

IN CONFIDENCE



24 August 2020

RPT 20/116A
EECA 2020 MR 057

Minister of Customs

Minister of Energy and Resources

INFORMATION DISCLOSURE AGREEMENT BETWEEN CUSTOMS AND THE ENERGY EFFICIENCY AND CONSERVATION AUTHORITY: FINAL AGREEMENT FOR SIGNATURE

Key points

- **Officials recommend that the Ministers of Customs and Energy and Resources enter into an information disclosure agreement under section 316 of the Customs and Excise Act 2018 (the Act).**
- **The agreement will provide for information collected by Customs on specified imported electrical goods to be regularly disclosed to the Energy Efficiency and Conservation Authority for the purpose of monitoring compliance with the Energy Efficiency (Energy Using Products) Regulations 2002.**
- **The Privacy Commissioner has been consulted on a draft agreement as required under section 316(4) of the Act. The Privacy Commissioner has responded that he is supportive of the agreement.**
- **We consider that the agreement properly addresses the matters that you must take into account under the Act. We recommend that you both sign the attached agreement to bring it into effect from 1 September 2020.**

Recommendations

We recommend that you:

- 1 **note** the disclosure of information by the New Zealand Customs Service to the Energy Efficiency and Conservation Authority is for the purpose of monitoring compliance with the Energy Efficiency (Energy Using Products) Regulations 2002

Minister of Customs

Minister of Energy and Resources

Noted/Please Discuss

Noted/Please Discuss

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- 2 **note** that the Privacy Commissioner has reviewed the draft information disclosure agreement and is supportive of it

Minister of Customs

Minister of Energy and Resources

Noted/Please Discuss

Noted/Please Discuss

- 3 **sign** the attached information disclosure agreement to bring it into effect from 1 September 2020.

Minister of Customs

Minister of Energy and Resources

Agreed/Disagreed/Please Discuss

Agreed/Disagreed/Please Discuss



Michael Papesch
Deputy Chief Executive
Policy, Legal and Strategy
For Comptroller of Customs

Marcos Pelenur
Group Manager, Strategy,
Insights and Regulations
For Chief Executive, Energy
Efficiency and Conservation
Authority



Minister of Customs
Date 2 / 09 / 2020



Minister of Energy and Resources
Date 12-9-20

NZ Customs Service

Policy contact	Tina Chong Manager, Border Protection and Enforcement	Mob: 021 531 478
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Energy Efficiency and Conservation Authority

Primary contact:	Marcos Pelenur Group Manager, Strategy, Insights & Regulations	Ph: 04 470 2223 Mob: 027 290 4459
Secondary contact:	Murray Bell Manager, Standards & Regulations	Ph: 04 470 2242 Mob: 027 490 5269

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BACKGROUND AND ANALYSIS

Proposal to enter into an information disclosure agreement

- 1 Section 316 of the Customs and Excise Act 2018 (the Act) authorises the New Zealand Customs Service (Customs) to disclose information to another government agency under the terms of a written agreement entered into by the Minister of Customs and the Minister responsible for the requesting agency, in this instance the Minister of Energy and Resources, for the purpose of assisting the agency to carry out its functions.
- 2 For this agreement, the relevant functions of the Energy Efficiency and Conservation Authority (EECA) is to advise the Minister of Energy and Resources on the state of energy efficiency, energy conservation and use of renewable resources.
- 3 The disclosure of information is for the purpose of monitoring compliance by importers with Energy Efficiency (Energy Using Products) Regulations 2002 (the Regulations) that EECA is responsible for enforcing.
- 4 The information disclosure will improve EECA's ability to ensure imported regulated products are compliant with the Regulations and further New Zealand's energy efficiency goals. The Regulations have provided a nationally consistent approach to product energy efficiency and have been effective at reducing energy consumption, removing poorly performing products from the market, and assisting consumers to make more informed choices when purchasing energy-using products. To date the 78 million regulated products sold in New Zealand have delivered significant reductions in carbon dioxide producing greenhouse gases (CO₂-e) and energy savings that equated to financial savings of \$1.23 billion.
- 5 EECA's compliance monitoring programme routinely identifies non-compliant products but it is constrained by the lack of independent information about the regulated products coming into New Zealand and the importers. Having access to Customs' information on imported regulated products will allow EECA to monitor and verify compliance by importers with reporting obligations under the Regulations. It will also allow EECA to improve its strategic use of resources by enabling targeting of education programmes to different sectors, in parallel with domestic enforcement and monitoring activity.

