

Chair
Cabinet Economic Growth and Infrastructure Committee

VEHICLE EXHAUST EMISSIONS AMENDMENT RULE 2012

Proposal

1. The purpose of this paper is to:
 - 1.1. Seek the agreement of the Cabinet Economic Growth and Infrastructure Committee (the Committee) on how to respond to one outstanding policy issue concerning minimum exhaust emissions standards
 - 1.2. note the content of *Land Transport Rule: Vehicle Exhaust Emissions Amendment 2012* (the amendment Rule)
 - 1.3. advise the Committee of my intention to make the proposed amendment Rule.
2. This paper also reports back on a minor, but related, matter on the use of rolling age bans to regulate the import of used vehicles, in response to a request by Cabinet in 2007 [CBC Min (07) 11/2 refers].

Executive summary

3. The proposed amendment Rule will make changes to *Land Transport Rule: Vehicle Exhaust Emissions 2007* ('the Vehicle Exhaust Emissions Rule' or 'the Emissions Rule'). The aim of the Vehicle Exhaust Emissions Rule is to achieve improvements in air quality by reducing the level of emissions harmful to human health from motor vehicles operating on New Zealand roads. Under the Emissions Rule, different and higher standards apply to vehicles imported new compared to the standards that apply to used vehicles.
4. This paper is being provided so that the Committee may consider and discuss the policy intent of the proposed changes prior to my signing the final version of the amendment Rule.
5. The proposed Rule changes are important and are required to be in place on or before 1 January 2013 to enable current exhaust emissions standards for used vehicles to continue. If amendments are not made there will be no minimum exhaust emissions standards for used vehicles after 1 January 2013.
6. The proposed changes will also update minimum standards for new vehicles to ensure that New Zealand continues to import new vehicles built to the highest available exhaust emissions standards.

7. Minor changes of a technical and editorial nature are also proposed.
8. The attached regulatory impact statement did not identify any significant costs from the implementation of the changes.
9. Consultation identified only one matter that was not supported, involving the certification of a small number of heavy trucks to a standard from the United States of America by one New Zealand based assembler. The company argued it could not afford to comply with the proposed implementation date of the US2007 standard as the minimum standard for vehicles declared to US standards. The amendment Rule currently proposes to bring this requirement forward by one year from 1 January 2015 to 1 January 2014 to close a loophole that was being exploited by non-US based manufacturers. The company argued that they may suffer economic losses from the proposed change. There are three options to address their concerns, and the Committee is asked to agree on one of three options. These are to:
 - 9.1. leave the draft Rule as it was consulted on, which is to implement the US2007 standard from 1 January 2014
 - 9.2. to continue to implement the US2007 standard from 1 January 2015, as set out in the current rule
 - 9.3. to implement the US2007 standard on 1 July 2014, being half way between these two dates.
10. If the first option is chosen, existing administrative flexibility provides an option to address the company's concerns, but these may still impose costs on it. The other options would assist the company, but risk further imports by other companies and may be criticised by those that are able to comply with the draft Rule, including importers of used diesel vehicles which have been required to meet a more recent standard (Japan 05) since 2010.
11. A number of submissions raised concerns that the draft rule did not address tampering or modification of emission control systems on vehicles already in the fleet. This issue was out of scope and I intend to consider it as part of the review of the need for further standards already planned to take place in 2014.
12. It is my intention that the proposed amendment Rule comes into force on or before 1 January 2013.

Report back on rolling age ban

13. In 2007, Cabinet invited the Minister of Transport and the Associate Minister of Transport to reconsider the use of a rolling age ban¹ once the exhaust emissions standards have been in force for three years, and to report to the Cabinet Economic Development Committee with the findings [CBC Min (07) 11/2 refers]. The Emissions Rule has now been in place for more than three years.

¹ie to restrict the entry of vehicles into the fleet on the basis of the age of the vehicle (eg seven years), either instead of, or in addition to the environmental or safety standards they were built to.

14. I am advised that the issue of using age to regulate the import of used vehicles was a specific interest of a former Minister. The matter has not been considered since the change of administration in 2008. The Minister of Transport has already announced that a review will be carried out in 2014 on the need for further exhaust emissions standards² and the matters raised in this 2007 decision can be considered at this time. Accordingly I ask the committee to agree that no further report back is required at this time.

