Office of the BC Container Trucking Commissioner

CTS LICENCE TAG MANAGEMENT POLICY REVIEW

OFFICE OF THE
BRITISH COLUMBIA CONTAINER
TRUCKING COMMISSIONER

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Background

On December 22, 2017, following a thorough consultation process, the Office of the Container Trucking Commissioner ("OBCCTC") released the new CTS Licence Tag Management Policy (the "Policy") that took effect on January 1, 2018.

The Policy introduced a number of key changes to the tag system which included the establishment of a detailed tag application process, tag withdrawal process and the creation of an independent operators ("I/O") List which allows for the movement of I/Os between companies with available truck tags and OBCCTC control of the number of new I/Os entering the system. The trucks of I/Os who are moving between Sponsorship/Joinder Agreements are allowed to remain in the Truck Licensing System ("TLS") for a period of time to accommodate I/O movement. The amended Policy is attached in Appendix I.

Stakeholders raised some concerns with the OBCCTC regarding the Policy during the first six months of its application. Specifically, licensees were concerned about the number of available I/Os on the I/O List and labour representatives were concerned about the issuance of new truck tags under the Policy and the conversion of vacant I/O truck tags to company truck tags.

In response to these concerns, the OBCCTC, on March 1, 2018, issued a Bulletin requiring that vacant I/O truck tags must be filled with I/Os on the I/O List and, on June 21, 2018, issued another Bulletin temporarily suspending the issuance of additional truck tags and committing to a review of the Policy in the fall of 2018. The Bulletin also noted that as part of the OBCCTC's regulatory review, truck tag policy would be considered. As such, some submitters to the rate review elected to provide feedback regarding the Policy.

Tag policy input received during the regulatory consultation is not addressed in the Commissioner's report to government. Rather, a summary of the tag policy submissions received during that process is included here and will be considered, with all other additional input, during this policy review. In addition to summarizing tag policy submissions received to date, the following OBCCTC policy paper highlights a number of tag policy issues of interest to the OBCCTC and provides formal terms of reference for further tag policy consultation.

Summary of Stakeholder Submissions received during Regulatory Review

The OBCCTC received three written submissions regarding the Policy as part of it review into Part 4 (Rates and Remuneration) of the *Container Trucking Regulation* (the "*Regulation*").

The Commissioner's Approved I/O List

One Licence holder is of the opinion that the Commissioner' Approved I/O List is not meeting its intent. Rather than facilitating movement of I/Os to companies with available work, the I/O List, it's argued, has provided a false protection for qualified I/Os who have, for the most part, elected to not move companies. This submitter supports the addition of new I/Os to the I/O List and is calling for a lifting of prohibition on the conversion of vacant I/O truck tags to company truck tags.

Conversely, another submitter is strongly supportive of the prohibition on the conversion of vacant I/O truck tags to company truck tags and is concerned about new I/O entrants into the system. They believe that the total number of trucks in the system should be closely monitored because the potential over-supply of trucks could lead to rate undercutting and labour instability.

Truck Tag Performance

Under the Policy, each quarter the Commissioner reviews the performance levels of all Licensees and may withdraw tags from Licensees who are not maintaining tag performance and/or demonstrating a prolonged decrease in tag performance and container movement volumes. In conducting performance reviews, the Commissioner utilizes the Licensee's Balance Scorecard as issued monthly by the Vancouver Fraser Port Authority ("VFPA"), as well as any other information that the Commissioner may consider relevant. In April 2018, the OBCCTC sent performance review letters to small, medium and large sized licence holders who's truck tag trips per day (on and off dock) were in the bottom 20th percentile in their grouping. Those companies were advised that they had 90 days to increase performance or face losing truck tags. In July 2018, the companies that did not increase performance following the April warning lost truck tags.

One labour representative has submitted that tag utilization is only one metric which should be considered when reviewing tag performance. Compliance history, it is argued, should be an equally important consideration.

I/O Sponsorship

Since 2015, I/Os have been required to enter into sponsorship agreements with licence holders in order to access port terminals on-behalf of licence holders. Under the Policy, I/Os can only enter into sponsorship agreements with licence holders that have a vacant I/O truck tag. Labour representatives believe that the sponsorship system and the Policy restricts labour mobility by limiting the availability of I/O work to licence holders with vacant truck tags and restricts I/O decision making.

One submitter suggests that I/Os should have their sponsorship converted to an individual truck tag that allows them to move between companies at their discretion. Another submitter recommends that the OBCCTC issue additional truck tags to licence holders upon request of the I/O, regardless of a licence holder's truck tag performance.

