

Version
as at 1 January 2022



Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020

(LI 2020/264)

Patsy Reddy, Governor-General

Order in Council

At Wellington this 21st day of September 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under sections 30GA and 30GB of the Climate Change Response Act 2002—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Climate Change made—
 - (i) after meeting the requirements of sections 3A, 3B, 30GB, and 30GC of that Act; and
 - (ii) having applied section 30GC(2)(a) as set out in clause 7(1) of Schedule 1AA of that Act (because these regulations are made before there is an emissions budget).

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Ministry for the Environment.

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Regulations

1 Title

These regulations are the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020.

2 Commencement

These regulations come into force on 4 January 2021.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Climate Change Response Act 2002

auction monitor has the meaning given in section 30GD(3) of the Act

auction operator means the Minister or an agent appointed by the Minister under section 6A(b) of the Act to conduct the sale of New Zealand units by auction

bid price has the meaning given in regulation 24

bid volume has the meaning given in regulation 24

bidding platform has the meaning given in regulation 10

bidding window has the meaning given in regulation 23

collateral, in relation to a bid, means the collateral that is required by regulation 25

collateral account means a Crown Bank Account nominated by the auction operator for holding collateral

confidential reserve price, in relation to an auction, has the meaning given in regulation 15A(1)(b)

cumulative volume has the meaning given in regulation 13

distributed volume has the meaning given in regulation 13

final clearing price has the meaning given in regulation 32(b)

interim clearing price has the meaning given in regulation 32(a)

prescribed minimum price, in relation to an auction, has the meaning given in regulation 15(a)

registered bidder means a person who is registered under regulation 21 and therefore eligible to submit a bid at an auction

released for sale, in relation to New Zealand units from the reserve volume, means released for sale at step 2 of the process set out in regulation 30

reserve volume has the meaning given in regulation 13

settlement account means a Crown Bank Account nominated by the auction operator for the settlement of auction sales

successful, in relation to a bid at an auction, means a bid that results in a sale of New Zealand units (*see* regulation 33)

tied bids means any 2 or more bids at an auction that have the same bid price

trigger price, in relation to the auctions in a calendar year, means any trigger price set for the year by regulation 15(b)

unit register means the unit register operated under section 18 of the Act.

- (2) In these regulations, unless the context otherwise requires, **approved overseas unit**, **auction**, **chief executive**, **holding account**, **primary representative**, **publicly available**, and **Registrar** have the meanings given in section 4(1) of the Act.

- (3) Any other term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

Regulation 3(1) **auction monitor**: inserted, on 15 March 2021, by section 7 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

Regulation 3(1) **confidential reserve price**: inserted, on 15 March 2021, by section 7 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

4 **Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

When auctions are held

5 **When auctions commence**

The sale of New Zealand units by auction commences on 17 March 2021.

6 **Indicative schedule for auctions**

Auctions are planned to be held—

- (a) on the dates set out in Schedule 2; and
- (b) after the last of those dates, 4 times a year at reasonably regular intervals.

7 **Chief executive must set auction dates**

- (1) No later than 30 September each year, the chief executive must set the auction dates for the next calendar year.
- (2) The auction dates—
 - (a) must be consistent with the indicative schedule set by regulation 6; and
 - (b) must not breach the date restrictions set by regulation 8.
- (3) The chief executive must, where possible, avoid setting an auction date—
 - (a) that they know to be the same date as a relevant announcement; or
 - (b) that is during the period of 20 working days before 31 May (which is the deadline for surrendering units under section 65(4) of the Act).
- (4) In this regulation, **relevant announcement** means an announcement that could have a substantial impact on the market for New Zealand units (for example, the delivery of a Budget under the Public Finance Act 1989 or a relevant announcement made by the Climate Change Commission).

8 **Restrictions on when auctions may be held**

- (1) An auction must be held on a working day.
- (2) In this regulation, **working day**—
 - (a) has the meaning given in section 29 of the Interpretation Act 1999; but

- (b) does not include any provincial public holiday (being a public holiday that is the day of the anniversary of any province or the day locally observed as that day).

9 Chief executive must make annual auction calendar publicly available

- (1) As soon as practicable after setting auction dates under regulation 7, the chief executive must make publicly available an auction calendar for the next calendar year.
- (2) The auction calendar must include—
 - (a) the auction dates set for the year; and
 - (b) for each auction, the number of New Zealand units expected to be available to sell at the auction (that is, the distributed volume: *see* regulation 13).
- (3) If an auction date has been made publicly available in an auction calendar, the auction operator must hold an auction on that date unless the auction is postponed under regulation 10.

