

Chair
Cabinet Economic Growth and Infrastructure Committee

2015/16 TRANSPORT RULES PROGRAMME

Proposal

1. This paper asks Cabinet to note the proposed transport rules programme for 2015/16, which sets out the 12 new rules that Transport Ministers expect to progress, and agree that only one be brought back to Cabinet before it is signed. [REDACTED]

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Executive summary

2. This Cabinet paper details the transport rules programme for 2015/16 (the 2015/16 programme) as required by Cabinet [CAB (99) M20/2B(1) refers]. The 2015/16 programme comprises 12 new rules (Appendix 1). There are six rules close to completion from the 2014/15 programme (Appendix 2). [REDACTED]
3. The 12 rules on the programme work to address harms (both safety and environmental) from the transport system, reduce compliance costs or ensure New Zealand meets its international obligations as a signatory to international treaties.
4. One rule on the programme deals with significant policy issues. It would formalise a requirement for discharge management plans for offshore oil wells (which entails noteworthy compliance costs) and will be the subject of a further Cabinet paper before signing. Transport Ministers propose signing the remainder of the rules on the programme without further reference to Cabinet unless a significant policy issue or risk emerges during development.
5. The development of rules on the programme includes undertaking public consultation on proposed rules. Transport Ministers will consult with their Cabinet colleagues in advance of public consultation where rules are likely to have significant impacts on other portfolios, public or industry interest or new costs.
6. Ministers will instruct the Parliamentary Counsel Office to draft consequential amendments to regulations in advance of Cabinet making policy decisions on these regulations where, for timing reasons, this is desirable.
7. I intend to publish this paper and lists of the rules to be progressed in the 2015/16 financial year (Appendices 1 and 2) on the Ministry of Transport's website with appropriate redactions.

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Background

Transport Ministers are required to report to Cabinet on proposed rules

8. Cabinet has invited the Minister of Transport to provide it with a rules programme each year [CAB (99) M20/2B(1) refers], and to bring the policy content of transport rules to Cabinet for noting. I am providing the 2015/16 transport rules programme as part of my Transport portfolio, under the delegation of the Minister of Transport.

Transport Ministers have authority to make rules

9. Transport Ministers are empowered¹ to make ordinary rules on matters covering land transport, civil aviation, maritime safety, and marine protection. Transport rules contain detailed technical standards, requirements and procedures governing the construction, maintenance, licensing and operation of transport modes. Rules are the most common form of delegated legislation for transport. However, any associated offences, penalties, fees and charges are specified through supporting regulation.

Update on the 2014/15 Transport Rules Programme

10. There were 19 rules on the 2014/15 programme. Twelve have been completed. A list of six² rules from the 2014/15 programme still to be finalised can be found in Appendix 2.
11. The rules programme is not an annual programme. It is an annual update of a rolling programme of rule making. The six rules remaining from the 2014/15 programme are in their final stages of development. They are rolling into 2015/16 for a number of reasons including issues arising from consultation. Five of these rules will be submitted to Transport Ministers for consideration within the first quarter of 2015/16.
12. The Ministry of Transport and transport Crown entities have an ongoing programme of regulatory reform to ensure rules and regulations are high quality and fit for purpose. The reform programme is focusing on delivery of the transport rules programme, building capability in rules development, improving flexibility of transport legislation and developing a future transport regulatory framework.

Proposed 2015/16 transport rules programme

13. Transport Ministers propose to progress 12 new transport rules in 2015/16 (Appendix 1) and sign six rules from the 2014/15 programme (Appendix 2) that are near completion. The new rules on the 2015/16 programme include one civil aviation rule, two land transport rules and nine maritime safety and marine protection rules.

¹ Ministers are empowered to make rules by the Land Transport Act 1998, Railways Act 2005, Civil Aviation Act 1990 and Maritime Transport Act 1994.

