



# Regulatory Impact Statement: Adjusting the penalty calculation for incorrect emissions returns through amendments to the Climate Change Response Act 2002 (2026)

<b>Decision sought</b>	<i>Analysis produced for the purpose of informing: final Cabinet decisions</i>
<b>Agency responsible</b>	<i>Ministry for Primary Industries</i>
<b>Proposing Ministers</b>	<i>Minister of Forestry and Minister of Climate Change</i>
<b>Date finalised</b>	<i>18 August 2025</i>

The Minister of Climate Change and Minister of Forestry propose to make changes to the Climate Change Response Act 2002 (the Act) to adjust the penalty calculation equation used when a participant reports incorrect amounts of carbon emissions or removals, or units, when the amount should have been 0.

The calculation will be adjusted by changing one of the three factors in the equation (factor A). The new factor A will be the difference between the amount the participant reported and 0 multiplied by 0.2.

## Summary: Problem definition and options

### What is the policy problem?

- Participants in the NZ ETS effectively receive no penalty when they report incorrect amounts of emissions, removals or units and the actual amount is equal to 0. The equation used for the calculation of penalties always leads to a penalty is \$0.00 in this situation, regardless of the participant's culpability level.
- An effective penalty can deter this type of non-compliant behaviour and plays an important role in protecting the integrity of the NZ ETS.
- Participation in the scheme has increased significantly since administrative penalties were introduced in 2021. The associated risk of participants reporting an incorrect amount of carbon emitted or removed where the correct amount is 0 has increased.
- Targeted engagement indicated that stakeholders do not have concerns about the proposed changes to the equation used to calculate penalties in the situation described above. Some stakeholders noted they are comfortable with the changes as they are methodological.

- Government intervention is required because sanctioning this type of non-compliance can only be provided for through changes to the Act.
- The underlying market failure is that this type of non-compliance occurs frequently and there is no sanction available to deter non-compliance. Non-compliance in relation to reporting emission and removal of carbon has a negative impact on the integrity of the New Zealand Emissions Trading Scheme (NZ ETS).

**What is the policy objective?**

- The proposed changes seek to:
  - Ensure penalties adequately sanction non-compliant behaviour and encourage voluntary compliance in the NZ ETS.
  - Ensure that the integrity of the NZ ETS is maintained so that it continues to support New Zealand’s domestic and international targets and emissions budgets.
  - Ensure penalties are proportionate to the severity of the error and the participant’s commercial activity.
- Success or failure will be measured through existing monitoring and reporting functions (e.g. monthly compliance reports). A trend of increasing non-compliance for the situation outlined above would result in the regulator exploring the reasons to determine if changes to penalties are required.

**What policy options have been considered, including any alternatives to regulation?**

- The “do nothing” approach means that participants who report an incorrect amount of emissions or removals or units when the actual amount is 0, currently do not receive a penalty.
- The Ministers’ preferred approach is to change one of the factors (factor A) in the equation used to calculate penalties. This updated factor would be the unit difference between what the participant reported and 0 multiplied by 0.2.

**What consultation has been undertaken?**

- Proposals in the RIS have been subject to targeted engagement. Full public consultation was not undertaken to balance consultation fatigue. Ministers considered the high volume of NZ ETS related public consultations in train at the time and that sufficient feedback could be obtained through carefully designed targeted engagement processes for the proposed changes.
- Targeted engagement was undertaken on the proposal outlined in this RIS. This included:
  - an email questionnaire to post-settlement governance entities (PSGEs);
  - an email to Māori forestry stakeholders outlining the proposals and inviting stakeholders to participate in a hui; one hui was held;
  - a discussion with the ETS Technical Advisory Group (forestry stakeholders);
  - engagement with pan-Māori groups.
- Stakeholders support the Ministers’ preferred option.

**Is the preferred option in the Cabinet paper the same as preferred option in the RIS?**

Yes.

## Summary: Minister's preferred option in the Cabinet paper

<b>Costs (Core information)</b>
<p><b>Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)</b></p> <ul style="list-style-type: none"><li>• The proposals have small, unquantified, potential financial implications for MPI and EPA. These result from the adjustment of one of the factors of the equation used to calculate penalties. Responsibilities are not changed through this proposal.</li><li>• Non-compliant participants could incur cost for non-compliance in relation to reporting incorrect amounts of emissions, removals or units when the correct amount is 0. The distributional impact of the proposed change falls on non-compliant regulated parties.</li><li>• The proposed change is not anticipated to have any impact on competition.</li></ul>
<b>Benefits (Core information)</b>
<p><b>Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)</b></p> <ul style="list-style-type: none"><li>• The proposed change is expected to encourage compliance in the NZ ETS, which protects the integrity of the NZ ETS. This benefits all participants in the scheme and aids New Zealand in meeting international climate change obligations.</li><li>• The proposed intervention is not anticipated to have any impact on competition.</li></ul>
<b>Balance of benefits and costs (Core information)</b>
<p><b>Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?</b></p> <ul style="list-style-type: none"><li>• The anticipated benefits outweigh the costs when considering quantitative and qualitative evidence.</li></ul>
<b>Implementation</b>
<p><b>How will the proposal be implemented, who will implement it, and what are the risks?</b></p> <ul style="list-style-type: none"><li>• Ongoing operation of the new arrangements will be implemented by EPA and MPI as relevant. Officials are confident arrangements can be implemented effectively and efficiently and administered through existing funding arrangements.</li><li>• The risk of participants misunderstanding changes to the equation used to calculate penalties will be mitigated through education.</li><li>• The proposal will be progressed through the Climate Change (Market Governance and Other Efficiencies) Amendment Bill, which is intended to come into effect mid-2026. Transitional arrangements are not anticipated to be required.</li></ul>
<b>Limitations and Constraints on Analysis</b>
<ul style="list-style-type: none"><li>• The tightly constrained timeline for policy development and limits on consultation means stakeholder engagement on the options discussed is not exhaustive.</li><li>• Wider changes to penalties for incorrect emissions returns, allocations and adjustments, and alternatives to administrative penalties were out of scope.</li></ul>

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:



**Bronwyn Kropp**  
**Manager (Acting) Operational Policy - Forestry**  
**Incentives**  
**Te Uru Rākau – New Zealand Forest Service**  
**Ministry for Primary Industries**  
**15 August 2025**

<b>Quality Assurance Statement</b>	
<b>Reviewing Agency:</b> Ministry for Primary Industries and Department of Corrections	<b>QA rating:</b> Partially meets
<b>Panel Comment:</b>  A quality assurance panel with members from MPI and the Department of Corrections has reviewed the Regulatory Impact Statement: Adjusting the penalty calculation for incorrect emissions returns through amendments to the Climate Change Response Act 2002 (2026), produced by MPI and dated 18 August 2025. The panel considers that it partially meets the Quality Assurance criteria. This rating is attributable to the limited consultation undertaken on the recommended option. This limits the availability of information to support cost/benefit analysis, and fully informed comparison between the options.	

