



Container Trucking Regulation Rate Review Submission Summary Report

Introduction

Background

- 1) The 2014 Lower Mainland container trucking work stoppage ended upon the signing of the Joint Action Plan. Following the signing of the Joint Action Plan, the Province of British Columbia enacted the *Container Trucking Act* (the “Act”) and *Container Trucking Regulation* (the “Regulation”) on December 22, 2014 (Reg. Amended March 13, 2015 and May 4, 2018). The legislation created the position of Container Trucking Commissioner (the “Commissioner”), who is tasked with overseeing the industry and enforcing the rate structure established in the *Regulation* (part 4, Rates and Remuneration).
- 2) The *Act* and *Regulation* formalized agreed upon principles in the Joint Action Plan as well as a series of recommendations, many of which pertained to rates of driver remuneration, made by Corinn Bell and Vince Ready in 2014.
- 3) There has been no review of the *Act* and *Regulation* since 2014 and therefore, The BC Minister of Transportation and Infrastructure has directed the Commissioner to undertake a consultation with the Lower Mainland container trucking sector on the *Act* and *Regulation*. In particular, the Commissioner has been asked to focus on the current rates and remuneration structure in the *Regulation* and make recommendations to the Minister on possible changes to the rates, rate structure and any other relevant issues. A final report identifying areas for improvement to the *Regulation* and/or *Act* is to be submitted to the Minister by October 2018.
- 4) On May 14, 2018, the Commissioner issued a call for submissions seeking input from stakeholders on possible reform measures to part 4 of the *Regulation*. The Commissioner will consider all the points raised in stakeholder submissions as well as those raised during stakeholder consultation when making his recommendations to government. The submissions received from stakeholders are summarized in this report for consideration.

Container Trucking Regulation Rate Review Consultation – Scope & Focus

- 5) The Commissioner sought submissions from stakeholders which addressed one or more of the following terms of reference:

Rates and Remuneration

- The use of a mix of hourly and trip rates in the *Regulation*;
- The implementation of minimum hourly rates for all drivers at licenced companies with consideration given to the appropriate minimum level of hourly compensation for employee drivers and Independent Operators based on operating costs for drayage companies and Independent Operators and other relevant factors;
- The current on-dock trip rates and the on-dock trip rate schedule;
- The current off-dock trip rates and the off-dock rate schedule including:
 - Assessment of the current Origin and Destination Areas in the off-dock rate schedule with consideration of their geographic description and boundaries, the corresponding rate and/or the current geographic location/concentration of off-dock facilities in the Lower Mainland;
- The inclusion of benefits in the calculation of the base hourly rate;
- Minimum call out rate for Independent Operators;
- The existing fuel surcharge formula including alternate calculation options;
- Introduction of a mechanism to provide certainty on future rate changes; and
- Any other recommendations or consideration related to rates/remuneration.

Other

- Any other issues that may fall outside the scope of part 4 of the *Regulation*.

- 6) The closing date for submissions was June 29th, 2018 (extended as required). The Commissioner received nine (9) submissions from licensees, shippers and organizations representing drivers.

Key Issues Raised in Submissions

- 7) Submissions received by the Commissioner addressed each of the specific terms of reference and also included a range of positions/recommendations on general industry reform.

Use of hourly and trip rate mix in the *Regulation*

- 8) Currently, the *Regulation* establishes hourly rates for employees and Independent Owner Operators (“I/Os”) and trip rates for I/Os. Appendix A to Schedule 1 of the Container Trucking Services Licence prohibits the payment of trucks using a hybrid method of trip and hourly rates. The terms of reference sought feedback from submitters on the practicality of maintaining this prohibition. Responses varied across the stakeholder groups.
- 9) Driver representatives support the continued prohibition on hybrid rate payments for drivers, although some noted that the exclusive use of hourly rates in the industry would preclude the need for a hybrid payment prohibition. While the current prohibition was supported by all driver representatives, some believe that I/Os should only be paid by the trip and employees by the hour.



10) Licence holders seek to have a rule established which would allow for drivers to be paid either hourly or by the trip but not on the same day. One shipper submission commented in support of the current mix of trip and hourly rates and another submitter believes that licensees should be required to declare their method of compensation at time of licencing or sponsorship of an I/O and this type of compensation should not change during the term of a licence or sponsorship.