10 Postponement of auctions

- (1) The chief executive or the auction operator may postpone an auction in exceptional circumstances, but must not cancel it.
- (2) However, an auction is automatically postponed if any of the following occur during the auction's bidding window:
 - (a) an outage occurs that lasts for longer than 5 minutes;
 - (b) any outage occurs during the final 30 minutes of the bidding window;
 - (c) the cumulative outage time exceeds 15 minutes.
- (3) In this regulation,—

bidding platform, in relation to an auction, is the digital or other platform on which the auction is run

exceptional circumstances means circumstances beyond the auction operator's control that would make it impossible, or unfair to bidders generally, for the auction to proceed on the scheduled date

outage means any period of time that the bidding platform is not available, meaning that bidders generally are unable to submit or withdraw bids.

11 Postponed auction must be rescheduled

- (1) The chief executive and the auction operator must comply with this regulation as soon as is reasonably practicable after an auction is postponed by or under regulation 10.
- (2) The chief executive must set a new date for the auction and notify the auction operator of that date.

- (3) The new date—
 - (a) must be as soon as is reasonably practicable after the original scheduled date and in the same calendar year; and
 - (b) must not breach the date restrictions set by regulation 8.
- (4) The chief executive must apply regulation 7(3) (to avoid certain dates where possible) when setting the new date.
- (5) The auction operator—
 - (a) must make the new date publicly available and notify all registered bidders, in writing, of the new date; and
 - (b) must hold an auction on the new date unless the auction is postponed again under regulation 10.

Auction volumes

12 New Zealand units available at auction

The auction operator must make available for sale, at each auction in a calendar year,—

- (a) the cumulative volume; and
- (b) any reserve volume that is released for sale after the end of the auction's bidding window.

13 Meanings of cumulative volume, distributed volume, and reserve volume

(1) In these regulations,—

cumulative volume, in relation to an auction, means the number of New Zealand units that is calculated by—

- (a) taking the distributed volume; and
- (b) adding any New Zealand units, other than those in the reserve volume, that were available for sale in any previous auction in the same calendar year and that remain unsold

distributed volume, in relation to an auction, means the number of New Zealand units that is calculated by—

- (a) taking the maximum number of New Zealand units that may be available for sale by auction in the calendar year, as set by regulation 14(1)(a)(i); and
- (b) subtracting the reserve amount of New Zealand units that may be available for sale by auction in that year; and
- (c) dividing the resulting number by the number of auction dates set for that year by or under these regulations; and

- (d) adding the number of New Zealand units (if any) by which the distributed volume for the previous auction in the same calendar year was rounded down under paragraph (e); and
- (e) rounding the result down to the nearest 100 units

reserve volume, in relation to an auction and a trigger price, means the number of New Zealand units that is calculated by—

- (a) taking the reserve amount of New Zealand units that is set for the trigger price by regulation 15(c); and
 - (b) subtracting any of that reserve amount that was released for sale and sold at any previous auction in the same calendar year.
- (2) To avoid doubt, any New Zealand units that remain unsold after the last auction in a calendar year are not available for sale at any subsequent auction.

Limits and price control settings for units

14 Limit on units available by auction and other unit limits

- (1) In a calendar year listed in column 1 of the limits table in Schedule 3,—
- (a) the New Zealand units available for sale by auction—
 - (i) must not exceed the number stated for that year in column 2 of the table; and
 - (ii) must not cause the overall limit for that year to be exceeded; and
 - (b) the approved overseas units used—
 - (i) must not exceed the number stated for that year in column 3 of the table; and
 - (ii) must not cause the overall limit for that year to be exceeded; and
 - (c) the overall limit is the number of units stated for that year in column 4 of the table.
- (2) The overall limit for a calendar year does not restrict the New Zealand units available by other means in that year, in that they may cause the overall limit to be exceeded.
- (3) Any additional units that are allocated under section 86C(5)(b) of the Act are not counted as New Zealand units available by other means.
- (4) In this regulation,—
- (a) **approved overseas units used**, **New Zealand units available by auction**, and **New Zealand units available by other means** have the meanings given in section 30GB(8) of the Act; and
 - (b) **overall limit** has the meaning given in section 30GB(2)(a)(iii) of the Act.