² This list does not sum because one rule from the 2014/15 programme, the International Civil Aviation Organization Equipment Compliance rule has been deferred, [REDACTED]

14. Transport Ministers plan to make 11 of the rules without further reference to Cabinet, unless in the course of their development a significant policy issue or risk emerges. This is because these 11 rules all meet one or more of the following conditions:
 - a. They are updates to meet existing international obligations.
 - b. They are minor and/or technical in nature.
 - c. The policy content has already been before Cabinet.
15. One rule will be referred back to Cabinet before signing. It would impose noteworthy costs on offshore oil operators (see paragraph 19).
16. The Ministry of Transport received 22 bids for the 2015/16 rules programme. The new rules were accepted from these bids. The primary reason bids were not included on the programme is that policy investigations had not concluded. Only bids that demonstrate a clear problem and need for regulatory change are put forward onto the rules programme.

Rationale for change and effect of the 12 new proposed rules

17. The rules on 2015/16 programme are set out below. While some rules will provide benefits for multiple objectives, they are each grouped under the one to which they provide most benefit.

Six of the 12 new rules address potential harms in the transport system

18. A rule amendment to improve road safety (Rule no. 3) will address matters concerning road markings and signs to improve safety. Many changes incorporated in this rule were recommended by the Cycling Safety Panel, which was established in response to a 2013 Coronial Inquiry investigating 13 cycling fatalities. This rule also provides for extended use of variable message signs for management and enforcement of road user behaviour.
19. Amendments to the marine protection rule covering discharge management plans for offshore installations (Rule no. 7) will specify how operators must develop plans to deal with a potential offshore oil well blowout. Maritime New Zealand already requires operators with exploration wells to produce such plans, but there is no specific legislative requirement. This rule amendment will give such requirements legislative force. This will mitigate Crown and environmental costs in the event of an underwater oil well blowout but will increase the cost to develop and approve a discharge management plan [REDACTED]. Industry has previously indicated that preparation of a discharge management plan costs approximately \$50,000-\$150,000, so there is unlikely to be significant opposition to this relatively small increase. There may also be notable new costs if operators have to purchase or establish contracts for additional equipment they would need to deal with an underwater oil well blowout.³

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³ Officials will prepare a Regulatory Impact Statement, informed by industry consultation, which will provide Transport Ministers with a fuller understanding of the size of these new costs.

- I propose that the policy content of this rule be referred back to Cabinet before it is signed, as it is expected to impose noteworthy new costs.
20. Technical amendments to ships' design, construction and equipment requirements (the Maritime Rule Part 40 series) (Rule no.9) will ensure that ships are fit-for-purpose. This will include mandating the carriage by fishing vessels of float-free emergency position indicator radio beacons⁴, as per Coroner D O Crerar's recommendation [Cosgrove [2013] NZCorC 113]. This will increase the safety of crew on these vessels. Costs are not expected to be significant.
 21. Revoking Maritime Rule Part 81: Commercial Rafting Operations (Rule no.10), will ensure that commercial rafting operators that also provide adventure activities not covered by maritime rules do not have to meet the dual regulatory requirements of maritime rules and the Adventure Activity Regulations. Approximately two-thirds of rafting operators also offer other adventure activities, and compliance with multiple regulatory regimes increases their costs. Revoking Part 81 would reduce compliance costs for these operators while maintaining safety.
 22. The Safety of Life at Sea (SOLAS) Rule Amendments (Rule no. 11) will mandate the carriage of certain safety devices and safety plans on board some large vessels, as required by an international maritime convention. This will include systems to alert crew to inattention or a lack of action on the bridge, systems to identify other ships, and specific plans to rescue people from the water. These amendments will increase the safety of all vessels, as vessels specifically affected by this rule will be less likely to be involved in, and better able to respond to, incidents. Costs will not be significant, as these requirements reflect common practice. In addition to providing safety benefits, this amendment is required to meet international obligations.
 23. Mandating container weight verification (Rule no. 12) will make sure that the weight recorded for shipping containers is accurate, as required by an international maritime convention. Overweight containers can make ships top-heavy and unsafe and have been implicated in several recent shipping accidents. Overweight containers can also be unsafe for stevedores and port workers, as well as road users if they make heavy vehicles overweight. The rule will require shippers to provide verified weights for each container, either by weighing the full container, or by summing the weights of the container and its contents (measured separately). Regulations will provide for fines for non-compliance. Costs will be established as part of the rule making process, including public consultation and a Regulatory Impact Statement, but are unlikely to be substantive.