Summary

- Maintain current mix of hourly and trip rates in the *Regulation*
- Maintain the hybrid rate payment prohibition in the Licence
- Allow for the hybrid payment of drivers in full day blocks
- Do not allow I/Os to be paid by the hour

Implementation of minimum hourly rates for all drivers at licenced companies

11) Submitters were asked to comment on the option of moving the entire regulated industry to an hourly rate structure. Trucking companies and shippers that submitted do not support such a move but remain focused on reforms which will drive efficiency in the sector while maintaining the dual trip rate/hourly remuneration structure. Some driver representatives strongly support an all hourly model noting that there are presently collective agreements in the industry which account for this. Others support the concept in general but all note that the current hourly rates are too low. There is however, little consensus on the correct hourly rates for I/Os and employees. It has been suggested by various submitters that the hourly I/O rate should be \$65 per hour, \$75.00 per hour or \$83.02 per hour. For employees, rates of \$28.00 and \$29.12 were advanced.

Summary

- Do not impose hourly rates of pay for all drivers
- If hourly rates for all drivers is imposed the proposed rates should be higher for I/Os and employees but there is no consensus on a suitable rate, particularly for I/Os

The current on-dock trip rates and the on-dock trip rate schedule

12) Driver representatives agree that on-dock trip rates should be increased. Some have called for an additional \$10.00 to be added to each cell in the on-dock trip rate schedule while others have called for percentage increases each year to a maximum of a 5% increase in 2021. There is also strong support for CN and CP's intermodal facilities to be returned to the on-dock trip rate schedule. Submissions from trucking companies support the current on-dock rate schedule. There is, however, recognition from licensees that the on and off-dock schedules should be reviewed on a regular basis, noting that any changes to the schedules should take into account operating costs and the time/mileage between zones.



Summary

- Increase on-dock trip rates
- Include CN and CP intermodal facilities in the on-dock rate schedule
- Increase (or decrease) rates only after considering current operating costs and changes to the time/mileage between zones

The current off-dock trip rates and the off-dock trip rate schedule

13) Driver representatives also agree that off-dock trip rates should be increased in a similar manner as the on-dock rates (additional \$10.00 to be added to each cell in the off-dock trip rate schedule or percentage increases each year to a maximum of a 5% increase in 2021). There is driver representative support for a review of the off-dock schedule to ensure rate consistency between zones taking into account time and distance of travel. This call is supported by another submitter which notes that:

...the current rate matrices that exist were taken from a structure created by a single participant [in the Lower Mainland] drayage sector prior to 2005 when Mr. Vince Ready introduced the concept to the broader industry at the time of on-dock rate regulation. As such, the development of the rates maintained in the table were **subject to where that participants' origins and destinations existed in any one zone**. As a result of the table's origin, the significant infrastructure investments as well as the introduction and growth of industrial land clusters, the rates of compensation for travel within and between [off-dock] zones requires adjustment.

14) Of perhaps greater importance to driver representatives is the scope of the *Regulation*. Concerns have been raised that the Lower Mainland container trucking industry is destabilized by a perceived gap in the *Regulation* which currently allows un-licensed companies to pay un-regulated rates for off-dock moves. On submitter notes that its data indicates that in 2017, 18% or 13,700 of its pick up container volume and 16% or 11,000 of its drop off container volume was transacted by companies who do not maintain a Container Trucking Services Licence.

15) It has been suggested that any company providing container trucking services (as defined in the *Regulation*) be licensed and therefore subject to the payment of regulated off-dock rates. Alternately, the scope of the regulation could be extended to cover all companies (licensed or un-licensed) performing container trucking services, provided the Commissioner has sufficient capacity to enforce the rates.

16) Trucking companies and other submitters are seeking the re-introduction of a off-dock short trip (<5km) rate arguing that its re-introduction would benefit I/Os in particular who have been losing paid short trips to hourly employees that can perform the trips for less expense.



Summary

- Increase off-dock trip rates
- Re-examine and amend as required off-dock rate zones
- Expand scope of regulation to cover all trucking companies performing container trucking services
- Re-introduce a off-dock short trip (<5km) rate

The inclusion of benefits in the calculation of the base hourly rate

17) Submitters were asked to comment on the inclusion of benefits in the calculation of the base hourly rate. One driver representative group submits that the inclusion of benefits in the calculation of the base hourly rate “makes it easier for companies to claim they are paying benefits to reduce the rate.” It is their opinion that making benefits exclusive of the hourly rate will increase driver take home pay and make auditing and enforcement easier for the OBCCTC.

18) Only one trucking company addressed this term of reference. It is their opinion that the inclusion of benefits in the hourly rate can give rise to complicated calculations based on a variety of benefit plans. They submit that there should be two hourly rates made option for companies to pay:

- Regulated rate exclusive of benefits; or
- Regulated rate inclusive of benefits but adjusted for companies that pay 100% of benefit plans for employees and companies that pay 50% of benefit plans as part of a cost sharing arrangement.