15 Price control settings for units

- (1) In a calendar year listed in column 1 of the price control settings table in Schedule 3,—
 - (a) New Zealand units must not be sold at auction for a price that is less than the minimum price stated for that year in column 2 of the table (the **prescribed minimum price**); and
 - (b) the trigger prices are the prices stated for that year in column 3 of the table; and
 - (c) the reserve amount of New Zealand units for each trigger price is the number of units stated for that trigger price in column 4 of the table.
- (2) To avoid doubt, if there is a confidential reserve price at an auction, that price (rather than the prescribed minimum price) is the lowest price at which New Zealand units may be sold at that auction.

Regulation 15(2): inserted, on 15 March 2021, by section 8 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

Methodology and calculation of confidential reserve prices for auctions

Heading: inserted, on 15 March 2021, by section 9 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

15A Minister must set methodology for calculating confidential reserve price

- (1) The Minister must set a methodology that an auction operator must use to calculate a price that,—
 - (a) if the price is greater than the lowest trigger price for the auction, must be recalculated as that trigger price (despite the initial calculation); and
 - (b) if the price (as recalculated or, if not, as initially calculated) is greater than the prescribed minimum price for the auction, becomes the **confidential reserve price** below which New Zealand units must not be sold at the auction.
- (2) In setting the methodology, the Minister must—
 - (a) consider the main matters and additional matters in section 30GC(5) and (6) of the Act; and
 - (b) ensure that the methodology promotes the purpose of confidential reserve prices, which is to prevent sales by auction under section 6A of the Act at prices significantly below the prices of New Zealand units sold at the time in other ways (on **secondary markets**) so that the sales by auction do not unduly affect secondary markets; and
 - (c) ensure that the methodology includes—
 - (i) a way to determine a representative price for New Zealand units sold on secondary markets recently before the auction, taking into account any volatility in prices; and

- (ii) a way to determine a price below the representative price that will achieve the purpose of confidential reserve prices.
- (3) In setting the methodology, the Minister must consult—
 - (a) the Minister of Finance; and
 - (b) the 1 or more auction monitors, if any.
- (4) The Minister—
 - (a) must ensure that the methodology is set, and remains set, from the commencement of this regulation; but
 - (b) may change the methodology by setting it differently at any time.

Regulation 15A: inserted, on 15 March 2021, by section 9 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

15B Minister must review methodology after certain auctions

- (1) This regulation applies if, at any auction, no bids are successful because the final clearing price is less than the confidential reserve price.
- (2) The Minister must—
 - (a) review the methodology by complying with regulation 15A as if setting the methodology; and
 - (b) if required, change the methodology by setting it under that regulation.

Regulation 15B: inserted, on 15 March 2021, by section 9 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

15C Auction operator must calculate confidential reserve price

- (1) The chief executive must provide the methodology to an auction operator as soon as is reasonably practicable after it is set under regulation 15A.
- (2) The auction operator must use the methodology to calculate a price that, if greater than the prescribed minimum price for the auction, is the confidential reserve price.
- (3) The methodology that must be used is the one that, 2 working days before the start of the day of the auction, had been most recently provided by the chief executive.

Regulation 15C: inserted, on 15 March 2021, by section 9 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

15D Methodology and calculated prices are confidential

- (1) The auction operator, and any other person, must keep confidential the methodology and the calculated price so that they are not disclosed to any potential buyer who participates in an auction.
- (2) To avoid doubt, as long as that information is not disclosed to any potential buyer who participates in an auction, this regulation does not prevent informa-

tion from being provided (for example, under regulation 36A or to an auction monitor).

Regulation 15D: inserted, on 15 March 2021, by section 9 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

Auction notices and information

16 Auction operator must make auction notices publicly available

- (1) At least 30 days before each auction date, the auction operator must make an auction notice publicly available.
- (2) The notice must include—
 - (a) the auction date and bidding window:
 - (b) the cumulative volume available for sale at the auction and the number of units within the cumulative volume, if any, that are unsold units from previous auctions in the same calendar year:
 - (c) any trigger prices and reserve volumes for the auction:
 - (d) the prescribed minimum price for the auction:
 - (da) a statement that there may also be a confidential reserve price for the auction that is not known to bidders:
 - (e) a statement that only those who are registered bidders immediately before the start of the auction's bidding window are eligible to submit a bid at the auction:
 - (f) the date by which collateral must be provided for bids at the auction (which must be 5 working days before the date of the auction):
 - (g) a statement that the Crown (as defined in regulation 19(2)) is not entitled to register as a bidder or submit a bid at the auction.
- (3) If the auction is postponed, the auction operator must make an updated auction notice publicly available as soon as practicable after a new date is set under regulation 11.
- (4) The updated notice must include—
 - (a) the information specified in subclause (2), not including subclause (2)(e); and
 - (b) a statement that only those who are registered bidders immediately before the start of the original bidding window and immediately before the start of the rescheduled auction's bidding window are eligible to submit a bid at the auction.