Four of the 12 new rules deal with international agreements

24. New Zealand benefits as a party to international transport regulatory regimes. By standardising requirements, international agreements reduce compliance costs for New Zealand operators who do business in multiple jurisdictions. The international regimes of aviation and maritime allow vessels, aircraft and goods to travel more

⁴ A float-free emergency position indicator radio beacon automatically releases itself from a sinking vessel and continues to transmit while floating on the surface of the water.

freely internationally. This helps facilitate trade and the international flow of people, capital and ideas. New Zealand's adoption of these international regimes also increases safety by ensuring that overseas operators entering New Zealand have been certified to acceptable standards.

25. Technical provisions in international agreements are periodically amended to reflect emerging best practice. New Zealand agrees to these changes through a tacit acceptance process. New Zealand uses international omnibus rules for aviation and maritime to respond to changing international standards. This reduces the overall regulatory burden by combining minor amendments to several rules.
26. An international aviation omnibus rule (Rule no.1) will give effect to changes to various Standards and Recommended Practices which, as a signatory to the International Convention on International Civil Aviation, New Zealand is obliged to conform to. These amendments will address minor technical matters.
27. Two maritime rule amendments will allow New Zealand to become a party to international conventions administered by the International Maritime Organization. One deals with standards of training, certification and surveying standards for fishing vessels and crew (Rule no. 6) and one mandates various safety equipment (Rule no. 8).
28. There is also an international omnibus rule to give effect to existing obligations in International Maritime Organization conventions (Rule no. 5).
29. These rules are minor and/or technical; they are not expected to have significant impacts or costs.

Two of the 12 new rules are domestic omnibus amendment rules

30. The programme includes one new land transport omnibus amendment rule (Rule no. 2) and one maritime and marine protection omnibus amendment rule (Rule no. 4). The omnibus amendment rules make minor or technical changes to a range of existing rules. For example, they will correct drafting errors and respond to changes in terminology.

Policy investigations that could result in rule making

31. [REDACTED]

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32. If specific policy projects recommend rule changes, Transport Ministers may move these onto the rules programme and commence rule development. Significant issues will be referred to Cabinet prior to rule development, and potentially again before rules are signed, if further issues arise during consultation.

33. [REDACTED]

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Consultation

34. The Civil Aviation Authority, the New Zealand Transport Agency, Maritime New Zealand, the Ministry of Justice, the Ministry for the Environment, New Zealand Police, the Treasury, and the Ministry of Business, Innovation and Employment have been consulted on this paper and their views incorporated. The Department of Prime Minister and Cabinet has been informed.
35. The Minister of Transport has approved the submission of this paper.
36. Transport Ministers are required to consult with the public on each transport rule as part of the rulemaking process, as specified in the empowering acts. Transport Ministers will consult with their Cabinet colleagues in advance of public consultation where rules are likely to have significant:
 - a. impacts on other portfolios
 - b. public or industry interest
 - c. new costs.

Financial implications

37. There are no financial implications resulting from this paper. Any financial implications resulting from a specific rule will be identified as part of the development of that rule.

Human rights, gender and disability implications

38. There are no human rights, gender or disability implications arising from this paper.

Legislative implications

39. Consequential amendments to regulations may be required to support implementation of rules. This paper proposes that Cabinet invites Transport Ministers to instruct the Parliamentary Counsel Office to draft consequential amendments to regulations where, for timing reasons, it is desirable to issue drafting instructions for consequential regulations pending Cabinet policy decisions, if required.
40. Any legislative implications arising from a specific rule will be identified as part of the development of that rule.

