

*Office of the BC Container Trucking Commissioner*

**CTS LICENCE REFORM  
2020 LICENCE APPLICATION PROCESS &  
TAG MANAGEMENT POLICY**

**CONSULTATION REPORT**

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March 2020



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## Executive Summary

Container Trucking Services Licences (“Licence”) expire on June 30, 2020. The Office of the BC Container Trucking Commissioner (“OBCCTC”) is proposing a series of licence reforms and amendments to the Truck Tag Management Policy (“Tag Policy”) to encourage greater regulatory compliance, promote the efficiency, effectiveness and competitiveness of the Lower Mainland drayage sector and facilitate the professionalization of the industry through reinforcement of ethical business practices, accurate record keeping processes and payroll systems.

Since September 25, 2019, the OBCCTC has been consulting with stakeholders concerning proposed changes to the current Licence and application process and the Tag Policy. The proposed reform measures were published in the OBCCTC’s November 12, 2019 CTS Licence Reform – 2020 Licence Application Process and Tag Management Policy consultation paper in addition to a supplemental consultation paper (February 11, 2020) that introduced new proposals and expanded upon previous recommendations.

Stakeholders provided feedback in response to the proposals through written submissions, Industry Advisory Committee meetings, focus groups and consultation sessions which concluded on February 28, 2020. The information received from sector participants helped shape the reforms that will be part of the upcoming licensing application process and are detailed in this consultation summary report.

## Licence Reform

### Tag Count Target

There is agreement that the number of trucks in the system currently exceeds available work and that this issue has contributed to past work stoppages and reduced opportunities for drivers. By allocating fewer truck tags across the sector, it is expected that overall fleet efficiency will improve, and this will lead to increased work for drivers.

**The target range for the number of truck tags issued will be 1450-1550 with the goal of improving gateway efficiency and increasing work opportunities for drivers.**

### Licence Term

It has been argued that a longer licence term is needed for industry stability. Previous licence terms were 1-year and the current 2-year term was introduced in 2018 to address these issues. The OBCCTC will consider longer licence terms once overall compliance rates increase.

**Licences will be issued with an effective date of July 1, 2020 and an expiry date of June 30, 2022. The OBCCTC will review the term of licence prior to the next licensing period.**

## New Applicants

The current composition of the drayage sector has remained relatively stable since 2014. While many licensees have left the system voluntarily or as a result of enforcement action, no new companies have been added. Shippers, warehouses, transloading facilities and other organizations involved in the containerized movement of imports and exports, have relied upon the current complement of drayage service providers to meet their business needs. But continued compliance issues across the existing fleet has prompted customers to re-evaluate their business needs with some considering the acquisition of their own trucks or wanting more service provider options.

**New applicants will be permitted to apply for a licence, but their applications will only be considered after the applications for existing licensees have been reviewed and if there are remaining truck tags to be allocated from within the target range.**

## Minimum Truck Application Requirement

The OBCCTC has proposed imposing a 10-truck minimum licence application requirement because audits have demonstrated a disproportionate level of non-compliance from smaller companies. These audits have also proven to be more costly, time consuming and difficult due to manual record keeping methods and, in some cases, missing records arising from poor file management practices.

The intent of the proposal was not to eliminate small businesses but to address ongoing compliance issues within the sector. Compliance issues are not exclusive to smaller companies and many niche markets and customers are better served by smaller carriers. Further, many smaller companies utilize their own trucks signifying higher levels of investment in the industry. Therefore, the OBCCTC will maintain the current 5 truck minimum licence criteria and will employ alternate methods to increase levels of compliance.

**Applicants must have a minimum of 5 trucks and/or sponsored I/Os to be eligible for a Licence.**

## Joint Licences Prohibition

The elimination of joint licences was proposed to prevent non-compliant activity, to streamline the audit and investigation process by focusing on the operations of a single licensee as opposed to two or more.

To ensure that smaller, compliant companies can apply and hold a licence, the OBCCTC will permit companies under an existing joint licence with less than 5 trucks to apply for a single licence.