Response to Stakeholder Submissions

The following table provides an OBCCTC response to stakeholder submissions received to date. These responses reflect the OBCCTC's consideration of stakeholder input as well as the operational experiences of the OBCCTC during the period of the Policy.

Submission Recommendation	OBCCTC Response and Action
Add new I/Os to the I/O List	The Policy allows for the addition of new I/Os to the I/O List. Fifteen new I/O positions have been added to the I/O list since January 1, 2018. The OBCCTC remains concerned that some licensees may choose to employ increasing numbers of I/Os in an attempt to address other operational and business challenges. This will result in more I/Os receiving less work. The OBCCTC is also aware that, historically, increases in the number of I/Os within the industry has led to increases in instances of rate undercutting and a deterioration in the working conditions (including wait times) of trip rate drivers. The Policy is intended to facilitate the movement of existing I/Os to companies with available work first before new I/Os fill vacancies. The number of new spaces made available on the I/O List could increase, however, if existing I/Os chose to remain at poor performing licence holders. Before this occurs, the OBCCTC will, through this consultation process, examine options for facilitating greater I/O movement to high performing licence holders.

Lift prohibition on the conversion of vacant I/O truck tags to company truck tags	The current prohibition was implemented to assist in maintaining a sufficient number of vacant I/O truck tags to facilitate I/O movement. The OBCCTC will, through this consultation process, examine options for facilitating greater I/O movement to high performing licence holders before consideration is given to lifting the prohibition.
Tag performance review should consider licensee compliance	Under the Policy, applications for additional truck tags are assessed using several criteria including a licensee's adherence to the terms and conditions of the VFPA's Access Agreement, the Licence and the *Container Trucking Act* and *Regulation*. The tag withdrawal process is based on a performance review which considers a licensee's Balanced Scorecard "as well as any other information the Commissioner may consider relevant." A licensee's compliance history is relevant information which may be considered by the Commissioner under the Policy and the Commissioner through this review will determine if there are other relevant criteria that will form part of the evaluation of applications for new tags.
Remove sponsorship requirements and assign truck tags directly to I/Os	The OBCCTC continues to be aware that some stakeholders desire a return to individual licences/permits for I/Os. The OBCCTC's position in this regard had not changed. A return to a previous system which was in operation during three container trucking labour stoppages at the Port of Vancouver (since 1999) is not a manner of reform which will advance the long term stability of the container trucking industry in the Lower Mainland. The current sponsorship requirements will remain in force.
Issue additional truck tags to licence holders upon request of the I/O	The OBCCTC supports I/O mobility but is also tasked with ensuring labour stability. Labour stability is threatened when I/Os are driving trucks for licence holders who do not provide an adequate amount of work, have poor labour conditions or demonstrate non-compliant behaviour. The OBCCTC, in the amended (October 2018) Policy has introduced an additional truck tag application criteria based on existing I/O support of the application.

Policy Issues of Interest to OBCCTC

In addition to the issues raised by stakeholders that are noted in this paper, the OBCCTC is aware of other issues which impact truck tag policy.

Currently, each Licensee and Access Agreement holder is assigned a fixed number of truck tags which can be apportioned at the licensee's discretion to either company owned trucks or I/O trucks. When a truck tag is assigned to a particular truck, a GPS unit is installed in the vehicle by the Port of Vancouver which is used to monitor the movements of the truck between geo-fenced facilities. A truck cannot access a marine terminal without a Port installed unit and, in order to qualify for GPS installation, the tagged truck must adhere to Port of Vancouver truck age requirements.

Some licensees have been utilizing tagged trucks for on-dock work only and un-tagged trucks for off-dock work in order to avoid the GPS and Port of Vancouver truck age requirements associated with the tagging of a truck. The OBCCTC, on March 6, 2018, issued a Bulletin reminding licensees that all trucks performing container trucking services under a licence must be tagged. This has led to concerns regarding the overall tag count and the number of trucks requiring GPS installation, as well as concerns about the number of trucks that can access Port of Vancouver terminals.

Tag Management Policy Review Terms of Reference

The OBCCTC's objective is to review the Policy with a particular focus on options for policy amendments which facilitate greater I/O mobility and enhance the additional truck tag application and truck tag withdrawal processes. Focus will also be given to amendment options which support a tag system that satisfies the mandates of both the Port of Vancouver and the OBCCTC.