## Terms used in this impact statement

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**Adjustment:** This is the difference between the provisional allocation that was received by the eligible person, and the allocation as checked at the end of the year. If the adjustment number is negative, the participant will receive additional units, if it is positive the participant will be liable to repay units.

**Amendment:** An amendment is a correction of an emissions return that is carried out by the regulator. The correct amount of emissions or removals may be higher or lower than what was reported by a participant. In some cases, the correct amount of emissions or removals is 0. This may happen when a participant submitted an emissions return when they were not supposed to.

**Culpability level:** The extent to which the participant's behaviour is responsible for the difference in emissions or removals reported.

**Emissions return:** A report that outlines a participant's emission of greenhouse gasses into (emissions), or removal of greenhouse gasses (removals) from the atmosphere during a set period.

**Entitlement:** Units received by a participant if their emissions return reports that greenhouse gasses have been removed from the atmosphere.

**Industrial Allocation (IA):** Allocations are units that are given free of charge to certain emissions intensive and trade exposed eligible persons by the government. This is to mitigate the financial effect of the New Zealand Emissions Trading Scheme (NZ ETS) on these participants. Participants can choose to receive their allocation either in advance (provisional) or in arrears (final allocation). Provisional allocations are checked at the end of the year to align with actual industrial activity during that year.

**Participant:** a person or business who undertakes activities in the New Zealand Emissions Trading Scheme (as defined in the Act).<sup>1</sup>

**Reconsideration of allocation decisions:** The regulator may reconsider, vary or revoke (change) an allocation given to an eligible person.

**Unit:** A unit can either represent one metric tonne of carbon dioxide, or the equivalent of any other greenhouse gas. For the purpose of this RIS, a unit is the New Zealand Unit (NZU) which are created by the Government.

**Unit difference:** As a result of an amendment or change in allocation decision a participant may receive additional units or be required to repay units. The unit difference:

- for amendments results from:
  - emissions or removals as reported by the participant in the emissions return, and
  - the correct amount of emissions or removals as determined by the regulator.
- for reconsideration of allocation decisions:

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<sup>1</sup> In this impact statement the term participant is used for clarity, however the Act specifies that penalties apply to a person. When this statement refers to participants, this includes IA applicants and persons who have submitted emissions returns when they were no longer carrying out the activity due to a transmission of interest.

- the units the participant is required to surrender or repay, or is no longer entitled to receive as a result of the change, or
- the units the participant is no longer required to surrender or repay, or is now entitled to receive, as a result of the change

## **Section 1: Diagnosing the policy problem**

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### **What is the context behind the policy problem and how is the status quo expected to develop?**

#### The New Zealand Emissions Trading Scheme

1. The New Zealand Emissions Trading Scheme (NZ ETS) is a market-based tool to encourage a reduction in emissions of greenhouse gasses. The purpose of the NZ ETS is to assist New Zealand in meeting its international climate change obligations and 2050 target and emissions budgets. The Climate Change Response Act 2002 (the Act) provides the statutory framework for the NZ ETS.
2. The NZ ETS is a unique emissions trading scheme because it not only includes participants that emit carbon (non-forestry participants), but also includes participants that are able to remove carbon from the atmosphere (forestry participants). Including forestry in the scheme provides financial incentives to establish new forests, and to replace older forests if they are cleared.
3. The Ministry for Primary Industries (MPI) is the regulator for forestry in the NZ ETS under delegation from the Environmental Protection Authority (EPA). Te Uru Rākau – New Zealand Forest Service is the branch within MPI responsible for carrying out operational regulation for forestry in the NZ ETS.

#### Forestry participants in the NZ ETS

4. In New Zealand, the baseline date for greenhouse gas emissions is 1990. This has resulted in two categories of forest land in the NZ ETS: pre-1990 and post-1989. A forester may choose to voluntarily register in the scheme with post-1989 forest land to earn NZUs. Owners of pre-1990 forest land can harvest and re-establish their forests without registering. However, if they deforest the land, they are required to participate in the scheme and surrender units to the Crown. The differences are summarised in **Table 1**.
5. Forestry participants in the NZ ETS are required to report the amount of carbon their forest removed or emitted through emissions returns. These emissions returns are usually required to be submitted at intervals set out in the Act, when changes occur on the forest land, such as changes to landownership, rights and leases, or when participants wish to remove land from the NZ ETS.
6. If a participant's emissions return reports removal of carbon during the relevant period, they will receive NZUs. Removals occur when a participant's forest absorbs carbon from the atmosphere while the trees are growing. Participants are required to surrender units if the emissions return reports that carbon was emitted due to forest land being cleared or deforested during the relevant period. The amount of NZUs the participant receives or is required to surrender is equal to the tonnes of carbon removed or emitted during the relevant period.

Table 1: Summary of differences amongst types of forest land involved in the NZ ETS

Forest type	What forestry activities are allowed?	When must foresters become participants in the NZ ETS?
Post-1989 standard	Clearing (harvesting) and reestablishing (replanting)	When the land is first entered in the NZ ETS or when ownership* for land already entered in the NZ ETS changes
Post-1989 permanent	Must not be fully cleared for 50 years	When the land is first entered in the NZ ETS or when ownership* for land already entered in the NZ ETS changes
Pre-1990	Clearing (harvesting) and reestablishing (replanting)	When exotic forest is cleared and not replanted (deforestation) occurs. Units must be surrendered to the Crown.

\* If land or a forestry right or a forestry lease is purchased

### Non-forestry participants in the NZ ETS

7. Non-forestry participants in the NZ ETS report on the greenhouse gases they emitted during the previous year through emissions returns.<sup>2</sup> They are required to surrender an amount of units equivalent to the emissions reported in the emissions return. Some participants can also receive units for their removal activities or apply for an allocation of units if they are affected by the rules of the NZ ETS. **Table 2** outlines obligations for non-forestry and forestry participants.

Table 2: Summary of obligations for different types of participants in the NZ ETS

Obligations for participants in the NZ ETS	Participant type	
	Forestry	Non-forestry
Submit an emissions return to report on emissions of the previous year	☑	☑
Submit an emissions return to report on emissions or removals (depending on whether forest is growing or cleared) <sup>3</sup>	☑	☑
Surrender units equal to the greenhouse gas emissions in the emissions return	☑	☑
Submit an industrial allocation application to receive units from the government		☑
Submit an adjustment which reports on the difference between the units received ahead of the year, and the actual units required based on emissions of the year.		☑

<sup>2</sup> Non-forestry participants are made up of the following sectors: liquid fossil fuels, stationary energy, industrial processes, synthetic greenhouse gases and waste.

<sup>3</sup> This also applies for some non-forestry participants if they have voluntarily registered.