Regulation 16(2)(da): inserted, on 15 March 2021, by section 10 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

17 Auction operator must make general information about auctions publicly available

The auction operator must make the following publicly available:

- (a) guidance material for potential bidders, including guidance on how to participate in an auction, how to provide collateral for bids, and how the auction process will run;
- (b) the application form for bidder registration (*see* regulation 20(5));
- (c) the terms and conditions that a bidder must agree to when submitting a bid at an auction (*see* regulation 26).

Registration of bidders

18 Requirement for bidders to be registered

- (1) A person may submit a bid at an auction only if the person is a registered bidder immediately before the start of the auction's bidding window.
- (2) Subclause (3) applies if an auction is postponed after the start of its bidding window (the **original bidding window**) (*see* regulation 10(2)).
- (3) A person may submit a bid at the rescheduled auction only if the person—
 - (a) was a registered bidder immediately before the start of the original bidding window; and
 - (b) is a registered bidder immediately before the start of the rescheduled auction's bidding window.

19 Who may apply to be registered

- (1) The Crown is not eligible to register as a bidder or submit a bid at an auction.
- (2) Any other person who holds a holding account may apply to the auction operator to be a registered bidder.
- (3) An application may be made by the account holder or their primary representative.
- (4) If a holding account is held jointly,—
 - (a) any 1 or more of the persons who hold the account jointly, or any of their primary representatives, may apply for the joint account holders to each be registered bidders; and
 - (b) each reference in regulation 20 to an account holder must be read as a reference to each person who holds the holding account jointly.
- (5) In this regulation, **Crown**—
 - (a) means the Sovereign in right of New Zealand; and
 - (b) includes all Ministers of the Crown and all departments; but
 - (c) does not include—

- (i) an Office of Parliament, as defined in section 2(1) of the Public Finance Act 1989; or
- (ii) a Crown entity, as defined in section 7 of the Crown Entities Act 2004; or
- (iii) a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986; or
- (iv) an organisation named or described in Schedule 4 of the Public Finance Act 1989; or
- (v) a company named in Schedule 4A of the Public Finance Act 1989; or
- (vi) a company listed in Schedule 5 of the Public Finance Act 1989; or
- (vii) an entity named or described in Schedule 6 of the Public Finance Act 1989.

20 Application to register

- (1) A person applies to register as a bidder by—
 - (a) notifying the Registrar, in the manner required by the Registrar for this purpose, of the person's intention to apply; and
 - (b) submitting an application to the auction operator in the form approved for that purpose by the auction operator and made publicly available under regulation 17.
- (2) The application must include the following details (the **registration details**):
 - (a) the status of the applicant (that is, whether the applicant is an account holder or a primary representative):
 - (b) for the purpose of enabling the auction operator to verify the applicant's identity as an account holder or their primary representative, the unique identifier assigned to the applicant by the Registrar to facilitate the operation of the unit register:
 - (c) the account holder's full legal name and trading name (if different):
 - (d) the full name of each of the account holder's primary representatives (if any):
 - (e) if the account holder is a company, the business number (NZBN) assigned to the company under the New Zealand Business Number Act 2016:
 - (f) the account holder's principal business address or registered office address:
 - (g) either—
 - (i) the account holder's holding account number; or

- (ii) if they have more than 1 holding account, the account number for the holding account to which units bought by the account holder at auction are to be transferred;
 - (h) the full names and contact details of anyone that the account holder or their primary representative authorises to bid on their behalf at an auction (as a proxy bidder).
- (3) The application must include—
 - (a) confirmation that the applicant has notified the Registrar of their intention to make the application; and
 - (b) confirmation that the applicant authorises the auction operator to verify with the Registrar—
 - (i) the applicant’s identity as an account holder or their primary representative; and
 - (ii) that the registration details align with any corresponding information that is held in the unit register; and
 - (c) a declaration that the information provided in the application is true and correct.
- (4) *See* section 8 of the Oaths and Declarations Act 1957, which is about the manner of making declarations.
- (5) *See* section 30J of the Act, which makes it an offence for a person to sign a declaration required under these regulations knowing the declaration to be false.

