

Land Transport Rule Work Time and Logbooks Amendment [(No 2) 2009]

Rule 62001/2

Overview

Land Transport Rules are produced for the Minister of Transport. They 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: Work Time and Logbooks Amendment [(No 2) 2009]** (Rule 62001/2). The draft Rule proposes amendments to Land Transport Rule: Work Time and Logbooks 2007.*

*If you wish to comment on this draft Rule, please see the page headed 'Making a submission'. The deadline for submissions is **27 February 2009**.*

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What are Land Transport Rules?

The NZ Transport Agency is contracted to produce Land Transport Rules (Rules), for signing by the Minister of Transport, under an agreement for Rule development services with the Secretary for Transport. 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.

What is the consultation process for this Rule?

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, which sets proposed Rule changes in context; and
- (b) the yellow draft of *Land Transport Rule: Work Time and Logbooks Amendment [(No 2) 2009]* (Rule 62001/2) (the proposed amendment Rule) for public comment.

This proposed amendment Rule contains changes to requirements in *Land Transport Rule: Work Time and Logbooks 2007* ('the Work Time and Logbooks Rule' or 'the Rule'). Please read the overview carefully and consider the effects that these proposed changes would have on you or your organisation, in particular the benefits and costs that would accrue from the implementation of the amendment Rule.

You will notice that the yellow draft contains only the proposed Rule changes. If you do not have a copy of the Work Time and Logbooks Rule, please read the information about obtaining Land Transport Rules in *Publication and Availability of Rule* (page 18). To assist in setting the proposed amendments in context, the web versions of the amendment Rule and the Work Time and Logbooks Rule are linked.

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

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

How do I make a submission?

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

The deadline for submissions is **27 February 2009**.

When will the Rule come into force

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

Why is this amendment Rule being proposed?

The Work Time and Logbooks Rule sets out how the limits to work time hours prescribed in the *Land Transport Act 1998* (the Act) are administered for drivers of:

- (a) vehicles that require a Class 2, 3, 4 or 5 licence; and
- (b) vehicles used in a transport service other than a rental service; and
- (c) vehicles used to carry goods for hire or reward.

This proposed amendment will make a number of changes to the Rule. It will address issues raised by industry groups, and by the Police, about the way in which variations of work time requirements are dealt with for specified services or in particular situations. It will also clarify some aspects of the Rule.

What changes are proposed?

Proposal 1 Emergency services' rest breaks

Background

The Rule provisions covering emergency services currently allow work time hours to exceed the permitted total for the day to attend a priority call, and make it clear that the required 10-hour continuous period of rest time must then be taken before a driver undertakes further work governed by work time requirements.

However, the Rule does not specify what should happen when a driver is not able to take a rest break of at least 30 minutes, before the 5½-hour limit for continuous work time is reached, because they have been required to attend a priority call.

Policy proposal

It is intended that a driver who has not been able to take the required rest break, because of a priority call, must do so as soon as is practicable after the priority call is completed.

Proposed Rule change

Subclause 2.2(5) of the Rule is to be amended, and a new subclause *2.2(7A)* will be inserted, to give effect to this change.

Proposal 2 Essential services' variation to include persons controlling traffic and providing hazard warning

Background

Currently, persons who control traffic, or who provide warning of a hazard, when a road is closed or access is restricted, are not covered in the Rule in the same way as drivers involved in road or bridge repair. The role of people controlling traffic or providing hazard warning is to ensure the safety of crew working to restore access and direct motorists at the scene. The scope of the existing provision also excludes persons assisting in situations such as clearing slips or a crashed vehicle that has temporarily closed a road.

Policy proposal

It is intended that the current variation to work time requirements should cover both drivers and those other workers who undertake work associated with the repair and restoration of roads and bridges, and which may require them to control traffic or provide warning of hazards.

Proposed Rule change

Paragraph 2.2(9)(b) is to be amended to widen the scope of the variation to:

- add persons who assist with restoring road access and
- include restoration of road access as well as “repair”.

A new subclause *2.2(14A)* is to be inserted to allow an essential services’ driver to extend his or her work time hours, if required to manage traffic in connection with repair or restoration work.

Proposal 3***Risk to persons and property******Background***

The Rule currently allows a variation to working hours for a person involved in “emergency works” or a risk to property. This excludes some possible situations where “personal risk” applies. (Note that, as with all other essential services’ variations, there has to be due authority for this clause to have effect; in this case, either from a local authority or the Police.)

