



Ministry of Transport
TE MANATŪ WAKA

WELLINGTON, NEW ZEALAND

PURSUANT to Sections 152 and 158(b)(vii) of the Land Transport Act 1998

I, Harry James Duynhoven, Minister for Transport Safety,

HEREBY make the following ordinary rule:

Land Transport Rule: Operator Safety Rating

SIGNED AT Wellington

This *8th* day of *May* 2008

A handwritten signature in black ink, appearing to read "Harry James Duynhoven".

Harry James Duynhoven
Minister for Transport Safety

**Land Transport Rule
Operator Safety Rating 2008**

Rule 81002

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Land Transport Rule

Operator Safety Rating 2008

Rule 81002

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Objective of the Rule

Land Transport Rule: Operator Safety Rating 2008 (the Rule) sets out the key aspects of the operator rating system (rating system). The rating of operators will allow Land Transport New Zealand compliance units, and Police enforcement units, to focus on operators of vehicles covered by the Rule.

The overall objective of the Rule is to reduce crashes and related social costs by encouraging and recognising compliance with land transport legislation, and by enabling enforcement efforts to be targeted at operators with poorer records of compliance with legislation and, therefore, constituting a greater safety risk.

The 1996 report *Inquiry into Truck Crashes*, by Parliament's Transport and Industrial Relations Select Committee, considered the merits of targeting road user groups that it considered to be "irresponsible operators" and recommended that:

- the Land Transport Safety Authority (LTSA), now Land Transport New Zealand, establish a database of operator performance to assist in identifying and targeting irresponsible operators; and
- the Police use the output from the database to target irresponsible operators; and
- irresponsible operators be subject to targeted, detailed audits.

Land Transport New Zealand has been working to improve heavy vehicle safety through the development of Rules aimed at addressing a range of safety issues, for example, vehicle testing, driver licensing, vehicle dimensions and mass, and driver fatigue.

This Rule is being produced under the authority of section 152 and section 158(b)(vii) of the *Land Transport Act 1998* (the Act). Section 152 enables the

Minister to make Rules assisting land transport safety and security. *Section 158(b)(vii)* allows the rating of the safety performance of transport service licence holders and approved taxi organisations (ATOs), and allows the Director of Land Transport to publish an operator's rating.

The Rule:

- allows rating categories to be assigned;
- sets out a process for notifying operators of their proposed rating;
- requires the Director to update ratings;
- provides for the correction of errors or omissions;
- details the composition of a review panel and the review process;
- sets out operators' obligations when publishing a rating.

The rating system:

The rating system has two distinct components: an inspection and review system and a system of assigning ratings. The first component provides risk scores to compliance and enforcement officers to assist their prioritisation of operators. The second component provides information to the public about an operator's compliance with safety legislation.

The rating system is to be implemented in stages. ATOs are not expected to be rated when the system is initially introduced, but the rating of ATOs will, instead, be phased in at a later date.

Benefits of the ratings system:

The expected benefits of the system include:

- a reduction in heavy vehicle crashes and associated social costs due to the improved compliance levels that will result from targeted enforcement;
- fairer and more effective enforcement of the transport industry;

- published ratings to help motivate operators and to provide information to help consumers make informed choices;
- more efficient utilisation of Police and Land Transport New Zealand resources;
- more effective targeting of operators that pose a higher risk.

Costs associated with the rating system:

The Rule has two associated costs. The first is the initial capital cost of the system and the ongoing costs of upgrading the system. The other is the ongoing operational costs of the rating system. For individual operators, this is expected to result in an increase of between five and fifteen dollars in their annual vehicle licensing fees.

Extent of consultation

Land Transport New Zealand consulted formally on the requirements in the Rule in the yellow (public consultation) draft, which was released on 11 April 2007.

The yellow draft was made available to about 700 organisations and individuals who had registered their interest in the Rule. The availability of the yellow draft was publicised in metropolitan and selected regional daily newspapers, *Tu Mai* magazine and the *New Zealand Gazette*. The draft was also made available, together with Questions and Answers, on the Land Transport New Zealand website.

Land Transport New Zealand received 32 submissions on the yellow draft. All comments were taken into account in redrafting the Rule. In addition, Land Transport New Zealand had contact with key stakeholder groups during the preliminary development of the operator rating system and worked extensively with industry and government agencies, including a working group with external

representatives, in the final development of the system.

The Rule was submitted to Cabinet before being signed by the Minister for Transport Safety.