Matters to be taken into account in making an agreement

- 6 We have previously reported to you on a draft information disclosure agreement (Customs' report RPT 20/116 and EECA report 2020 MR 057 refer). We advised you on how that draft agreement addressed certain matters that you are required to take into account in making an information disclosure agreement under the Act.
- 7 In particular we advised on the aspects of the agreement that provide certainty and transparency for the protection of personal information and commercially sensitive information.

The Privacy Commissioner supports the agreement

- 8 Section 316(4)(b) of the Act requires the responsible Ministers, before entering into an information disclosure agreement, to consult the Privacy Commissioner and have regard to any comments received from the Privacy Commissioner on the proposed agreement.

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- 9 You have consulted with the Privacy Commissioner. The Privacy Commissioner has responded that that he is supportive of the agreement and has noted that the comments provided by his office on the preliminary draft of the agreement have been incorporated.

We now recommend that you sign the agreement and next steps

- 10 The draft information disclosure agreement between Customs and EECA that we previously reported to you on does not require any amendment as a result of consultation with the Privacy Commissioner. We consider that it properly addresses the matters that you must take into account under the Act before entering into an agreement and complies with the requirements of the Act in all respects.
- 11 Consequently we recommend that you sign the attached agreement to bring it into effect from 1 September 2020.
- 12 Once you have signed the agreement, it will be published on agencies' websites as required by the Act.

ENDS



Information Disclosure Agreement

between

New Zealand Customs Service

and

Energy Efficiency and Conservation Authority

(Section 316, Customs and Excise Act 2018)

PART 1: INTRODUCTION

1 Parties

- 1.1 This Information Disclosure Agreement (**Agreement**) is entered into by the Minister of Customs and the Minister of Energy and Resources and sets out the terms and conditions under which information is disclosed by the Chief Executive of the New Zealand Customs Service (**Customs**) to the Chief Executive of the Energy Efficiency and Conservation Authority (**EECA**) (the **Parties**).

2 Purpose of the AGREEMENT

- 2.1 Section 316 of the Customs and Excise Act 2018 (**the CEA**) facilitates the disclosure of information by the chief executive of Customs to the chief executive of another government agency for certain purposes.
- 2.2 The function of EECA, established under the Energy Efficiency and Conservation Act 2000 (EECA Act), is to encourage, promote, and support energy efficiency, energy conservation, and the use of renewable sources of energy. Section 36 of the EECA Act allows the Minister of Energy and Resources to make regulations for minimum energy performance standards, labelling requirements and annual reporting for energy-using products and services. Under the Energy Efficiency (Energy Using Products) Regulations 2002 (the Regulations) EECA is responsible for collecting evidence and verifying compliance with the Regulations.
- 2.3 This Agreement will facilitate the disclosure of Customs' information to EECA in order to assist EECA in carrying out their functions under the EECA Act.
- 2.4 The objectives of this Agreement are to set out the detail regarding:
- 2.4.1 The particular type or class of information to be disclosed
 - 2.4.2 The particular purpose or purposes for which the information is accessed
 - 2.4.3 The particular function being, or to be, carried out by the government agency for which the information is required
 - 2.4.4 How the information is to be used by the government agency to assist with the carrying out of those functions
 - 2.4.5 The form in which the information is to be disclosed
 - 2.4.6 The positions or designations of the persons in the government agency to whom the information may be disclosed
 - 2.4.7 The safeguards that are applied for protecting personal information, or commercially sensitive information that is disclosed
 - 2.4.8 The requirements relating to storage and disposal of the disclosed information
 - 2.4.9 The circumstances (if any) in which the information may be disclosed by Customs to EECA, and how that disclosure may be made
 - 2.4.10 The requirements for reviewing this Agreement.