**Joint licence applications will not be accepted by the OBCCTC. Current joint licensees will be permitted to apply for a single licence if their fleet size is less than 5 trucks and provided they satisfy all remaining mandatory licensing requirements.**

### **Truck and Driver Declaration**

Accurate and comprehensive driver information is critical for audits and investigations. It is also important that this information is updated as changes are made to a licensee's fleet throughout the licence term.

**Applicants must provide, in a manner prescribed by the OBCCTC, a detailed listing of all drivers (employed, indirectly employed and sponsored) and trucks performing container trucking services (on and off-dock).**

### **National Safety Code Profile Report**

All carriers must maintain a current listing of the vehicles that fall under their National Safety Code. As this list represents the most accurate representation of the trucks associated with the company, the data in this report will be used to compare the information provided in the truck and driver declaration.

**Applicants must submit a copy of sections 1-3 of their most recent National Safety Code Profile Report and clearly identify all vehicles listed in section 3 that are performing both on and off dock container trucking services. This submission must align with all trucks declared by the applicant.**

### **Vehicle Ownership Confirmation**

Past audits and investigations have revealed cases where drivers have been misclassified. Truck ownership confirmation is necessary to determine whether the vehicles and drivers are correctly identified within a licensee's fleet.

**Licence applicants must provide, in manner prescribed by the OBCCTC, detailed truck ownership documentation/confirmation including leasehold agreements for all declared drivers performing on and off dock container trucking services.**

### **I/O Sponsorship**

As a condition of employment, all I/Os must be sponsored by a Licensee. While most sponsorships involve one I/O and one truck, there are cases where an I/O owns multiple trucks with various drivers that fall under one sponsorship. This situation has made auditing and investigating allegations of driver remuneration issues problematic.

**Each truck, owned by an I/O, listed under licence must have a corresponding, sponsorship agreement signed by the same I/O.**

## Tag Allocation Criteria

As part of the licensing process, applicants will be required to apply for the number and type of truck tags that are needed to support their business. For existing licensees, the number and type of tags allocated will be based on an assessment of their business case, compliance history, fleet efficiency and the current composition of their fleet. For new applicants, only the business case will be assessed.

**Allocation of company and I/O truck tags for existing licensees will be determined by assessing an applicant's business case, compliance history and fleet efficiency data. Allocation of company and I/O truck tags for new applicants will be determined by assessing the business plan only if additional tags are available for allocation after Licences have been issued to existing licensees.**

**Upon notification of the OBCCTC's intent to remove truck tags, a licensee will be permitted to submit a proposal outlining which truck tags associated with which trucks should be removed. The OBCCTC will consider the licensee's submission prior to making its final determination.**

## Tag Management Policy Amendments

### TLS & CTC Truck Tags

All licensees performing container trucking services (on and off-dock) ("CTS") are required to adhere to the rates set by the OBCCTC. Section 6.9 of the current CTS Licence requires licensees to only use tagged trucks for the performance of container trucking services (on and off-dock). This requirement is made in support of section 25 of the *Container Trucking Regulation ("Regulation")* which ties the number of truck tags assigned to a licence to the licensee's security requirement.

OBCCTC audits have identified instances of licensees operating untagged "shadow fleets" that perform off-dock container trucking services in violation of the *Act, Regulation* and Licence. In response, the OBCCTC proposed to introduce and issue CTC truck tags ("CTC Tag") for any declared truck exclusively engaged in performing off-dock container trucking services.

The CTC Tag proposal was not intended to create more complexity within the industry and the OBCCTC is particularly concerned that the already occurring split of on and off-dock movements within a fleet is not exacerbated by OBCCTC policy.

**CTC Tags will not be issued; however, all trucks declared under a licence will remain subject to compliance auditing and security/bonding requirements and all trucks performing container trucking services must be tagged in accordance with existing licence conditions.**



### **Provisional Truck Tags**

In circumstances where a sponsored I/O has had to stop working due to unforeseen circumstances, provisional tags have been granted to a licensee who sponsors the I/O until he/she is able to return to the company. Without severing the original sponsorship, tracking these arrangements has become an administrative burden.

