

In Confidence

Office of the Minister of Transport

Chair, Cabinet Economic Development Committee

PROVIDING A SIX-MONTH PHASE-IN OF THE CLEAN VEHICLE STANDARD

Proposal

1. This paper proposes the legislation for the Clean Vehicle Standard (the Standard) be amended to provide a six-month phase-in and to exclude mopeds and motorcycles. It also seeks authorisation for submission to the Executive Council of the attached Land Transport (Clean Vehicle Standard) Regulations 2022.

Relation to government priorities

2. On 9 May 2022 the Government announced New Zealand's first three greenhouse gas emissions budgets setting out the total amount of emissions New Zealand must cut over the next 14 years. This was followed, on 16 May 2022, by the release of the first Emissions Reduction Plan (ERP) outlining how the emissions budgets will be achieved.
3. In transport, the ERP sets four targets to reduce transport emissions by 41 percent by 2035. One of these four targets is to increase zero-emission vehicles to 30 percent of the light fleet by 2035. The Standard is a central policy in achieving this target. It will increase the proportion of low and zero carbon dioxide (CO₂) emissions light vehicles entering the fleet.

Executive Summary

4. The Standard is key to transitioning the light vehicle fleet to be low and ultimately zero emission. Its requirements for vehicle importers start from 1 December 2022.
5. Officials have been engaging over several years with the vehicle industry on the Standard. Used-vehicle importers, for example those represented by the Imported Motor Vehicle Industry Association (VIA), have raised concerns over recent months about implementing the Standard within the legislated timeframes. In its view the timing between the regulations being made and coming into effect does not give the industry sufficient time to comply.
6. The vehicle industry's view is of concern because unless vehicle importers comply with the targets set by the Standard, we will not achieve the expected emission reductions. To increase the buy in from used-vehicle importers and the likelihood of compliance, I propose having a six-month phased implementation of the Standard. This phase-in will require an amendment to the Land Transport Act 1998. Given the pending legislated start date of 1 December 2022, I will seek approval to progress the amendment under urgency to ensure it is enacted and assented to by 30 November 2022.
7. I am also proposing the opportunity be taken in the amendment to correct the Ministry of Transport's inadvertent inclusion of mopeds and motorcycles in part of the requirements of the Standard. Without this change importers of motorcycles and mopeds would need to unnecessarily hold CO₂ accounts and record emissions.

8. I am also seeking a waiver of the 28-day rule to enable an early commencement of the attached Land Transport (Clean Vehicle Standard) Regulations 2022. This is necessary to comply with the statutory requirements.

Background

9. On 26 January 2021 Cabinet agreed to regulate light vehicle CO2 emissions through the Standard [CAB-21-MIN-0004 refers]. The Standard sets annual targets that require light vehicle importers to progressively reduce the CO2 emissions of the vehicles they import.
10. The Land Transport Act 1998 was amended in February 2022 to introduce a new Part 13 that establishes the Standard. This legislation sets two key start dates for the Standard, which are:
- 1 December 2022. From this date, all light vehicle importers will be required to have a CO2 account, where the CO2 emissions of their vehicles will be recorded. No light vehicle will be able to be certified for entry into New Zealand unless its CO2 emissions have been recorded in the relevant importer's account
 - 1 January 2023. From this date, the CO2 emissions of Type A and Type B vehicles imported will count towards importers' emissions targets. Importers will have to pay charges for exceeding targets if sufficient credits are not available. Type A and Type B vehicles are defined in Part 13, and are cars, SUVs, vans, utes and small trucks. Part 13 also allows importers to transfer CO2 credits to other importers' CO2 accounts. The Director of Land Transport (the Director) is required to maintain and operate an accessible record of CO2 accounts to facilitate the transfer of credits between importers.
11. The attached regulations prescribe the procedural and operational requirements to support the Clean Vehicle Standard. If Cabinet agrees to a proposed waiver of the 28-day rule, the regulations will be in force on 1 November 2022. Without a waiver, the regulations will be in force on 30 November 2022, which will be too close to the 1 December 2022 deadline in the Land Transport Act 1998 for the Director to open CO2 accounts for vehicle importers.

