

Land Transport Rule Traction Engines [2008]

Rule 63001

Overview

Land Transport Rules are law produced by Land Transport New Zealand for the Minister of Transport. Land Transport NZ drafts Rules in plain language to reach a wide audience. Draft Rules go through an extensive consultation process and are refined in response to consultation.

*This overview accompanies, and sets in context, the yellow (public consultation) draft of **Land Transport Rule: Traction Engines [2008]** (Rule 63001). This proposed legislation will specify the requirements for certification of traction engines, and the qualifications engine drivers and steerers must hold.*

*If you wish to comment on this draft Rule, please see the page headed 'Making a submission'. The deadline for submissions is **23 May 2008**.*

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Introduction

What are Land Transport Rules?

Land Transport New Zealand is contracted to produce Land Transport Rules, in collaboration with the Ministry of Transport, under an agreement for Rule development services made with the Secretary for Transport. Rules are signed into law by the responsible Minister, under the *Land Transport Act 1998* (the Act).

Rules are made in respect of a wide range of matters covered by the New Zealand Transport Strategy. These include safeguarding and improving land transport safety and security, improving access and mobility, assisting economic development, protecting and promoting public health and helping to ensure environmental sustainability.

Land Transport Rules aim to:

- **clarify**
- **consolidate and**
- **create**

land transport law.

Rules are developed by means of extensive consultation, and each Rule is drafted in plain language to be understood by a wide audience and to help ensure widespread compliance with its requirements.

About this proposed Rule

The requirement for traction engines to be operated in a safe condition, by appropriately qualified users, is prescribed in the Act, as amended by the *Land Transport Amendment Act 2005*. These provisions replaced and updated older legislation, such as the *Boilers, Lifts, and Cranes Act 1950*.

The Act enables the making of a Land Transport Rule, which specifies detailed requirements.

This proposed Rule will replace the interim *Land Transport (Traction Engine Safety) Regulations 2006*.

How is the Rule being consulted on?

The Government is committed to ensuring that legislation is sound and robust and that the consultation process takes account of the views of, and the impact on, people affected by changes proposed in Rules.

This publication, for your comment, has two parts:

- (a) an overview to the proposed Rule; and
- (b) the yellow draft of *Land Transport Rule: Traction Engines [2008]* (the proposed Rule) for public comment.

This overview sets in context the proposals in the draft Rule. Please consider the effects that the Rule would have on you, your business, or the members of your organisation. In particular, consider the benefits and costs that would result from its implementation.

As a focus for consultation, the overview contains questions relating to each Rule proposal. Your comments are sought on these questions. However, you are welcome to make comments on any matters raised in the overview or the draft Rule.

The issues that are raised in submissions on the yellow draft of the Rule will be analysed and taken into account in redrafting the proposed Rule.

Following completion of the public consultation phase, the draft Rule will be submitted to the Ministry of Transport for government scrutiny. The final draft of the Rule will then go to Cabinet for noting and, finally, will be submitted for signature by the Minister.

Making a submission

If you wish to make a submission on the proposed Rule, please read the material headed *Making a submission* at the front of this document.

The deadline for submissions is 23 May 2008.

Proposed timetable for implementation of the Rule

Subject to government approval, it is proposed that the Rule will come into force in 2009.

Why is this Rule being proposed?

The principal objective of the proposed Rule is to define the requirements for certification of traction engines and the qualifications for users of traction engines, to ensure their safe operation when used in a public place.

Background to the proposals

The *Land Transport Amendment Act 2005* inserted a number of provisions concerning traction engines, under the following sections:

- section 22B: Users must be qualified; 'public place' defined
- section 22C: Traction engines must be safe and operated in accordance with regulations and rules
- section 36B: Offences against *sections 22B* or *22C*
- section 155(ea): Rule may specify inspection and certification requirements
- section 158(b)(xx): Rule may provide for the approval of qualifications and specify conditions for safe use.

In 2006, the *Land Transport (Traction Engine Safety) Regulations 2006* were introduced as a temporary measure while this proposed Rule was developed.

What does the Rule propose?

Scope of the proposed Rule

To which vehicles would the Rule apply?

The proposed Rule would apply to the operation of traction engines in a public place.

The Rule is not intended to apply to portable steam engines designed to drive machinery but not capable of being driven under their own power.

In which circumstances would the Rule apply?