## Non-compliance and administrative penalties in the NZ ETS

8. The NZ ETS relies on “self-assessment” for reporting emissions and removals through emissions returns, allocation applications and adjustments. The NZ ETS resembles the tax system in New Zealand, so the administrative penalties introduced in 2021 were modelled on administrative penalties in the tax system. The analysis for the introduction of reporting penalties is set out in the Regulatory Impact Statement ‘NZ ETS tranche two: Improving compliance and penalties’.<sup>4</sup>
9. An accurate overview of emissions, removals and units is required to support New Zealand in meeting its domestic and international obligations. Compliance and enforcement tools encourage participants to submit accurate emissions returns, allocation applications and adjustments, and play an important role in maintaining the integrity of the NZ ETS.
10. The Act provides for the application and calculation of an administrative penalty when participants:
  - a. Submit an incorrect emissions return for activities relating to post-1989 forestry<sup>5</sup>
  - b. Submit an incorrect emissions return for other activities,<sup>6</sup> and
  - c. Provide incorrect information in an allocation application or adjustment.<sup>7</sup>
11. The penalty amount is calculated using an equation set out in the Act. An example of a penalty calculation can be found in **Figure 1**. The equation is made up out of three factors,  $A \times B \times C$ , where:
  - a. Factor A is the lesser of:
    - i. the outcome of the corrected emissions return, application or adjustment, or
    - ii. the difference between the incorrect emissions return, application or adjustment and the corrected emissions return, application or adjustment.
  - b. Factor B is the price of carbon as determined in regulations.<sup>8</sup>
  - c. Factor C is the participants culpability factor
    - i. The culpability factor is made up of the participant’s culpability level and whether they voluntarily disclosed their error to the regulator.<sup>9</sup>
12. The ‘lesser than’ formula in factor A was implemented to mitigate the risk of participants becoming liable for penalties that are disproportionate to the size of their undertaking. This may happen if small entities report significantly more emissions than they are required to. For example, where a participant reports emissions in kilograms rather than in tonnes. In those cases, the amended outcome of the emissions return will more accurately reflect the size of the entity and lead to a more proportionate penalty.

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<sup>4</sup> [Impact Statement - NZ ETS Tranche two: Improving Compliance and Penalties - 16 May 2019 - Ministry for the Environment - Regulatory Impact Assessment](#).

<sup>5</sup> The calculation for this penalty is in section 134C(5).

<sup>6</sup> The calculation for this penalty is in section 134C(8).

<sup>7</sup> The calculation for this penalty is in section 134D(2).

<sup>8</sup> Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013.

<sup>9</sup> Culpability factor can be 0.1, 0.2, 0.4 or 1.0.

### *Penalties where participants report too many emissions, or report too few removals*

13. Penalties for participants reporting too many emissions, or reporting too few removals differ from penalties where participants report too few emissions, or report too many removals. This is because ‘the motivations for over- and underclaiming units, and the resulting risk and cost profile (with the participant facing the costs of underclaiming units and the Crown the costs of overclaiming), justify different treatment.

14. For this reason, participants who underclaim an allocation or entitlement to units, or over-report on their obligation to surrender units, receive a maximum penalty of \$1,000.

*Figure 1: Example of a penalty calculation for an incorrect emissions return*

Business X submitted an emissions return in 2023 reporting they removed 3,000 tonnes of carbon during the relevant period. The regulator identified that the emissions return is incorrect as the actual amount of removals for this business during the relevant period was 1,000 tonnes of carbon. The regulator will amend Business X’s emissions return to 1,000 and assess whether a penalty applies. The participant voluntarily disclosed the error to the regulator before they were informed of the error by the regulator. If a penalty applies, the amount would be  $A \times B \times C$  where:

- A is the lesser of:
  - the actual amount of carbon removed by Business X (in this case 1,000), or
  - the difference between the submitted and actual amount of removals (in this case 2,000)
- B is the price of carbon. The price of carbon was \$67.63 in 2023.
- C is the participant’s culpability factor. For this example, the participant failed to take reasonable care in the preparation of their emissions return and voluntarily disclosed the error to the regulator.

The penalty will be:  $1,000 \times 67.63 \times 0.1 = \$6,763$

These proposals will be progressed alongside other amendments to the Act

15. The package of forestry-related proposals in this RIS are part of a wider collection of proposed changes through the Climate Change Response Amendment (Market Governance and Other Integrity and Efficiency Changes) Amendment Bill (the Bill). The Bill is intended to make the administration of the Act easier and to support the NZ ETS to function as intended. The wider collection of changes includes annual updates to wider NZ ETS settings and an efficiency review of the Act.<sup>10</sup>

16. The other RISs prepared for the wider collection of proposed changes to the Act are:

- Technical amendments to the NZ ETS;
- Improvements to the administration of the Emissions Trading Scheme through amendments to the Climate Change Response Act 2002 (2026).

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<sup>10</sup> The wider review does not include the review of cost recovery and efficiencies for updating fees and charges for forestry.

## What is the policy problem or opportunity?

### *Nature, scope and scale of the problem*

17. Almost a third of non-compliance where participants reported incorrect emissions or removals for forestry activities, would receive a penalty of \$0.00 if a penalty applies.<sup>11</sup> This is due to the calculation of penalties as set out in the Act. In most of these instances of non-compliance participants reported removals when they did not carry out removal activities (87%).<sup>12</sup> This means that they received units in relation to the removals reported that they were not entitled to.
18. For the forestry activity related non-compliance above, participants reported a median average of 1,113, and a mean average of 4,025 of incorrect removals. Because participants receive units for their removals this means they received on average 1,113 or 4,025 units in error respectively that are worth \$66,034.29 and \$238,803.25 respectively.<sup>13</sup>

### *Why do penalties of \$0.00 occur?*

19. In situations where a participant reports incorrect amounts of removals, emissions or units when the actual amount of removals, emissions, or units is 0, the penalty calculation equation will be multiplied by 0 (**Figure 2**). This is because of the formulation of factor A in the penalty calculation equation set out in the Act.<sup>14</sup>
20. Factor A requires the use of the 'lesser of':
- the difference between the reported amount of emissions, removals or units and the actual amount, or
  - the actual amount of emissions, removals or units.
21. Where the actual amount of removals, emissions or units is not equal to 0, the equation leads to a penalty amount higher than \$0.00. This means that participants who make similar sized errors (report a similar amount of removals or emissions in error) may receive significantly different penalties (**Figure 2**).
22. At the time the penalty was introduced, this penalty calculation was created based on the expectation that the risk of participants receiving a penalty of \$0.00 was low. In practice, this risk has since been found to be significant. This is because a substantial amount (around 30%) of penalties for participants reporting incorrect emissions, removals or units are now resulting in a penalty of \$0.00.

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<sup>11</sup> From January 2023 to 26 June 2025, 100 of the 334 (30%) of post-1989 forestry emissions returns referred for amendment investigation, were emissions returns where the actual amount is 0. This date range reflects when the new ETS forestry IT system, Tupu-Ake, went live. It does not include incorrect returns prior to the new system being in place, unless they were migrated due to being open at the time it went live.