**In circumstances where licensees have a need to accommodate an I/O leave of absence, due to extraordinary circumstances, that have exceeded or is expected to exceed one month in duration, the OBCCTC will place the I/O on “Inactive” status on the I/O List. In the event the I/O returns to the industry and/or their previously sponsoring licensee, the OBCCTC will consider the issuance of a new tag.**

### **Annual Tag Application Process**

The OBCCTC has proposed a scheduled annual intake window for new tag applications, subject to the Commissioner’s discretion. An annual tag application period will allow the OBCCTC to better assess fleet performance and compare performance against historic fleet specific and industry wide trends. It will also allow for more certainty in licensee business planning and in the administrative processes of the OBCCTC.

**The OBCCTC will set an annual fixed application period (at time of licensing and once during the term of the Licence) to accept additional tag applications. The OBCCTC will continue to issue truck tags throughout the term of the Licence at its discretion and in exceptional circumstances. Where additional truck tags are issued, they will be effective on the 1st of the following month.**

### **Truck Tag Conversions**

Past behavior by some licensees has resulted in the mistreatment of drivers resulting in significant financial and emotional stress.

**The OBCCTC will not permit the conversion of truck tags during the term of the Licence.**

### **Commissioner’s I/O List**

The I/O List was introduced to ensure that I/Os were able to remain financially stable and to encourage I/Os to move to compliant companies. Over time, drivers and licensees have expressed concern about the list because they feel it has become restrictive and does not allow licensees to select drivers that meet their hiring standards or conform to union seniority requirements.

**The Commissioner’s I/O list will remain in place but will be amended to allow licensees to nominate drivers from other divisions within their fleet to be placed on the I/O list for the express purpose of filling a vacant I/O tag within their fleet. The driver’s placement on the I/O list will be revoked if he/she leaves the Licensee that nominated them.**

## Introduction

In November 2019, the OBCCTC published the CTS Licence Reform – 2020 Licence Application Process and Tag Management Policy consultation paper which outlined several proposed Licence reform measures and Tag Policy amendments. In February 2020, a supplemental consultation paper was published which expanded upon some of the Licence and Tag Policy reforms and provided clarity about the criteria that would be used to evaluate Licence applications.

The purpose of this document is to summarize the OBCCTC's proposals, stakeholder responses and the final decisions that have been made regarding proposed reforms, including an overview of the licence application process for existing licensees and prospective applicants.

## The Case for License Reform and Tag Policy Amendments

The Lower Mainland drayage sector has experienced significant growth over the past 30 years. This growth has given rise to a range of issues that culminated in several work stoppages and negatively impacted the province's reputation as a stable and efficient gateway and port transportation hub. The Bell/Ready Report cited historic and more recent factors that precipitated the most recent driver work stoppage in 2014. These factors included terminal operations, rate undercutting, absence of a sector wide auditing process and inadequate enforcement of previous audit judgements.

In response, the provincial and federal governments created a regime that would regulate driver rates of pay, establish a robust auditing and enforcement process and create a whistle-blower line to investigate allegations of driver misconduct. The OBCCTC was established to administer the drayage carrier licensing process, enforce regulatory compliance and investigate and resolve driver complaints.

The *Container Trucking Act* (the "Act"), *Container Trucking Regulation* (the "Regulation") and the CTS Licence provide three primary mechanisms with which to address systemic drayage sector issues:

Enforcement: conducting compliance focused investigations and audits and issuing orders and penalties for substantiated violations.

Licensing: prescribing the terms and conditions under which an individual or entity is granted authorization to perform prescribed container trucking services.

Rate Setting: establishing minimum rates of pay for on and off dock container movements performed by drivers employed by and/or sponsored by a Licensee.

While significant progress has been made towards achieving fairness and compliance across the drayage sector, many outstanding issues continue to plague the industry. Through its auditing and investigative efforts, the OBCCTC continues to encounter high rates of non-compliance among licensees. Since the OBCCTC was created in January 2015, 101 full audits (excluding wait-time audits) have been completed with only 20 letters of compliance issued. Violations include minor issues but also underpayment of drivers, submitting forged records during an audit, misrepresentation of driver hours worked, unauthorized deductions from pay and the withholding of fuel surcharge. The OBCCTC has investigated several cases where drivers have allegedly been coerced into making false statements during an audit or have been threatened with job loss or experienced a reduction of work after making a complaint.