Policy proposal

It is intended to extend the current variation so that it covers a situation where risk to persons exists, not just risk to property.

Proposed Rule change

Paragraph 2.2(9)(e) is to be amended to give effect to this proposed change.

Proposal 4 Essential services called upon by the Police

Background

Mobile crane operators advise that they (and others, such as those operating vehicle recovery services) are occasionally called out by Police for road clearance after hours. In doing so, however, they could potentially be charged with a breach of the driving hours because they are not covered by a work time variation. The proposed amendment recognises that, although the Police request the attendance of these operators, their services cannot be described as being “under contract” to the Police.

Policy proposal

The intention is that the variation should apply to drivers who are called upon by the Police to provide essential services in an accident or incident, regardless of whether or not they are “contracted” to the Police.

Proposed Rule change

A new subclause 2.2(14B) is to be inserted to specify which drivers are covered by this work time variation.

Proposal 5 Short-term variations of working hours

Background

At present, variations to working hours to cover short-term operational requirements can only be applied to transport service operators. By default, this excludes couriers and others who are subject to work time requirements but who are not operators. A similar situation exists where, for example, an event (such as a charity truck parade) is held on a Sunday and would otherwise disrupt the 24-hour break requirement. Again, the organisers of that event may not be transport service operators.

Policy proposal

It is intended that persons who employ drivers who are subject to work time restrictions, or are the organisers of a public event, should be able to apply for a short-term variation of hours.

Proposed Rule change

It is proposed to amend *subclause 2.5(1)* to allow persons who are not transport service operators or the organisers of public events to apply for such variations.

Proposal 6 **Corrections****Background**

Example 1 (linked to *clause 3.2* of the Rule) includes an incorrect date.

Proposed Rule change

It is proposed to amend the Rule to correct this error.

Proposal 7 **Simpler logbook entries for non-driving days****Background**

Questions have been raised as to how drivers, who are not driving full time but who undertake other duties during a cumulative work period, can record work time without the need to complete the full details on all logbook pages. These drivers include dispatchers and drivers of vehicles who normally drive only light vehicles (exempt from logbook use) but who undertake driving from time to time that requires them to maintain a logbook.

The Rule requires that, when driving that is subject to logbook use is commenced part way through a cumulative work period, a record of the days back to the last 24-hour break must also be completed. This proposal links the recording of full details to days on which driving subject to work time occurred.

Policy proposal

The intention is to provide a link between driving (subject to logbook use) and the manner of completion. The effect is that on “non-driving days” less detail needs to be recorded.

Proposed Rule change

It is proposed to insert *subclause 5.2(2A)*, and to add a cross reference from *subclause 4.1(1)* to *subclauses 5.2(2)* and *5.2(2A)*, to clarify these requirements.

Proposal 8 Logbook exemption for tractors

Background

The Rule currently exempts (subject to conditions) tractors and similar vehicles owned or operated by farmers from the requirement to complete a logbook. However, it does not exempt similar vehicles operated by agricultural contractors, or self-propelled agricultural machinery. Both types of vehicle are generally driven only short distances and at low speeds.

Policy proposal

It is intended that drivers of tractors and self-propelled agricultural machinery (irrespective of who operates them) should not have to comply with the requirement to complete a logbook.

Proposed Rule change

It is proposed to correct this inconsistency by amending *subclause 4.4(2)* and by linking that provision to amended definitions of ‘tractor’¹ and ‘self-propelled agricultural machinery’².

Proposal 9 Amendment of definition of “priority call”

Background

Some ‘time-critical’ responses to calls for ambulance services sit on the boundary between tasks that can be described as a “priority call” and those that would not currently meet the criteria in the Rule.

Ambulance service representatives have asked that a broader definition be proposed, to allow for situations where patient care requires transfer from one facility to another in a time-critical manner, even if there is no imminent risk to life.

Policy proposal

It is intended that a slightly wider use of the term “priority call” be allowed, by replacing the reference to “imminent” with the term “serious”, while retaining the element of time-critical response.

¹ ‘Tractor’ is to be defined in terms of towing or powering agricultural machinery.

