

WORKING DOCUMENT
JURISDICTIONAL PANEL ON HoS ALTERNATIVES

Introduction:

A number of jurisdictions as well as the Canadian Council of Motor Transport Administrators (CCMTA) have had to deal with applications for partial or total exemption from the hours of service (HoS) regulations.

Where a situation involves extraprovincial transportation, requests for relief are to be addressed to Transport Canada, the department responsible for their analysis.

Where applications concern intraprovincial transportation, responsibility lies with the provinces or territories. Given the potential domino effect associated with the granting of special sector allowances amongst jurisdictions, CCMTA developed a process designed to promote a harmonized approach to regulating motor carriers that fall exclusively under provincial/territorial jurisdiction. Deviations/exemptions are to apply only to provincial regulation, and provinces and territories retain the option of harmonizing their regulation accordingly based the approved recommended solution. Under the process, an interjurisdictional panel of CRA members was set up to analyze the requests for relief and make recommendations to CRA and CCMTA Board. Although jurisdictions are encouraged to use the method of analysis developed by the panel for local requests, any decisions rendered by the review panel are not binding on other provinces and territories.

Mandate of Jurisdictional Panel on HoS Alternatives:

Using the criteria set out in the Board-approved document entitled "Proposed Screening Criteria for Alternative HoS Regimes", the panel will analyze applications it receives and make recommendations to CRA and CCMTA Board.

Policy:

The panel is intended to foster inter-provincial harmonization, minimize disparities between provincial frameworks, and provide jurisdictions and industry alike with an inventory of HoS exemptions and special allowances granted across the country.

Scope:

This approach applies to all requests submitted for analysis to the panel by the provinces and territories. Only requests received from industry sectors (generally represented by associations) will be considered. Requests from single individuals or companies will not be considered by the panel except in the case where the request originates from a company that is in a monopoly position or a quasi-monopoly position.

Approach:

Basic principle

Public interest, particularly the safety of road users, and general interest must always prevail over corporate interests, such as economic interests.

Application

Applicants must ensure they take into account and provide all relevant information required for analysis.

The province or territory that receives the application and wishes for the panel to analyze it is responsible for communicating the application to the panel.

Analysis

In its recommendations to CCMTA authorities, the panel shall consider that exemptions, whether partial or total, are to be granted in exceptional circumstances only following thorough analysis.

It is the responsibility of the applicant to ensure that their application is sufficiently detailed, including financial and related data in support of their request, (see Appendix A).

In conducting the analysis, the panel will, to the extent possible, ensure consistency with previous decisions rendered on other applications.

Various criteria will be used in the analysis of applications, including **public safety**, which is paramount. The other criteria may carry a different weight depending on the situation.

Reasons to apply for HoS relief may include:

- ✓ Abiding by the HoS regulations may pose a risk to public safety.
- ✓ No accommodations available for the driver to rest.
- ✓ Inability to continue operations due to severe operating costs directly related to HoS.
- ✓ Significant environmental or seasonal limitations severely hinder the ability to carry out or complete projects.

The analysis will also take into consideration:

- ✓ Whether the applicant has demonstrated that public safety is threatened.
- ✓ Whether the applicant has shown that he considered all likely alternatives to comply with the regulations.
- ✓ Whether mitigating measures will be taken to compensate for the partial or total exemption or deviation from the regulations, and whether these measures are acceptable for the purpose of fatigue management.

Appendix A

Elements required for analysis:

The applicant is responsible for submitting all required information.

1. Identification of Application

Purpose: Find out the applicant's needs in connection with the special allowance/exemption requested.

The applicant must:

- ✓ Provide information on the special allowance/exemption requested
- ✓ Give the reasons for making the application
- ✓ Demonstrate that the applicant represents a sector or sub-sector of the industry, or that the company making the application is in a monopoly or a quasi-monopoly position.

2. Description of Applicant's Operations

Purpose: Understand the applicant's activities.