Regulatory impact analysis

41. A Regulatory Impact Statement is not required for this paper. Regulatory impact analysis is undertaken for each rule project and a Regulatory Impact Statement developed where necessary. The Regulatory Impact Analysis Team at the Treasury will be consulted on these as appropriate.

Publicity

42. There are no requirements for publicity arising from this paper. Regulatory Impact Statements, draft rules and final rules will be publicised as required by the relevant legislative provisions. This publicity will be managed by the Ministry of Transport or relevant transport agency.
43. The Ministry of Transport proposes to publish this paper (and Appendices 1 and 2) with any appropriate redactions on its website, as part of a suite of material it makes publicly available about the regulatory programme.

Risks

44. Any risks from releasing this Cabinet paper and Appendices 1 and 2 on the Ministry of Transport's website are limited because the majority of rules are minor and technical or comply with agreed international standards. [REDACTED]

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Recommendations

I recommended that the Committee:

- 1) **note** that in 2015/16 Transport Ministers intend to progress:
 - a. the proposed 2015/16 transport rules programme as set out in Appendix 1
 - b. the rules close to completion from 2014/15 as set out in Appendix 2
- 2) **note** that all transport rules undergo public consultation, and Cabinet will be informed of any significant risks before consultation
- 3) **agree** that Transport Ministers make rules arising from all but one of the rule projects on the 2015/16 programme without further reference to Cabinet, unless in the course of their development a significant policy issue or risk emerges. The rule to be referred to Cabinet is:
 - a. amendments to the marine protection rule covering discharge management plans for offshore installations (Rule no. 7 in Appendix 1) which will specify how operators must develop plans to deal with a potential offshore oil well blowout
- 4) **agree** that Transport Ministers may instruct the Parliamentary Counsel Office to draft consequential amendments to regulations where, for timing reasons, it is desirable to issue drafting instructions for consequential regulations in advance of Cabinet policy decisions. This is in order to deliver the 2015/16 transport rules programme

- 5) **note** that Transport Ministers may move policy investigation projects, [REDACTED], onto the 2015/16 programme and notify Cabinet of any significant policy issues associated with those rules
- 6) **note** that this paper, and Appendices 1 and 2 will be published on the Ministry of Transport's website with any appropriate redactions.