In response, the OBCCTC has increased its enforcement capacity and has escalated the application of administrative penalties to deter non-compliance and encourage ethical business practices across the sector. The OBCCTC has also proposed a series of licensing reforms and Tag Policy amendments intended to advance compliance and increase stability in the industry.

The proposed licensing changes were outlined in two consultation documents that were provided to stakeholders for input. The purpose of the proposed reform measures and amendments is to:

- Increase regulatory compliance;
- Promote the efficiency, effectiveness and competitiveness of the container trucking industry; and
- Facilitate the professionalization of the sector by reinforcing ethical and fair business practices through accurate record keeping and payroll processes.

## Consultation Approach and Scope

An engagement strategy was developed to identify key stakeholders and determine how best to reach them. The principles that guided the development and implementation of the strategy included:

Transparency: clearly identify and explain the proposed licence and policy reforms and the rationale for the changes.

Inclusiveness: identify all impacted stakeholders and provide opportunities to provide input.

Flexibility: employ a variety of engagement tactics that are designed to appeal to the preferences and/or needs of specific individuals or groups.

Responsiveness: provide engagement opportunities where there is an open exchange of ideas and perspectives, questions can be asked and answered, and facts are presented objectively.

Tactical approaches used to connect with key stakeholders included:

- Industry Advisory Committee (IAC) Meetings
- Newsletters/Bulletins/Information Flyers
- Meetings with key stakeholders – scheduled and by registration
- Driver focus groups
- Publication of written submissions on the OBCCTC website
- Earned and unearned media

Key groups and individuals that were identified and approached to provide input included:

- Drivers
- Current licence holders
- Industry Associations and Unions
- Shippers
- Other service providers such as transloading, warehousing and other facilities

## Who We Heard From

The consultation period commenced on September 25, 2019 and was open until the end of the day on February 28, 2020. Thirty-nine written submissions were received and posted on the OBCCTC website. A list and a link to the submissions is included in Appendix I.

Meeting opportunities were offered to drivers, licensees and other stakeholders. Driver focus groups held in December 2019 were attended by 31 drivers and 6 licensee consultation sessions held in February 2019 were attended by 34 licensees. The Commissioner and Deputy Commissioner met individually with industry associations, unions, shippers, suppliers and other stakeholders during the consultation period. A listing of these meetings is contained in Appendix II.

## What We Heard

The following table summarizes key stakeholder input provided in written submission and during consultation sessions.

Proposed Licence and Tag Policy Reform	Stakeholder Response
<b>Truck Tag Count Target</b>	<p>There was universal agreement from all stakeholders that the current size of the fleet exceeded available work opportunities for drivers. (see for example Submission #13)</p> <p>One submitter (Submission #3) noted that the OBCCTC must provide detail on how we determine the Truck Tag Count Target.</p>
<b>New Licence Applicants</b>	<p>Many stakeholders were not in favour of opening the licence application process to new applicants on the basis that existing companies have invested time and resources into their licenced businesses and the potential for new competition in an already crowded industry will result in uncertainty and adversely impact business and investment planning. (see for example Submission #2).</p> <p>Some stakeholders were supportive of a competitive application process but also stressed the importance of assessing all applicants consistently against the application criteria. (see for example Submission #3 &amp; #12)</p>
<b>Licence Term</b>	<p><b>The OBCCTC has not proposed a change to the term of licences (currently 2 years); however, stakeholders did raise the issue, advocating for an increase to the term of the licence on the basis that longer terms will allow for more certainty in business planning and investment. (see for example Submission #4, #12 &amp; #25).</b></p>