Background

15. In accordance with paragraph 5.31 of the Cabinet Manual the Committee is requested to note my intention to make the amendment Rule.
16. Section 152 of the *Land Transport Act 1998* (the Act) empowers the Minister of Transport to make rules for any matter contemplated by the Act including protecting and promoting public health (s152 (e)). In particular, section 155(a) empowers the Minister to make ordinary rules that set out standards and requirements concerning vehicles, including their emissions and environmental requirements.
17. The *Land Transport Rule: Vehicle Exhaust Emissions 2003* was the first Rule to set emissions standards³ for vehicles entering New Zealand. It set minimum standards for vehicles manufactured after 2004 from four jurisdictions (Europe (Euro), Australia (Australian Design Rules (ADR)), Japan and the United States of America⁴).
18. The 2003 Emissions Rule was updated in 2007 and, among other changes, for the first time it imposed minimum exhaust emissions standards for all new and used vehicles entering the fleet [EDC Min (07) 27/4 refers].
19. When the Emissions Rule was updated in 2007, the table of approved standards for used vehicles deliberately did not include any minimum standards after 31 December 2012. This was to signal Cabinet's intent that the inclusion and timing of future standards would be considered again. If the Rule is not amended to include minimum standards after 1 January 2013 it would allow the import of vehicles built to any emissions standards, which would be contrary to the intent of the Rule.
20. In addition, in 2007, Cabinet also agreed that New Zealand would adopt new vehicle emissions standards two years after they were adopted in Europe, or Japan, or in the case of Australian standards, on the same day as Australia. This amendment therefore seeks to implement emissions standards that have been adopted internationally since 2007 according to this agreed policy. It also proposes some relatively minor technical changes.

² <http://www.beehive.govt.nz/release/proposed-changes-vehicle-emissions-rules>

³ The standard only applies to emissions that are harmful to health. It does not apply to carbon dioxide, which is a greenhouse gas.

⁴ Japanese and American exhaust emissions standards have relatively long and at times inconsistent names. For convenience these standards are referred to by their year (or years) of introduction.

Content of the Vehicle Exhaust Emissions Amendment 2012

21. The proposed amendment Rule contains eight specific amendments. The provisions of the amendment are to:
- 21.1. ensure that used vehicles certified for use on our roads after 31 December 2012 continue to be built to the current, recognised exhaust emissions standards, pending a review of the need for any additional emissions standards in 2014
 - 21.2. incorporate new Australian Design Rules and their equivalent Euro standard for new light vehicles from 1 November 2013, on the same dates as they are introduced in Australia
 - 21.3. incorporate implementation dates for the US2007 and Japan 09 emissions standards for new vehicles
 - 21.4. remove the requirement for heavy diesel vehicles certified to comply with ADR 80/03 (the Australian equivalent of Euro V⁵), or light vehicles complying with ADR 79/03 (Euro 5), to also comply with ADR 30/01—Smoke Emission Control for Diesel Vehicles. The requirement set out in ADR 30/01 for an additional and very rudimentary smoke test for these very recent standards is now redundant
 - 21.5. clarify the Rule's original intention that the means by which a vehicle may be assessed as complying with an approved emissions standard does not include physical testing and can only be demonstrated by official documentation
 - 21.6. amend the exception that provides that older vehicles are not required to meet emissions standards requirements to maintain consistency with other Land Transport Rules
 - 21.7. correct an error in the current citation of Euro heavy vehicle emissions standards so that they use Roman numerals for heavy vehicle standards rather than normal (Arabic) numerals
 - 21.8. update the current definition of the Euro 5 standard to include new amended versions published since the Rule was signed in 2007

Timing

22. Any amendment needs to be in place by 1 January 2013 if continuity of standards is to be maintained.

Issues raised during consultation

⁵ As discussed in para 21.3, Euro emissions standards for heavy vehicles are described using Roman numerals and light vehicle standards are described using normal (Arabic) numerals.

