

## **In Confidence**

### **Office of the Minister for Climate Change**

#### **Chair, Cabinet Legislation Committee**

### **New Zealand Emissions Trading Scheme settings regulations**

#### **Proposal**

- 1 I propose that the Cabinet Legislation Committee authorises the submission of the Climate Change Response (Limits and Price Control Settings for Units) Regulations for annual unit limits and price control settings for the New Zealand Emissions Trading Scheme (NZ ETS) to the Executive Council.
- 2 These regulations are required to operationalise changes made to the Climate Change Response Act 2002 (CCRA) made by the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (ETR Act).

#### **Policy**

- 3 On 14 May 2020 Cabinet agreed to the regulations prescribing overall unit limits and auction price controls for the NZ ETS [ENV-20-MIN-016 refers]. These regulations need to be made annually once the regulations governing the operation of auctions are made. Policy decisions for the operation of auctions were made by the Cabinet Economic Development Committee on 18 March 2020 [DEV-20-MIN-0047 refers].
- 4 The ability set a 'cap' on the limit of emissions units available within the NZ ETS was one of the major reforms introduced through the ETR Act.
- 5 The NZ ETS price control settings provide an important safety valve to protect against unacceptably low or high unit prices, by allowing for a minimum price at which units may be sold by auction, and a cost containment reserve that releases additional units onto the market if a specific trigger price is reached at auction.
- 6 NZ ETS unit supply and price control regulations are fixed for the first two years unless there are special circumstances that require change. NZ ETS settings for the following three years are set and announced, but can be adjusted.
- 7 Once emissions budgets have been set in accordance with the CCRA, the Climate Change Commission will recommend limits and price control settings prior to the annual updates to these regulations.
- 8 Since Cabinet agreed to the regulations on 14 May 2020, New Zealand Aluminium Smelters (NZAS), a major emitter, has announced it will close its operations at Tiwai Point in August 2021. I have considered the impact of NZAS closing on the agreed NZ ETS unit limits and auction price control settings. I do not consider any changes should be made to the NZ ETS settings regulations previously agreed to by Cabinet.
- 9 Any revision to unit supply settings for 2022 onwards should be considered in 2021 as part of the annual decision-making process, once more information is

known about the closure’s impact. This will also allow us to consider the Climate Change Commission’s advice on emission budgets in mid-2021.

*Unit supply*

- 10 Section 30GB of the CCRA (as amended by the ETR Act) requires regulations to be set that prescribe the following limits for a calendar year:
  - 10.1 a limit on the New Zealand units available by auction (*an individual limit*)
  - 10.2 a limit on the approved overseas units used (*an individual limit*)
  - 10.3 a limit on the sum of the following (*the overall limit*):
    - 10.3.1 the New Zealand units available by auction
    - 10.3.2 the New Zealand units available by other means
    - 10.3.3 the approved overseas units used
- 11 The unit limits are in Table 1 below.

**Table 1: Unit supply limits (million NZUs)**

|                            | 2021 | 2022 | 2023 | 2024 | 2025 |
|----------------------------|------|------|------|------|------|
| Units available by auction | 19.0 | 19.3 | 18.6 | 17.2 | 15.5 |
| Approved overseas units    | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| The overall limit          | 32.8 | 32.9 | 32.9 | 31.3 | 29.6 |

- 12 I note that the ‘units available by auction’ volumes were rounded to whole numbers in the recommendations agreed previously by Cabinet. I recommend this is corrected so the regulations match the content of the previous Cabinet paper and the table above.

*Price controls*

- 13 The price control regulations set under section 30GB of the CCRA must prescribe:
  - 13.1 The minimum price at which units may be sold by auction
  - 13.2 The 1 or more trigger prices
  - 13.3 The reserve amount of New Zealand units for each trigger price
- 14 The unit price control regulations Cabinet agreed to are in Table 2 below.

**Table 2: Price control settings**

|                                | 2021     | 2022     | 2023     | 2024     | 2025     |
|--------------------------------|----------|----------|----------|----------|----------|
| Minimum price                  | \$ 20.00 | \$ 20.40 | \$ 20.81 | \$ 21.22 | \$ 21.65 |
| Trigger price                  | \$ 50.00 | \$ 51.00 | \$ 52.02 | \$ 53.06 | \$ 54.12 |
| Reserve volume (million units) | 7.0      | 7.0      | 7.0      | 7.0      | 6.9      |

**Timing and 28-day rule**

- 15 The regulations will come into force 3 months after they are notified in the New Zealand Gazette, in accordance with s 30H(3), in time to be implemented through

the first NZ ETS auction, which, as prescribed in these regulations, is set to commence on 17 March 2021.

