



27 July 2022

OC220546

Hon Michael Wood
Minister of Transport

Action required by:
Monday, 1 August 2022

TARGETED CONSULTATION ON CLEAN VEHICLE STANDARD REGULATIONS

Purpose

Seek permission to release draft Land Transport (Clean Vehicle Standard) Regulations 2022 (the Regulations) with vehicle industry organisations for the purpose of targeted consultation, and inform you of details in the Regulations.

Key points

- The Regulations must be in force on or before 1 December 2022 to support the implementation of the Clean Vehicle Standard (the Standard), set out in Part 13 of the Land Transport Act 1998 (the LTA).
- The Regulations will be made under section 167C of the LTA to provide the technical and administrative detail to support the operation of the Standard, including formulas for the vehicle weight adjustment of carbon emission targets, and the process and criteria for an importer to be approved to operate on an annual compliance basis (known as a Category 1 Light Vehicle Importer).
- Section 167C of the LTA does not require you to consult on the Regulations unless they prescribe future carbon dioxide (CO₂) emission targets (for 2028 and beyond). While the proposed Regulations do not include targets, we recommend that you consult with industry stakeholders to gain a technical review of the content and to identify any detailed concerns with the policy. The proposed list of stakeholders is provided in Appendix 1.
- Draft government legislation is subject to legal professional privilege and Ministerial approval must be sought before it may be released outside the Crown. The privilege in draft government legislation lies with the Attorney-General, who has agreed that his approval is not required in certain circumstances. One of these is where the draft legislation will be released to a small pre-determined group outside the Crown on an in-confidence basis and subject to legal professional privilege, and the Chief Legal Adviser of the department confirms the release will not create a legal risk for the Crown.
- The Chief Legal Adviser of Te Manatū Waka Ministry of Transport has confirmed he considers the proposed release to a select group of vehicle industry stakeholders will not create a legal risk to the Crown.

- In July 2021 you agreed to the weight adjustment slope for the Standard [OC210558 refers]. We recommend that this be used for 2023 and 2024, then be updated every second year using a process outlined by the Regulations. The industry is supportive of this approach.
- s 9(2)(f)(iv) [REDACTED]
- Next steps detail how the Regulations will be in force by 1 December 2022, with a draft Cabinet paper to you in late September and a Cabinet Legislation Committee paper in late October 2022.

Recommendations

We recommend you:

- agree** to release the draft Land Transport (Clean Vehicle Standard) Regulations 2022 (the Regulations) outside of the Crown for the purpose of targeted consultation with the stakeholders identified in Appendix 1; Yes / No
- note** the risks of releasing the draft Regulations outside the Crown described by this paper.



Jemima de Lacey
Policy Delivery Lead, Environment,
Emissions, and Adaptation

27 / 7 / 2022

Hon Michael Wood
Minister of Transport

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Minister's office to complete:

- ☐ Approved
 ☐ Declined
☐ Seen by Minister
 ☐ Not seen by Minister
☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Jemima de Lacey, Policy Delivery Lead – Environment, Emissions and Adaptation	s 9(2)(a)	✓
Sigurd Magnusson, Senior Adviser – Environment, Emissions and Adaptation	s 9(2)(a)	

TARGETED CONSULTATION FOR MAKING CLEAN VEHICLE STANDARD REGULATIONS

Background

Regulations must be in place by 1 December 2022 for the implementation of the Clean Vehicle Standard (the Standard)

- 1 The Land Transport (Clean Vehicles) Amendment Act 2022 was passed in February 2022, inserting a new Part 13 into the Land Transport Act 1998 (the LTA) to establish the Standard. Regulations may be made under section 167C of the LTA to provide for the administrative and technical detail required to support the successful operation of the Standard. Section 185 of the LTA requires every light vehicle importer to hold a carbon dioxide (CO₂) account by 1 December 2022, and from that date no light vehicles may be certified for entry until the (CO₂) emissions of the vehicle have been recorded in an account (section 187 LTA).
- 2 The proposed Land Transport (Clean Vehicle Standard) Regulations 2022 (the Regulations) prescribe the matters necessary for the implementation of the Standard on 1 December 2022, including:
 - 2.1 formulas to calculate weight-adjusted targets and how they will be updated;
 - 2.2 entry and exit processes and criteria for different aspects of the Standard; and
 - 2.3 specifying the vehicle types excluded from the Standard.
- 3 The draft Regulations are technical. A working draft has been circulated with your office. Officials will provide you with an updated draft at the same time it goes to industry stakeholders for their review.

Purpose of regulations

The Regulations will prescribe formulas to determine weight-adjusted targets and how they will be updated

- 4 The (CO₂) emission targets for the Standard are set out in section 175 of the LTA. The targets ensure that small vehicles, which already have low average emissions, are given slightly stricter targets than heavier vehicles. This approach is modelled on the system used in the European Union.
- 5 The targets set out in section 175 of the LTA will provide the basis for calculating weight adjusted targets that will apply to each vehicle importer based on the specific mix of light vehicles they have imported in the obligation year. The weight adjusted targets will be calculated in accordance with the formulas set out in the Regulations. The formulas include a variable called 'the slope of the limit line' which will be determined by assessing the unladen weight and (CO₂) emissions of applicable light vehicles entering New Zealand over a certain period (called the 'reference period'). To prevent unreasonably strict or overly generous targets at the extremes, light vehicles below a 'floor' of 1200kg or above a 'ceiling' of 2000kg for passenger cars, and 2200kg for commercial vehicles, are treated as though they weigh those limits.