23. Sixteen submissions were received on the draft amendment Rule and with the exception of the issues discussed below, were in support of the proposed amendments.
24. Some submissions did express concern that other matters, including dates for the introduction of further standards for used vehicles should have been included in the draft Rule. These were considered out of scope or will be addressed in any future amendments following the planned review in 2014.
25. The only proposed change set out in the amendment Rule that received specific adverse comment was the proposal to implement the US2007 emission standard as the minimum standard for existing model new vehicles⁶ for those certified to US standards. The proposed change would require the US2007 standard as the minimum from 1 January 2014, instead of 1 January 2015 as set out in the current Emissions Rule. Relatively few vehicles are certified to US standards (around 350 of 3,200 in 2011) and the vast majority of vehicles imported in 2011 and 2012 that were declared to US standards were heavy diesel vehicles manufactured in Japan. It appears importers were taking advantage of the loophole created by the relatively old US standard to import older-model Japanese trucks. None of the importers of Japanese built trucks expressed concern with the proposal to increase this standard to the US2007 standard on 1 January 2014.
26. One local assembler of large American trucks asked that the draft Rule be amended to allow his company a 12-month extension (from 2014 to 2015) to provide them more time to upgrade their trucks from the currently acceptable US2004 emissions technology. The importer argues it does not have the resources available to manage this transition with only 12 months' notice and argued that two years is usually given to allow for the industry to adapt to any changes. It also argued that it had been working to achieve compliance by the previous deadline of 1 January 2015, set in the 2010 amendment of the Emissions Rule.
27. The importer argues in its submission that it expects to sell between 40 and 70 trucks in 2014. Data from the Motor Vehicle Register shows that less than 10 vehicles per year have been registered by this company since 2008 and in several of the past four years it registered no vehicles.
28. There are three possible options to address the concerns raised by this submission. The Committee is asked to make a specific decision on this matter, which can be then implemented through the finalised Rule.
29. The first option is to retain the current proposal, set out in the amendment Rule to make the US2007 standard the minimum accepted standard from 1 January 2014 and rely on existing administrative processes to address the specific circumstances faced by the submitter.
30. For new heavy vehicles, compliance with the Emissions Rule is required from the date of the chassis and engine's manufacture, not the date of the first registration of the

⁶ New vehicle standards have two introductory dates, one for new models, and one for existing models, which are those that already being produced. The different dates are intended to allow companies to sell older stocks. For US standards, new model vehicles are already required to meet the US2007 standard.

finished vehicle. This allows for the fact that the bodies on large heavy vehicles are usually custom built to the client's specifications. Land transport law already allows some administrative flexibility in interpreting exactly when the vehicle's chassis and engine is considered to be manufactured. If the submitter can demonstrate to the NZ Transport Agency's satisfaction that the chassis and engine that they wish to use have been manufactured, before 1 January 2014, these may be able to be considered to be compliant with the Rule, even if the truck is not fully assembled.

31. This process was previously used by the New Zealand company Designline Buses which assembled buses on imported chassis at facilities in Ashburton and Christchurch. In a subsequent communication the submitter expressed concern that they would not be able to purchase one year's stock in advance, which they estimated would cost "close to \$8 million", but did not identify how this figure was arrived at.
32. In addition to the option of the submitter providing data to the NZ Transport Agency in advance, under Section 166 of the Land Transport Act the submitter (or any other person) may apply for an exemption from any requirement in a land transport rule. Each case must be assessed on its merits and cannot be judged in advance. NZ Transport Agency officials have advised that it appears that an exemption could be given serious consideration if an application was made. This provision exists independently of the ability to provide data in advance.
33. It is acknowledged that neither of these options provides certainty and may also impose costs on the company, but they do ensure that the current loophole of allowing new vehicles built to an eight year old standard does not continue.
34. The second option is to accept the advice of the submitter and alter the draft Rule to return the introduction date for US2007 to 1 January 2015. This change would give certainty to the submitter, but runs the risk that the loophole would continue to be exploited by other manufacturers to continue to bring in older and more polluting vehicles. This option may not be supported by importers of vehicles that are able to meet the updated standard. Importers of used diesel vehicles may also object to this proposal as they have been required to meet a more recent standard (the Japan 05 standard) since 1 January 2010.
35. An alternative option, suggested in the submission by the Motor Industry Association, would be to pick an intermediate date, such as 1 July 2014 as a compromise.
36. The only other substantive issue raised during consultation concerned the tampering with vehicle exhaust emissions controls after vehicles were in the fleet. The Emissions Rule requires vehicles entering the fleet to meet internationally recognised exhaust emissions standards. However, once these vehicles are in the fleet, there are only basic requirements for them to continue to operate at the standard they were built to. Emissions controls can be modified, or in some cases even removed, without breaching current in-service requirements. A number of the submissions noted that this was an inconsistency. Several also cited examples of companies advertising devices being sold in New Zealand that are intended to bypass emissions control systems. Submissions requested that the amendment Rule also include new requirements for mandatory in-service emissions testing as a way of preventing people from tampering with or modifying the emissions controls.