Used-vehicle importers are concerned about current legislated timelines

12. Used-vehicle importers have raised concerns about implementing the Standard within the current legislated timeframes. In its view the timing between the regulations being made and coming into effect does not give the industry sufficient time to comply.
13. This is because vehicle importers need time to become accustomed to operating with the new requirements, business processes and the Standard's online system to be run by Waka Kotahi.
14. The vehicle industry is also concerned Waka Kotahi may not have a fully automated system to operate the Standard in time for the legislated start dates. As a consequence there may be a degree of manual processing. Manual processing would increase the time required to process the opening of accounts, the recording of vehicle emission data, the imposition of charges and the accrual of credits and their transfer. Manual processing could also increase the potential for errors and fraud.
15. Officials concur with the concerns about having to rely on manual processing, noting that automation is key to minimising industry compliance costs and government administration costs.
16. Further, the view expressed by VIA is of concern because vehicle emissions will only be reduced if the industry complies with the Standard's annual targets. Every non-compliant vehicle entering

the fleet will add to New Zealand's greenhouse gas emissions burden for, on average, 20 years for new vehicle imports and 10 years for the average used-vehicle import.

17. The original policy proposal sought to make compliance more likely by operating the Standard for a year without charges. This was to allow the vehicle industry time to adjust to the changed regulatory environment. The consultation document¹ stated:

In 2021, the first year of the proposed standard, only reporting obligations would apply. Vehicle suppliers would be required to report their vehicle imports, vehicle weights, CO2 emission levels, and the weighted average emissions of their fleets. However, there would be no regulatory obligation to meet an annual emissions target.

18. Unfortunately, the time necessary for policy approvals and legislation has meant this 'reporting only' year is no longer an option.
19. New vehicle distributors are also subject to the current legislated start dates. However, it is expected that it will be easier for them to comply with the Standard's targets because they will do so annually and on a 'fleet average' basis. In comparison, most used-vehicle importers will comply on a vehicle-by-vehicle or 'pay as you go' basis. In other words, they will pay any charges or accrue any credits as they import vehicles. This difference is provided in Part 13 of the Land Transport Act 1998 through the following two categories of light vehicle importers.
- Category 1 light vehicle importers: an importer must receive the Director's approval under regulations to be a Category 1 light vehicle importer. For these importers, CO2 emissions targets (and payable charges) are calculated on an annual basis, across the fleet of vehicles imported in that year. This means a Category 1 importer can import higher-emitting vehicles without charge, so long as they are balanced by sufficient numbers of low-emitting vehicles.
 - Category 2 light vehicle importers: any light vehicle importer that does not have the Director's approval to operate as a Category 1 importer is a Category 2 light vehicle importer. For Category 2 importers, targets (and charges) are calculated on a vehicle-by-vehicle basis. A Category 2 light vehicle importer must pay a charge for each individual vehicle they import on or after 1 January 2023 that exceeds the carbon dioxide target for that vehicle type, unless the charge is offset with an existing CO2 credit. Payment must be made at the time of entry certification on a vehicle-by-vehicle basis to allow the vehicle to enter the New Zealand fleet. The expectation is that all official new vehicle distributors will be Category 1 in line with Cabinet's 26 January 2021 decisions [CAB-21-MIN-0004 refers].

I propose giving used-vehicle importers time to adjust to complying with the Standard through a six-month phase-in

20. As compliance with the Standard is critical to emission reductions, I propose a phase-in akin to, but not the same as, the original proposal in paragraph 17. This would be done by deferring from 1 January 2023:

20.1. the requirement to pay charges to 1 June 2023. Charges will still be incurred from 1 January 2023 but would not be payable until 1 June 2023

20.2. the ability to transfer emission credits from 1 June 2023. Credits will still be accrued from 1 January 2023

¹ <https://www.transport.govt.nz/assets/Uploads/Discussion/LEV-consultation-document-final.pdf>