<p><b>Minimum Truck Requirement</b></p>	<p>All current licensees with less than ten trucks assigned to their licence that provided input into the consultation process opposed the increase to the minimum truck requirement. Labour organisations with members working at small licensees and elected officials also voiced their concerns.</p> <p>It was requested that the OBCCTC leave the minimum truck requirement unchanged (currently 5). Stakeholders noted that:</p> <ul style="list-style-type: none"> <li>• The size of licensee’s fleet does not necessarily equate to a licensee’s level of compliance;</li> <li>• Many small licensees utilize company trucks and therefore have made greater investments in their business and often demonstrate higher levels of performance; and</li> <li>• The loss of a licence will have severe financial implications for business and will adversely impact drivers who may be laid off and lose industry seniority as a result.</li> </ul>
<p><b>Joint Licences</b></p>	<p>Some stakeholders argue against any minimum truck requirement. They note that joint licences have historically been the only way a company with less than 5 truck tags can participate in the program. Should the OBCCTC continue to enforce a minimum truck requirement, they submit that joint licences should continue to be grandfathered on the same basis that stakeholders argued against an increase to the minimum truck requirement. (see for example Submission #11 &amp; #4)</p>
<p><b>National Safety Code Profile Report</b></p>	<p>The OBCCTC received one written submission in support of this proposed additional requirement to the licence application process. (Submission #13) One other submission was opposed on the basis that the requirement will not meet the OBCCTC’s goal of managing and tracking fleets nor will it assist in the assignment of CTC truck tags. (Submission #18)</p>
<p><b>Truck and Driver Declaration</b></p>	<p>The OBCCTC did not receive stakeholder input regarding this proposed additional requirement to the licence application process.</p>
<p><b>Vehicle Ownership Confirmation</b></p>	<p>The OBCCTC did not receive stakeholder input regarding this proposed additional requirement to the licence application process.</p>
<p><b>I/O Sponsorships</b></p>	<p>The OBCCTC did not receive stakeholder input regarding this proposed amendment.</p>

<p><b>Tag Allocation Criteria – Business Case</b></p>	<p>The review of a business case made in support of truck tag requests was generally supported by stakeholders. Some stakeholders posed questions at consultation sessions about what to submit in a business case and one submitter suggested that it is difficult for some companies to demonstrate increased container movements prior to receiving additional truck tags. In these cases, it was recommended, the OBCCTC should assign truck tags on the basis of potential increases in volumes with a trial period to follow the issuance of the tags to ensure that they are being used. (Submission #10 &amp; #11)</p>
<p><b>Tag Allocation Criteria – Compliance History</b></p>	<p>Stakeholders initially raised concerns that the first, proposed compliance history assessment criteria (i.e. Good/Average/Poor) was not sufficient and did not properly differentiate between the various circumstances that informed OBCCTC audits and decisions. (see for example Submission #4 &amp; #5)</p> <p>The OBCCTC agreed and in its supplemental consultation document proposed 6 criteria for consideration when assessing an applicant’s compliance history.</p>
<p><b>Tag Allocation Criteria – Fleet Efficiency</b></p>	<p>Stakeholders note that the Port of Vancouver performance score cards do not necessarily reflect all the factors that the OBCCTC should consider when assessing fleet efficiency. (see for example Submission #8). The period assessed was also raised (Submission # 2) and it was suggested that a longer period would more accurately reflect the performance of a fleet.</p> <p>One submission notes that it will be difficult for the OBCCTC to distinguish between poor fleet utilization performance and external economic factors outside of a licensee’s control. (Submission #18)</p>

<p><b>CTC Truck Tags</b></p>	<p>All stakeholders that provided input regarding the OBCCTC’s proposed introduction of CTC Truck Tags were in opposition.</p> <p>Concerns raised included:</p> <ul style="list-style-type: none"> <li>• The creation of an “off-dock” truck tag will incentivize the splitting of fleets between on and off-dock work;</li> <li>• Splitting on and off-dock work will result in loss of work for drivers of TLS tagged trucks and reduced income for drivers of CTC tagged trucks; and</li> <li>• The splitting of on and off-dock work between different trucks will lead to increased road and terminal congestion and decreased efficiency.</li> </ul>
<p><b>Provisional Truck Tags</b></p>	<p>The OBCCTC did not receive stakeholder input regarding this proposed change to the Truck Tag Policy.</p>
<p><b>Annual Additional Truck Tag Application Process</b></p>	<p>Some stakeholders queried why this proposed change was necessary, noting that the current Truck Tag Policy (where additional truck tags can be requested any time) was already too restrictive, does not allow for business growth and is not responsive to fluctuations in business demand. (see for example Submission #18)</p>
<p><b>Truck Tag Conversions</b></p>	<p>Three submitters are opposed to the proposed prohibition of truck tag conversions during the term of a licence on the basis that it negatively impacts licensees and that licensees pay for truck tags and should be free to assign them at their discretion. (Submissions #1, #3 &amp; #23)</p>
<p><b>Commissioner’s I/O List</b></p>	<p>Union representatives submit that the Commissioner’s I/O List restricts union drivers who drive for a licensee in an untagged truck from becoming an I/O and accessing Port of Vancouver terminals. Licensees which operate under a collective agreement have raised concerns that the Commissioner’s I/O List restricts their hiring and their ability to effectively promote from within. (see for example Submission #23)</p>