21 Decision on application to register

- (1) This regulation applies if the auction operator receives an application under regulation 20.
- (2) The auction operator must verify with the Registrar—
 - (a) the applicant’s identity as an account holder or their primary representative; and
 - (b) that the applicant’s registration details align with any corresponding information that is held in the unit register.
- (3) If those matters are verified and the application otherwise meets the requirements of regulation 20, the auction operator must—
 - (a) register the account holder, or each person who holds the account jointly, as a bidder; and
 - (b) notify the applicant, whether that is an account holder or their primary representative, that the account holder, or each person who holds the account jointly, is a registered bidder and is therefore entitled to submit bids at an auction.
- (4) In any other case, the auction operator must—

- (a) decline the application; and
- (b) notify the applicant of that decision and the reasons for it.

22 Register of bidders

- (1) The auction operator must establish and maintain a register of bidders.
- (2) The register must include, for each registered bidder, the registration details set out in regulation 20(2).
- (3) The auction operator is not required to make publicly available any information kept in the register of bidders.

How auctions are run

23 Meaning of bidding window

- (1) The **bidding window** for an auction is the period that—
 - (a) starts at 9 am on the day of the auction; and
 - (b) ends at 12 pm on the same day.
- (2) See regulation 10(2), which sets out how bidding platform outages may cause an auction to be postponed after the start of its bidding window.

24 Requirements for bids

A bid at an auction must specify—

- (a) the number of New Zealand units (a **bid volume**) sought, which must be at least 500 and a multiple of 100; and
- (b) the price per New Zealand unit (a **bid price**) that the bidder will pay, which must—
 - (i) be at or above the prescribed minimum price; and
 - (ii) be a multiple of \$0.05.

25 Requirement to provide collateral for bids

- (1) At least 5 working days before a person submits a bid at an auction, the person must provide to the auction operator—
 - (a) collateral for the bid that amounts to at least 25% of the bid's maximum value; and
 - (b) if the collateral is provided in the form of cash, details of the bank account to which the amount provided should be returned if necessary.
- (2) The collateral must be provided in the form of—
 - (a) cash paid into a collateral account; or
 - (b) a negotiable instrument that, in substance, secures payment of, or performance of the obligation to pay, an amount that is 25% of what the bidder would be required to pay if their bid were successful.

- (3) As soon as is practicable after the auction, the auction operator must return the collateral to the person who provided it, unless—
- (a) the person requests otherwise under subclause (4); or
 - (b) the amount is, or may become, forfeit to the Crown under regulation 35, in which case the auction operator must return only what is not forfeit.
- (4) The person may request—
- (a) that collateral in the form of cash be applied towards the payment for any New Zealand units purchased at the auction; or
 - (b) that collateral in the form of a negotiable instrument be—
 - (i) retained by the auction operator as collateral for bids at future auctions; or
 - (ii) returned only when the person requests it (rather than returned automatically under subclause (3)).
- (5) A single amount or form of collateral may be provided to cover—
- (a) the combined maximum value of multiple bids at an auction; or
 - (b) bids at more than 1 auction.
- (6) In this regulation,—
- maximum value**, in relation to a bid, means the amount calculated by multiplying the bid volume by the bid price
- negotiable instrument** has the meaning given in section 16(1) of the Personal Property Securities Act 1999.

26 Requirement to agree to terms and conditions

- (1) The auction operator may set terms and conditions that a bidder must agree to before submitting bids at an auction.
- (2) However,—
- (a) the auction operator may impose a term or condition only if they are satisfied that it is necessary or desirable—
 - (i) to ensure the effective conduct of an auction in accordance with these regulations; or
 - (ii) for the administration of these regulations or for giving them full effect; and
 - (b) the terms and conditions are enforceable only to the extent that they are necessary for either of those purposes.

27 How bids are made

- (1) A registered bidder may bid at an auction by submitting a bid to the auction operator during the auction's bidding window.
- (2) The bid must—

- (a) comply with the requirements set out in regulation 24; and
 - (b) be submitted in the manner required by the auction operator.
- (3) As soon as practicable after receiving a bid, the auction operator must—
- (a) accept the bid, unless there is a reason to reject it under subclause (4); and
 - (b) advise the bidder whether their bid was accepted or rejected and, if their bid was rejected, why it was rejected.
- (4) The auction operator must reject a bid if—
- (a) the bid is not made in accordance with subclauses (1) and (2); or
 - (b) the auction operator cannot verify the bidder's registration details; or
 - (c) the collateral required for the bid by regulation 25 was not provided at least 5 working days before the auction date; or
 - (d) the bidder did not agree to the auction terms and conditions before submitting the bid (*see* regulation 26).
- (5) The auction operator must not reject a bid for any other reason.