- 20.3. the requirement for a publicly available record of account holders to apply from 1 June 2023. Between 1 December 2022 and 31 May 2023, importers and the public would need to apply to the Director to access information from the record of account holders.
21. The proposed phase-in would likely increase compliance and the level of buy-in from used-vehicle importers. Although charges would still apply from 1 January 2023, a six-month deferral would give used-vehicle importers more time to:
- 21.1. become accustomed to meeting the new reporting requirements. These require the CO2 emissions of their vehicles to be recorded in their CO2 accounts before the vehicles may be certified for entry into New Zealand
 - 21.2. increase the number of low- and zero-emission vehicles they import over January–May 2023 to offset the charges of any high-emitting vehicles they might also import over the same period. For some vehicle importers the phase-in could improve their cash-flow relative to what it might be with no deferral of charges and credits. While the payment of debits will not be live in the online System for the Standard, all accounts will show the debit and credit amounts being accrued. This will ensure importers can budget accordingly and will not be caught out once charges are invoiced later in the year
22. While the original proposal in paragraph 17 provided a one-year adjustment period, in my view a six-month period is preferable now. A phase-in of six months strikes the right-balance between providing sufficient time for used-vehicle importers to adjust to the Standard, and the urgent need to transition the vehicle fleet through the Standard. With this phase-in proposal:
- 22.1. light vehicle importers would open accounts and from 1 December 2022 the emissions data of vehicles would be linked to these accounts (this is the existing date in the legislation)
 - 22.2. importers of Type A and Type B vehicles will have their vehicles' emissions data recorded against the Standard's emission targets in their accounts from 1 January 2023 (this is the existing date in the legislation)
 - 22.3. Category 2 light vehicle importers would not be required to pay any charges or be able to transfer any credits until 1 June 2023. However, charges will still be incurred and credits will still accrue from 1 January 2023
 - 22.4. Category 1 light vehicle importers would be unaffected, as fleet averaging is calculated on an annual basis with:
 - payment of charges due 10 working days from 31 March 2024
 - credits available from 1 January 2024.

The proposed phase-in will create risks and resourcing costs

23. The proposed phase-in is not without risk. Deferring the obligation for pay-as-you-go importers (Category 2) to pay charges could result in some incurring charges over January–May 2023 they are subsequently unable to pay. As a consequence, there would be an increase in bad debts.
24. The charges are land transport revenue which will require Waka Kōtahi to recover them. Prior to the charges being paid, they are debts due to the Crown. As noted above, importers will be able to see their account balance during the deferral period to assist with forecasting and planning.

25. Also, vehicle importers who are currently importing low and zero emission vehicles will lose the ability to profit from transferring their emission credits for up to six months. This could flow through into vehicle prices, but the size of this effect cannot be quantified.
26. As well, a six-month deferral of the publicly available record of account holders could increase transaction costs for vehicle importers. The record is intended to aid the transfers of emission credits between vehicle importers. Although, vehicle importers could still apply to the Director to access information from the record, it will be more time consuming and thus costly for them.
27. A further significant risk concerns the resourcing implications for Waka Kotahi. It is estimated the core resource required to support the Standard is approximately 28 staff. Waka Kotahi will require additional resource to support the proposed phase-in. This is because it will face a peak of transactions to process once charges and credit become active from 1 June 2023. If Ministers agree to the proposed phase-in, Waka Kotahi would look at ways it could bring in additional resource to manage this expected peak.

Excluding mopeds and motorcycles from the Standard's account and reporting obligations

28. If Ministers agree to amend the Land Transport Act 1998, I propose the amendment include a correction for the inadvertent inclusion of motorcycles and mopeds in the Standard. This correction would clarify that Part 13 of the Land Transport Act 1998 only applies to Type A and Type B vehicles.
29. The decisions Cabinet took on 26 January 2021 were for the Clean Vehicle Standard to apply to light vehicles, with light vehicles being defined as cars, SUVs, utes, vans and small trucks all under 3.5 tonnes [CAB-21-MIN-0004]. These sub-categories of light vehicle are defined in Part 13 of the Act as Type A vehicles and Type B vehicles. However, the term "light vehicle" is defined generally in the Land Transport Act 1998 and includes motorcycles and mopeds. This wider definition is used in the Part 13 requirement to hold a CO2 account and record emissions.
30. As a consequence from 1 December 2022, importers of motorcycles and mopeds will be obliged to hold a CO2 account and to record the CO2 emissions of the vehicles they import in those accounts. If they do not comply they will be unable to certify their vehicles for entry into New Zealand. However, unlike other light vehicle importers, importers of motorcycles and mopeds will not be required to comply with CO2 targets.
31. Complying will impose an extra cost for moped and motorcycle importers. It also risks undermining the vehicle industry's acceptance, and compliance with, the Standard.