<sup>12</sup> Out of the 100 participants who reported incorrect emissions or removals where the actual amount was 0, 87% reported incorrect removals, 11% reported incorrect emissions, and 2% reported 0.

<sup>13</sup> These amounts are calculated at a market price of \$59.33.

<sup>14</sup> Section 134C and 134D.

### *Risks if penalty calculations lead to a \$0.00 penalty*

#### *Importance of penalties to encourage accurate reporting*

23. The risk of compliance action is likely to be considered low by participants if a penalty applies, but the penalty amount is \$0.00. If participants consider the risk of compliance action is low, they may continue to incorrectly report emissions, removals and units which would undermine the integrity of the NZ ETS.
24. Reporting of emissions, removals and units is a fundamental aspect of the NZ ETS as it supports national reporting and the meeting of climate change targets. Based on the emissions or removals a participant reported they are either entitled to units or required to surrender units. Accurate reporting of removals is critical to ensure that people do not receive more units than they are entitled to and the potential financial gain these units could represent. Accurate reporting of emissions incentivises participants to reduce their emissions.
25. It is important that participants submit accurate IA applications so that unfair effects of the NZ ETS on any part of the economy can be mitigated, but businesses are still incentivised to reduce emissions of greenhouse gasses.

#### *Risk of inaccurate reporting increases as more participants join the NZ ETS*

26. The amount of forestry participants and reporting obligations in the scheme have increased significantly since the implementation of administrative penalties. Even if the percentage of non-compliance remained the same or have been reduced, the absolute number of instances have increased. This means the risk of participants reporting incorrect amounts of emissions, removals or units when the actual amount is 0 is also higher.

#### *Context of non-compliance*

27. For post-1989 forestry, this type of incorrect emissions return is often linked to non-compliance in relation to transmissions of interest. Compliance rates for transmissions of interest have improved since the last mandatory reporting cycle but remain one of the biggest causes for non-compliance for forestry in the NZ ETS.
28. Changes to the broader system of transmissions of interest may be considered in future, however effective penalties play an important part in encouraging compliance in relation to incorrect emissions returns.
29. This problem does not amount to a significant portion of non-compliance for non-forestry participants. However, to ensure fairness for participants from all sectors, and consistency within the NZ ETS, the changes are proposed to apply to all participants including those who submit IA applications.

### *Assumptions*

#### *Reliance on previous regulatory impact statement*

30. The problem in this statement is solely related to the calculation of administrative penalties that currently apply under the Act. Policy decisions have been made previously around the introduction of administrative penalties.

31. Reconsideration of the suitability of administrative penalties for incorrect reporting is out of scope for this impact analysis. This regulatory impact statement relies on, and builds from, the underlying analysis that supported the introduction of the administrative penalty for this type of offending. That analysis supports the conclusion the penalties are needed to deter this type of non-compliance and encourage accuracy in reporting. This analysis is set out in the relevant Regulatory Impact Statement.<sup>15</sup>

*Maximum penalties for reporting too many emissions, or report too few removals*

32. This statement assumes that the \$1,000 maximum penalty will also apply to situations where a participants overreport emissions, or underreport removals. Previous analysis outlined why these situations are treated differently because of the costs and risks associated with this type of non-compliance.<sup>16</sup> Revisiting this analysis is out of scope for this impact statement.

*Figure 2: Example of a penalty calculation for an incorrect emissions return where the actual amount of removals is 0*

Business X submitted an emissions return in 2023 reporting they removed 2,000 tonnes of carbon during the relevant period. The regulator identified that the emissions return is incorrect as the actual amount of removals for this business during the relevant period was 0. The regulator will amend business X's emissions return to 0 and assess whether a penalty applies. The participant voluntarily disclosed the error to the regulator before they were informed of the error by the regulator. If a penalty applies, the amount would be  $A \times B \times C$  where:

- A is the lesser of:
  - the actual amount of carbon removed by Business X (in this case 0), or
  - the difference between the submitted and actual amount of removals (in this case 2,000)
- B is the price of carbon. The price of carbon was \$67.63 in 2023.
- C is the participants level of culpability factor. For this example, the participant failed to take reasonable care in the preparation of their emissions return and voluntarily disclosed the error to the regulator.

The penalty will be:  $0 \times 67.63 \times 0.1 = \$0.00$

**Note:** The amount by which the reported removals were incorrect is the same as in **Figure 1** (2,000 tonnes). The calculated penalty there was \$6,763, here the penalty is \$0.00.

<sup>15</sup> See: [Impact Statement - NZ ETS Tranche two: Improving Compliance and Penalties - 16 May 2019 - Ministry for the Environment - Regulatory Impact Assessment](#), p. 31-34.

<sup>16</sup> See: [Impact Statement - NZ ETS Tranche two: Improving Compliance and Penalties - 16 May 2019 - Ministry for the Environment - Regulatory Impact Assessment](#), p. 20.

#### *Affected parties*

33. The proposed changes to the penalty calculation would apply to all participants in the NZ ETS. The effect on participants is expected to be low. This is because the proposal does not alter any participant obligations in the Act and does not change when a penalty applies. It proposes to change factor A in the equation used for penalty calculations so that an effective penalty amount is charged.
34. Non-compliant regulated parties will likely have the largest interest in this issue. There are currently more than 4,600 forestry participants in the NZ ETS, the majority of which are compliant. All participants benefit from high compliance rates in the NZ ETS. New Zealand benefits from high integrity in the NZ ETS to meet climate change targets including international obligations.
35. While Māori form a large portion of participants in the NZ ETS, rights and interests analysis determined that Māori would not be disproportionately affected by this proposal. No other population groups are disproportionately affected and no special factors are involved.

#### *Stakeholder views*

36. Stakeholders were informed of the proposal to change the calculation of penalties for incorrect emissions returns, allocations and adjustments. No concerns were raised regarding the proposal. Some stakeholders noted that they were comfortable with the changes due to the problem being an imperfect methodological issue.

#### *Consultation with MOJ*

37. Ministry of Justice (MoJ) was consulted regarding the options for changing the penalty for reporting incorrect emissions, removals or units when the actual amount is 0. MoJ considers that the range of options vary as to the degree to which penalties reflect the level of moral culpability and that some options are disproportionately low or high. On balance MoJ considers that the preferred options strikes a good balance and is supportive of the preferred option in this RIS.

#### *Impact on international emissions trading scheme*

38. This proposal does not alter participant obligations and as such the impact on the international climate change obligations is low.

### **What objectives are sought in relation to the policy problem?**

39. This proposal seeks the following objectives:
- a) Ensuring penalties adequately sanction non-compliant behaviour and encourage voluntary compliance in the NZ ETS.
  - b) Ensuring that the integrity of the NZETS is maintained so that it continues to support New Zealand's domestic and international targets and emissions budgets.
  - c) Ensuring penalties are proportionate to the severity of the error and the participant's undertaking.