The applicant must:

- ✓ Describe the industry or industry segment concerned (e.g., mission, number of firms, sector of activity, number of employees, etc.)
- ✓ Where required, describe the association presenting the application on behalf of the industry (e.g., mission, number of firms it represents, membership, etc.)

3. Threat to Public Safety

Purpose: Verify that strict adherence to HoS would put public safety at risk or contribute to a highway safety risk.

The applicant must:

- ✓ Describe how public safety is threatened
- ✓ Target and identify the services that pose the threat (segment or overall services offered by firm)
- ✓ Show how public health and safety are threatened if the service is not provided (type of service, impact on public or customer base, scope of threat)

4. Demonstration of Impediments

Purpose: Show how applying the regulations is problematic.

The applicant must:

- ✓ Show how compliance with HoS regulations would have serious consequences for the industry sector if an exemption, exception or special allowance were not granted
- ✓ Submit **documents, supported with relevant data, clearly showing the hindrance** caused by compliance with the regulations
- ✓ Describe problem situations and explain why the regulations are unable to address these
- ✓ Quantify the regulations' impacts on the operation of the industry sector concerned (e.g., loss of income, major increase in costs to users, loss of a given number of jobs, reduced efficiency, degradation of service).

5. Demonstration of Compliance Efforts

Purpose: Determine that the applicant took every possible means to solve the problem in compliance with the regulations.

The applicant must:

- ✓ Describe every means taken to comply with the regulations and explain how and where they failed

6. Current Operations

Purpose: Evaluate the impacts on driver fatigue of current work schedules.

To evaluate these impacts, the panel needs information on the industry sector or organization.

The applicant must provide the following detailed information:

- ✓ Personnel involved
- ✓ Activities concerned
- ✓ Regular schedule (length, time off, night/day/evening)
- ✓ Overtime (frequency, usual length, night/day/evening shift, with or without time off or mandatory off-duty time)
- ✓ Work organization (personnel rotation, shift, work team, policies or procedures)
- ✓ Skills required of personnel involved (specialty, required training and length of training)
- ✓ Agreement between employer and employees on work conditions (labour agreement)

- ✓ Specify the point of view of drivers and safety personnel concerning the exemption request

7. Concern for Road Safety and Fatigue

Purpose: Ensure that practices are safe.

The applicant must demonstrate that his operating practices are safe from the standpoint of road safety. For that, he must show that company management and driver do not constitute an undue road safety hazard. Accordingly, he must include information on:

- ✓ Control mechanism implemented
- ✓ Firm conduct, frequency of offences, type of offences, safety rating
- ✓ Frequency and type of accidents

More specifically, with respect to *fatigue*, the applicant must:

- ✓ Show that with fatigue risk management the driver does not constitute an undue hazard to his own safety and that of other road users during and after work
- ✓ Present existing measures to prevent or counter risks of accidents related to driver fatigue: policies, procedures and practices (information and personnel training) already implemented or to be implemented

8. Mitigation Measures

Purpose: Ensure that measures will be implemented to offset risks created by a possible allowance.

- ✓ Provide a **proposal of recognized alternatives** to implement in order to compensate for the exemption, exception or special allowance and maintain road safety

Proposed Screening Criteria for Alternative HoS Regimes

Issue

While the Hours of Service Regulations appear to work well for long-haul trucking, operations intrinsic to certain short-haul, specialized industries – **ie. road building, oil patch and log hauling**– are such that they indicate they have difficulty complying with a number of the new regulations' provisions. The CRA Committee, with support from the CCMTA Board, agreed in May 2007 that there is a need to consider specific solutions for those highly specialized industries, both within the federal regulatory framework, and on an intraprovincial basis to ensure interprovincial equity.

To this end, jurisdictions concerned were allowed to extend the federal education period from July 1 to December 31, 2007 for operators involved in the three industries above, allowing CCMTA jurisdictions and Transport Canada to put in place a package of specific regulatory measures that would address concerns of federal motor carriers involved in the three sectors. It was envisioned that the standard criteria would be used by individual jurisdictions in considering similar provisions for specific intraprovincial fields of operation for those industries that operate separately in more than one jurisdiction.