Summary

- Exclude benefits from the hourly rate
- Establish two hourly rates; one inclusive of benefits (adjusted) and one exclusive of benefits

Minimum call out rate for Independent Operators

19) Submissions regarding the current minimum call out rate for I/Os were split between those who support the current I/O call out rate and those who are seeking an increase to the rate. Trucking companies support the status quo while driver representatives have recommended either an increase in the call out rate to \$400 per day or, in the case of I/Os paid by the hour, an applicable hourly rate of pay for I/Os available for 5 or more continuous hours of work.

Summary

- Leave call out rate unchanged
- Increase call out rate and increase number of available hours from 4 to 5



The existing fuel surcharge formula including alternate calculation options

- 20) The OBCCTC often hears concerns regarding the current fuel surcharge formula. Comments have generally related to either the amount of fuel surcharge being paid to drivers at certain times or the complications inherent in calculating the correct fuel surcharge rate on a quarterly basis. Submissions received by the OBCCTC on this issue are consistent with these historical positions. Trucking companies note that the fuel surcharge is intended to protect I/Os from volatile fuel price fluctuations and at 1% for every 5-cent increment in fuel prices above \$1.05 per litre, I/Os are covered. However, at the current 2% adjustment rate, the fuel surcharge has become an additional revenue source for I/Os.
- 21) Trucking representatives have recommended that there could be options for companies. Companies could either pay the current fuel surcharge which would only be adjusted as rate and remuneration adjustments occur or:
- Pay all fuel costs in excess of base price per litre; or
 - Allow companies to provide discounted fuel cards to their drivers and calculate the fuel surcharge using the established base price per litre from the actual cost of fuel averaged over the quarter
- 22) Another submitter points out that the fuel surcharge should be considered when reviewing operating costs for I/Os in order to determine trip rates and hourly I/O rates and that the assumptions made in the review of operating costs regarding the base price of fuel should be the same as the base price of fuel used in the fuel surcharge calculation mode.
- 23) One driver representative recognizes that there may be scope to discuss altering the current fuel surcharge formula within the context of sectoral bargaining but barring that event, it is their position that a change in the fuel surcharge formula will lead to suspicion on the drivers' part that they will earn less money and would also trigger a new round of OBCCTC audits/enforcement as companies struggle to apply a new fuel surcharge formula.
- 24) This last point is key, as other submitters have noted that while the fuel surcharge calculation in the *Regulation* is clear, finding the "reference price of diesel" has become increasingly complicated since the introduction of the *Regulation*. It is recommended that the OBCCTC post a quarterly communication outlining the calculation for the applicable quarter.

Summary

- Only change the fuel surcharge when rates of remuneration are adjusted
- Do not change the fuel surcharge
- Provide options for paying a fuel surcharge
- Ensure that a consistent base price of fuel is used in calculating I/O operating costs and the fuel surcharge formula
- OBCCTC should look to communicate the fuel surcharge calculation on a quarterly basis to increase understanding within the drayage sector.



Introduction of a mechanism to provide certainty on future rate changes

- 25) All submissions received by the OBCCTC support some mechanism which provides certainty on future rates changes. Trucking company representatives, shippers and other submitters have called for regularly scheduled reviews of rates based on the following principles:
- A review underpinned by publicly available/provided data such as compensation studies, comparisons with other North American Ports, exchange rate changes, growth/decline in volume of container trucking activity by Port, etc.
 - A review should consider the cost of living in BC and other inflationary pressures
 - Review done in consultation with industry
 - No automatic rate changes
 - No changes in rates based on work disruptions
 - Rates should be in line with trucking industry rates in general
 - Rate changes should come with an appropriate notice period (not less than 90 days) to provide drayage companies appropriate time to implement and amend rates
- 26) One driver representative has suggested that the best way to ensure stability in the industry and provide for future rate reviews is the implementation of a “geographically targeted sectoral bargaining solution imposed by government in order to allow for free collective bargaining to reach a single agreement covering all licensees.” This is not a solution supported by any other submitters.
- 27) In the absence of imposed sectoral bargaining, it has been suggested that future rate certainty could be achieved by tying future rate increases to ILWU-BCMEA increases or at 1% plus the applicable percentage increase in the BC Consumer Price Index, whichever is greater.