Correcting technical matters

32. I also propose to use this opportunity to amend the Land Transport Act 1998 to correct a technical matter identified in the empowering provision for the Standard.
33. Section 167C allows regulations to be made to provide for the refund or waiver, or enabling the refund or waiver, of charges imposed under section 177. Section 167C also allows regulations to be made to provide for unpaid charges under section 177 to be recoverable as a debt due to the Crown. Section 177 relates to the charges payable by a Category 1 light vehicle importer if targets are exceeded. However, sections 167C(1)(n) and 167C(1)(o) should also include a cross-reference to section 182 relating to the charges payable by Category 2 light vehicle importers if targets are exceeded. I propose a minor and technical amendment is made to section 167C(1)(n) and 167C(1)(o) to correct this omission.

Financial implications

34. There are no financial implications arising from the proposal.

Legislative Implications

35. The policy proposals in this paper require an amendment to the Land Transport Act 1998. I seek approval to instruct Parliamentary Counsel to draft an amendment Bill to be progressed under urgency to ensure it is enacted and assented to by the end of November 2022.

Timing and 28-day rule

36. The regulations will come into force on 1 November 2022. A waiver of the 28-day rule is sought on the grounds that early commencement is necessary to comply with statutory requirements. Section 185 of the Land Transport Act 1998 requires every vehicle importer who imports a light vehicle on or after 1 December 2022 to hold a carbon dioxide account to obtain certification for use on the road. A waiver of the 28-day rule is necessary to support the processing of applications before this date and to reduce administrative delays from 1 December 2022.

Compliance

37. The attached regulations comply with each of the following:

- the principles of the Treaty of Waitangi
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
- the principles and guidelines set out in the Privacy Act 2020
- relevant international standards and obligations
- the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

s 9(2)(h)



Regulations Review Committee

39. I am not aware of any grounds on which the Regulations Review Committee could draw the attached regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

40. The Parliamentary Counsel Office (PCO) has certified the Land Transport (Clean Vehicle Standard) Regulations 2022 as being in order for submission to Cabinet.

Impact Analysis

Regulatory impact statement and climate implications of policy assessment

41. Cabinet's regulatory impact analysis requirements were met in the Regulatory Impact Statement for the Standard that accompanied the paper Cabinet considered on 26 January 2021. The Climate Implications of Policy Assessment for the Standard was also attached to the paper considered on 26 January 2021.

Population impact

42. There are no population impacts arising from this proposal.

Publicity

43. If Ministers agree to progress the attached regulations they will be notified in the New Zealand Gazette. Waka Kotahi will communicate the details of the regulations to the motor vehicle industry and dealers to ensure they are prepared for the changes.

Consultation

Departmental consultation

44. The following agencies were consulted in the development of this paper: Waka Kotahi, Ministry of Justice, Crown Law, Parliamentary Counsel Office, Inland Revenue, New Zealand Customs Service, New Zealand Defence Force, Ministry for Primary Industries, Ministry of Health, Treasury, Ministry for the Environment, Department of Internal Affairs, Ministry of Foreign Affairs and Trade, Ministry of Business, Innovation and Employment, and the Energy Efficiency and Conservation Authority. The Department of Prime Minister and Cabinet has been informed.

Consultation with stakeholders

45. From 15 August to 2 September 2022, members of the motor vehicle industry were included in targeted consultation on the draft Land Transport (Clean Vehicle Standard) Regulations 2022. The targeted consultation included the Motor Industry Association, the Imported Motor Vehicle Industry Association, the International Council on Clean Transportation, Motor Trade Association, SOC NZ Limited, AutoHub, Low Volume Vehicle Technical Association, European Motor Distributors, Financial Service Federation, Juno Jupiter, Automobile Association, Vehicle Testing New Zealand, and the Bus and Coach Association.