Submissions are being sought from stakeholders which address one or more of the following terms of reference:

- The effectiveness of the additional truck tag application business case requirements of the Tag Management Policy with particular consideration given to options for enhancement of the business plan criteria;
- The effectiveness of the truck tag withdrawal process/criteria of the Tag Management Policy with particular consideration given to vacant truck tags;
- Consideration of set additional truck tag application periods during the year;
- Options to facilitate greater I/O movement to licensees that can provide an adequate amount of work, satisfactory labour conditions and demonstrate compliance with the *Container Trucking Act*, *Regulation* and Container Trucking Services Licence; and
- Options to ensure the tagging of all trucks performing container trucking services (on and off-dock) with consideration given to Port of Vancouver terminal access, truck age and GPS requirements.

Please provide your written submission to the OBCCTC at the following email address: Registrar@obcctc.ca

Next Steps

The closing date for stakeholder submissions is December 14, 2018. Once consultation is complete, the OBCCTC will release a revised policy for stakeholder input before issuing a final, updated policy. The revised policy will be released on www.obcctc.ca and stakeholders will be advised of its release via an OBCCTC Bulletin. The OBCCTC will extend a two-week period for stakeholders to provide feedback before the final, updated policy is implemented.

Appendix I
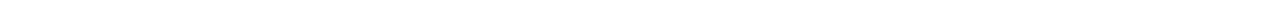
Office of the BC Container Trucking Commissioner
CTS Licence Tag Management Policy
Amended October 2018

PURPOSE

This is the policy of the Office of the BC Container Trucking Commissioner (the "OBCCTC") on the issuance, withdrawal and management of tags assigned to Licensees. It is consistent with the purpose of the *Container Trucking Act* and *Container Trucking Regulation* ("the legislation").

Licensees and current and prospective I/Os must follow this policy when applying for additional tags, moving Sponsorship/Joinder, or seeking to be added to the I/O List.

AUTHORITY

In conjunction with the legislation, the Container Trucking Licence (the "Licence") establishes the authority of the Container Trucking Commissioner (the "Commissioner") to determine the number of tags associated with the Licence and impose conditions upon the Licensee.

CRITERIA

As provided in the Licence, the Commissioner considers a Licensee's performance metrics (including those under the VFPA's performance review program) and the size and performance of the I/O fleet under Sponsorship/Joinder when issuing and withdrawing additional tags.

POLICY

Annual Licence/Tag Application Process

1) Every licence application will identify the total number of tags sought under the Licence for which the application is made. The application will also outline the allocated number of tags that will be associated with each type of truck owner as defined in the following two categories:

- Company owned and/or leased trucks ("Company Trucks");
- I/O owned and/or leased trucks ("I/O Trucks").

2) As part of the licence application review process, the Commissioner will review and determine the number of tags to be allocated to each applicant under an approved Licence based upon information provided by the VFPA, including a performance review and any other matters that the Commissioner in his or her discretion may consider relevant.

3) Should the Commissioner choose to issue fewer tags than requested, the Commissioner will advise the applicant of his or her decision in writing.

4) As set out below, the number of authorized tags may vary throughout the term of the Licence.

Tag Application Process during Annual Term of Licence

5) During the term of a Licence, a Licensee may apply to increase the number of tags authorized under its Licence. Licensees may submit a request for additional tags at any time during the year by completing the Additional Tag Request Form and submitting the supporting documents outlined below.

6) In order to qualify for additional tags, Licensees must provide a business plan detailing all of the following:

- The planned use of the additional tags;
- The estimated impact of additional tags on the performance metrics of a Licensee's existing tag allotment;
- A schedule for the implementation of the additional tags.

7) The business plan must also demonstrate one or more of the following:

- Existing business is difficult to service due to the high utilization of the current tag allotment;
- A current customer has increased its container movement volume;
- New business has been secured necessitating additional capacity; and/or
- An Independent Operator has indicated, in writing, support for the additional truck tag application on the basis that the granting of an additional truck tag will result in their sponsorship.

8) The OBCCTC will conduct an audit of licensee and I/O truck trips/movement records to accurately assess the amount of trips per day undertaken by the applicant's drivers and/or I/Os.

9) Additional tags will be issued subject to the Licensee's adherence to the terms and conditions of the VFPA's Access Agreement, the Licence and the legislation.

10) Licensees will be advised of the Commissioner's decision in writing. If approval is granted, the Licensee must then inform the VFPA and secure approval to add a truck within 30 days of the date of the Commissioner's written approval or the approval will automatically expire, unless consent is granted in advance by the OBCCTC to extend the timeframe.

11) Licensees may also apply to the Commissioner for a 90 day temporary tag ("Provisional Tag") to accommodate an I/O leave of absence, due to extraordinary circumstances, that has exceeded or is expected to exceed one month in duration. The Provisional Tag may only be assigned to a VFPA approvable fleet truck. The Provisional Tag will automatically expire after 90 days, unless terminated earlier or extended as a result of a Commissioner-approved request for extension by the Licensee, both at the discretion of the Commissioner.