## What consultation has been undertaken?

40. Targeted engagement was undertaken on forestry proposals specifically, and alongside other proposals to amend the Act as outlined in paragraphs 15 to 16. Section 2 will set out specific feedback for each proposed change.

### Engagement with Māori forestry stakeholders

41. A large portion of participants in forestry in the NZ ETS are Māori or Māori entities.
42. As part of targeted engagement, Māori forestry stakeholders were contacted via email with a summary of the proposals and invited to meet with us via online hui to discuss the proposals. Those contacted included Māori forestry landowners (trusts, rūnanga, iwi authorities and incorporations) representing 90% of all Māori forest land, as well as Māori forestry stakeholders such as Ngā Pou a Tāne. As a result of the email, an online hui was held with Māori forestry representatives from Tairāwhiti.
43. The forestry proposals were discussed alongside other proposals for the Bill with pan-Māori groups representative of expert in Treaty of Waitangi and Te Ao Māori.
44. An email seeking feedback on high-level proposals including the proposals outlined in this RIS was sent to Post-Settlement Governance Entities (PSGEs) via email for feedback. No feedback was received from the PSGEs.

### Targeted engagement with other forestry stakeholders

45. The proposals were discussed with MPI's Forestry NZ ETS Technical Advisory Group (ETS TAG) which supports the development of NZ ETS policy through technical input from the perspective of experienced practitioners of forestry in the NZ ETS. The ETS TAG did not express any concerns regarding the proposal.

### Other relevant consultation

46. Consultation on technical improvements to the Climate Change (Forestry) Regulations 2022 was held between 15 April and 16 May 2025, with late submissions accepted until 23 May.

## Section 2: Assessing options to address the policy problem

### What criteria will be used to compare options to the status quo?

47. All options are assessed against the criteria shown in **Table 3**.

Table 3: Assessment criteria

Criteria	Description
Consistency with purpose of NZ ETS	The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets.
Ease of implementation and cost	The extent to which the option is easy to implement and minimises compliance costs for government and ETS participants.
Clarity and transparency	The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for ETS participants on how it will be applied.
Consistency	The extent to which the option ensures that ETS participants are treated consistently
Proportionality of penalties	The extent to which the proposed penalty is proportionate to the severity of the offence and to the participant's undertaking.

48. These criteria are consistent across all proposals described in paragraph 16.

49. A qualitative judgement is made of the effectiveness of each option using the following rubric:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

## What scope will options be considered within?

50. Three matters were considered to be outside the scope of this proposal. These are:
- a. Reconsidering whether administrative penalties are a suitable tool to address non-compliance for incorrect emissions returns. Policy decisions on introducing an administrative penalty have already been made.<sup>17</sup>
  - b. Changing the calculation of penalties for incorrect emissions returns that are not amended to an outcome of 0 NZUs, including the consideration of a minimum penalty.
  - c. Changing the application of penalties, and the culpability levels of reasonable care, gross carelessness and knowing failure.
51. A new online system to administer forestry in the NZETS introduced in 2023. One of the objectives of this system was to provide more assistance for participants. This assistance encourages voluntary compliance for submitting accurate emissions returns for post-1989 forestry.<sup>18</sup> These changes have improved overall compliance rates. However, we do not consider that further system changes can be implemented in place of an effective penalty for reporting of incorrect amounts of emissions, removals or units where the actual amount is 0.

## What options are being considered?

### *Context for calculations of penalties under different options*

52. All options considered include analysis by reference to the median and mean average amount of over-reported removals for forestry activities. This is the most representative of current non-compliance. The median amount of units received for incorrectly reported removals is 1,113 and the mean average is 4,025 units.<sup>19</sup> This aims to show the effect of the options proposed.

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<sup>17</sup> The Regulatory Impact Statement 'NZETS tranche two: Improving compliance and penalties' contained several alternatives to reporting penalties that were considered out of scope.

<sup>18</sup> This is achieved through functions like input returns, which allow for emissions return to be calculated by the system instead of manually.

<sup>19</sup> This means that participants received 1,113 and 4,025 NZUs respectively too many. The current value of these units is \$66,034.29 and \$238,803.25 respectively (at a market price of \$59.33).

### Option One – Status Quo

53. Key features: when a participant reports incorrect amounts of carbon emissions or removals, or units, when the actual amount is 0 they receive a penalty of \$0.00. The penalties as shown in **Table 4** apply.
54. Addressing the problem: participants who report incorrect amounts of carbon emissions or removals or units, when the actual amount is 0 effectively receive no penalty. The regulator cannot deter non-compliance and encourage voluntary compliance using a penalty. Participants may continue to report incorrect emissions, removals and units if they consider the risk of compliance action is low.

Table 4: Current penalties for incorrect emissions returns that require amending to an outcome of 0 NZUs

Culpability	Did the participant voluntarily disclose failure or error to EPA before being informed of it by EPA?	Penalty size for the median incorrect removals of 1,113 NZUs (worth approximately \$66,034.29)	Penalty size for the mean average removals of 4,025 NZUs (worth approximately \$238,803.25)
Participant did not take reasonable care	Yes	\$0.00	\$0.00
Participant did not take reasonable care	No	\$0.00	\$0.00
Participant was grossly carelessness	Yes	\$0.00	\$0.00
Participant was grossly careless	No	\$0.00	\$0.00
Participant knowingly failed	Yes	\$0.00	\$0.00
Participant knowingly failed	No	\$0.00	\$0.00

## Option Two – Factor A is the unit difference

55. Key features: change factor A in the equation used to calculate penalties when a participant reports an incorrect amount of emissions, removals or units and the actual amount is 0. The new factor A will be equal to the unit difference (the difference between what the participant submitted and 0).

56. Addressing the problem: participants will receive a penalty based on the emissions, removals or units they incorrectly reported. The penalty is likely to deter non-compliance and encourage voluntary compliance. This factor A may result in penalties that are disproportionate to the severity of the offence and to the size of a participant’s undertaking. Because of this it may discourage voluntary participation in the scheme. The penalties as shown in **Table 5** would apply.

Table 5: using the unit variance as factor A for penalty calculations

Culpability	Did the participant voluntarily disclose failure or error to EPA before being informed of it by EPA?	Penalty size for the median incorrect removals of 1,113 NZUs (worth approximately \$66,034.29)	Penalty size for the mean average removals of 4,025 NZUs (worth approximately \$238,803.25)
Participant did not take reasonable care	Yes	\$6,936.22	\$25,083.80
Participant did not take reasonable care	No	\$13,872.43	\$50,167.60
Participant was grossly carelessness	Yes	\$13,872.43	\$50,167.60
Participant was grossly careless	No	\$27,744.86	\$100,335.20
Participant knowingly failed	Yes	\$69,362.16	\$250,838.00
Participant knowingly failed	No	\$69,362.16	\$250,838.00

### Option Three – Factor A is the 0.2 of unit difference

57. Key features: change factor A in the equation used to calculate penalties when a participant reports an incorrect amount of emissions, removals or units and the actual amount is 0. The new factor A will be 0.2 of the unit difference.