28 How bids are amended or withdrawn

- (1) After making a bid at an auction, and at any time before the end of the bidding window, the bidder may—
- (a) amend the bid by submitting an amendment request to the auction operator; or
 - (b) withdraw the bid by submitting a withdrawal request to the auction operator.
- (2) The request must,—
- (a) in the case of an amendment request, include an amended bid that complies with the requirements set out in regulation 24; and
 - (b) in any case, be submitted in the manner required by the auction operator.
- (3) If the auction operator receives an amendment request, the auction operator must accept or reject the amended bid by applying regulation 27(3) to (5) as if the references in those subclauses to a bid were references to the amended bid.
- (4) If the auction operator receives a withdrawal request, the auction operator must—
- (a) either—
 - (i) reject the request if it was not submitted during the bidding window; or
 - (ii) in any other case, accept the request; and
 - (b) advise the bidder whether their request was accepted or rejected and, if their request was rejected, why it was rejected.

29 Restriction on disclosure of bids

- (1) The auction operator must not make the details of any bid publicly available or disclose them to another bidder or any other person.
- (2) However, subclause (1) does not prevent a disclosure that the auction operator considers is necessary or desirable to assist with the administration of an auction under these regulations.

*How auction results are determined***30 Process for determining auction results***Step 1: allocate cumulative volume and determine first interim clearing price*

- (1) As soon as practicable after the end of an auction's bidding window, the auction operator must—
 - (a) rank the bids in order of bid price, so that—
 - (i) the highest-ranked bid is the bid with the highest bid price; and
 - (ii) the lowest-ranked bid is the bid with the lowest bid price; and
 - (iii) tied bids have the same rank; and
 - (b) allocate the cumulative volume to bids in accordance with regulation 31, starting with the highest-ranked bid; and
 - (c) determine an interim clearing price in accordance with regulation 32.

Step 2: allocate reserve volume and redetermine interim clearing price

- (2) If the interim clearing price determined under subclause (1)(c) is greater than or equal to the lowest trigger price, the auction operator must—
 - (a) release for sale at the auction the reserve volume for that trigger price; and
 - (b) in accordance with regulation 31, and reassessing any bid that was allocated less than its bid volume at step 1, allocate to bids the reserve volume released under paragraph (a); and
 - (c) redetermine the interim clearing price in accordance with regulation 32.
- (3) If the interim clearing price determined under subclause (2)(c) is greater than or equal to the next lowest trigger price (if any), the auction operator must—
 - (a) release for sale at the auction the reserve volume for that trigger price; and
 - (b) in accordance with regulation 31, and reassessing any bid that was allocated less than its bid volume in an earlier round at step 2, allocate to bids the reserve volume released under paragraph (a); and
 - (c) redetermine the interim clearing price in accordance with regulation 32.
- (4) The auction operator must reapply subclause (3) for each trigger price as necessary.

Step 3: determine final clearing price and sell units

- (5) As soon as practicable after completing step 2, the auction operator must—
- (a) determine the final clearing price in accordance with regulation 32; and
 - (b) sell units at that price if required by regulation 33 (if there are successful bids under that regulation).

Regulation 30(5)(b): replaced, on 15 March 2021, by section 11 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

31 Allocating New Zealand units to bids

- (1) As required by regulation 30, the cumulative volume and any reserve volume released for sale must be allocated to bids at an auction as follows:
- (a) apply subclauses (2) to (7) (as applicable) to each bid in order of rank, starting with the highest-ranked bid; and
 - (b) if any bid is allocated less than its bid volume under subclause (3) or (6), allocate zero New Zealand units to every lower-ranked bid; and
 - (c) from any reserve volume that is released, allocate zero New Zealand units to every bid with a bid price that is less than the trigger price for that reserve volume.

