WAKA KOTAHI
NZ TRANSPORT AGENCY

MINISTERIAL BRIEFING NOTE

Subject	Clean Vehicle Scheme Transitional Phasing Proposal
Date	16 September 2022
Briefing number	BRI-2593

Contact(s) for telephone discussion (if required)				
Name	**Position**	**Direct line**	**Cell phone**	**1st contact**
Kane Patena	General Manager Regulatory Services	s 9(2)(a)	s 9(2)(a)	✓

Action taken by Office of the Minister

- ☐ **Noted**
- ☐ **Seen by Minister**
- ☐ **Agreed**
- ☐ **Feedback provided**
- ☐ **Forwarded to**
- ☐ **Needs change [please specify]**
- ☐ **Withdrawn**
- ☐ **Overtaken by events**

16 September 2022

Minister of Transport

CLEAN VEHICLE SCHEME TRANSITIONAL PHASING PROPOSAL

Purpose

1. This note provides a proposed plan (the plan) for phased implementation of the Clean Vehicle Standard project (CVS) without any primary legislative amendment.

2. The plan requires a transitional implementation period supported by regulations and would enable existing legislative timeframes to be met. There remains resource and reputational risks to consider.

Background

3. Further to our previous advice, the CVS online system will not meet current commencement dates of:

    - 1 December 2022 for carbon dioxide account (account) creation and recording vehicle emissions data.
    - 1 January 2023 for importers to pay charges and trade credits.

4. These dates are legislated for in Part 13 of the Land Transport Act 1998 (LTA).

Accounts, Charges, Credits and Trading

5. Under the CVS, from 1 December 2022, all vehicle importers must hold an account where the carbon dioxide emissions of their vehicles will be recorded. Importers will be either Category 1 or Category 2 (Cat1 or Cat2).

    - Cat1 will pay charges and receive credits 12 months after 1 January 2023 on the basis of all vehicles they've imported (known as Fleet Average).
    - Cat2 will pay charges and receive credits on a vehicle-by-vehicle basis after importation of a vehicle (known as Pay As You Go – PAYGO).

6. Charges will be based on the amount – per gram of carbon dioxide – a vehicle *exceeds* the applicable CVS target.

7. Credits will be based on the amount – per gram of carbon dioxide – that a vehicle is *less* than the applicable target. Credits may be banked in an account and can be used to either offset excess

emissions from other vehicles linked to the account (so charges do not apply) or transferred to another account (trading).

8. Trading refers to the ability for an importer to transfer credits from their account to another importer's account and must be processed through the CVS system. The market for credits will be operated by the private sector. The role of Waka Kotahi is to transfer credits when provided the relevant account and credit information. In doing so, the Director of Land Transport (the Director) must verify account holder/trader identity to ensure transaction authenticity.

The Plan – Regulations and Resourcing

Regulations

9. Te Manatū Waka Ministry of Transport and Waka Kotahi have been working on regulations to support CVS. We propose changing these draft regulations to streamline the Cat1 approval process and create a transitional period deferring:

    - the requirement to pay charges to 1 June 2023, with flexibility for charges to be paid at a customer's request, if systems allow, before this date
    - the ability to transfer credits to apply on or before 1 June 2023, with flexibility for the Director to state an earlier date if systems allow
    - the requirement for a publicly available record of account holders to apply from 1 June 2023. Between 1 December 2022 and 1 June 2023, importers will need to apply to the Director to access information from the record of account holders.

10. Parliamentary Counsel Office have agreed in principle that these changes are an appropriate use of the regulation making power.

11. The plan would see:

    - All CVS users open accounts, and the emissions data of vehicles linked to these accounts, recorded from 1 December 2022 (existing date in legislation).
    - All users will have their emissions data recorded against CVS targets in their accounts from 1 January 2023 (existing date in legislation).
    - Cat2 payment would only be enforceable from 1 June 2023 – unless these importers wish to pay earlier **and** the CVS system is online to enable it.
    - Cat 1 users remaining largely 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

    - A more efficient Cat1 approval process where less information is initially requested from applicants. Importers who the Director is confident will be able to pay the charges will be approved with other applicants required to provide further information. Waka Kotahi is also investigating the use of conditions to reduce the risk of bad debts.

Resourcing

12. Additional resourcing would be necessary to support the plan. It is expected that online account creation will be available from 1 December 2022 but that manual processes will be required to support vehicle transactions (approximately 950 per day) during the transitional period.

13. It is estimated that the core BAU resource required to support the standard is approximately 22 staff. We will require additional resource to support a phased approach. This includes supporting a manual process following online account creation. We could need twice as many people to support during the transitional period and are looking at ways we can bring in the resourcing required as we manage peaks and troughs.

Risks – Legal, Financial, Resourcing, System

Legal

14. The CVS system must comply with anti-money laundering requirements unless we obtain an exemption. This will require preparation of an AML/CFT Risk Assessment and Compliance Programme, annual returns, three- yearly audit and obligations to identify and report suspicious activity.

15. All users of the CVS system are subject to “know your client” obligations where Waka Kotahi will need to be satisfied of the identity of anyone in control of an importer. This can be time consuming, particularly for offshore importers or any organisations with moderately complex business structures.

Financial

16. Over time, some fleet average importers will be unable to pay charges when they fall due. Deferring the obligation for pay-as-you-go importers will result in some of these importers also incurring charges that they are unable to pay. We expect there will be an increase in bad debts as a result of the deferral.

17. The charges are land transport revenue which will require Waka Kotahi to diligently attempt to recover them. Prior to the charges being paid, they are debts due to the Crown. In order to forgive Crown debt, Waka Kotahi will require an appropriation approved by the Minister of Finance for a ‘non-departmental other expense’.