2.5 This Agreement also contains a schedule of annexes:

- 2.5.1 Annex 1 contains the contact details of departmental representatives in relation to this Agreement
- 2.5.2 Annex 2 contains the technical standards report in relation to the information disclosed to EECA, including details of the information being disclosed, the form and methods of disclosure, security protocols, retention and who are the Authorised Persons for the purpose of the Agreement
- 2.5.3 Annex 3 contains the approach to the audit process.

3 Definitions

3.1 Terms relevant to this Agreement are defined as follows:

Term	Definition
Authorised Person/Personnel	Any Energy Efficiency and Conservation Authority employee in designated positions to whom the information may be disclosed. The roles held by authorised personnel are listed in Annex 2.
Customs	New Zealand Customs Service
EECA	Energy Efficiency and Conservation Authority

4 Particular type or class of information that may be disclosed

- 4.1 Customs may disclose to EECA the information set out in Annex 2 relating to all imported goods covered by the Energy Efficiency (Energy Using Products) Regulations 2002 ("the Regulations").
- 4.2 The imported goods covered by the Regulations will be identified by the relevant tariff code from the Working Tariff Document of New Zealand. For clarity, if new categories of energy using products are added to the Regulations or are deleted from the Regulations, or a tariff code changes, the list of tariff codes listed in Annex 2 will be authorised in accordance with paragraph 17.2.
- 4.3 The information to be disclosed is provided in import entries lodged under section 75 of the CEA. This information is Category 1 information under section 304 of the CEA.

5 Particular function being carried out for which information is required to be disclosed

- 5.1 The information will be disclosed to EECA to assist in the performance of its functions to:
 - 5.1.1 advise the Minister on any matters relating to energy efficiency and conservation, and the use of renewable sources of energy in New Zealand
 - 5.1.2 monitor and review the state of energy efficiency, energy conservation, and the use of renewable sources of energy in New Zealand.

6 Particular purpose(s) for which information is disclosed

- 6.1 The information is to be disclosed to EECA to enable the monitoring of compliance with the Regulations, in accordance with clause 7 of this Agreement.
- 6.2 Where EECA's monitoring identifies non-compliance that leads to further investigation or enforcement action, EECA will:
 - 6.2.2 submit a separate request for any additional information. Such a request will be considered under the Official Information Act 1982 and the Privacy Act 1993
 - 6.2.3 advise Customs when any information disclosed under this Agreement is used in any enforcement action.
- 6.3 Customs will undertake regular audits to ensure that EECA is adhering to the provisions of this Agreement as set out in Annex 3.

7 How the information will assist in the carrying out of the particular function

- 7.1 The information on imported products supplied by Customs will help EECA to:
 - 7.1.1 verify the information that importers provide to them direct
 - 7.1.2 ensure that all importers are aware of their obligations under the Regulations
 - 7.1.3 enable importers who are in breach of the Regulations to be identified and allow appropriate education and/or enforcement action to be taken
 - 7.1.4 determine whether there is a need to regulate new classes of products for energy efficiency, and what the impact of regulating new classes would be.

8 The form in which the information will be disclosed

- 8.1 Customs will provide the information to EECA using secure email to a named EECA email address with a security level agreed by the parties.
- 8.2 Access to data received by EECA will be restricted to Authorised Persons and maintained on a secure server.