37. While the issue of tampering with vehicle emissions equipment does appear to be of concern, any changes to in-service requirements would be out of scope of this amendment. It is not appropriate to delay the amendment Rule to consider the issue further because the changes must be in place by 1 January 2013. The problem of tampering can be looked into as part of the proposed review of the need for further emissions standards, already announced, that will take place in 2014.

Report back on the use of a rolling age ban

38. I am advised that in the mid-2000s, Ministers in the previous administration became concerned that the age of used vehicles being imported from Japan was increasing each year. Ministers considered that New Zealand was not getting the safety or environmental benefits of newer vehicles. In 2006, in one of the decisions contained in a paper about emissions standards, Cabinet requested officials to provide further consideration of the use of a rolling age ban as a mechanism to reduce the average age of vehicles entering the fleet [CBC Min (06) 23/19 refers]. Ministers specifically sought advice on the need for a rolling age ban, in addition to the use of minimum exhaust emissions standards.
39. In response to the 2006 decision, the Ministry of Transport prepared a further paper for Cabinet Business Committee (CBC) entitled: *Vehicle Fleet: Consideration of a rolling age ban* [CBC Min (07) 11/2 refers]. The paper reported that there were a series of legal and practical issues with a rolling age ban. It argued that as well as providing air quality benefits, the use of minimum emissions standards was a preferable alternative to a rolling age ban as a tool to reduce the age of vehicles entering the fleet, if this was Cabinet's primary concern.
40. CBC noted that using emissions standards was likely to be as effective as a rolling age ban at regulating imports, but included a decision that:
- 'invited the Minister of Transport and the Associate Minister of Transport to reconsider the use of a rolling age ban once the exhaust emissions standards have been in force for three years, and to report to the Cabinet Economic Development Committee with the findings'.*
41. The Emissions Rule has now been in force for more than three years and report back to what is now the Cabinet Economic Growth and Infrastructure Committee is now due.
42. I consider that the use of an age related control, in addition to the existing safety and environmental standards already in place, would be unnecessary regulation. I note that the original Cabinet decision does not provide any criteria to on which to assess the need for a rolling age ban, making it difficult to determine what was intended. However, in April this year the Minister of Transport announced that the Ministry of Transport would undertake a review of the need for any further exhaust emissions standards in 2014 to regulate the import of used vehicles. This will be an opportunity for the Ministry to consider whether other approaches, including age related restrictions, may be appropriate. Accordingly I consider that it is not necessary for a more formal report on the use of a rolling age ban to be presented at this time.

Consultation

43. I am satisfied that the NZ Transport Agency has publicly notified and consulted on this proposed amendment Rule on my behalf, in accordance with section 161(2) of the Land Transport Act 1998. The NZ Transport Agency, in the course of development of this amendment Rule, has:
- 43.1. published a notice of the Minister of Transport's intention to make the proposed amendment Rule in the metropolitan daily newspapers in Auckland, Hamilton, Wellington, Christchurch and Dunedin on 30 June 2012, and in the *Gazette* on 5 July 2012, inviting submissions by 10 August 2012. The submission period was six weeks;
 - 43.2. published the public consultation (yellow) draft amendment Rule on its website and notified about 480 groups and individuals, who had registered an interest in the Vehicle Exhaust Emissions Rule, of the availability of the draft for comment.
44. Those consulted on the Rule amendment proposals included the Motor Industry Association, Imported Motor Vehicle Industry Association, Motor Trade Association, Road Transport Forum, Bus and Coach Association, New Zealand Federation of Motoring Clubs, Low Volume Vehicle Technical Association, New Zealand Automobile Association, Intertruck Distributors Ltd, Vehicle Testing New Zealand, Vehicle Inspection New Zealand, private citizens, government departments and agencies, and local authorities.