58. Addressing the problem: participants will receive a penalty that is based partially on the emissions, removals or units they incorrectly reported. The penalty is likely to deter non-compliance and encourage voluntary compliance. This factor A is unlikely to result in penalties that are disproportionate to the severity of the offence and to the size of a participant’s undertaking. The penalty is likely to be consistent with penalties that apply when a participant reports incorrect emissions, removals or units where the actual amount is greater than 0. The penalties as shown in **Table 6** would apply.

Table 6: Using 0.2 of the unit variance as factor A for penalty calculations

Culpability	Did the participant voluntarily disclose failure or error to EPA before being informed of it by EPA?	Penalty size for the median incorrect removals of 1,113 NZUs (worth approximately \$66,034.29)	Penalty size for the mean average removals of 4,025 NZUs (worth approximately \$238,803.25)
Participant did not take reasonable care	Yes	\$1,387.24	\$5,016.76
Participant did not take reasonable care	No	\$2,774.49	\$10,033.52
Participant was grossly carelessness	Yes	\$2,774.49	\$10,033.52
Participant was grossly careless	No	\$5,548.97	\$20,067.04
Participant knowingly failed	Yes	\$13,872.43	\$50,167.60
Participant knowingly failed	No	\$13,872.43	\$50,167.60

#### Option Four – Separate factor A for small foresters

59. Key features: introduce a separate factor A for small foresters. Those with a unit difference below 25,000 NZUs would be classified as a small forestry participants.<sup>20</sup> For example, if factor A for a regular participant is 0.2 of the unit difference, the penalty calculation for small forestry participants would be:

- a. The unit difference multiplied by 0.1 for post-1989 forestry participants, or
- b. The unit difference multiplied by 0.05 for pre-1990 forestry participants.
  - i. The penalties as shown in **Table 7** would apply.

60. Addressing the problem: small foresters will receive a penalty larger than \$0.00. The penalty may deter non-compliance and encourage voluntary compliance. The penalty may be disproportionate to the severity of the offence, but is unlikely to result in penalties that are disproportionate to the participant’s undertaking.

Table 7: Using the 0.1 of the unit variance as factor A for penalty calculations

Culpability	Did the participant voluntarily disclose failure or error to EPA before being informed of it by EPA?	Penalty size for the median incorrect removals of 1,113 NZUs (worth approximately \$66,034.29)	Penalty size for the mean average removals of 4,025 NZUs (worth approximately \$238,803.25)
Participant did not take reasonable care	Yes	\$625.69	\$1,915.72
Participant did not take reasonable care	No	\$1,251.39	\$3,831.43
Participant was grossly carelessness	Yes	\$1,251.39	\$3,831.43
Participant was grossly careless	No	\$2,502.77	\$7,662.87
Participant knowingly failed	Yes	\$6,256.93	\$19,157.17
Participant knowingly failed	No	\$6,256.93	\$19,157.17

<sup>20</sup> This reflects the ‘lower amounts’ as set out in section 134AA of the Act.

## Option Five – Set a minimum penalty under current provision

61. Key features: Introduce a minimum penalty amount for situations where a participant reports an incorrect amount of emissions, removals or units and the actual amount is 0. The amount for the penalty would be set at \$1,000. The penalties as shown in **Table 8** would apply.
62. Addressing the problem: ensures that participants receive a penalty larger than \$0.00. The penalty is not dependent on the size of the error and may result in a penalty that is disproportionate to the size of the offence or the participant’s undertaking. The penalty may deter non-compliance and encourage voluntary compliance. Penalties are equal for all participants making a similar error.

Table 8: Introducing a minimum penalty of \$1,000

Culpability	Did the participant voluntarily disclose failure or error to EPA before being informed of it by EPA?	Penalty size for the median incorrect removals of 1,113 NZUs (worth approximately \$66,034.29)	Penalty size for the mean average removals of 4,025 NZUs (worth approximately \$238,803.25)
Participant did not take reasonable care	Yes	\$1,000	\$1,000
Participant did not take reasonable care	No	\$1,000	\$1,000
Participant was grossly carelessness	Yes	\$1,000	\$1,000
Participant was grossly careless	No	\$1,000	\$1,000
Participant knowingly failed	Yes	\$1,000	\$1,000
Participant knowingly failed	No	\$1,000	\$1,000