## Licence Reform

Part 3 Division 1 of the *Act* and Part 3 of the *Regulation* outlines the licensing authority of the Container Trucking Commissioner (the “Commissioner”). As one of the mechanisms available to support the overall competitiveness of the drayage industry, licensing has the most immediate impact on changing behavior and driving compliance within the sector. While enforcement action through audits and investigations is equally effective, results are often realized after a longer time period. Therefore, the OBCCTC has proposed the following licence reforms intended to assist in expediting and increasing licensee compliance:

- a. Establishing a target range for the total number of truck tags allocated across the sector.
- b. Maintaining the two-year licence term.
- c. Opening the licence application process to new entrants.
- d. Introducing new mandatory licence criteria.

## Tag Count Target

Drivers, licensees and other industry participants continue to advise the OBCCTC that the number of trucks performing container trucking services exceeds the available work opportunities and that this has, in part, contributed to past work stoppages and to past and present rate undercutting.

Data provided by the VFPA reveals that while the number of twenty-foot equivalent units (“TEU’s”) has grown steadily year over year since 2009, reaching just over 3.4 Million TEU’s, there has been a significant change in the mode of transport. The growth in TEU volumes transported by drayage truck has remained relatively modest, having grown by approximately 20% over the last 10-year period. Whereas, the number of TEU’s moving via other modes of transportation has surpassed the volumes moving by truck and has grown by almost 80% during the same period.

Factors such as the completion of the Deltaport Terminal Road & Rail Improvement Project during 2019, have contributed to this trend as significant drayage services that were routinely used to supplement Deltaport’s rail services during construction are no longer required.

As a result of the above and other industry and economic factors, there continues to remain an over supply of drayage trucks in the sector competing for TEU volumes that are increasingly relying upon intermodal services. This imbalance, if unaddressed, will lead to further industry instability as competition within the drayage sector intensifies. Further efficiencies and optimization within the drayage sector such as short haul shipping, industry consolidation and increased double-ended moves will bring added pressures upon driver income if the number of drayage trucks isn’t more closely aligned with present and future TEU volumes. Ultimately, continuing to raise driver rates of pay without addressing fleet efficiency issues will drive price sensitive shippers to seek out other transportation options.

There was universal agreement from all stakeholders that the current size of the fleet exceeds available work opportunities for drivers. VFPA data reveals that the average on dock trips per day is 2.2 whereas 4 on dock trips per day has often been cited as a desired target. Stakeholders held varying opinions on the optimum size of the fleet and the approach that was needed to reduce it. For example, the United Truckers Association, which represents owner operators, is on record as stating that a reduction



of 200-300 trucks would be required<sup>1</sup> whereas others have suggested a reduction of up to 400 trucks from the system could be appropriate.

Adopting an incremental approach to address fleet efficiency starting with a modest reduction in the number of trucks in the system will enhance the competitiveness of the sector and lead to more work opportunities for drivers.

**The target range for the number of truck tags issued will be 1450-1550 with the goal of improving gateway efficiency and increasing work opportunities for drivers.**

## **Licence Term**

During the consultation sessions, many existing licensees raised the issue of the licence term. While a proposal to amend the term was not included in the initial or supplemental consultation documents, the current two-year licence term generated much discussion. Licensees felt that the current term limited their ability to build their businesses. They felt that without a 5 or 10-year term, their confidence to invest significant capital into trucks and equipment and secure business contracts was negatively impacted. One licensee suggested that a longer licence term could contain review periods during which a licensee's performance could be reviewed and adjustments made to the Licence without the need for a reapplication process.