² ‘Self-propelled agricultural’ machinery is to be defined as machinery that must be designed or adapted for agricultural purposes.

Proposed Rule change

The definition of “priority call” is to be amended to effect this proposed change.

Proposal 10 **Changes to logbooks schedule****Book codes****Background**

Currently, the required book code is in the form AB-CDEF whereas the previous book code format was AB-1234. Logbook suppliers note that the change to an all-alpha requirement would lead to a significant increase in logbook prices, because printers would have to purchase new equipment to meet the requirement. There would be no tangible safety benefit from imposing this change.

Policy proposal

The use of numbers to distinguish logbooks has been allowed (by way of exemptions) for logbooks approved since the Rule came into effect. It is proposed to allow the combination of a printer code with either numbers or letters that designate the book. This proposal would bring the Rule into line with the existing practice.

Proposed Rule change

Clause 2.2 in *Part 2* of the *Schedule* is to be amended to bring this proposal into effect.

It is also proposed to amend *clause 5.1* to allow the continued use of logbooks that were approved before the amendment comes into force.

Explanatory text**Background**

Inclusion of “in any 24-hours” in advisory text (Part 3, 1.1 and 1.2) has been found to be confusing to drivers.

Proposed Rule change

It is proposed to amend *Part 1* of the *Schedule* by deleting the words “in any 24 hours”, and replacing them with reference to “in any cumulative work day” in the advisory text.

It is also proposed to amend *clause 5.1* to allow the continued use of logbooks that were approved before the amendment Rule comes into force.

Matters to be taken into account

The Act provides the legal framework for making Land Transport Rules. *Section 161* of the Act states the procedures by which the Minister makes 'ordinary rules'. These include the obligation to consult, which has been developed into a series of formal and informal discussion procedures.

Section 164 of the Act states the matters to be taken into account in making Rules. In making ordinary rules, the Minister is required to give such weight as he or she considers appropriate in each case to the matters discussed below. The *Land Transport Amendment Act 2004* amended the matters that the Minister must take into account when making Rules, to reflect the overarching importance for transport of the *New Zealand Transport Strategy* (NZTS). The NZTS envisages that New Zealand will have an affordable, integrated, safe, responsive and sustainable transport system.

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 'proposed activity or service' that is covered by the proposed amendment Rule are the hours worked by drivers of commercial vehicles, which are regulated by the Rule.

Risk to safety and personal security

Section 164(2)(a), (c) and (d) requires the Minister to take into account:

- (i) the level of risk to land transport safety in each proposed activity or service;
- (ii) the level of risk existing to land transport safety in general in New Zealand; and
- (iii) the need to maintain and promote land transport safety and security, including personal security.

The proposed amendment Rule would address the risk to land transport safety by balancing the operational needs of transport firms against the need to mitigate road safety risks.

Assisting achievement of strategic objectives

Section 164(2)(e) of the Act requires the Minister to take into account whether the proposed Rule:

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

The proposals in the amendment Rule are designed to balance operational needs (ie, assist economic development) with the requirement to mitigate the risks posed by driver fatigue (ie, protect public health).

Costs of proposed changes

Section 164(2)(ea) of the Act requires that appropriate weight be given to the costs of implementing the measures for which the Rule is being proposed.

The provisions in the draft Rule do not impose additional compliance costs on transport service operators and drivers. In situations in which logbooks no longer have to be maintained, there would be limited savings for some drivers.

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.

International best practice has been taken into account in developing this proposed amendment Rule.

How the proposed amendment Rule fits with other legislation

Offences and penalties

The proposed amendment Rule does not contain offence provisions. These provisions are contained in the *Land Transport (Offences and Penalties) Regulations 1999* and are linked to the Work Time and Logbooks Rule.

No additional offences or penalties will be required to give effect to the provisions of this proposed amendment Rule.

Publication and availability of Rule

Availability of Land Transport Rules

Copies of this Rule proposal document may be obtained by calling the NZ Transport Agency Contact Centre on 0800 699 000. It is also available at: www.nzta.govt.nz/consultation/work-time-and-logbooks-amendment/.

The Work Time and Logbooks Rule and other final Land Transport Rules can be purchased from selected bookshops throughout New Zealand that sell legislation. They are also available at: www.landtransport.govt.nz/legislation, and can be inspected at regional offices of the NZ Transport Agency.

Information about Rules

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

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