**How do the options compare to the status quo/counterfactual?**

	<b>Option One – Status Quo</b>	<b>Option Two – Factor A is the unit difference</b>	<b>Option Three - Factor A is 0.2 of the unit difference</b>	<b>Option Four – Separate factor A for small foresters</b>	<b>Option Five – Set penalty amount</b>
<p><b>Consistency with purpose of NZ ETS</b> The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets.</p>	<p>0 Factor A leads to a penalty of \$0.00. The regulator cannot enforce the obligation to report accurate emissions, removals and units negatively affecting the integrity of the NZ ETS.</p>	<p>+ The regulator can enforce the obligation to report accurate emissions, removals and units which helps to maintain the integrity of the NZ ETS as a mechanism to drive reductions in emissions. Penalty amount may discourage voluntary participation in the NZ ETS for some smaller participants who will consider the risk of compliance too high to enter the NZ ETS. If voluntary participation is discouraged this would result in less removals of greenhouse gasses affecting emissions budgets and targets.</p>	<p>++ The regulator can enforce the obligation to report accurate emissions, removals and units which helps to maintain the integrity of the NZ ETS. The penalty amount is unlikely to be high enough to discourage voluntary participation.</p>	<p>+ The regulator may not be able to enforce the obligation to report accurate emissions, removals and units. This means the option may not improve the maintaining of the integrity of the NZ ETS. The penalty amount is unlikely to be high enough to discourage voluntary participation.</p>	<p>+ The regulator may not be able to enforce the obligation to report accurate emissions, removals and units. This means the option may not support improving or maintaining the integrity of the NZ ETS.</p>
<p><b>Ease of implementation and cost</b> The extent to which the option is easy to implement and minimises compliance costs for government and ETS participants.</p>	<p>0 Factor A leads to a penalty amount is easy to implement but does not minimise compliance costs for government and ETS participants because participants are likely to consider the risk of compliance action low so the penalty amount does not encourage voluntary compliance.</p>	<p>+ The penalty calculation provision would require updating by introducing a new subsection for penalties for this type of incorrect emissions return. Implementation does not require system changes and requires minimal process changes for the regulator. Factor A is expected to result in a penalty that results in participants considering the risk of compliance action high and therefore encourage voluntary compliance. This means that compliance costs for government and ETS participants are minimised.</p>	<p>+ The penalty calculation provision would require updating by introducing a new subsection for penalties for this type of incorrect emissions return. Implementation does not require system changes and requires minimal process changes for the regulator. Factor A is expected to result in a penalty that results in participants considering the risk of compliance action high enough to encourage voluntary compliance. This means that compliance costs for government and ETS participants are minimised.</p>	<p>+ The penalty calculation provision would require updating by introducing a new subsection for penalties for regular and small forestry participants for this type of incorrect emissions return. Implementation does not require system changes and requires minimal process changes for the regulator. Factor A is may not result in a penalty that results in participants considering the risk of compliance action high enough to encourage voluntary compliance. This means that compliance costs for government and ETS participants may not be minimised.</p>	<p>+ The penalty calculation provision would require updating to introduce a minimum penalty amount for this type of incorrect emissions return. Implementation does not require system changes and requires minimal process changes for the regulator. Factor A is may not result in a penalty that results participants considering the risk of compliance action high enough to encourage voluntary compliance. This means that compliance costs for government and ETS participants may not be minimised.</p>
<p><b>Clarity and transparency</b> The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for ETS participants on how it will be applied.</p>	<p>0 Factor A does not lead to penalties that result in clear compliance action. Participants may receive a penalty for their offending but the penalty amount of \$0.00 sets the expectation that this type of non-compliance is acceptable.</p>	<p>++ Factor A leads to penalties that result in clear compliance action. Participants receive a penalty, and the penalty amount sets the expectation that this type of non-compliance is not acceptable. Application of the penalty and the penalty amount align. Processes for determining if penalties apply will not change.</p>	<p>++ Factor A leads to penalties that result in clear compliance action. Participants receive a penalty, and the penalty amount sets the expectation that this type of non-compliance is not acceptable. Application of the penalty and the penalty amount align. Processes for determining if penalties apply will not change.</p>	<p>- Factor A leads to a penalty that may not result in clear compliance action. Participants receive a penalty, but the penalty amount may not set the expectation that this type of non-compliance is not acceptable. Processes for determining if penalties apply will not change. Different penalty calculations would apply for the same type of non-compliance. This is likely to make it harder to understand what penalty a participant will be liable for.</p>	<p>+ Participants receive a penalty, but the penalty amount may not set the expectation that this type of non-compliance is not acceptable. Processes for determining if penalties apply will not change.</p>

<p><b>Consistency</b></p> <p>The extent to which the option ensures that ETS participants are treated consistently</p>	<p>0</p> <p>The penalty amount does not align with penalties for similar errors.</p>	<p>0 The same type of non-compliance will be treated similarly. Factor A will apply to the calculation of all penalties for non-compliance in relation to incorrect emissions returns, allocations and adjustments that require amendment to 0. Penalties will likely be larger than penalties for other incorrect emissions returns, allocations and adjustments where the corrected outcome has been used as factor A.</p>	<p>+ The same type of non-compliance will be treated similarly. Factor A will apply to the calculation of all penalties for non-compliance in relation to incorrect emissions returns, allocations and adjustments that require amendment to 0. Penalty amounts are likely to be more consistent with penalties for incorrect emissions returns, allocations and adjustments where the corrected outcome has been used as factor A.</p>	<p>-- The same type of non-compliance will be treated differently. Penalties for the same type of error will be calculated using different factors A.</p>	<p>+ Penalty amounts are the same for all for non-compliance in relation to incorrect emissions returns, allocations and adjustments that require amendment to 0. Penalty amounts do not align with penalties for incorrect emissions returns, allocations and adjustments that are amended to an outcome larger than 0.</p>
<p><b>Proportionality of penalties</b></p> <p>The extent to which the proposed penalty is proportionate to the severity of the offence and to the participant's undertaking.</p>	<p>0</p> <p>The penalty amount is always disproportionate to the severity of the error and the size of the participant's undertaking because the amount is always \$0.00.</p>	<p>- Factor A may result in a penalty amount that larger than is proportionate to the severity of the error and the size of the participant's undertaking. This may have significant financial impact on participants.</p>	<p>++ Factor A is partially derived from the size of error. Multiplying factor A by 0.2 ensures that penalty are not larger than is proportionate to the severity of the error, and mitigates risk of participants being charged a penalty that is disproportional to the size of the participants undertaking.</p>	<p>+ Factor A is partially derived from the size of the error. Multiplying factor A by 0.1 means that the penalty will not always be proportional to the size the error, but the penalty will be proportional to the participant's undertaking if they are a small forestry entity.</p>	<p>+ Penalty amounts are not derived from the size of the error. The penalty amounts are more proportional to the size of the error than the current penalty amount. It is also unlikely to be proportional to the size of the participant's undertaking. The penalty may be too low for larger participants and too high for very small participants.</p>
<p><b>Overall assessment</b></p>	<p>0</p>	<p>+</p>	<p>++</p>	<p>0</p>	<p>+</p>

## **What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

### *Assumptions for the testing of options*

63. For testing the options and determining the preferred option the criterion ‘consistency with purpose of NZ ETS’ has been considered in a broad sense. As set out above it means the extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets. In practical terms this means encouraging participants to comply with the obligation to report accurate emissions, removals and enabling the regulator to enforce these obligations through effective penalties and maintain the integrity of the NZ ETS.
64. Proportionality of penalties has been considered especially important for penalty calculation options. This is because disproportionately large penalties can have severe financial effects on participants (potentially leading to bankruptcy), while disproportionately small penalties will not effectively encourage participants to comply.
65. As stated in paragraphs 66 and 67 below, the options only relate to whether the proposed new factor A will result in a penalty that deters non-compliance and is proportionate to the harm of the offence. The options do not relate to whether an administrative penalty is a suitable enforcement tool to deter the offence and proportionate to the harm of the offence.

### *Preferred option*

66. Officials considered different options to improve the calculation of penalties for participants reporting incorrect amounts of emissions, removals or units where the actual amount is 0. Option Three is considered most likely to address the problem. This is because:
- a. changing factor A to 0.2 of the unit difference means that participants receive a penalty that is partially based on the severity of their offence.
  - b. the penalties are likely to be significant enough to deter non-compliance and encourage compliance which decreases the risk of participants incorrectly reporting emissions, removals and units.
  - c. the penalties are unlikely to be severe enough to have significant financial impact on participants (potentially leading to bankruptcy).
  - d. the penalties are likely to be more consistent with penalties for similar offending
  - e. the proposed changes are expected to require minimal resources to implement because they will only require changes to legislation and processes.
67. This option is most likely to meet the policy objectives because:
- a. The new factor A is likely to adequately sanction non-compliant behaviour and encourage voluntary compliance.
  - b. This then enables the regulator to enforce the obligation of accurate reporting placed on participants in the NZ ETS which protects the integrity of the NZ ETS. If the integrity of the NZ ETS is protected it continues to support domestic and international targets and emissions budgets.