Previous licence terms were 1-year and the current 2-year term was introduced in 2018 to address these issues. The OBCCTC will consider longer licence terms once overall compliance rates increase.

**Licences will be issued with an effective date of July 1, 2020 and an expiry date of June 30, 2022. The OBCCTC will review the term of licence prior to the next licensing period.**

## **New Applicants**

The current composition of the drayage sector has remained relatively stable since 2014. While many licensees have left the system voluntarily or as a result of enforcement action, no new companies have been added. Stakeholders have argued that allowing new entrants into the sector does not make sense, particularly if there is already a perceived oversupply of companies and drivers. They also cite the unfairness of having to compete against applicants who have not been subject to the OBCCTC's oversight and do not have a compliance history that can be used as a factor when considering their application.

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<sup>1</sup> Industry Advisory Committee Meeting Minutes, December 3, 2019, obcctc.ca

Section 6 of the *Regulation* states that if the Commissioner is satisfied that it is desirable to increase the number of licensees, the Commissioner may invite applications for a licence. In this case, the Commissioner considers it desirable to accept licence applications from new entrants that can demonstrate a substantial investment in the industry and a commitment to pay their drivers compliant rates. The introduction of new applicants will also assist in putting downward pressure on the valuation of licences which are presently considered to be only attainable through sale.

**New applicants will be permitted to apply for a licence, but their applications will only be considered after the applications for existing licensees have been reviewed and if there are remaining truck tags to be allocated from within the target range.**

## **Mandatory Licence Criteria**

The proposed mandatory licence criteria are intended to shape reform by improving compliance and ethical business practices amongst licensees.

The proposed changes to the mandatory licence criteria for the upcoming licencing cycle include:

- i. Establishing a 10-truck minimum application requirement
- ii. Prohibiting joint licences
- iii. Requiring applicants to declare all drivers (employed, sponsored I/Os and indirectly employed operators) and all trucks performing on and off container trucking services under the licence
- iv. Submitting specified sections of the applicant's National Safety Code Carrier Profile
- v. Submitting prescribed documentation to confirm ownership of all declared trucks
- vi. Submitting one sponsorship for each I/O truck

## **Minimum Truck Application Requirement**

The OBCCTC has proposed imposing a 10-truck minimum licence application requirement because audits of smaller companies demonstrate a disproportionate level of non-compliance. These audits have also proven to be more costly, time consuming and difficult due to manual record keeping methods and, in some cases, missing records arising from poor file management practices. Further, many companies with 10 or fewer trucks are primarily engaged in providing subcontracted services for larger licensees which has also led to significant challenges during audits as some smaller companies simply "loan" drivers without proper invoicing procedures in place and some drivers elect to perform container trucking services for other licensees while remaining on their sponsored licensee's fleet insurance and operating under their National Safety Code Certificate number.

Thirty-seven companies could be impacted by this change. As such, many stakeholders have voiced their opposition. Stakeholders have been unanimous in branding this reform measure as arbitrary and unfair to smaller companies with specialized business models. Many have operated in the sector for 10 or more years and have invested significant capital into equipment and facilities. These licensees also state that unlike larger companies that have multiple divisions, their sole source of work and income is drayage business.

The intent of the proposal was not to eliminate small businesses but to address ongoing compliance issues within the sector. Compliance issues are not exclusive to smaller companies and many niche markets and customers are better served by smaller carriers. Further, many smaller companies utilize

their own trucks (rather than sponsor independent operators (“I/O”)) signifying higher levels of investment in the industry. Therefore, the OBCCTC will maintain the current 5 truck minimum licence criteria and will employ alternate methods to increase levels of compliance.

**Applicants must have a minimum of 5 trucks and/or sponsored I/Os to be eligible for a Licence.**

### **Joint Licence Prohibition**

There are currently twelve joint licences. Joint licences were created in 2014 in response to the VFPA reform measures. Following the 2014 work stoppage and transfer of licensing authority to the province, the OBCCTC continued to licence existing joint licensees but prohibited the issuance of new joint licences.