Resourcing

18. There is a risk that Waka Kotahi may not be able to find, recruit, train and onboard all the necessary roles required to support the additional manual processes in time for CVS commencement.

System

19. Linking vehicles to accounts requires Waka Kotahi to connect information across multiple sources, with incomplete system development creating delays for importers and requiring manual data entry and resourcing to minimise these delays. Manual processes are likely to lead to processing times of between 3 and working 15 days for importers.

20. Continued issues with the accuracy of vehicle emissions data will see continued challenges about amounts owed, and continued activity to monitor and amend errors, and deal with disputes. Manual processes would increase the likelihood of errors and the complexity of reconciliations.

Public

21. Waka Kotahi has continued to engage with the new and used vehicle industry (industry) throughout this process. Both have indicated a desire to delay the scheme until it can be fully automated, and the impacts on their businesses mapped. While the industry has prepared for the launch of the scheme by focusing on low emission vehicles, they have expressed a willingness to challenge aspects of the scheme which are detrimental to their commercial position. We will not know the substance of the challenge until the details of the scheme are finalised.

22. Further, delays to credit transfers/trading is viewed by some as creating market uncertainty for vehicle pricing.

Motorcycles

23. As previously advised, motorcycles are not subject to CVS targets and will not generate credits or charges. Including motorcycles would require further system and legislative changes in addition to the current project scope, and in parallel to the urgent work required to implement the CVS scheme outlined in this paper.

24. Waka Kotahi understands that Crown Law has advised that “excluding” vehicles under the regulations does not remove the requirement to hold an account and record emissions data.

25. Waka Kotahi and Te Manatū Waka therefore recommend the implementation of the always-planned operational CVS policy for motorcycles, i.e., all motorcycle imports will have ‘null’ recorded in the emission data field in their accounts.

Next steps

26. Drafting changes to the regulations to reflect the phased implementation approach outlined in this note will need to be progressed in the week of 19 September 2022. The draft regulations and Cabinet paper will be provided to the Office on 29 September 2022 for review and Ministerial consultation.

27. The draft regulations and Cabinet paper will need to be lodged on 13 October for Cabinet Legislation Committee on 20 October 2022. If Cabinet agrees to a 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 1 December 2022.

28. The next steps on how we resolve these issues will depend on your feedback.

It is recommended that you:

1. **note** this advice from Waka Kotahi and Te Manatū Waka

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Kane Patena
General Manager of Regulatory Services and Director of Land Transport

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Hon Michael Wood, Minister of Transport
Date: 2022

Appendix 1: CVS Transitional Phasing One-pager

Clean Vehicle Standard Transitional Implementation

Summary

- Delay requirement to pay Cat 2 charges to 1 June 2023 through Regulations
- Delay credit transfers to a date on or before 1 June 2023 through Regulations (date to be authorised by the Director of Land Transport)
- Delay requirement for publicly-available record of account holders to 1 June 2023 through Regulations
- All CVS users open accounts and have vehicles linked to these accounts from 1 December 2022 (existing date in legislation)
- Cat 2 users accrue charges and credits from 1 January 2023 (existing date in legislation)
- Cat 2 payment only enforceable from 1 June 2023 and a date on/before that for credit transfers, but can pay earlier if they wish and the system is online
- Cat 1 users largely unaffected as Fleet Averaging is on a 12-monthly basis, and charges and credits will still accrue from close of 31 December 2023
- The below diagram illustrates the critical milestones and dates we believe necessary to maintain system integrity and purpose

1 - Importer can register and open an account (1 Dec 2022)

2 - Vehicle is linked to an account through the Import process and the Importer is able to view the vehicle/s in their CVS account (1 Dec 2022)

3 - Credit Transfers (1 June 2023 or earlier)

4 – Payment of accrued and future Cat 2 charges required (1 June 2023)

5 – Publicly-available record of account holders (1 June 2023)

To facilitate this, we recommend:

Regulatory Enablers

- Delaying to 1 Jun 2023 the:
  - payment of Cat 2 charges
  - availability of public record of account holders
- For those who wish to pay earlier and not trade credits – if system payment functionality is in place earlier, and people wish to, Waka Kotahi could enable payment
- Allowing credit transfers on/before 1 June 2023 (before date would be notified by the Director).

Go Live Operational Risk

- Linking vehicles to accounts requires multiple register integrations, any delay creates a lag. Manual data entry and resourcing is needed to avoid this, but importers will still likely see delays.
- Vehicle emissions data inconsistency will mean continued challenges about amounts owed. A data cleanse and checking initiative will need to run as we transition.

Delivery Risks

- Resources - CO_2 account identity verification, manual data entry.
- When CO_2 credit transfer starts, the complex AML regime for account creation kicks in, so any delay will assist Waka Kotahi with AML compliance

Reputational Risk

- Industry Engagement – Waka Kotahi has continued to engage with new & used industry throughout this process.
- Both new & used industries wants scheme delayed to enable automation & their business impacts to be mapped – legal challenge risk
- Credit transfer delay seen by some as creating market uncertainty for pricing etc.
- Motorcycles – we cannot legally exempt/exclude motorcycles from account requirements, a 'null' emissions value will be entered for all motorcycle imports.
- Reconciliation processes and potential non-payment of Cat 2 charges.

Key Milestone	Delivery
1) Register and Open account	1 December 22
2) Link & View vehicle in CVS	1 December 22
3) Credit transfers	1 June 23 (or earlier)
4) Payment of Cat 2 charges required	1 June 23
5) Publicly available record of account holders	1 June 23