The Act provides, in sections 22B and 22C, that the requirements for a traction engine to be certified, and for the persons in charge to be appropriately qualified, apply when the vehicle is used in a public place. A public place is defined in section 22B(3) as “a place that is open to, or being used by, the public, whether or not there is a charge for admission” and “includes a road and any part of a public place”.

The proposed Rule would cover a traction engine when it is not being driven, but is under steam to drive machinery. However, the operation of a traction engine in an area that is not (at the time) open to members of the public would not be covered by the Rule.

Proposal 1: Certification to be required every two years

The proposed Rule requires that evidence of certification of a traction engine’s pressure equipment must be displayed on the vehicle, and that:

1. the certificate must be less than two years old;
2. inspection organisations must be recognised by the Secretary for Labour; and
3. a copy of the certificate is to be forwarded to the Director following each inspection.

Question (Proposal 1):

The proposed Rule does not specify the form of inspection. Your views are sought on whether further prescription is appropriate.

Proposal 2: *Licensing requirements*

Section 22B(1)(b) of the Act specifies that a person using a traction engine in a public place must be legally permitted to drive a motor vehicle. The proposed Rule reinforces that requirement.

Vehicle in motion

In most situations, a traction engine in motion will have two crew. The proposed Rule describes an ‘engine driver’ (the person in charge of the steam equipment) and a ‘steerer’ (the person steering the traction engine).

Qualified users

The proposed Rule requires qualified engine drivers to have a full Class 1 driver licence¹ and appropriate engine driver qualifications. Qualified steerers must have a full Class 1 driver licence¹ and appropriate steerer qualifications.

Person under instruction

A person who does not have the appropriate engine driver or steerer qualification would be allowed to operate the pressure equipment or steer the traction engine under instruction.

The person under instruction need hold only a valid driver licence (of any class) but must be supervised by a person holding a full Class 1 driver licence and the appropriate engine driver and steerer qualifications.

Stationary vehicle

It is proposed that, when a traction engine is stationary, the person for the time being “in charge” of the vehicle be required to hold a full Class 1 driver licence, as well as the appropriate engine driver or steerer qualification.

These are less onerous requirements than those specified in the 2006 Regulations, which require all persons using a traction engine to hold a Class 2 driver licence (rigid vehicle of 4.5 to 18 tonnes).

If this proposal is accepted, a consequential change to *Schedule 3* of the Driver Licensing Rule will be made to specify licensing requirements for traction engines.

¹ Note: *Clause 88 of Land Transport (Driver Licensing) Rule 1999* provides that a person with a valid and current overseas driver licence is deemed to hold an equivalent class of New Zealand driver licence, and may drive on the overseas licence until:

- (a) the person has been in New Zealand for a continuous period of 12 months;
- (b) the overseas licence expires, is suspended or is revoked;
- (c) the holder is disqualified from driving in New Zealand or overseas; or
- (d) the person obtains a New Zealand driver licence of any class.

Question (Proposal 2)

Is the combination of a Class 1 (car) driver licence and the appropriate steam qualification an appropriate and sufficient requirement for persons in charge of a traction engine? (Please provide reasons for your views.)

Proposal 3: *Safe use not specified*

Although the Act allows the Rule to specify conditions of use, the proposed Rule does not do so.

During consultation with interested groups prior to the drafting of this proposed Rule, Land Transport NZ was provided with the *Code of Practice for Steam Driven Vehicles* (1997)² (the code). The code sets out a number of sensible provisions and gives advice to users.

However, it does not meet the statutory requirements for incorporation by reference in the proposed Rule. As a result, the Rule does not require persons using a traction engine to have regard to the material printed in the code.

Question (Proposal 3):

Are there any detailed provisions within existing codes of practice which should be included directly in the Rule? (Please list the provisions and provide reasons for your views.)

² *Code of Practice for Steam Driven Vehicles*, June 1997. Written for, and published by, the Steam Driven Vehicle Expert Panel (of the Dairy ITO) with assistance from the Ministry of Transport.

Matters to be taken into account

The *Land Transport Act 1998* (the Act) provides the legal framework for making Rules.

Section 161 of the Act states the procedures by which the Minister of Transport may make ordinary rules. These include the obligation to consult, which has been developed into a series of formal and informal discussion procedures.

Application of Rule-making criteria

Proposed activity or service

Section 164(2)(b) of the Act requires that appropriate weight be given to the nature of the proposed activity or service for which the Rule is being established.

The Rule would prescribe requirements for traction engines that are used in a public place. These vehicles will be those generally used by enthusiasts and not usually used for commercial purposes. Sensible regulation should ensure their safe use in a public place, without imposing excessive compliance costs.

