

Policy and Privacy

In-Confidence

Office of the Minister of Climate Change

LEG - Cabinet Legislation Committee

New Zealand Emissions Trading Scheme and Synthetic Greenhouse Gas Levy Amendment Regulations 2022

Proposal

- 1 I propose that the Cabinet Legislation Committee authorises the submission of the following regulations to the Executive Council:
 - 1.1 Climate Change (Emissions Trading Scheme and Synthetic Greenhouse Gas Levies) Amendment Regulations 2022
- 2 These regulations are included as attachments to this paper.

Executive Summary

- 3 This paper seeks Cabinet approval to amend regulations supporting the operation of the New Zealand Emissions Trading Scheme (NZ ETS) and the Synthetic Greenhouse Gas Levy (SGG levy). These regulations are made under the Climate Change Response Act 2002 (the Act).
- 4 The Act enables regulations to be made and updated to support the implementation and operation of the NZ ETS. This year, minor and technical amendments are required to maintain the technical accuracy and to address operational issues in the NZ ETS and SGG levy in the:
 - 4.1 Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013 (SGG levy Regulations)
 - 4.2 Climate Change (Liquid Fossil Fuels) Regulations 2008
 - 4.3 Climate Change (Other Removal Activities) Regulations 2009 (ORA Regulations)
 - 4.4 Climate Change (Station Energy and Industrial Processes) Regulations 2009 (SEIP Regulations)
 - 4.5 Climate Change (Unique Emissions Factors) Regulations 2009 (UEF Regulations)
 - 4.6 Climate Change (Waste) Regulations 2010

4.7 Climate Change (Unit Register) Regulations 2008 (Unit Register Regulations)

- 5 Cabinet previously agreed to relevant policy changes [CAB-21-MIN-0300 and CAB-22-MIN-0426 refer] and I was authorised to issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to those decisions.
- 6 Amendments are also required to update the carbon price in the SGG levy Regulations and the levy rates for imported goods and motor vehicles that contain synthetic greenhouse gases (SGGs).
- 7 Importers of goods, and people registering motor vehicles, that contain SGGs are required to pay a levy through Customs New Zealand or Waka Kotahi NZ Transport Agency. Levy rates are adjusted to match emission unit price changes over the previous year so that emissions of those gases have a similar cost as other greenhouse gas emissions covered by the NZ ETS.
- 8 The statutory requirements that apply to making regulations under the Act have been met.

Summary

- 9 Regulatory changes are required each year to keep the NZ ETS and SGG levy operating efficiently and accurately.
- 10 I propose:
 - 10.1 To update the price of carbon and the levy rates for imported goods and motor vehicles in the SGG levy Regulations.
 - 10.2 Several technical amendments to keep the NZ ETS and SGG levy functioning as it should.

Reflecting 2021 Cabinet decisions

- 10.3 Updating default emissions factors and other reference data used in the NZ ETS and SGG levy to reflect updated global warming potentials (GWP) for greenhouse gases.
- 10.4 Updating the schedule of goods covered by the SGG levy to address possible gaps in coverage.

Reflecting 2022 Cabinet decisions

- 10.5 Removing a redundant regulation allowing conversion of NZUs to Kyoto Protocol era emission units for cancellation.
- 10.6 Removing eligibility criteria for receiving emission units for exporting or destroying refrigerant greenhouse gases.
- 10.7 Updating the schedule of default emissions factors for natural gas fields.

- 10.8 Updating waste composition data used in calculating unique emissions factors for waste disposal in relation to landfill gas collection and destruction.

Policy

Updating the price of carbon in the SGG levy Regulations and levy rates

- 11 The carbon price and levy rates prescribed in the SGG levy Regulations are updated each year using the methodology specified in the Act. As these amendments are routine and require no new policy decisions, I authorised drafting of regulations to amend the carbon price and levy rates for the 2023 calendar year. This is in accordance with paragraph 7.91(d) of the Cabinet Manual.
- 12 High level detail on these changes is provided here as Cabinet decisions on these changes have not yet been made.
- 13 SGGs are contained in goods including air-conditioning units, refrigerators and motor vehicle air conditioning units. These gases have high GWP and are released into the atmosphere as the product is used, serviced and disposed. Importers of bulk SGGs and domestic manufacturers of SGGs are mandatory participants in the NZ ETS.
- 14 Importers of goods and those who first register vehicles containing SGGs do not participate in the NZ ETS; instead, they pay a levy linked to the quantity and GWP of gas in the goods imported or vehicle registered. The levy imposes an emissions cost on these importers, which is intended to be equivalent to the costs faced by mandatory participants in the NZ ETS. The levy avoids the administrative and compliance costs of the NZ ETS for the smaller-scale importers of these goods and vehicles.
- 15 The price of carbon prescribed in the SGG levy Regulations is also used to calculate penalties for NZ ETS participants and in any associated recovery of costs.
- 16 The price of carbon for 2023 will increase to \$67.63 per tonne of carbon dioxide equivalent (CO₂e). This carbon price was calculated using a weekly average of the price of emission units in the NZ ETS for the twelve months from July 1, 2021, to 30 June 2022. Levy rates for 2023 have been calculated by reference to this 2023 price of carbon and are in the SGG Levy amendment regulations.
- 17 The price of carbon used to set the levy rates each year since 2014 are in table one below, as well as the calculated 2023 value.