46. Submissions focused on delaying the implementation of the Standard, deferring or removing obligations on motorcycle importers to hold carbon dioxide accounts, streamlining the process for approval as a Category 1 light vehicle importer, how future weight-adjusted targets are set, and ensuring that vehicle forecast information is simplified and kept confidential.

Communications

47. I will inform representatives of the vehicle industry of the outcome of the decisions on this paper following confirmation from Cabinet.

Proactive Release

48. I propose to proactively release this Cabinet paper subject to any necessary redactions. This would be done within 30 business days of decisions being confirmed by Cabinet.

Recommendations

The Minister of Transport recommends that the Cabinet Economic Development Committee:

1. **note** that compliance with the Clean Vehicle Standard is critical to reducing the emissions of vehicles entering the light vehicle fleet and the current legislated timeline risks some used-vehicle importers not complying
2. **agree** to provide a phased transition for the Clean Vehicle Standard so that:
 - 2.1. while charges will still be incurred from 1 January 2023, they will not be required to be paid until 1 June 2023
 - 2.2. while credits will still be accrued from 1 January 2023, the ability to transfer them will be deferred from 1 January 2023 to 1 June 2023
 - 2.3. the requirement for a publicly available record of account holders will be deferred from 1 January 2023 to 1 June 2023. Between 1 December 2022 and 31 May 2023, importers and the public would need to apply to the Director of Land Transport to access information from the record of account holders
3. **note** that motorcycles and mopeds have inadvertently fallen within the Clean Vehicle Standard's requirements for their importers to have a CO2 account and to record the emissions of each vehicle they import, and this is contrary to Cabinet's decisions on applicability [CAB-21-MIN-0004 refers]
4. **agree** to amend the requirement for importers to have a CO2 account and record the emissions of each vehicle they import to Type A and Type B vehicles, noting that this will exclude motorcycles and mopeds
5. **agree** to amend the Land Transport Act 1998 to give effect to the decisions in recommendations (2) and (4) above and **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office for these changes and any necessary consequential amendments, savings and transitional provisions
6. **agree** to include in the amendment in recommendation (5) above an empowering provision to enable regulations to be made that provide for the waiver or refund of charges imposed on Category 2 light vehicle importers and for unpaid charges to be recoverable as a debt due to the Crown
7. **note** that I intend to seek agreement to the amendment to the Land Transport Act 1998 being progressed under urgency to ensure it is enacted and assented to by the end of November 2022
8. **authorise** the Minister of Transport to take a paper seeking approval for the introduction of the Bill amend the Land Transport Act 1998 direct to Cabinet
9. **note** that on 26 January 2021 and 20 December 2021 Cabinet agreed to the administrative and operational settings required to support the implementation of the Clean Vehicle Standard, including prescribing excluded vehicles, eligibility criteria and formulas for weight adjusted targets [CAB-21-MIN-0004 and CAB-21-MIN-0553 refer]
10. **note** that the attached Land Transport (Clean Vehicle Standard) Regulations 2022 give effect to the decisions in recommendation (8) above

11. **authorise** the submission to the Executive Council of the attached Land Transport (Clean Vehicle Standard) Regulations 2022
12. **note** that the Land Transport (Clean Vehicle Standard) Regulations 2022 come into force on 1 November 2022
13. **note** that a waiver of the 28-day rule is sought:
 - so that the regulations can come into force as soon as possible
 - on the grounds that early commencement is necessary to comply with statutory requirements.
14. **agree** to waive the 28-day rule so that the regulations can come into force on 1 November 2022
15. **note** that if Ministers support the recommendations in this paper, the Minister of Transport will inform representatives of the vehicle industry, following confirmation by Cabinet
16. **note** that this Cabinet paper will be proactively released, subject to any necessary redactions, within 30 business days of decisions being confirmed by Cabinet.

Authorised for lodgement

Hon Michael Wood
Minister of Transport

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MINISTRY OF TRANSPORT

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