- c. The penalty is proportionate to the harm of the participant's offending and is also unlikely to be disproportionate to the participant's commercial activity.

**Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?**

68. The Minister's preferred option in the Cabinet paper aligns with MPI's preferred option in this statement.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.</i>	<b>Impact<sup>21</sup></b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Compliant regulated parties	Regulated parties will continue to bear the cost of compliance. The proposal does not change participant obligations or the application of penalties.	Low	High
Non-compliant regulated parties	Regulated parties will bear an increased cost of compliance due to penalty amounts no longer being equal to 0. This proposal does not make changes to participant obligations or the application of penalties. Based on the mean and median error sizes used to describe options (above), indicative penalties could range from \$1,387.24-\$50,167.60 per participant (this represents the largest range set out in Table 3).	Medium	Medium
Regulators	The regulator will continue to apply penalties, a change in the penalty calculation is considered a minor system and process change to operationalise. There may be an increased cost in relation to collecting of unpaid penalties. This proposal does not make changes to participant obligations or the application of penalties. The only change is the calculation of the penalty.	Low	High
Wider Government	The penalty for incorrect emissions returns, allocations and adjustments will continue to be payable to the Crown. There may be a small increase in the quantum of penalties being received.	Low	High
Other parties	Iwi and Māori will not be disproportionately affected by the changes to the penalty for incorrect emissions returns, allocations and adjustments. The obligations and situations where the penalty applies remain the same.	Nil	High
Courts	The overall number of cases is not expected to change due to these changes. If penalties higher than \$0.00 are applied there may be a slight increase in penalty decisions being challenged through reviews of decisions or appeals through the Court.	Low	High
<b>Total monetised costs</b>	Based on the range of indicative penalty costs for non-compliant regulated parties, the total monetised costs may initially range from \$138,724– \$5,016,760 and be expected to reduce over time. <sup>22</sup>	High, dependent on actual penalties issued as a response to cases of non-compliance	Low
<b>Non-monetised costs</b>	<i>One-off costs associated with new guidance on calculation of penalties. Ongoing costs do not change as allocation of compliance resources does not require changes.</i>	Low	High
<b>Additional benefits of the preferred option compared to taking no action</b>			
Compliant regulated parties	The proposed changes will ensure that non-compliance will receive a sanction, ensuring the integrity of the ETS for compliant participants.	Medium	High
Non-compliant regulated parties	The proposed changes ensure that penalties for incorrect emissions returns that are amended to an outcome of 0 NZUs align better with penalties for other incorrect emissions returns. This means penalties will be more consistent between participants for similar errors.	Medium	High
Regulators	The proposed changes ensure that compliance actions, which require regulator resources are effective. This is because the penalty amount will be proportional to the non-compliance and not equal to \$0.00. Over time, it is expected that effective penalties will promote voluntary compliance.	High	High
Wider Government	Penalties encourage compliance and protect the integrity of the NZ ETS. This positively contributes to the Government meeting its domestic and international climate change goals. The increase in penalty amount may initially contribute to Crown revenue, but is expected to reduce over time as compliance increases.	High, dependent on actual penalties issued as a response to cases of non-compliance as these are paid to the Crown	High
Other parties	The public benefits from the proposed changes as they will help maintain the integrity of the NZ ETS and help New Zealand meet international climate change obligations.	Medium	High
<b>Total monetised benefits</b>	There may be an initial increase in penalty revenue to the Crown, which will decrease as effective penalties encourage compliance.	<i>High</i>	High
<b>Non-monetised benefits</b>	All parties benefit from effective penalties that sanction non-compliance appropriately and therefore encourage voluntary compliance.	<i>High</i>	<i>High</i>

<sup>21</sup> Low impact is considered less than \$10,000, medium between \$10,000 - \$100,000, high above \$100,000.

<sup>22</sup> These calculations are based on the non-compliance as set out in paragraph 18 and the mean and median average of incorrect amounts of removals. The total amount is a hypothetical range based on 100 penalties issued to non-compliant regulated parties using this penalty. Future non-compliance is difficult to predict and the monetised costs provided may not be representative of future non-compliance.

## Section 3: Delivering an option

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### How will the proposal be implemented?

69. The preferred options will be progressed alongside other proposals via an amendment Bill, which is anticipated to be passed mid-2026 and for amendments to come into force shortly afterwards. It is expected that this allows for sufficient time for regulated parties and MPI and EPA to prepare for the proposed change. No changes are needed to secondary legislation to operationalise the proposals.
70. Reliance on existing institutional structures assumes that implementation of the system will be able to be absorbed by the relevant agencies. MPI is responsible for the operation of forestry in the NZ ETS, and compliance, monitoring, and enforcement for all regulated parties. The EPA is responsible for the Registry and compliance, monitoring, and enforcement for non-forestry participants, and recovering all unpaid penalty debt, including debt owed by forestry participants.
71. Implementation will require updating existing systems and processes, this is considered a part of existing system maintenance by the regulator. The Act enables cost recovery for operating the NZ ETS, cost recovery settings are reviewed periodically to ensure they reflect the cost and benefits of operating the system’.

### Implementation risks

72. The most significant risk is that the changes are not well understood and that regulated parties and other stakeholders expect:
- a. changes to the obligations to submit accurate emissions returns as required by the Act, and/or
  - b. changes to how penalties are applied.
73. Education will be developed to ensure that regulated parties and other stakeholders understand the changes that are implemented. Examples of education initiatives for forestry in the NZ ETS are:
- a. The ‘Forestry ETS Alert’ newsletter;
  - b. Guidance published on Te Uru Rākau – New Zealand Forest Service’s website;
  - c. The ETS participant newsletter published by the EPA.

### How will the proposal be monitored, evaluated, and reviewed?

74. The proposal will be integrated into pre-existing regulatory systems.
75. MPI and the EPA have the responsibility as part of their regulatory stewardship to monitor, review and report on regulatory system performance. MPI and EPA routinely monitor and report on non-compliance, including types and rates of non-compliance and penalties applied.
76. The application of penalties affected by the proposed changes will be tracked in the MPI and EPA processing systems and added as an agenda item to meetings between MPI and EPA operations teams.

77. This data is expected to give insight into trends for non-compliance related to emissions returns that require amendment to an outcome of 0 NZUs. The application of the proposed penalty can be easily tracked in the MPI and EPA processing systems.
78. Participants and other stakeholders can contact the regulator through the methods listed on the website for general issues and concerns. Processes are in place so that problems are recorded and escalated as appropriate. The Act also allows for participants to request a review of a penalty decision or appeal to the District Court or to the High Court (on questions of law only).
79. The Act also contains mechanisms for reviewing the operation of the NZ ETS, and this proposal does not suggest changes to these mechanisms.
80. A trend of increasing non-compliance related to incorrect emissions returns or allocation application or adjustment that require amendment to an outcome of 0 NZUs would result in reasons being explored by the regulator to determine if changes to penalties are required.