NZUs available for auction. We will provide details on those financial impacts when work occurs to amend relevant regulations.

*Updating the default emissions factors for waste and natural gas fields*

83. Updating the default emissions factors for natural gas will not have a material financial impact.
84. Updating the default emissions factor for waste will decrease NZ ETS revenue (and costs to waste sector participants) by approximately \$11million per annum.

*Other proposed changes*

85. The other proposed changes have only minor financial implications.

## **Regulatory and legislative implications**

86. Regulations will be required to implement all proposals other than an update to the methodology used to calculate the EAF. Implementing new EAFs resulting from this methodology will require regulatory updates in future.
87. The following regulations and orders will be updated by implementing these recommendations:
  - Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020.
  - Climate Change (Eligible Industrial Activities) Regulations 2010
  - Climate Change (General Exemptions) Order 2009
  - Climate Change (Liquid Fossil Fuels) Regulations 2008
  - Climate Change (Other Removal Activities) Regulations 2009
  - Climate Change (Stationary Energy and Industrial Processes) Regulations 2009

- Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013
  - Climate Change (Unique Emissions Factors) Regulations 2009
  - Climate Change (Waste) Regulations 2010
88. Regulations and orders will be made under sections 60, 163, 164, 245, and 246 of the Act.
89. Some of the amendment regulations need to be published in the New Zealand Gazette by the end of September 2021 to ensure the updates apply from 1 January 2022.

## Next Steps

90. Next steps are summarised in table 2 below.

**Table 2: Next steps**

When	What	Who
Monday 5 July	Provide any feedback on draft Cabinet paper	Minister's office
Thursday 8 July	Provide updated draft Cabinet paper to your office	MfE
Week beginning Monday 12 July (or sooner)	Begin Ministerial consultation	Minister's office
By 10am Thursday 29 July	Lodge Cabinet paper	Minister's office
Thursday 5 August	ENV considers Cabinet paper	Cabinet
Monday 8 August	Confirmation of ENV decision from Cabinet	Cabinet
Tuesday 9 August	Begin issuing drafting instructions to PCO	MfE
Thursday 26 August	Draft LEG Cabinet paper to you for feedback	MfE



## Appendix 1

### **Matters that the Minister must consider when recommending limits and price control settings for units**

Section 30GC requires that you be satisfied that the limits and price control settings are in accordance with items listed in 30GC(2)

(2) (a) the emissions budget, and the nationally determined contribution for New Zealand under the Paris Agreement, that applies to—

- (i) the period for which the limits or price control settings are being prescribed; or
  - (ii) any period after that, if a budget or contribution exists for that period; and
- (b) the 2050 target.

These recommendations on settings are made after analysis drawing on two key sources

1. The 2020 RIA for the unit limits and price control settings regulations
2. The Climate Change Commission final advice report

The previous RIA was based on a large body of evidence, as well as the extant economic impact analyses of different emissions prices in New Zealand. Its impact analysis is recent and can still be used to assess the current proposals.

The Commission's report provides robust and comprehensive economic analysis of the impacts of higher emissions prices.

In addition to this, we have undertaken additional impact analysis based on the Commission's advice and publicly consulted on the proposals for unit limits and price controls.

The proposed unit limits do not strictly accord with Provisional Emissions Budget (PEB), as the PEB does not extend to 2026 and there are more recent budget proposals recommended by the Climate Change Commission that we consider relevant. This discrepancy is justified given the Commission's recommended budget better aligns with the projected trends for New Zealand's greenhouse gas emissions in the next five years and the forecast availability and costs of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets.

The proposed price control settings align the ETS settings with the most current forecast abatement costs, and are thus in accordance with our emissions budget.

Officials also consider the proposed limits and price control settings are in accordance with both the NDC and the 2050 target. The proposed settings align the recommended approach to meet these targets with the most recent forecasts abatement costs provided by the Commission.

**Section 30GC also requires that you consider the main matters listed in s30GC(5) when recommending limit and price control settings for units. These are described below.**

*5(a) the projected trends for New Zealand's greenhouse gas emissions in the 5 years after the current year*

The recommended settings are consistent with the most recent projected trends for New Zealand's greenhouse gas emissions in the 5 years after the current year, including the volumes of greenhouse gas emissions to which the emissions trading scheme applies and to which the emissions trading scheme does not apply.

