Impact Summary: NZ ETS Improvements – sale of coal from stockpiles

Section 1: General information

Purpose
The Ministry for the Environment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.
Key Limitations or Constraints on Analysis
There are no limitations or constraints on the analysis in this summary.
Responsible Manager (signature and date):
M Cowie Matthew Cowie Manager – Climate Change Policy Climate Change Directorate Ministry for the Environment **Date:** 22/11/18. *A Quality Assurance Panel with representatives from the Ministry for the Environment and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment (RIA) "Impact Summary: NZ ETS Improvements – sale of coal from stockpiles" produced by the Ministry for the Environment and dated November 2018. The panel considers that it meets the Quality Assurance criteria.* *More detail on the assessment of this and the other RIAs can be found at: [link to be added].*

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

A person must be a participant in the New Zealand Emissions Trading Scheme (NZ ETS) if they carry out the Schedule 3 activities of importing coal or mining over 2,000 tonnes of coal in a year. A person may also choose to be a participant if they carry out the Schedule 4 activity of purchasing over 250,000 tonnes of coal in a year.[1]

A participant must submit an annual emissions return to the Environmental Protection Authority (EPA) to report their emissions and assess their liability to surrender emissions units in that year. Coal importers and purchasers may use a stockpile adjustment in their emissions return to defer the liability to surrender units in respect of stockpiled coal to a future year. For mining coal, there is no ability to make a stockpile adjustment. However, rather than tying the surrender obligation to the activity of mining coal, the surrender obligation is only on coal sold or otherwise disposed of during that year. The effect is the same in that the liability to surrender units in respect of coal mined but not disposed of in that year is able to be deferred to a future year.

If a person does not meet the thresholds for carrying out the activity, they are not required to be a participant in that year. They are then not obliged to file an emissions return in that year. The person will only have an obligation to file a return if they resume the activity, or they deregister, at which point a final emissions return is required. This final emissions return contains an assessment of the liability to surrender units in respect of any stockpiled coal. However, the regulations do not require a person to report on the size of the stockpile of coal including if any coal has been sold or used during the years while a person is still registered but is not required to submit an emissions return or has ceased to be a participant.

For example, a person may import, mine or purchase a high tonnage of coal in year one but not sell or use this coal immediately. It is therefore added to their stockpile and the obligation to surrender units on the stockpiled coal is deferred. If, in subsequent years they do not carry out an activity that requires them to be a participant (such as importing, mining or purchasing volumes of coal over the set thresholds) or they do not choose to become a participant, they are able to sell or use coal from the stockpile without needing to account for this.

There is therefore uncertainty about the amount of coal being used or sold by persons who have stockpiled coal, are no longer participants and have not yet de-registered. The Government seeks to maintain the integrity of the NZ ETS by closing this loophole so as to ensure that NZ ETS obligations cover all coal emissions resulting from the activities of large coal importers and large purchasers of coal.

[1] Persons carrying out these activities are called 'coal participants' for the remainder of this summary

2.2 Who is affected and how?
Addressing the problem will directly impact coal participants who sell or use coal from a stockpile in a year and who are not participants or de-registering in that year. The loophole means this coal can be sold into the market at a lower price in the years between submitting emissions returns impacting market competitiveness and the integrity of the NZ ETS. For a person who was an opt-in participant, it means none of the emissions arising from using stockpiled coal in the years intervening between being a participant and de-registration will carry the emissions cost. The Crown is also impacted, as the loophole reduces the effectiveness of the NZ ETS in helping the government meet international commitments and national targets. The loop-hole in reporting means that there is no oversight of coal from the stockpile being used and sold on a yearly basis. This makes it difficult to accurately account for, and offset emissions in the appropriate year, and within the appropriate annual unit supply and emissions budget periods.

2.3 Are there any constraints on the scope for decision making?
There are no constraints on the scope for decision making, or interdependencies or connections, other than that resolution could require amendment to primary legislation.

Section 3: Options identification

3.1 What options have been considered?

Three options to resolve this issue are considered and have been consulted on; all would close the loophole:

1. Remove the ability to make stockpiling adjustments.

This option would require any coal imported, mined, or purchased to be reported under the NZ ETS and emissions units surrendered, regardless of whether the coal was sold or used in the year. This would impact most coal participants, as the use of stockpiling is commonplace. Those parties would incur NZ ETS costs ahead of recovering those costs through sale of the coal or the products manufactured by the opt-in participant.

2. Require the reporting of all coal sold or used from the stockpile in the year, regardless of whether the participant meets the threshold for coal importing, purchasing or mining

This option would allow transparency on the disposal of coal and remove the loophole. However, coal participants will need to report every year even if they have not imported, purchased, or mined any coal in the year.

3. Remove the threshold for coal importing and purchasing. This would require all coal to be accounted for annually (including stockpile adjustments).

This would impose NZ ETS obligations on new parties previously not required to be participants, including on those who purchase under 250,000 tonnes in total in a year. The administrative and compliance costs imposed on small scale coal mining or purchasing activities would likely be disproportionate to any benefit gained. It may also capture coal not intended for use as a fuel, for example activated carbon in water filtration systems.

3.2 Which of these options is the proposed approach?

Option 2 is preferred. This is because it has the least impact on participants as it still allows stockpile adjustments to be made, does not capture those below the thresholds and is administratively efficient.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties *Coal participants and the Crown*	**Comment**: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties	Increased NZ ETS coverage for disposal of coal from a stockpile, meaning increased costs for those who may be using the loophole	Low; no information is held on the amount of coal impacted by this proposal because of the loop-hole that this proposal seeks to fix
Regulators	Some potential for a small increase in administrative costs	Very low
Wider government		Nil
Other parties	Potential for increase in price of coal sold from stockpiles to other parties	Low
Total Monetised Cost		Low
Non-monetised costs		Nil

Expected benefits of proposed approach, compared to taking no action		
Regulated parties (other than those using the loophole)	Improved competitiveness outcomes through increased NZ ETS coverage of coal sold, mined and purchased	Low
Regulators		Nil
Wider government	Increased timeliness of emission units surrendered to account for increased emissions reported Improved NZ ETS integrity	Low
Other parties		
Total Monetised Benefit		Low
Non-monetised benefits		Low

4.2 What other impacts is this approach likely to have?
There will be no other impacts.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?
Consultation was held on this proposal within a package of planned NZ ETS improvements over August - September 2018. The consultation document sought views on all three options, with a preference for option two. The majority of submitters agreed that the loophole needs to be closed as it undermines the integrity of the NZ ETS and is counter to the NZ ETS's objectives. Option three was considered by a number of submitters to create a disproportionate administrative burden, whereas option two struck a balance between efficiency and reporting integrity.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?
This proposal is one of several operational changes that will be carried through to the proposed Climate Change Response Amendment Bill in 2019, and come into effect from 1 January 2020.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?
The scheme regulator will continue to monitor the emissions reporting and emission unit surrenders of coal participants once the new arrangements are implemented.

7.2 When and how will the new arrangements be reviewed?
No review of the arrangements is planned.