Table 1: Price of carbon (NZ\$) in the SGG levy Regulations since 2014

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Price (NZ\$)	\$1.65	\$0.64	\$0.30	\$9.85	\$17.67	\$19.88	\$24.54	\$25.60	\$36.50	\$67.63

Statutory requirements for updating the price of carbon and SGG levy rates

- 18 Before recommending regulations that specify the price of carbon, I am required, under section 30W of the Act, to consider the following criteria:
- 18.1 the price of the units used to calculate revenue from the NZ ETS in the Crown annual financial statements in the preceding 12 months; and
 - 18.2 the price of NZUs sold by auction in the preceding 12 months; and
 - 18.3 any changes to the operation of the NZ ETS that have affected the price of the units surrendered under that scheme, or that may do so before the end of the next levy year.
- 19 In relation to the first requirement, the methodology for the Crown Accounts' carbon price draws on the same source data and uses a similar calculation approach to that prescribed in the SGG levy Regulations for calculating the price of carbon in those regulations¹.
- 20 In relation to the second requirement, there have now been six auctions, the four quarterly auctions in 2021, and auctions in March and June 2022.
- 21 The price of carbon calculated by the methodology in the SGG levy Regulations has arrived at a price point within the range of clearing prices for the last four auctions².
- 22 In relation to the third requirement, changes to the price of units as a result of changes to the operation of the NZ ETS are accounted for with the existing carbon price methodology as it uses NZU market prices. Therefore, changes to the operation of the NZ ETS that have affected the price of surrendered units are taken into account.
- 23 It is difficult to predict the impact of NZ ETS operational and regulatory changes on the price of units to be surrendered in 2023. It is important to note that many participants with surrender obligations will have secured 2023 supply already, at prices used in calculating the update to the price of carbon. I expect to consult soon on auction price controls for 2023-2027. The impact of these regulation decisions on unit prices in 2023 has not been considered in setting the carbon price for 2023 as policy changes have not been made yet.
- 24 There is no statutory requirement to consult on the proposed regulation amendments setting the carbon price and corresponding SGG levy rates for 2023, and no consultation has been carried out.

¹ The price of carbon in the SGG levy Regulations is not materially different to the carbon price used to reflect Crown NZU revenue for 2021/22.

² The cost containment reserve volume was sold in the third auction in 2021, which cleared at \$53.85. The last auction in 2021 cleared at \$68.00. The first two auctions of 2022 cleared at \$70 and \$76 respectively, and the 2022 cost containment reserve volume is sold.

Implementing 2021 policy decisions made by Cabinet

Reflecting 2021 policy decisions

- 25 In 2021, Cabinet agreed to a set of policy changes Cabinet invited me to issue drafting instructions for four of these changes so that they would be in force by 1 January 2022, and these were in force at that time. Cabinet further invited me to issue drafting instructions for other changes at a later date. These further changes relate to emissions factors and SGG levy coverage that cover a full calendar year, so need to be in force from 1 January 2023. These are outlined below.

Updating default emissions factors and other reference data used in the NZ ETS and SGG levy to reflect updated global warming potentials for greenhouse gases

- 26 Non-carbon dioxide (CO₂) emissions reported in the NZ ETS and the SGG levy are converted to CO₂ equivalent values using use the global warming potential relative to CO₂ over a 100-year time horizon (known as GWP₁₀₀).
- 27 GWP₁₀₀ is assessed by the Intergovernmental Panel on Climate Change (IPCC). The IPCC released its Fifth Assessment Report (AR5) in 2014 and updated the GWP₁₀₀ values for all greenhouse gases, including methane and nitrous oxide.
- 28 New Zealand's official annual estimate of greenhouse gas emissions and removals (the Inventory) is currently reported using Assessment Report 4 metrics. However, emissions reported from 2023 onwards, which will include emissions up to 2021, (which will not be published until 2023 in the Inventory) will be required to use AR5 metrics. Additionally, New Zealand's first nationally determined contribution under the Paris Agreement (NDC1) and first emissions budgets were set in reference to AR5 metrics.
- 29 This update is for consistency between NZ ETS and SGG levy data and New Zealand's international obligations, targets, and emissions budgets. This change would come into effect from 1 January 2023.