Hon Craig Foss
Associate Minister of Transport

Dated: _____

Appendix 1: Summary of new rules in the 2015-16 transport rules programme

	Project name	Rationale for Rule change	Summary of rule change	Effect of rule change	Separate cabinet paper?
AVIATION					
1	ICAO Compliance Omnibus Rule	To ensure rules are fit for purpose and New Zealand meets obligations with the International Civil Aviation Organization.	Various minor changes and technical amendments.	Rules are fit for purpose. New Zealand will continue to meet international obligations. Compliance costs may also decrease.	No
LAND					
2	Land Transport Omnibus Amendment Rule 2016	To ensure clear and effective rules.	Minor technical amendments and corrections of drafting and typographic errors.	Rules are easier to read and regulation will be fit for purpose.	No
3	Land Transport: Road User Amendment Rule and Land Transport: Traffic Control Devices Amendment Rule	These rule changes would include proposals to implement the recommendations of the Cycle Safety Panel, specifically regarding road rules and equipment to make cycling safer.	The changes will allow safer cycling infrastructure to be installed, produce clearer rules and address gaps (for example including segregated cycle lanes under the definition of 'roadways'). Other changes may be made to update traffic control devices and road rules for all road users.	Improved safety of cyclists and pedestrians. Safer operation of highways. It may indirectly lead to decreased congestion and emissions, and health benefits if the changes help encourage a wider uptake of cycling.	No
MARITIME					
4	Maritime and Marine Protection Omnibus Amendment Rule 2016	To ensure clear and effective rules.	Minor technical amendments and correction of drafting and typographic errors.	Rules are easier to read and fit for purpose.	No
5	International Omnibus Rule 2015/16	To ensure New Zealand law reflects the latest amendments to mandatory International Maritime Organization conventions.	Various rules will be amended to reflect changes to international agreements such as the International Convention for the Safety of Life at Sea, the International Convention for the Prevention of Pollution From Ships and the Load Line Convention. The changes include implementation of the Polar Code, which sets standards for safety and environmental protection in polar waters.	Will ensure clear and effective rules and ensure the implementation of mandatory International Maritime Organization requirements so that New Zealand meets its international obligations. It will decrease compliance costs for operators, as they will no longer have to meet differing international and New Zealand standards.	No
6	Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel	To enable New Zealand to become a party to the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995.	This will involve minor changes to Maritime Rule Parts 31 and 32 (which deal with certification, crewing and watchkeeping requirements). Although minor, these changes are not suitable for inclusion in an international omnibus, as they will implement new international obligations.	The Rule will provide an internationally agreed system for recognising the qualifications of fishing vessel crew. This will address concerns about the competence of foreign fishing crews visiting New Zealand's ports, and allow New Zealand fishing vessel crew to more easily work overseas, and should decrease compliance costs overall.	No
7	Mandating Well Control Contingency Plans – Rule part 200 (or 131 once new EEZ regulations have passed)	To formalise the requirement for offshore oil well operators to develop plans to deal with a potential offshore oil well blowout.	Formalises the requirement for offshore oil well operators that apply for a discharge management plan (or a proposed oil spill contingency plan) to also prepare a Well Control Contingency Plan, in case they have an underwater oil well blowout.	Ensures offshore oil well operators have adequate planning and preparation for a well blowout. This planning will mitigate Crown and environmental costs if a blowout occurs. It will increase the cost of applying for a discharge management plan [REDACTED], and operators will have to meet the cost of any equipment required.	Yes
8	Torremolinos/Cape Town agreement	To allow New Zealand to become a party to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.	This will make New Zealand a party to the Torremolinos International Convention for the safety of fishing vessels. Amendments would be required to maritime rule Parts 25 (carriage of charts), 40D, 42A, 42B (vessel design, construction and equipment) and possibly 19 (operator certification) or 46 (vessel maintenance and surveys) to give effect to the Convention in New Zealand.	The changes will increase safety standards on board foreign fishing vessels, giving New Zealand jurisdiction to enforce minimum safety standards. This will decrease Crown costs associated with fishing vessel incidents, and reduce compliance costs for New Zealand vessels operating internationally, as they will only have to meet a single set of standards.	No
9	Changes to vessel design construction and equipment (the Maritime Rule Part 40 series)	Rules regarding ships' design, construction and equipment are unclear, inconsistent or out of date. This is making it difficult for surveyors to effectively do their jobs.	This rule change will make various minor changes to Maritime Rule Parts 40A, 40C, 40D, 40E, 40F and 40G to clarify requirements and remove inconsistencies. The change will also require carriage of float-free emergency position indicator radio beacons on certain fishing vessels. A float-free emergency position indicator radio beacon automatically releases itself from a sinking vessel and continues to transmit while floating on the surface of the water.	Accurate surveys and clear requirements, alongside the carriage of float-free emergency position indicator radio beacons will improve safety. New Zealand rules will also be aligned with international best practice.	No
10	Streamlining commercial rafting regulation (Revoking Maritime Rule Part 81)	Because most commercial rafting operators offer several adventure activities, they must meet regulatory requirements and costs under both Adventure Activity Regulations and Maritime Transport Regulations, which is inefficient.	Revoking Maritime Rule Part 81 would take commercial rafting operators outside the transport system. They would be regulated under Adventure Activity regulations, administered by WorkSafe.	Reduced compliance costs for operators overall, but may increase costs for the 1/3 of operators not already meeting Adventure Activity Regulations, depending on how WorkSafe manages the transition process.	No
11	Safety of Life at Sea (SOLAS) Catch-up Rule Amendments	The International Maritime Organization has amended the international Convention for Safety of Life at Sea to require vessels to carry specific safety equipment.	The rule change will require certain types of large vessels to carry the following safety equipment: <ul style="list-style-type: none"> • bridge navigation watch alarm systems • automatic identification and tracking systems • a current version of the international aeronautical and maritime search and rescue manual • ship-specific plans and procedures for the recovery of persons from the water. 	Safety will increase, as ships will be less likely to have accidents caused by inattention on the bridge. Ships will also be better prepared to participate in search and rescue operations at sea.	No
12	Mandating container weight verification	There is no requirement to verify the weight of packed shipping containers. Incorrectly recorded weights cause vessels, freight yards and trucks to be unsafe and unstable.	Shippers will be required to sum the certified weights (measured on approved equipment) of all packages and cargo items (including packing materials) to be packed in containers. The verified weight will be provided to freight operators. Regulations will provide for fines for non-compliance.	Increased safety for drivers, sailors and stevedores. Costs may increase for some exporters that do not currently weigh their exports, but this is not expected to be significant.	No