Summary

- Undertake regular, planned rate reviews based on a range of publically available inputs and in consultation with industry participants
- Index future rate increases
- Account for future rate increases within a sectoral bargaining model
- Tie future rate increases to ILWU-BCMEA increases or at 1% plus the applicable percentage increase in the BC Consumer Price Index, whichever is greater

Other recommendations or consideration related to rates/remuneration

Round Trip

- 28) Further to discussions regarding the on-dock and off-dock trip rates is the manner in which those rates are calculated. It has been pointed out that the Joint Action Plan states that rates “shall be calculated on a round trip basis.” The *Regulation* accounts for a calculation of the rate paid to a driver on the basis of each container move made by that driver between a location (on-dock or off-dock).



- 29) It is recommended by one submitter that the *Regulation* be amended to reflect trip rates paid on a round-trip basis using the following model:
- Import container trips paid on a round trip based on double the rate from the point of origin
 - Export container trips paid on a round trip based on double the rate from the destination point
 - Third leg moves (container move between an off-dock facility and a customer or vice versa) paid on a round trip based on the port of origin
 - When a round trip cannot be calculated use of the off-dock rate schedule in the *Regulation* based on the origin and destination of the container
- 30) It was pointed out that payment on a round-trip basis does not mean that the same driver will drop off and pick up a specific container, rather it ensures that a company will increase the efficiency of its dispatch by ensuring that every driver that is paid for two moves will do two moves. This, it is also suggested, will give drivers access to more moves per day.
- 31) Trucking company representatives have been silent on the issue of paying on a round-trip basis but one shipper has suggested that a round-trip should be defined as a trip where a driver “moves a container back to back from each stop/destination” with each move paid according to the on and off-dock tables in the *Regulation*. This submitter notes the importance of collaboration with terminals to ensure that their reservations systems support double ended moves. The promotion of double-ended moves in terminal reservations systems was also supported by driver representatives.
- 32) Double-ended moves were noted by one submitter who suggested that double-ended moves are difficult to schedule and therefore they should be promoted through a rate/price discount when they are achieved.

Bob-Tail and Empty-Chassis Moves

- 33) To date, it has been understood that the on and off-dock rate tables in the *Regulation*, based on the “Ready” rates, account for an empty leg move as part of the rate for a container move. Driver representatives have either disagreed with this assumption or, state that I/O moves without a load are generally non-compensated time. This is negatively impacting driver remuneration as the amount of time a driver spends bob-tailing or driving with an empty chassis each day is increasing, resulting in longer working hours for I/Os.
- 34) The introduction of compensation of bob-tail and empty-chassis moves has been raised by driver representatives. One submitter states that:
- ...implementing a bob-tail and bare chassis compensation mechanism would force customers and companies to seriously think about how to best move as many containers as possible while drivers would start to be compensated for their time not carrying a load...



35) Recommendations for the correct empty leg rate vary from a minimum charge either per kilometre to a zone rate or flat rate which has been suggested should be no less than \$25.00 per move or a flat rate of 50% of the applicable on or off-dock rate in lieu of round-trip payments.

Summary

- Introduce round-trip language/compensation scheme into the *Regulation*
- Introduce rate incentives intended to encourage double-ended moves
- Seek assistance from terminal operators to ensure double-ended moves are facilitated
- Introduce a payment mechanism for empty-leg moves

Other Remuneration Recommendations

36) The following remuneration recommendations were also advanced by various submitters:

- Introduce a dangerous goods premium for hourly drivers and a rate of \$75.00 per container movement for I/Os
- Allow licence holders to make deductions from driver remuneration for chassis/equipment damage and tire damage
- Consider differentiated rates between day and night moves

Other issues outside the scope of part 4 of the *Regulation*

37) The efficiency and stability of the Lower Mainland drayage industry relies on the interconnectivity of many factors which span a number of stakeholder jurisdictions. Terminal operations in particular directly affect trucking operations and therefore must be considered when reviewing the rates in the regulation. However, the OBCCTC has no ability to directly impact policy and actions relating to terminal reservations/fees, the wait time fee program and the Port of Vancouver's truck age requirements.

38) This was recognized by submitters who recommend that the OBCCTC play a facilitating role in addressing these cross-jurisdictional issues. Further, elements of the OBCCTC's Truck Tag Policy were raised on a number of occasions in submissions and while the OBCCTC does not intend to address the Truck Tag Policy in its review of the *Regulation*, it will address Truck Tag Policy reform in separate forums.

39) The final area of focus raised by one submitter in particular does relate to the *Act* and *Regulation*. A number of specific recommendations have been raised pertaining to the Commissioner's enforcement powers and rules of practice and procedure, some of which are already granted to the Commissioner under the *Act*, others, are not. These recommendations relate to powers or practices and procedures in other statutes (*Administrative Tribunals Act*, *Employment Standards Act* and the *Labour Relations Code*) and are sufficiently detailed that they require a fulsome analysis and reply which will be included in the Commissioner's report to government.