9 Positions or designations of persons to whom information may be disclosed

- 9.1 The disclosure of information will be limited to Authorised Persons working directly on the purpose specified in clause 6 of this Agreement, where access is required to carry out that purpose.
- 9.2 EECA will ensure that Customs is informed of any changes of positions designated as Authorised Persons as specified in Annex 2.

10 Safeguards to be applied for protecting particular information

Security

- 10.1 Both parties will take reasonable steps to maintain the security of information disclosed under this Agreement, by protecting it against risks such as unauthorised access, collection, use, disclosure and disposal.
- 10.2 Customs and EECA will at all times adhere to the Protective Security Requirements (PSR) and New Zealand Information Security Manual (NZISM). This is contained in the Technical Standards Report (TSR) attached as Annex 2 to this Agreement.

Privacy

- 10.4 Each party will be responsible for ensuring that it complies with the Privacy Act 1993 in respect of the disclosure of the information. Both parties agree to manage the information disclosed to it in accordance with the principles in the Privacy Act 1993.
- 10.5 Each party will advise the other as soon as practicable of any circumstances, incidents or events that, to its knowledge, have jeopardised or may in future jeopardise the privacy of individuals subject to this process, or the security of any computer system in its custody that is used to store information disclosed under this Agreement. This includes notifying the other party of any complaint made by a person to the agency.
- 10.6 If either party reasonably believes that the privacy of individuals subject to this Agreement has been or may be breached, then that party, after appropriate discussions with the other party, may suspend the process for up to three calendar months to give the parties the opportunity to remedy the breach or possible breach.
- 10.7 Inappropriate access, dissemination, or use of any information disclosed by one party to the other is to be subject to appropriate action by the party responsible for the breach in accordance with that party's policies, processes and code of conduct.
- 10.8 Where an internal investigation confirms a privacy breach, and it is considered necessary or required by law, the Office of the Privacy Commissioner will be notified as soon as possible by the responsible party.

11 Requirements relating to the storage and disposal of disclosed information

- 11.1 All information disclosed pursuant to this Agreement will be handled and stored strictly in accordance with any security endorsement or caveat including any Government Security Classification, and the requirements set out in the PSR and NZISM.
- 11.2 The retention of data disclosed under this Agreement is set out in Annex 2.
- 11.3 Disposal of information disclosed is subject to the requirements of the Public Records Act 2005 and any applicable disposal authorities under that Act.

12 Disclosure by the Energy Efficiency and Conservation Authority to any other agency or third party

- 12.1 Information disclosed in accordance with this Agreement may only be disclosed by EECA to another agency in accordance with the Official Information Act 1982, Privacy Act 1993 and Energy Efficiency and Conservation Act 2000, and all caveats that have been placed on the information by Customs.

-
- 12.2 Customs' approval must be sought prior to any disclosure being made to other agencies or any other third party.

13 Commencement, review and termination

- 13.1 This Agreement and associated annexes shall come into effect on the date that it is signed by both signatories. It remains in effect unless otherwise notified and agreed by both parties.
- 13.2 The parties shall review this Agreement at intervals of no more than five years, unless either party initiates an earlier review, with a view to making any changes necessary to enhance the effectiveness of the information disclosure process in light of the intended use of the information.
- 13.3 The parties shall co-operate with each other in any review and will use their reasonable endeavours to make available the necessary resources, facilities and information to facilitate each joint review.
- 13.4 Each party has the right to initiate a review at any time on providing 30 days' notice in writing.
- 13.5 All notices of review shall be in writing and sent to the agency contacts detailed in Annex 1 of this Agreement.
- 13.6 This Agreement may be terminated at any time by either party providing formal notice in writing to the appropriate person in the other party. The termination will take effect one month after the notice is received by the other party.

14 Confidentiality

- 14.1 The parties agree that subject to both parties' obligations under the Privacy Act 1993 and/or Official Information Act 1982:
- 14.1.1 neither party will release any information arising from this Agreement to the media or any member of the public without first obtaining an agreement to do so from the other party
- 14.1.2 if there is a matter of concern neither party will discuss the matter in public without first engaging in a full discussion between the parties.