Mandate

Develop an assessment criteria, to be approved by the CRA committee and CCMTA Board, by which those specific situations will be analyzed, and determine conditions under which proposed regulatory solutions might be acceptable.

Current Status

Further to Transport Canada input into the Project Group's Proposed Criteria for Considering HoS Alternatives, federal officials submitted that under Section 16 of the MVTA Transport Canada is bound to use its own regulatory process for consideration of exemption requests from extra-provincial undertakings. TC will consult with the provincial and territorial governments as part of that process but under law the assessment of the requests and subsequent decisions rest with the Federal Minister.

Meanwhile despite the fact that the group has been focused primarily on extraprovincial issues, a number of provincial industry sectors are asking for similar allowances/exemptions from their respective provincial government (e.g road builders, log haulers). CRA officials are concerned about the potential domino effect associated with the granting of special sector allowances amongst jurisdictions.

As a result, it is proposed the attached process be used to promote a harmonized approach to regulating motor carriers that fall exclusively under provincial/territorial jurisdiction. Deviations/exemptions are to apply only to provincial regulation, and provinces and territories will have the option of harmonizing their regulation accordingly based on the approved recommended solution. Recommendations from the panel will be submitted to CRA and the CCMTA Board for approval. [Suggested recommendations may include an update of NSC Standard 9.] Extraprovincial carriers will be redirected to Transport Canada.

Intent and Outcome Expected

While recognizing that decisions for intraprovincial regulatory control ultimately rest with individual legislatures, the attached is intended to foster interprovincial harmonization, minimize disparities between provincial frameworks, and provide jurisdictions and industry alike with an inventory of HoS deviations, special allowances or exemptions granted across the country.

The panel to be formed will include all jurisdictions showing an interest and willing to participate in the assessment process. It is hoped that the recommendations of the panel will lead to better harmonization of intraprovincial regulations between jurisdictions, and provide a sanctioned framework to considering local/regional requests for special allowances under provincial/territorial Hours of Service Regulations. However each jurisdiction remains responsible for incorporating the Board-approved recommendations into their law, regulations, policy or rules.

Proposed Review Principles

1. Criteria (basis for industry sector request)

- Any request for relief from all or part of the HoS regulations will be reviewed and assessed by the CRA Committee (or a panel thereof, see next page) with due care to public safety based on merit of each request as per Appendix I:
 - criteria # 1 is viewed as a public safety imperative and a stand-alone
 - all other criteria may be combined, and merit will be given accordingly where more than one criteria are proven (*weighting to be developed*).
- In all cases, requesters bear responsibility to build their case and provide sufficient rationale as per the screening requirements below.

2. Screening

- Any request for relief from all or part of the HoS regulations must provide a clear and documented demonstration of impediments and propose mitigating measures that must be implemented to compensate for the exemption/exception/deviation:
 - has the requestor considered all available alternatives?
 - has the requestor quantified the impact of the rule on its operations as an industry sector? (e.g. XX million \$ in lost revenue, a significant increase in cost to the end-user, loss of a specific number of jobs, reduction in efficiency, service level degradation)? Is this a one-time impact (e.g. for previously signed contracts that did not take into account the new rules), or an ongoing impact (e.g. fee/cost increase)?
 - has the requestor provided proof of safe operating practice?
 - has the requestor provided effective alternative fatigue management measures or other acceptable countermeasures?
- Any HoS exemption/exception/deviation granted must be based on demonstration that strict adherence to HoS rules would result in a serious negative impact for the industry sector.
- Public/general interest must prevail at all times over corporate interests.
- Requests for relief must come from industry sectors (as opposed to individual companies).