Tied bids

- (2) A tied bid is allocated its bid volume, unless the combined volume of the related tied bids is greater than the remaining volume.
- (3) If the combined volume of the related tied bids is greater than the remaining volume,—
- (a) each tied bid is allocated its proportional share of the remaining volume, rounded as necessary under subclause (7); and
 - (b) if the remaining volume after allocations under paragraph (a) is 100 units or more, the remaining volume is distributed, in 100-unit lots, among the related tied bids at random.
- (4) If the random allocation of a 100-unit lot to a tied bid under subclause (3)(b) would result in the bid being allocated more than its bid volume, the allocation fails and the 100-unit lot must be reallocated to another related tied bid at random.

Other bids

- (5) A bid other than a tied bid is allocated its bid volume, unless the bid volume is greater than the remaining volume.
- (6) If the bid volume is greater than the remaining volume, the bid is allocated the remaining volume, rounded as necessary under subclause (7).

Rounding

- (7) The number of New Zealand units allocated to a bid—

- (a) must be rounded down to the nearest 100 units; and
- (b) may be rounded down to zero.

Interpretation

- (8) In this clause,—

combined volume, in relation to related tied bids, means the sum of the bid volumes of all the related tied bids

proportional share, in relation to a tied bid, means the bid volume of the tied bid divided by the combined volume of the related tied bids

related tied bids, in relation to a tied bid at a particular bid price, means all the bids that are tied at that bid price

remaining volume means the number of New Zealand units that is calculated by—

- (a) taking the cumulative volume; and
- (b) adding any reserve volume released for sale; and
- (c) subtracting the total number of New Zealand units already allocated to bids.

32 Determining clearing price

The clearing price for an auction is the bid price of the lowest-ranked bid (or tied bids) at the auction to be allocated a number of New Zealand units that is greater than zero—

- (a) at step 1 or step 2 of the process set out in regulation 30 (an **interim clearing price**); or
- (b) at step 3 of the process set out in regulation 30 (the **final clearing price**).

33 Requirement to sell at final clearing price

- (1) As soon as practicable after completing the process set out in regulation 30, the auction operator must sell to bidders, and the bidders must buy, at the final clearing price, the number of units allocated to their bids under regulation 31.
- (2) However, no bids are successful, and no units may be sold to bidders, if—
 - (a) there is a confidential reserve price at the auction; and
 - (b) the final clearing price is less than the confidential reserve price.

Regulation 33(2): inserted, on 15 March 2021, by section 12 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

Settlement of auction sales

34 Payment required before units transferred

- (1) If a bidder buys New Zealand units at an auction, the bidder must pay for the units, in full, within 4 working days after the auction date.
- (2) Subclause (3) applies if the bidder—
 - (a) provided any amount of collateral for the bid in the form of cash paid into a collateral account; and
 - (b) requested that it be applied towards the payment for any New Zealand units purchased at the auction (*see* regulation 25(4)(a)).
- (3) The auction operator must—
 - (a) treat as much of the collateral as is needed to pay for the units as payment or part-payment received for the units; and
 - (b) transfer that amount, within 4 working days after the auction date, from the collateral account to the settlement account.
- (4) A bidder's obligation to pay for units is only satisfied when—
 - (a) the required payment is paid into the settlement account; and
 - (b) it is no longer possible to reverse the payment and the funds are available for use by the Crown.
- (5) If the auction operator is satisfied that a bidder has satisfied their obligation to pay for units, the auction operator must, as soon as is reasonably practicable,—
 - (a) if the auction operator is the Minister, direct the Registrar to transfer the units from the Crown holding account to the holding account listed for that purpose in the bidder's registration details; or
 - (b) if the auction operator is an agent appointed by the Minister under section 6A(b) of the Act, ask the Minister to direct the Registrar to transfer units as described in paragraph (a).

35 Consequences if payment requirements not met

- (1) This regulation applies if a bidder buys New Zealand units at an auction but does not satisfy their obligation to pay for the units as required by regulation 34.
- (2) The units must be treated as unsold.
- (3) From the collateral provided for the bid, an amount is forfeit to the Crown that is 25% of the amount calculated by multiplying the bid volume by the final clearing price.

Publication of auction results and provision of certain information

Heading: replaced, on 15 March 2021, by section 13 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

36 Requirement to make auction results publicly available

- (1) The auction operator must make the auction results publicly available as soon as is reasonably practicable after they have been determined, and on the same day as the auction.
- (2) The **auction results** are all of the following:
 - (a) the final clearing price:
 - (b) the total auction volume, which is the sum of the cumulative volume for the auction and any reserve volume that was released for sale:
 - (c) the total number of bidders at the auction (excluding any whose bids were all withdrawn before the end of the bidding window):
 - (d) the total bid volume, which is the sum of the bid volumes of all the bids made and not withdrawn:
 - (e) the average bid volume, which is the total bid volume divided by the number of bids made and not withdrawn:
 - (f) the cover ratio, which is the total bid volume divided by the total auction volume:
 - (g) the number of bidders at the auction who made successful bids:
 - (h) the number of units not sold at the auction, if any:
 - (i) a statement that the number of units not sold at the auction may increase if any auction sales are not settled in time.
- (3) However, if no bids were successful because the final clearing price was less than the confidential reserve price, the **auction results** are solely a statement to that effect.