*5(b) the proper functioning of the emissions trading scheme*

The recommended settings are consistent with the proper functioning of the emissions trading scheme. They support alignment of the NZ ETS unit limits and price control settings with the probable first emissions budget set under the Climate Change Response Act.

*5(c) international climate change obligations and instruments or contracts that New Zealand has with other jurisdictions to access emissions reductions in their carbon markets*

The recommended settings are consistent with New Zealand's international climate change obligations. New Zealand has no current instruments or contracts with other jurisdictions to access emissions reductions in their carbon markets.

*5(d) the forecast availability and cost of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets for the reduction of emissions*

The recommended settings are consistent with the forecast availability and cost of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets for the reduction of emissions.

*5(e) the recommendations made by the Climate Change Commission under section 5ZOA:*

This matter is not considered as 5ZOA does not yet apply. 5ZOA only applies after the first emissions budget has been set.

*5(f) any other matters that the Minister considers relevant.*

The Climate Change Commission's advice on emissions budgets and price controls are relevant. The recommended settings are consistent with this advice.

**Section 30GC requires that you also consider the additional matters listed in s 30GC(6) when recommending price control settings for units.**

The additional matters are as follows:

*6(a) the impact of emissions prices on households and the economy*

The recommendations on price control settings are made after considering the impact of emissions prices on households and the economy. While these impacts are difficult to quantify given price controls are not major drivers of price movement on the NZ ETS

secondary market, we assess the recommended price control settings could increase NZ ETS compliance costs and indirect costs on businesses and households.

*6(b) the level and trajectory of international emissions prices (including price controls in linked markets)*

The recommendations on price control settings are made after considering the level and trajectory of international emissions prices. The recommended price control settings will support changes in domestic emissions prices in line with those in overseas carbon markets, which New Zealand may link with in the future.

*6(c) inflation.*

The recommendations on price control settings are made after considering inflation. The recommended price control settings account for inflation.



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## Appendix 2

### **Matters that the Minister must consider recommending the making of an exemption order under section 60**

Before recommending the making of an order under section 60, you must be satisfied of the following two items. We have provided analysis on each of these:

*(a) the order will not materially undermine the environmental integrity of the emissions trading scheme; and*

The exemption is likely to apply to a small proportion of waste disposed to landfills. The current reported emissions, and associated costs, from redisposed waste are significantly higher than the actual emissions. Those potential NZ ETS costs are important considerations for decisions on where to redispose excavated waste. Current settings risk adverse environmental effects due to NZ ETS costs.

*(b) the costs of making the order do not exceed the benefits of making the order.*

The costs of the exemption are fiscal, as it will remove the requirement to surrender emissions units for waste redisposed from closed landfills. This is not currently known to be occurring in any volume. For waste currently redisposed from closed landfills, NZ ETS costs do not accurately reflect the amount of emissions that will arise from redisposing this waste. Should a landfill operator choose an expensive and time consuming methodology to more accurately account for the emissions from this class of waste, it is expected that the associated NZ ETS costs would be close to zero.

In determining whether to recommend the making of an order under section 60, you must also have regard to the following matters. We have provided analysis on each of these:

*(a) the need to maintain the environmental integrity of the emissions trading scheme; and*  
Yes, this is described above.

*(b) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme; and*

Yes, the exemption will not create any administrative and compliance costs for the Crown or the participant. It will remove NZ ETS costs that are restricting redisposal options and hindering decisions.

*(c) the relative costs of giving the exemption or not giving it, and who bears the costs; and*  
Yes, the costs of the exemption will fall on the Crown through reduced NZ ETS revenue, as detailed above. Without the exemption, costs will fall on NZ ETS participants to go through an expensive and time consuming methodology to more accurately account for the emissions from this class of waste.

*(d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption; and*



Yes, the alternatives have been described in the discussion document and considered in the regulatory impact analysis associated with this proposal.

*(e) any other matters the Minister considers relevant.*

There are no other relevant matters.

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