Part 1 Rule requirements**Section 1 Application**

1.1 Title

This Rule is *Land Transport Rule: Operator Safety Rating 2008*.

1.2 Scope of the Rule

This Rule applies to transport service operators and approved taxi organisations.

[Note: ‘Approved taxi organisation’ and ‘transport service operator’ are defined terms.]

1.3 Date when Rule comes into force

This Rule comes into force on a date to be notified in the *Gazette* by the Minister in accordance with section 160(3) of the Act.

Section 2 Operator safety ratings

2.1 Operator safety ratings

- 2.1(1) The Director may assign, to transport service operators and approved taxi organisations, safety ratings that measure the operator’s level of compliance with land transport safety legislation (including the operator’s vehicle crash history).

2.1(2)

The following safety ratings may be assigned:

- (a) five stars or “★★★★★” indicating an excellent level of compliance;
- (b) four stars or “★★★★” indicating a good level of compliance;
- (c) three stars or “★★★” indicating an average level of compliance;
- (d) two stars or “★★” indicating a below average level of compliance;
- (e) one star or “★” indicating a poor level of compliance.

2.1(3)

A rating may not be assigned to an operator for the first time until event information has been collected for that operator for at least six months.

2.2**Approved methodology for calculating safety ratings**

The Director must approve a methodology for calculating safety ratings, taking into account:

- (a) the types of event information to be rated; and
- (b) the weight to be given to:
 - (i) the different categories of event information; and
 - (ii) the size of the operator’s fleet; and
 - (iii) the volume of event information; and

- (iv) the incidence of event information; and
- (c) whether the ratings will provide a fair and accurate indication of:
 - (i) the safety risk of the operator's fleet; and
 - (ii) the operator's compliance with land transport safety legislation.

Section 3 Proposed ratings

3.1

Calculation of proposed ratings

The Director must calculate a proposed rating using the approved methodology.

3.2

Notification of proposed ratings

The Director must notify an operator of its proposed rating in writing or electronically and provide the details of:

- (a) how that rating was calculated; and
- (b) the event information used to calculate the rating.

3.3

Operator may apply for correction

An operator may apply to the Director for correction of any errors or omissions in its proposed rating, or any event information used to calculate its proposed rating, within 20 working days of receipt of the notification under 3.2.

Section 4

Corrections of errors or omissions

4.1

Corrections of errors or omissions

4.1(1)

If the Director is satisfied that any errors or omissions have been made in a proposed rating, or in any event information used to calculate the proposed rating, the Director must:

- (a) correct the proposed rating; or
- (b) correct the event information and recalculate the rating using the approved methodology.

4.1(2)

The Director must notify the operator whether:

- (a) any errors or omissions have been corrected in its proposed rating or the event information used to calculate the rating;
- (b) the proposed rating has changed.

4.1(3)

The Director must notify the operator, under 4.1(2), within 20 working days of receipt of the application for correction(s) under 3.3.

Section 5

Review of proposed ratings

5.1

Application for review of rating by review panel

5.1(1)

An operator may apply to the Director for review of a proposed rating by a review panel if, following an application for correction of any errors or omissions, the proposed rating has not changed or has become less favourable.

- 5.1(2) The application for review by the review panel must be:
- (a) made within 20 working days of receipt of the Director's notification under 4.1(3); and
 - (b) accompanied by:
 - (i) the fee (if any) specified in, or assessed in accordance with, regulations made under the Act; and
 - (ii) the applicant's written submission; and
 - (iii) any request by the applicant for an oral hearing.

5.2

Composition of review panel

- 5.2(1) Within 20 working days of receipt of an application for review under 5.1, the Director must assign members of the review panel pool to a review panel to conduct the review.
- 5.2(2) A review panel conducting a review must consist of two industry representatives, two Land Transport New Zealand employees and one lawyer drawn from the review panel pool.
- 5.2(3) The review panel pool must consist of:
- (a) seven industry representatives appointed by the Director; and
 - (b) Land Transport New Zealand employees appointed by the Director; and
 - (c) three lawyers, with knowledge and experience in economic, commercial and business affairs, nominated by the President of the New Zealand Law Society and appointed by the Director.

5.2(4) A member of the review panel pool may be appointed for a three-year term and may be reappointed for further terms.

5.3 Obligation to disclose a conflict of interest

5.3(1) A member of the review panel pool must disclose to the Director any conflict or potential conflict of interest in respect of a particular application.