Consultation on Cabinet paper

45. The Energy Efficiency and Conservation Authority, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Health, NZ Transport Agency and the Treasury were consulted on this Cabinet paper and agree with its recommendations. The Department of the Prime Minister and Cabinet was informed of its contents.
46. The Minister of Transport has agreed to the submission of this paper.

Financial implications

47. There are no financial implications for the Crown. Several of the proposals will continue existing compliance costs for importers and purchasers of vehicles.

Human rights, gender and disability implications

48. There are no human rights, gender or disability implications from the proposed amendments.

Legislative implications

49. There are no additional or consequential legislative changes required from the proposed amendments to the 2007 Land Transport Rule: Vehicle Exhaust Emissions.

Regulatory Impact Analysis

50. A Regulatory Impact Statement has been prepared and is attached as an appendix to this paper.
51. The Regulatory Impact Statement identified that there would be few direct costs from the proposed changes. New vehicles are primarily imported through Australia and it is likely that vehicles built to the new standards would arrive in New Zealand at the same time as they do in Australia. New vehicle importers generally prefer New Zealand to set dates for implementation of standards as it ensures a 'level playing field'. The other proposals either continue existing policies and so impose no new costs, or they have no impact.
52. The Ministry of Transport's Regulatory Impact Statement Quality Assurance Panel has independently reviewed the Regulatory Impact Statement and associated supporting material. The panel considers that the information and analysis summarised in the Regulatory Impact Statement meets the quality assurance criteria.

Consistency with Government Statement on Regulation

53. I have considered the analysis and advice of my officials and I am satisfied that the regulatory proposals recommended in this paper:
 - are required in the public interest
 - will deliver the highest net benefits of the practical options available
 - are consistent with our commitments in the Government statement "Better Regulation, Less Regulation".

Publicity

54. The motor vehicle importing industry is generally aware of the proposed changes. The NZ Transport Agency will also advise the vehicle industry (manufacturers, importers, and operators) and other interested groups of the signing and availability of the amendment Rule. A factsheet and questions and answers will be published, along with the amendment Rule, on the NZ Transport Agency's website.
55. I propose to place a copy of this Cabinet Paper and its subsequent Cabinet minute, the submissions analysis and the Regulatory Impact Statement on the Ministry of Transport's website once the Rule has been signed.

Recommendations

56. It is recommended that the Committee:
1. **note** that the Associate Minister of Transport intends to make Land Transport Rule: Vehicle Exhaust Emissions Amendment 2012
 2. **note** that the aim of the Vehicle Exhaust Emissions Rule is to achieve improvements in air quality by reducing the level of emissions harmful to human health from motor vehicles operating on New Zealand roads
 3. **agree** that the date for the implementation of the US2007 standard for existing-model heavy diesel vehicles be either:
 - 3.1 1 January 2014 as set out in the draft amendment Rule; or
 - 3.2 1 January 2015 as in the existing 2007 Emissions Rule; or
 - 3.3 1 July 2014.
 4. **note** the content of Land Transport Rule: Vehicle Exhaust Emissions Amendment 2012
 5. **note** that the issues raised in the 2007 Cabinet decision regarding a rolling age ban [CBC Min (07) 11/2 refers] will be addressed as part of a review that the Minister of Transport has announced will take place in 2014
 6. **agree** that a report back on the need for a rolling age ban to regulate the import of used vehicles is no longer required
 7. **agree** that the Ministry of Transport places a copy of this Cabinet paper and its subsequent Cabinet minute, the submissions analysis and the Regulatory Impact Statement on the Ministry of Transport's website once the Rule has been signed



Hon Simon Bridges
Associate Minister of Transport

Dated: 10/10/12