Regulation 36(2): amended, on 15 March 2021, by section 14(1) of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

Regulation 36(3): inserted, on 15 March 2021, by section 14(2) of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

36A Requirement to provide information relevant to confidential reserve price

The auction operator must, as soon as is reasonably practicable after an auction, provide the following information about the auction to the chief executive:

- (a) details of the calculation of the price using the methodology set under regulation 15A; and
- (b) the bid volume and bid price of each bid in a form that does not identify the bidder.

Regulation 36A: inserted, on 15 March 2021, by section 15 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

Revocation

37 Revocation

The Climate Change (Limits and Price Control Settings for Units) Regulations 2020 (LI 2020/185) are revoked.

Schedule 1

Transitional, savings, and related provisions

r 4

Part 1

Provisions relating to these regulations as made

1 Requirement to make annual auction calendar for 2021 publicly available

- (1) The chief executive must make an auction calendar for 2021 publicly available as soon as practicable after these regulations are made.
- (2) The auction calendar must comply with regulation 9(2).

2 Requirement to make general information about auctions publicly available

The auction operator has until 15 February 2021 to make publicly available the information referred to in regulation 17.

Part 2

Provisions relating to Climate Change Response (Auction Price) Amendment Act 2021

Schedule 1 Part 2: inserted, on 15 March 2021, by section 16 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

3 Meaning of amendments

In this Part, **amendments** means the amendments made to these regulations by the Climate Change Response (Auction Price) Amendment Act 2021.

Schedule 1 clause 3: inserted, on 15 March 2021, by section 16 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

4 Setting and providing first methodology

Actions done for the following purposes are taken as having been done under the amendments, even if they are done before the amendments commence or are enacted:

- (a) setting the first methodology under regulation 15A, to ensure that regulation 15A(4)(a) is satisfied; and
- (b) providing the first methodology to an auction operator under regulation 15C, to ensure that regulation 15C is satisfied.

Schedule 1 clause 4: inserted, on 15 March 2021, by section 16 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

5 Auction notice for early auction

If an auction is held within 30 days after the amendments commence, the notice under regulation 16 need not include the statement in regulation 16(2)(da).

Schedule 1 clause 5: inserted, on 15 March 2021, by section 16 of the Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4).

Schedule 2
Auction dates included in indicative schedule

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17 March 2021

23 June 2021

1 September 2021

1 December 2021

Schedule 3 Limits and price control settings

rr 14, 15

Limits

| Column 1 | Column 2 | Column 3 | Column 4 |
|----------------------|--|--|--|
| Calendar year | New Zealand units available by auction (millions) | Approved overseas units used (millions) | Overall limit on units (millions) |
| 2022 | 26.3 | 0.0 | 34.5 |
| 2023 | 25.6 | 0.0 | 34.5 |
| 2024 | 25.0 | 0.0 | 32.9 |
| 2025 | 23.3 | 0.0 | 29.6 |
| 2026 | 21.7 | 0.0 | 27.9 |

Price control settings

| Column 1 | Column 2 | Column 3 | Column 4 |
|----------------------|---|---|---|
| Calendar year | Minimum price below which units must not be sold by auction (\$) | Trigger price for sale of reserve amount of New Zealand units (\$) | Reserve amount of New Zealand units (millions) |
| 2022 | 30.00 | 70.00 | 7.0 |
| 2023 | 32.10 | 78.40 | 7.0 |
| 2024 | 34.35 | 87.81 | 7.0 |
| 2025 | 36.75 | 98.34 | 6.8 |
| 2026 | 39.32 | 110.15 | 6.7 |

Schedule 3: amended, on 1 January 2022, by regulation 4 of the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2021 (LI 2021/290).

Michael Webster,
Clerk of the Executive Council.

Notes

1 *General*

This is a consolidation of the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2021 (LI 2021/290)

Climate Change Response (Auction Price) Amendment Act 2021 (2021 No 4): Part 2