## Compliance

- 16 All proposed regulations described within this paper are consistent with:
  - 16.1 the principles of the Treaty of Waitangi;
  - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 16.3 the principles and guidelines set out in the Privacy Act 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
  - 16.4 relevant international standards and obligations;
  - 16.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 17 The requirements that I must comply with when making regulations about limits and price control settings are set out in Section 30GC of the CCRA.
- 18 I must be satisfied that the regulations are in accordance with:
  - 18.1 the emissions budget and the nationally determined contribution for New Zealand under the Paris Agreement that applies to –
    - 18.1.1 the period for which the limits or price control settings are being prescribed, or;
    - 18.1.2 any period after that, if a budget or contribution exists for that period, and;
  - 18.2 the 2050 target.
- 19 However, they need not strictly accord with the budgets or contributions as long as I am satisfied that the discrepancy is justified, after considering the other matters.
- 20 Other matters required to be considered when making the regulations are:
  - 20.1 the projected trends for New Zealand's greenhouse gas emissions
  - 20.2 the proper functioning of the emissions trading scheme
  - 20.3 international climate change obligations and instruments or contracts that New Zealand has with other jurisdictions,
  - 20.4 the forecast availability and cost of ways to reduce greenhouse gas emissions
- 21 *Additional matters which must be considered in respect of the price control settings* include the impact of emissions prices on households and the economy the level and trajectory of international emissions prices (including price controls in linked markets) and inflation
- 22 Sections 30H and 3A and 3B set out consultation requirements. Consultation with representatives of iwi and Maori that have an interest in the regulations, and consultation with persons that appear to be substantially affected by the regulations, was carried out in February 2020.

- 23 The transitional provisions of the ETR Act enabled this consultation to be carried out prior to the passing of the ETR Act. The ETR Act also enabled consideration of the provisional budget for these settings, as no formal budget will be set until 2021.
- 24 I am satisfied that all statutory requirements were considered and met when the policy decisions regarding the regulations were agreed to by Cabinet on 14 May 2020.

### **Regulations Review Committee**

- 25 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 319.

### **Certification by Parliamentary Counsel**

- 26 The amendment regulations have been certified by Parliamentary Counsel as being in order for submission to Cabinet.

### **Impact Analysis**

- 27 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 [ENV-20-MIN-0016 refers].

### **Publicity**

- 28 The confirmed regulations will be available on the New Zealand Legislation website following their notification in the New Zealand Gazette. Participants will be informed directly once this occurs.
- 29 Decisions on the proposed regulations were announced via press release and email updates were sent to participants of the Emissions Trading Register on 2 June 2020. Those decisions are currently available on the Ministry for the Environment website.

### **Proactive release**

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

### **Consultation**

- 31 The Ministry of Justice, the Ministry of Foreign Affairs and Trade, the Ministry of Transport, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Treasury, the Environmental Protection Agency and the Department of the Prime Minister and Cabinet were consulted on this paper and did not provide any feedback. Te Puni Kokiri were informed but responded that they did not currently have the capacity to undertake a full review.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 14 May 2020 the Cabinet Environment, Energy and Climate committee agreed to New Zealand Emissions Trading Scheme: Settings Regulations [ENV-20-MIN-0016]
- 2 **agree** that the regulations set the annual limits on NZUs available by auction to be 19.0 million NZUs in 2021, 19.3 million NZUs in 2022, 18.6 million NZUs in 2023, 17.2 million NZUs in 2024 and 15.5 million NZUs in 2025
- 3 **note** that no changes have been made to the New Zealand Emissions Trading Scheme Settings Regulations based on the announcement by New Zealand Aluminium Smelters that it will close its operations at Tiwai Point in August 2021
- 4 **note** that unit limit and price control regulations are required to operationalise the Climate Change Response (Emissions Trading Reform) Amendment Act 2020
- 5 **note** that the Climate Change Response (Limits and Price Control Settings for Units) Regulations will give effect to the decision referred to in paragraph 1 above
- 6 **note** that these regulations will come into force on the date 3 months after they are notified in the New Zealand Gazette, in accordance with the requirements of the CCRA, to be in force when unit auctioning begins in March 2021.
- 7 **authorise** the submission to the Executive Council of the Climate Change Response (Limits and Price Control Settings for Units) Regulations.
- 8 **note** the advice of the Minister for Climate Change that the statutory prerequisites have been met.

Authorised for lodgement

Hon James Shaw

**Minister for Climate Change**