Updating the schedule of goods covered by the SGG levy to address possible gaps in coverage

- 30 The SGG levy Regulations ensure imports of SGGs in goods and vehicles incur comparable emissions costs to bulk imports of SGGs and domestic manufacturing of SGGs subject to the New Zealand Emissions Trading Scheme (NZ ETS). Using a levy, rather than an NZ ETS obligation, decreases administration and compliance costs for the many importers of SGG-containing goods and motor vehicles.
- 31 There are gaps in the coverage of goods and vehicles in the SGG levy. Several unlevied synthetic greenhouse gas blends are likely to be contained in goods being imported into New Zealand. This creates inconsistency in the application of the levy, where some goods with SGGs face an emissions price, and others do not. This update addresses this inconsistency.

Implementing 2022 policy decisions made by Cabinet

Reflecting 2022 policy decisions

- 32 On 27 June 2022, Cabinet agreed to the following four policy decisions [CAB-22-MIN-0426 refers].

Removing the regulation allowing conversion of NZUs to Kyoto Protocol era emission units for cancellation

- 33 How the voluntary carbon market will operate in the Paris Agreement era is still developing. Guidance under the Kyoto agreement recommended using Regulation 11D of the Unit Register regulations for voluntary surrender. This guidance is no longer applicable, and new interim guidance has been published that no longer recommends the use of conversion of NZUs to AAUs for carbon offsetting [ENV-22-MIN-0005 refers].
- 34 Repealing Regulation 11D of the Unit Register regulations will ensure regulations are in line with the Ministry's guidance and current practice in the voluntary carbon market. Stakeholders are expecting this change. This change would come into effect from 1 January 2023.

Removing eligibility criteria for receiving emission units for exporting or destroying refrigerant greenhouse gases

- 35 Removing the eligibility criteria for receiving emission units for exporting or destroying refrigerant greenhouse gases will enable higher reductions in New Zealand's net emissions from the export or destruction of those gases.
- 36 This will allow more people to be participants and earn NZUs for the removal activity of exporting or destroying refrigerant greenhouse gases. This change would come into effect from 1 January 2023.

Updating the schedule of default emissions factors for natural gas fields

- 37 Default emissions factors (DEFs) are used to report emissions in the NZ ETS. DEFs need to be updated to reflect the most up-to-date natural gas composition data to maintain accuracy.
- 38 Amendment of the natural gas DEFs in the SEIP Regulations will improve the accuracy of the low-cost reporting option for gas purchasing (opt-in) participants. This change would come into effect from 1 January 2023.

Updating waste composition data used in calculating unique emissions factors for waste disposal in relation to landfill gas collection and destruction

- 39 Participants in the NZ ETS calculate their emissions based on emissions factors prescribed in regulations. The UEF Regulations provide the ability to apply for the use of unique emissions factors that vary from the DEF for the activity.

- 40 The Ministry consulted on and updated the emissions factor for waste going to landfill in 2021 to reflect changes in waste composition. However, updated waste composition data were not incorporated into the UEF Regulations at the time due to an oversight.
- 41 Updating Schedule 3 of the UEF Regulations to correct this oversight will ensure participants can apply for accurate UEFs and provide accurate emissions returns for 2022 calendar year activity. This change would come into effect from 1 January 2023.

Timing and 28 day rule

- 42 Most of the updates come into force three months after the date of their notification in the New Zealand Gazette. The relevant sections of the Act are:
- 42.1 Section 30H(3) for the update to the Unit Register Regulations.
- 42.2 Section 30W(4) for the update to the price of carbon.
- 42.3 Section 166(3) for updates to the Liquid Fossil Fuel regulations, the SEIP Regulations, the UEF Regulations, and the Waste Regulations all made under sections 163 and 164.
- 42.4 Section 245(4) for updating SGG levy rates
- 43 The update to the ORA Regulations made under section 168 cannot come into force sooner than 28 days after the date of their notification in the New Zealand Gazette.

Compliance

- 44 All proposed amendments described in this paper are consistent with:
- 44.1 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 the workshops and webinars were sent to iwi/Māori NZ ETS stakeholders for input into the proposals;
- 44.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 44.3 the principles and guidelines set out in the Privacy Act 2020 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
- 44.4 relevant international standards and obligations;
- 44.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