Risk to land transport safety

Section 164(2)(a) and *(c)* requires the Minister to take into account, respectively, the level of risk existing to land transport safety in general in New Zealand and the level of risk to land transport safety in each proposed activity or service.

The primary risk associated with traction engines is that a boiler malfunction may cause an explosion, endangering the users and anyone standing near the engine.³ Care must also be taken that members of the public are at a safe distance when these vehicles are driven, or are used to drive antique machinery.

Assisting achievement of strategic objectives for transport

The Minister must take into account the Government's New Zealand Transport Strategy (NZTS) when making Rules. The NZTS envisages that, by 2010, New Zealand will have an affordable, integrated, safe, responsive and sustainable transport system.

³ The most recent event of this sort happened on 29 July 2001 in Ohio, USA, where five people were killed in a fairground accident. The form of boiler in that instance was substantially different to those seen in New Zealand. However, the need to have appropriate means of ensuring public safety underpins the development of this proposed Rule.

Section 164(2)(d) and (e) of the Act requires that the Minister must have regard to, and give such weight as he or she considers appropriate in each case, to the need to maintain and improve land transport safety and security, including personal security, and to whether a proposed Rule:

- (i) assists economic development;
- (ii) improves access and mobility;
- (iii) protects and promotes public health; and
- (iv) ensures environmental sustainability.

As noted above, one of the main functions of this proposed Rule is to set out the safety requirements for traction engines. Those requirements will maintain and improve land transport safety and security.

Benefits and costs of the proposed changes

Section 164(2)(ea) of the Act requires that the Minister have regard to the costs of implementing measures proposed in a Rule.

The draft Rule relaxes the previous certification requirements (annual inspections were required under the previous legislation) and clarifies the qualifications required for engine drivers and steerers. These changes should reduce compliance costs for the operators of traction engines.

International considerations

Sections 164(1) and 164(2)(f) of the Act, respectively, require that Rules may not be inconsistent with New Zealand's international obligations concerning land transport safety, and that international circumstances in respect of land transport safety be taken into account in making a Rule.

The only relevant international agreement covering matters contained in this proposed Rule is the UN protocol on recognition of overseas driver licences for persons visiting New Zealand. The proposed Rule is consistent with its provisions.

A number of states in Australia and the USA, as well as the United Kingdom, have regulations applying to traction engines, which emphasise the need for regular vehicle inspections and for users to hold appropriate qualifications.

How the proposed revised Rule fits with other legislation

Some offences and penalties, relating to the use of traction engines, are already listed in *section 36B* of the Act.

Additional offences will also be created for duties stated in the Rule, through consequential regulations, namely:

	Maximum penalty on summary conviction for individual (\$)	Maximum penalty on summary conviction for body corporate (\$)	Infringement fee for individual (\$)	Infringement fee for body corporate (\$)
Failure to carry or produce driver licence, or to ensure driver licence carried	1000	1000	55	55
Failure to carry or produce engine driver or steerer qualification, or to ensure qualification(s) carried	1000	5000	100	500
Failure to display evidence of vehicle certification, or to ensure certification displayed	1000	5000	100	500

The proposed infringement fees are consistent with those prescribed for similar, existing offences.

A consequential change to *Schedule 3 of Land Transport (Driver Licensing) Rule 1999* will be proposed separately if proposal 2 (that a Class 1 driver licence, in combination with steam qualifications, is sufficient for a person in charge of a traction engine) is accepted.

Publication and information

Copies of this document may be obtained by contacting the Land Transport NZ Contact Centre on 0800 699 000. A copy of this document is also available on the Land Transport NZ website at www.landtransport.govt.nz/consultation/traction-engines/.

If you have not registered your interest to receive drafts of this proposed Rule (or other draft Rules in the Rules programme), you can do so by contacting Land Transport NZ at the address shown on the *Making a submission* page at the front of this publication, or on the Land Transport NZ's website at www.landtransport.govt.nz/rules/reg-interest-rules.html

Information about the Rules programme and process can be found on our website at www.landtransport.govt.nz/legislation. An electronic form is also provided for registering an interest in Rules.

Final published Land Transport Rules can be purchased from selected bookshops throughout New Zealand that sell legislation. Queries about the availability and price of Rules can be made to the Rule printers and distributors, Wickliffe Ltd, telephone (06) 358 8231.

Final Rules, together with related information material, are also available on the Land Transport NZ website.