Tag Withdrawal Process during Annual Term of Licence

12) Each quarter, the Commissioner will review the performance levels of all Licensees and withdraw tags from Licensees not maintaining tag performance and/or evidencing a prolonged decrease in tag performance and container movement volumes.

13) In conducting performance reviews, the Commissioner will utilize the Licensee's Balance Scorecard as issued monthly by the VFPA, as well as and any other information that the Commissioner may consider relevant.

14) Should the Commissioner consider reducing the number of tags under a Licence, the Commissioner will provide the Licensee with a warning and a 90 day opportunity to improve tag performance, which is detailed on the Licensee's Balanced Scorecard. If, after 90 days, tag performance has not improved, the Licensee will be given reasonable notice of the Commissioner's intention to withdraw the tags.

15) Licensees may voluntarily surrender tags at any time. The VFPA is prepared to amend Access Agreement charges to reflect Licensees who voluntarily surrendering tags.

Independent Operator List

16) The Commissioner has created an I/O List (not intended for publication) to increase sponsorship opportunities for I/Os.

17) Status on the I/O List is associated with an individual, not with a tag. **Tags do not move between Licences**. I/O's cannot transfer their place on the I/O List to another I/O.

18) An I/O shall not perform Container Trucking Services on behalf of any Licensee unless the I/O is on the I/O List.

19) Licensees shall only sponsor and join to I/Os on the I/O List.

20) In order to ensure the objective of this policy and the integrity of the I/O List, and avoid the forced conversion of I/Os to employees, in accordance with Appendix A to Schedule 1 of the Licence ("Prohibited Practices") a Licensee must not require an I/O to sell his or her Equipment (as defined in the Licence) to the Licensee.

21) The maximum number of I/Os on the I/O List is set by the Commissioner, and is reviewed monthly and adjusted as necessary at the discretion of the Commissioner.

22) The I/O List is comprised of three types of I/Os: Active I/Os, Eligible I/Os, and Inactive I/Os.

- Active I/Os

  An Active I/O is an I/O who is working under an active Sponsorship/Joinder.

  Active I/Os on the I/O List may move to a new Sponsorship/Joinder.

- Eligible I/Os

  An Eligible I/O is an I/O who is not working under an active Sponsorship/Joinder and is available to Licensees for Sponsorship/Joinder.

  I/Os remain on the I/O List as Eligible I/Os for a maximum of 90 days from the date of termination of a Sponsorship/Joinder.

  If an Eligible I/O does not become an Active I/O within the 90 days, the Eligible I/O will be removed from the I/O List.

  The associated TLS-approved trucks of Eligible I/Os will not be deemed by VFPA to be exiting TLS as of January 1, 2018; however, the trucks remain subject to TLS requirements.

  Subject to the discretion of the Commissioner, it is anticipated that approximately 10% of the I/O List will be comprised of Eligible I/Os.

- Inactive I/Os

  An Inactive I/O is a Sponsored/Joined I/O who is unable to perform Container Trucking Services due to a temporary recess of the Licensee's tag by the Commissioner (ex. as the result of a bargaining unit grievance process).

New I/O List Applicants

23) The Commissioner will monitor the I/O List and, if satisfied that it is desirable to add new Eligible I/Os to the I/O List, will publish a request for applications.

24) Should the number of applicants exceed the number of advertised spaces, the successful applicants will be determined by a lottery.

25) Successful applicants will be notified in writing and will have 30 days from the date of the written notification to acquire a compliant vehicle, secure a Sponsorship/Joinder and secure VFPA TLS approval, unless consent is granted in advance by the OBCCTC to extend the timeframe.

26) Subject to the discretion of the OBCCTC, any applicant seeking to be placed on the I/O List must not have been a company employee of a Licence holder in the three months prior to being placed on the I/O List.

General

27) Licensees may apply for additional tags to: registrar@obcctc.ca.

28) Licence holders may apply to fill vacant tags and submit new I/O Sponsorship/Joinder applications through the OBCCTC and the VFPA TLS.

29) Placement on the I/O List is solely for the purpose of the proper administration of this policy, and is in no way an approval or endorsement by the Commissioner of the I/Os on the I/O List. Further, placement on the I/O List does not represent confirmation that the I/O's truck meets the VFPA's TLS requirements.

30) Placement on the I/O List does not guarantee an I/O Container Trucking Services work of any kind.

31) All references to timeframes and deadlines in this policy are subject to the discretion of the Commissioner.

32) Except as defined herein, capitalized terms in this policy have the same meanings as defined in the Licence.