5.3(2) A member of the review panel pool may not participate in the review of a rating if a conflict or potential conflict of interest exists.

5.4 Review panel procedures

5.4(1) The review panel must advise the operator of:

- (a) the process for review; and
- (b) the date or dates when the review is to be held.

5.4(2) The review panel may agree to a revised process or an alternative date or alternative dates after consultation with the operator.

5.5 Scope of the review panel

5.5(1) The review panel is bound by the approved methodology.

5.5(2) The review panel must consider:

- (a) the factual accuracy of event information; and
- (b) the appropriate weighting of event information; and

- (c) whether specific event information should be included or excluded; and
- (d) any relevant circumstances relating to the collection of the event information; and
- (e) any submission made by the operator.

5.6 Recommendation of the review panel

- 5.6(1) The review panel must determine the review with all reasonable speed.
- 5.6(2) The review panel must send the Director a written report of its findings and a recommendation (whether unanimous or by majority) that:
 - (a) specific event information should be included or excluded and the proposed rating recalculated; or
 - (b) the proposed rating be confirmed.
- 5.6(3) The review panel must make its recommendation to the Director within 20 working days of its review of the proposed rating.

5.7 Director's requirements following the review panel recommendation

- 5.7(1) The Director must accept the review panel's recommendation unless the Director considers, on reasonable grounds, that the recommendation has been invalidly reached.
- 5.7(2) If the Director does not accept the review panel's recommendation, the Director must confirm the original proposed rating.

- 5.7(3) The Director must notify the operator of his or her decision within 10 working days of receipt of the panel's recommendation.

Section 6 Final ratings

6.1 Final ratings

A rating becomes final 20 working days after receipt of the notification of a proposed rating under:

- (a) *clause 3.2*, unless the operator applies for the correction of errors or omissions in accordance with 3.3; or
- (b) *subclause 4.1(3)*, unless the operator applies for review of the rating by a review panel in accordance with 5.1(1); or
- (c) *subclause 5.7(3)*.

Section 7 Publication

7.1 Publication by the Director

- 7.1(1) The Director must publish final ratings and the approved methodology on the Land Transport New Zealand website.
- 7.1(2) The Director may make final ratings and the approved methodology available to the public in any other manner that he or she considers appropriate.

7.2**Publication by the operator****7.2(1)**

An operator may publish its final rating provided the date that the rating became final under 6.1 is conspicuously printed:

- (a) as near as practicable to the rating; and
- (b) in letters or figures that are clear and legible.

7.2(2)

An operator may not publish a rating in such a way as to be misleading about its currency, or otherwise.

Section 8**Updating safety ratings****8.1****Period of assessment and updating of rating**

The Director must recalculate and, if necessary, update an operator's rating within six months of the assignment of the last-assigned final rating.

Section 9**Miscellaneous provisions****9.1****Service and receipt of applications and notifications****9.1(1)**

An application or notification, made for the purposes of this Rule, must be made in writing or electronically.

9.1(2)

A written application or notification must be served in accordance with *section 210(1)* of the Act.

9.1(3) A written notification is deemed to have been received on the fifth working day after the date on which it was posted.

9.1(4) An electronic notification is deemed to have been received on the later of:

- (a) the next working day after the date on which it was sent; or
- (b) the time the notification enters an information system designated, by the addressee, for the purpose of receiving electronic communications.

Part 2 Definitions

Act means the *Land Transport Act 1998*.

Approved methodology means the rating methodology approved by the Director in accordance with 2.2.

Approved taxi organisation means a taxi organisation approved or deemed to be approved by the Director under:

- (a) *Land Transport Rule: Operator Licensing 2007*; or
- (b) the Act; or
- (c) regulations made under the Act.

Employee means any person employed under a contract of service to do any work for hire or reward.

Event information means information regarding compliance with land transport safety legislation that is recorded at the time of, or in respect of, a transport event.

Lawyer means a person who holds a current practising certificate, as a barrister or as a barrister and solicitor, issued under the *Lawyers and Conveyancers Act 2006*.

Operator means a transport service operator or an approved taxi organisation.

Publish means make, or cause to be made, available to the public.

Transport service (a) means any goods service, passenger service, rental service, or vehicle recovery service; but

- (b) does not include:
- (i) a rail service under the *Railways Act 2005*; or
 - (ii) any service specified as an exempt transport service in regulations or rules made under the Act.

Transport service operator

means a person who carries on a transport service, whether or not that person employs personnel to assist in doing so on its behalf; but does not include those personnel.