3. Mitigation

- The assessment process to be used by the CRA panel to validate the effectiveness of countermeasures must include the following considerations:
 - Is driving a core function?
 - Does the driving occur primarily on highways or private roads, off-roads, others?
 - Is the operator at home every night? On a regular schedule?
 - Does the industry have a sound fatigue management program in place? The program should be clearly documented, available to the drivers, monitored by safety supervisors and must be verifiable by roadside enforcement officers.
 - Is the exception/deviation/special allowance requested consistent with basic HoS principles, e.g. a 24-hour circadian clock and/or the need for 8 continuous hours off every 24 hours or equivalent as deemed acceptable by the review panel, or a recognized medical sleep research facility?
 - Is there a possibility the exception/deviation/special allowance might create inequity between like sectors providing similar services? If so, measures must be provided to ensure no competitive advantage is obtained.
 - If granted, would the exception/deviation/special allowance otherwise create unsafe practices that would contribute to an undue highway safety risk?
 - Are there any similar situations elsewhere (i.e. other jurisdictions) and what is their status?
 - Have the economic benefits of compliance been considered?

Proposed Review Process

1. It is proposed a review panel composed of the CRA Committee, or representatives thereof based on the nature of the operation, be struck to consider requests for provincial HoS relief as per the attached screening criteria [Provinces where work is already under way with specific sectors may continue deliberations, however due consideration should be given to the consistent treatment of like sectors across Canada.]
2. Requests should be directed to the panel by individual jurisdictions through the CCMTA Secretariat. [Local requests that are unique in nature –where there is no potential for a domino effect on other jurisdictions– need not be submitted to the panel.]
3. Recommendations from the panel are to be submitted to CRA and the CCMTA Board for approval and adoption by individual jurisdictions as they see fit.
4. All requests for relief from extraprovincial carriers will be redirected to Transport Canada.

DRAFT PROPOSED CRITERIA FOR CONSIDERING HoS ALTERNATIVES

| CRITERIA | SCREENING | MITIGATION/COUNTERMEASURES |
|---|---|---|
| <p><i>1. Public Safety Imperative</i> Strict adherence to HoS would put public safety at risk or contribute to highway safety risk</p> | <ul style="list-style-type: none"> – Must provide proof of requirement to manage emergency or extraordinary situation such as environmental hazard, flood, fire, heavy snow, sour gas, dangerous goods spill, etc. – Must demonstrate that public safety is at risk – Must demonstrate lack of other alternatives (lack of competent drivers or workers, under-capacity to provide operation or service) | <ul style="list-style-type: none"> ✓Readiness to provide alternative rest and fatigue management provisions ✓Must come back into compliance once emergency/extraordinary situation is over |
| <p><i>2. Remoteness of Operation</i> Inability to access accommodation for rest</p> | <ul style="list-style-type: none"> – Must provide proof of operation, lack of accommodation complying with HoS requirements | <ul style="list-style-type: none"> ✓Must meet the intent of the requirements by providing a safe and comfortable accommodation which provides sleep capacity equivalent to that of the regulations ✓Provide acceptable alternative fatigue management practice to compensate for the absence of accommodation |
| <p><i>3. Economic Impact</i> Inability to continue operation due to severe operating costs directly related to HoS</p> | <ul style="list-style-type: none"> – Must demonstrate/quantify severe operational impediment related to HoS that would make the operation financially unfeasible (ie. to segment of industry or local economy) | <ul style="list-style-type: none"> ✓Must be able to demonstrate effective alternative fatigue management practice as supported by a recognized medical sleep research facility |
| <p><i>4. Nature of Driving Duties</i> Driving is incidental to the primary service performed</p> | <ul style="list-style-type: none"> – Must provide a detailed work shift with a breakdown of all driving / non-driving activity – Must demonstrate (qualify and quantify) impact of compliance with HoS rule | <ul style="list-style-type: none"> ✓Must be able to demonstrate effective alternative fatigue management practice as supported by a recognized medical sleep research facility |
| <p><i>5. Seasonal Restrictions</i> Significant environmental or seasonal limitations severely limit the ability to complete projects or the feasibility of projects</p> | <ul style="list-style-type: none"> – Must provide detailed work flow requirements and how environmental seasonal window impacts the ability to complete projects – Must demonstrate absence of alternatives and impediments to comply with HoS rule directly linked to seasonal or environmental limitations | <ul style="list-style-type: none"> ✓Must provide alternative fatigue management options for delivery |