15 Signatories

- 15.1 The Agreement shall be signed off by the Minister of Customs and the Minister of Energy and Resources.
- 15.2 The annexes shall be signed off in the first instance by the Minister of Customs and the Minister of Energy and Resources.

16 Department Representatives

- 16.1 The Parties will each appoint a representative to oversee the operation of the information disclosure process, and will ensure that the person is familiar with the requirements of this Agreement and the Privacy Act 1993. The names and contact details are contained in Annex 1 to this Agreement.
- 16.2 In the first instance issues should be referred to Customs' representative for clarification and resolution.
- 16.3 All notices and communication between the Parties and under this Memorandum shall be sent to the representatives at the addresses set out in Annex 1.

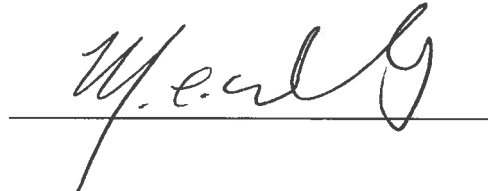
17 Variations

- 17.1 This Agreement may be varied by the Parties. Each variation must be done in accordance with section 316 of the CEA, which includes consultation with the Privacy Commissioner.
- 17.2 Any variation to this Agreement must be executed by the Minister of Customs and the Minister of Energy and Resources.



Hon Jenny Salesa
Minister of Customs

Date: 2 / 09 / 2020



Hon Megan Woods
Minister of Energy and Resources

Date: 12.9.20

ANNEXES

Schedule of annexes to this Agreement

Annex 1	Departmental representatives to act as contact persons
Annex 2	Technical Standards Report
Annex 3	Audit process

Annex 1 – Departmental representatives and contact details

Representatives for oversight of agreement

New Zealand Customs Service

<i>Role</i>	<i>Contact Details</i>
Product Manager (Information and Data)	P +64 4 978 8316 PO Box 2218 Wellington 6140

Energy Efficiency and Conservation Authority

<i>Role</i>	<i>Contact Details</i>
Manager, Standards and Regulations	P +64 4 470 2200 PO Box 388 Wellington 6140

Contact details for operational issues

If there are operational or technical issues with the receipt of the report (for example it is not received when expected, or the file is empty) EECA will contact Customs' Help Desk 0800 508 010 or Helpdesk@Customs.govt.nz stating the:

- name of the report - EECA Monthly Report
- detail of the issue
- contact details for an Authorised Person in EECA.

Annex 2: Technical Standards Report

Introduction

1. This annex to the Agreement specifies the details of the information to be provided by the New Zealand Customs Service to the Energy Efficiency and Conservation Authority.

The Information

2. The import entry information to be sent includes:

	Data fields
1	Entry Number
2	Date of import
3	Import Entry Type
4	Entry Client Name
5	Entry Client Name (PIDs and SIDs)
6	Entry Line Broker Name
7	Entry Line Supplier Name
8	Entry Line No.
9	Entry Line Tariff Item
10	Entry Line Goods Description
11	Entry Line Tariff Item Description
12	Entry Line Country of Origin
13	Entry Line Country of Export
14	Entry Line Statistical Quantity
15	Entry Line Statistical Unit
16	Entry Line Unit value
17	Entry Line Currency
18	Entry Line Value Foreign Currency
19	Entry Line Value NZ
20	Entry Total Gross Weight

3. Tariff codes

Tariff codes down to statistical level are required. Some products are already specified at the statistical level as that is the only product required.