- 45 The amendments and new regulations are made under sections 30G, 30W, 163, 164, 168, 245 and 246 of the Act.
- 46 The consultation processes described under these sections and sections 3A and 3B of the Act were followed, and I am confident that consultation requirements have been met.
- 47 Assessment against the matters that must be taken into account before making regulations specifying the price of carbon is provided above in the policy section of this paper.
- 48 Before recommending the making of regulations including setting emissions factors under s 163, s 163(5) requires that I must have regard to international climate change obligations (if any) in respect of the collection of data and information relating to, and the measurement of, emissions and removals from the activity. The proposed amendments are not inconsistent with international climate change obligations.
- 49 Before recommending the making of regulations for SGGs under sections 246 I must have regard to international climate change obligations relating to synthetic gases. The proposed amendments are not inconsistent with these obligations.
- 50 I am satisfied that all statutory requirements, including consultation requirements, for the making of the following regulations have been met:
- 50.1 Climate Change (Emissions Trading Scheme and Synthetic Greenhouse Gas Levies) Amendment Regulations 2022

Regulations Review Committee

- 51 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

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

Impact Analysis

Regulatory Impact Statement

- 53 Regulatory Impact Assessment requirements apply to proposals in this paper.
- 54 Treasury's Regulatory Impact Analysis team has determined that the proposed updates to the price of carbon and synthetic greenhouse gas levy rates are exempt from the requirement to provide a Regulatory Impact Statement. The exemption has been granted on the grounds that the Government has limited statutory decision-making discretion or responsibility

for the content of proposed delegated legislation because the updates result from applying the calculation methodology prescribed in the regulations.

- 55 Regulatory Impact Statements were prepared to inform Cabinet's policy decisions on the other matters [CAB-21-MIN-0300 and CAB-22-MIN-0246 refer].

Consultation

- 56 The Ministry published a discussion document for public consultation on the changes for which public consultation was required.
- 57 The Treasury, Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, Ministry for Business, Innovation and Employment, Environmental Protection Authority, the New Zealand Customs Service, the New Zealand Transport Agency and the Ministry of Transport were consulted on this paper. The Department of Prime Minister and Cabinet, and Te Puni Kōkiri were informed. Where feedback has been received, it has been considered and incorporated as appropriate.

Proactive Release

- 58 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.

Recommendations

The Minister of Climate Change recommends that the Committee:

- 1 **note** that the Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013 need to be amended to:
 - 1.1 specify the price of carbon for the 2023 calendar year; and
 - 1.2 specify the levy rates for levy goods and motor vehicles using the updated price of carbon for 2023
 - 1.3 update the schedule of goods covered by the SGG levy to address possible gaps in coverage.
- 2 **note** that using the methodology prescribed in regulations, the price of carbon for the 2023 levy calendar year is \$67.63 per tonne of carbon dioxide equivalent.
- 3 **agree** to amend the Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013 to reflect this calculated price of carbon for the 2023 calendar year
- 4 **note** that in 2021, Cabinet agreed to the issuing of drafting instructions to update default emissions factors and other NZ ETS and SGG levy reference

data to reflect global warming potentials in the Fifth Assessment Report (AR5) from the Intergovernmental Panel on Climate Change [ENV-21-MIN-0041].

- 5 **note** that updating the default emissions factors and other reference data to reflect AR5 data requires amending six sets of regulations under the Act:

5.1 Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013

5.2 Climate Change (Liquid Fossil Fuels) Regulations 2008

5.3 Climate Change (Other Removal Activities) Regulations 2009

5.4 Climate Change (Stationary Energy and Industrial Processes) Regulations 2009

5.5 Climate Change (Unique Emissions Factors) Regulations 2009

5.6 Climate Change (Waste) Regulations 2010

- 6 **note** that emissions factors in the Climate Change (Agriculture Sector) Regulations 2010 are not being updated as part of this process.

- 7 **note** that on 27 June 2022, Cabinet agreed to the issuing of drafting instructions to amend the following regulations [CAB-22-MIN-0246]:

7.1 Climate Change (Unit Register) Regulations 2008

7.2 Climate Change (Other Removal Activities) Regulations 2009

7.3 Climate Change (Stationary Energy and Industrial Processes) Regulations 2009

7.4 Climate Change (Unique Emissions Factors) Regulations 2009

- 8 **authorise** the submission to the Executive Council of the:

8.1 Climate Change (Emissions Trading Scheme and Synthetic Greenhouse Gas Levies) Amendment Regulations 2022

- 9 **note** that Part 4 of the attached Amendment Regulations comes into force on 1 February 2023, other than regulation 25.

- 10 **note** that regulation 25 in Part 4 of the attached Amendment Regulations comes into force on 1 January 2023.

- 11 **note** that the rest of the amendments introduced by these Amendment Regulations listed above come into force on 1 January 2023.

- 12 **note** that I have considered the statutory prerequisites required for the making of regulations described in this paper under sections 30G, 30W, 163, 164, 168, 245 and 246 of the Climate Change Response Act 2002.

- 13 **note** that I am satisfied that all the statutory requirements have been met for the making of regulations described in this paper.

Authorised for lodgement

Hon James Shaw

Minister of Climate Change

Proactively released

Appendices

Proactively released