- 6 Last year, you agreed to use light vehicle data from 2019 and 2020 to set the initial weight-adjusted slope [OC210558 refers]. This information has been shared with the Motor Industry Association (MIA) and their members, who strongly desire these settings to be retained, because their vehicle orders for the next year are already locked in. The Regulations therefore reflect that the reference period, for 2023 and 2024, the first two years of the Standard, is based on vehicle data from 2019 and 2020.
- 7 The MIA has asked that the weight adjustment be updated, with notice, every two or more years. We consider two years to be a fair balance between accuracy and administration. We therefore recommend that light vehicle data from 2023 be used to determine the slope used in the 2025 and 2026 obligation years. And that light vehicle data from 2025 be used to determine the slope for the 2027 and 2028 obligation years. The process will continue on that basis every two years.
- 8 The Regulations will set out the reference period that must be used to determine the slope of the limit line for a particular obligation year. Using this formulation, the vehicle industry will receive at least one year's notice before the new 'slope' is set, which will ensure they have sufficient information to plan future vehicle imports. The slope of the limit line for the initial reference period will be contained in the Regulations. Future slopes will be approved by the Minister and published in the *Gazette* to provide industry with certainty.

The Regulations will prescribe the entry and exit processes and criteria for different aspects of the Standard

- 9 Under the LTA, every vehicle importer who imports a light vehicle on or after 1 December 2022 must hold a (CO₂) account with the Director of Land Transport. We recommend that the process and criteria for opening a (CO₂) account is straightforward. By default, importers will be *Category 2 light vehicle importers*, subject to a vehicle-by-vehicle compliance basis, meaning they must pay a financial charge on any vehicle above its CO₂ target before it can be certified for entry, unless preceding low-emission vehicles have placed that importer into a credit position.
- 10 Some importers will seek approval to be a *Category 1 light vehicle importer*, which affords them special compliance benefits, including being assessed against their CO₂ emissions targets on an annual rather than per-vehicle basis, and having the ability to defer compliance until the following obligation year.
- 11 Because an annual compliance model could result in a higher risk of non-payment of any applicable charges, we recommend that the application process for approval as a Category 1 light vehicle importer should be more onerous, including:
 - 11.1 being required, on an annual basis, to share projected vehicle sales information to show how the targets will be met, and being required to inform the Director where this is not going to plan;
 - 11.2 not being recently convicted of an offence under the Fair Trading Act 1986 or Motor Vehicle Sales Act 2003, a conviction of an offence involving dishonesty, or having been prohibited under Companies Act 1993 (and similar) from being a director or holding a management position;
 - 11.3 for used vehicle importers, that they've been in business for 5 years; and

11.4 the Director may impose further 'appropriate and reasonable' conditions in approving an application.

- 12 The Regulations will allow the Director to revoke an importer's Category 1 light vehicle importer status if they fail to maintain the conditions needed for approval, or where the importer fails to pay applicable charges or poses an unacceptable financial risk to the Crown. An importer whose status has been revoked will be entitled to comply as a Category 2 light vehicle importer (i.e. vehicle by vehicle compliance).

The Regulations will specify the light vehicle types excluded from the Standard

- 13 Cabinet has already agreed that the Standard will not apply to certain classes of vehicles [CAB-21-MIN-004 and CAB-21-MIN-0553 refers]:

13.1 agricultural vehicles;

13.2 special interest vehicles;

13.3 vehicles over 40 years old when imported;

13.4 military vehicles;

13.5 low volume scratch-built vehicles; and

13.6 motor sport vehicles.

- 14 The Regulations will include these vehicles as excluded vehicles for the purpose of the Standard.

We recommend a period of targeted consultation on the Regulations to test technical aspects

- 15 The Regulations include technical content including the formulas for determining weight-adjusted vehicle targets. This detail would benefit from input from the vehicle industry to test the technical accuracy and workability of these provisions. While the broad policy design has been consulted on over the past year, much of the operational detail in the Regulations is new. We think that testing the processes and criteria set out in the Regulations with targeted stakeholders will improve the quality of the final Regulations.

- 16 Draft government legislation is subject to legal professional privilege and Ministerial approval must be sought before it may be released outside the Crown. The privilege in draft government legislation lies with the Attorney-General, who has agreed that his approval is not required in certain circumstances. One of these is where the draft legislation will be released to a small pre-determined group outside the Crown on an in-confidence basis and subject to legal professional privilege and the Chief Legal Adviser of the department confirms the release will not create a legal risk for the Crown.

- 17 s 9(2)(h)
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IN CONFIDENCE

s 9(2)(h)



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IN CONFIDENCE

s 9(2)(h)

s 9(2)(f)(iv)

Overview of the timing

20 A brief overview of the timing for finalising the Regulations is provided in the table below:

Milestone	Date
Targeted consultation and regulations finalised	August/September 2022
Draft Cabinet paper to you for review and Ministerial consultation	Late September 2022
Paper submitted to Cabinet Legislation Committee and Cabinet	Late October 2022
Regulations in force	1 December 2022

Appendix 1: Proposed stakeholders to be consulted on the draft Regulations

- Drive Electric
- Financial Services Federation
- Imported Motor Vehicle Industry Association (VIA)
- Low Volume Vehicle Technical Association Incorporated
- Motor Industry Association of New Zealand Inc (MIA)
- Motor Trade Association Inc
- New Zealand Automobile Association
- Phill Haynes (*independent motor vehicle consultant*)
- Rental Vehicle Association
- SOC NZ (*business involved in sourcing emissions data on vehicles*)
- Special Interest Vehicle Association of New Zealand
- Tesla New Zealand (*not an MIA member*)
- The ICCT (*an NGO that can give independent advice on transport policy*)
- Vehicle Inspection New Zealand Ltd (VINZ)
- Vehicle Testing New Zealand Limited (VTNZ)