Appendix 2 – Rules near completion from the 2014/15 transport rules programme

	Project name	Rationale for rule change	Summary of rule change	Effect of rule change	Status
AVIATION					
1	Safety Management Systems	The International Civil Aviation Organization has adopted a new annex requiring a risk based approach to compliance systems. Safety Management Systems are its required risk management framework.	The rule will create a new rule part 100, mandating the implementation of a risk management system for civil aviation operators.	There may be upfront costs for businesses to develop a safety management system, however ongoing costs for government and industry associated with certification and auditing will decrease. The rule will also promote a culture of safety and active risk management practices.	Consultation complete
2	Civil Aviation Rule Part 147: Maintenance Training Organisations	The lack of an internationally recognised process to authorise maintenance training organisations in New Zealand is impeding industry from attracting international students.	Maintenance training organisations will be able to show that the training provided meets internationally recognisable standards. This will require training organisations to be approved by the Director of Civil Aviation.	The maintenance training industry has actively supported the creation of the new Rule. The sector wide economic benefits will outweigh the minor compliance costs.	Consultation complete
3	Civil Aviation Rule Part 61: Licences & Ratings Stage 2	The Rule will improve safety and ensure that requirements for New Zealand pilot licences align with International Civil Aviation Organization requirements and international best practice.	A helicopter recreational pilot license will be introduced. the change will also reorganise Defence qualifications for Civil Aviation and improve training standards for agricultural operators, night flying and commercial balloonists.	Agricultural pilots and pilots using night vision equipment will need to be authorised by the Director of the Civil Aviation Authority. The cost impact is expected to be minor for most pilots. Additionally, removed barriers for licensing will reduce compliance costs.	Consultation complete
MARITIME					
4	Regulating ships' ballast water – Part 300	To ensure New Zealand reflects International Maritime Organization standards and gives effect to technical standards in the International Convention for the Control and Management of Ships' Ballast Water and Sediments.	Requires vessels to implement a Ballast Water and Sediments Management Plan, keep a Ballast Water Record Book and manage any ballast water to a given standard. A levy will be required to fund Maritime NZ's compliance activities.	This Rule will prevent invasive aquatic species from entering New Zealand territorial waters in ships' ballast water, and prevent New Zealand invasive species from entering international waters. Compliance costs will increase.	Consultation to take place September-October 2015
5	Marine Protection Rule Part 132: Dispersants and Demulsifiers	To allow oil spill control agents approved overseas to be used in an emergency.	The amendment enables New Zealand access to global stockpiles in the event of a major spill emergency. It also extends the rule's scope to cover approval of other response products, such as sorbents.	Industry, Government and local government will be able to access more oil spill control agents and access emergency stockpiles. Cost implications are to be confirmed.	Consultation complete
6	Maritime Labour Convention Rule	To allow New Zealand to become a party to the Maritime Labour Convention.	Minor changes and amendments to maritime labour rules.	Aligning New Zealand regulations with international practice will reduce compliance costs for vessels, and our access to international markets may increase.	Consultation to take place September-October 2015