Product	Tariff code
Air conditioners:	<ul style="list-style-type: none">• 8415.10.10• 8415.81.00• 8415.82.10• 8415.83.10
Clothes washers	<ul style="list-style-type: none">• 8450.11.01• 8450.20.00• 8450.12.01
Clothes dryers	<ul style="list-style-type: none">• 8451.21• 8451.29.00
Dishwashers	<ul style="list-style-type: none">• 8422.11.00• 8422.19.00

Product	Tariff code
Fridges/Freezers	<ul style="list-style-type: none"> • 8418.10.00 • 8418.21.00 • 8418.29.00 • 8418.30.00 • 8418.40.00 • 8418.69.00
Electric storage water heaters	<ul style="list-style-type: none"> • 8516.10.00 21K • 8516.10.00 23F
Gas hot water	<ul style="list-style-type: none"> • 8419.11.01 00F • 8419.11.01 00G • 8419.19.00
Compact Fluorescent Lamps	<ul style="list-style-type: none"> • 8539.31.00
Linear Fluorescent Lamps	<ul style="list-style-type: none"> • 8539.31.00 • 8539.90.01
Ballasts for fluorescent lamps	<ul style="list-style-type: none"> • 8504.10.09 • 8504.10.01
Televisions	<ul style="list-style-type: none"> • 8528.72.00
Computers	<ul style="list-style-type: none"> • 8471.30.00 • 8471.41.00
Monitors	<ul style="list-style-type: none"> • 8528.52.00 • 8528.59.00
External Power Supplies	<ul style="list-style-type: none"> • 8504.40.15 • 8504.40.07 • 8504.40.17
Refrigerated display cabinets (RDC)/Commercial Refrigeration	<ul style="list-style-type: none"> • 8418.50.00
Distribution Transformers	<ul style="list-style-type: none"> • 8504.22.00 • 8504.32.09 • 8504.32.01 • 8504.33.00 • 8504.34.00
Three phase electric motors	<ul style="list-style-type: none"> • 8501.52.01 • 8501.53.00 • 8414.40.00 • 8413.70 • 8501.51.01 • 8501.52.09
Close control air conditioners (CCAC)	<ul style="list-style-type: none"> • 8415.10.10 • 8415.81.00 • 8415.82.10
Commercial Chillers/Building chillers	<ul style="list-style-type: none"> • 8415.10.10 • 8415.81.10 • 8415.82.10
Set top boxes	<ul style="list-style-type: none"> • 8525.60.00 19E

Report details

4. Import entry types: All - excluding Temporary.
5. Dates: report is based on the previous month's data and is based on the date the entry is cleared NOT the date of import. Note: if the report runs on the date of import, the report will miss entries; if an entry for goods imported last month has not been cleared by the time the report is run, then it will not be in the report.
6. Frequency:
 - 6.1. Updates will be sent once a month after an initial request, on the 4th of the month following the month of import.
 - 6.2. A one-off request will provide data dating back 2 years from first regular report.
 - 6.3. Any additional one-off requests will be subject to the Official Information Act 1982.
7. Transmission Method:
 - 7.1. Monthly report: secure email to ImportData@eeca.govt.nz, which is a generic EECA email address set up solely for this purpose and monitored by Authorised Personnel only.
 - 7.2. One-off report: secure email, or if technical limitations require, it will be provided to EECA via an authorised iron key.
8. Security Protocols: the following security protocols will be used for the transmission of data:
 - 8.1. SEEMAIL for secure email data exchange.
 - 8.2. IN CONFIDENCE for the information security classification.

Retention and disposal

9. The data disclosed under this agreement will be retained by EECA for a period no longer than 12 months from the receipt of the information under this Agreement, and deleted.
10. Data disclosed on products under the specified tariff codes that are confirmed as not being within the scope of the Regulations will be deleted immediately at that point.

Positions or designations of persons to whom information may be disclosed

11. Manager, Standards and Regulations (EECA)
12. Authorised Compliance Officers (EECA)

ANNEX 3: AUDIT PROCESS

1. Frequency and process will be agreed by the chief executives of Customs and EECA but audits will occur at least biennially.
2. Responsibility: Customs Risk, Assurance & Integrity