Some companies entered into these arrangements because they did not meet the 5-truck minimum while others formed through shared ownership and/or family relationships. While this licence class has enabled smaller companies to continue operating, it has created auditing challenges. Each company within a joint licence is required to function as a separate entity; however, the OBCCTC has encountered circumstances where drivers are dispatched interchangeably between the companies. This creates the illusion, if not the reality, of tag transfers and is in violation of the bonding requirements prescribed in the *Regulation*.

Further, unapproved tag transfers are a violation of section 6.17 of the licence, which was introduced, in part, to prevent the commoditization of licences, tags and port access. The OBCCTC is aware that truck tags have been illegally bought and sold. Additionally, when discrepancies involving driver remuneration has been the focus of an audit, it is often difficult to determine which party is responsible for a potential violation. Joint licenses also pose a risk to each company in that a finding of non-compliance resulting in a licence cancellation of one company will impact the status of the partner company to remain in the fleet.

The elimination of joint licences was proposed to prevent further non-compliant activity, to streamline the audit and investigation process by focusing on the operations of single licensee as opposed to two or more.

Some stakeholders have cited the elimination of joint licences as an attack on small business, many who have operated in the sector for decades. Others have stated that the impacted companies have not had enough time to notify their customers or change their business models.

The OBCCTC acknowledges that this measure invariably impacts smaller companies but reiterates the significant challenges these arrangements pose to the auditing and enforcement process.

To ensure that smaller, compliant companies can apply and hold a licence, the OBCCTC will permit companies under an existing joint licence with less than 5 trucks to apply for a single licence.

**Joint licence applications will not be accepted by the OBCCTC. Current joint licensees will be permitted to apply for a single licence if their fleet size is less than 5 trucks and provided they satisfy all remaining mandatory licensing requirements.**

### Truck and Driver Declaration

During the 2018 licensing process, licensees were provided with a listing of trucks and drivers which they were asked to verify and submit with their application. Subsequent audits have revealed that this information was not always correct, did not accurately reflect the composition of fleets and has not been maintained. Collecting complete and accurate information concerning all drivers and trucks under a licence is essential to the OBCCTC's oversight mandate. Licensees are also expected to inform the OBCCTC following any change to their fleet during the licence period.

**Applicants must provide, in a manner prescribed by the OBCCTC, a detailed listing of all drivers (employed, indirectly employed and sponsored) and trucks performing container trucking services (on and off-dock).**

### National Safety Code Profile Report

The *Regulation* requires all drivers performing on and off dock container trucking services to be paid regulated rates. During audits, the OBCCTC has discovered trucks that have not been previously listed under licence. The National Safety Code Carrier Profile Report contains detailed information about the composition of a carrier's fleet which will assist the OBCCTC to identify all trucks that fall under its jurisdiction.

**Applicants must submit a copy of sections 1-3 of their most recent National Safety Code Profile Report and clearly identify all vehicles listed in section 3 that are performing both on and off dock container trucking services. This submission must align with all trucks declared by the applicant.**

### Vehicle Ownership Confirmation

Recent decisions have cited the misclassification of drivers in order to avoid paying the required rates. Vehicle ownership information is often requested during an audit to determine if drivers are correctly identified under licence as either employees or independent operators. By obtaining vehicle ownership documentation during licensing, the OBCCTC will have this information readily available for audits if required.

**Licence applicants must provide, in manner prescribed by the OBCCTC, detailed truck ownership documentation/confirmation including leasehold agreements for all declared drivers performing on and off dock container trucking services.**

### I/O Sponsorship

There are currently I/Os sponsored once under a licence who operate more than one tagged truck (utilizing indirectly employed operators). I/O sponsorship under a licence was introduced, in part, to ensure that licensees assume responsibility for I/O remuneration and other conditions of licence by linking an I/O to a sponsorship agreement and the licence. It was not intended to be a mechanism for those who own more than 1 but less than 5 trucks to access VFPA terminals without a licence.

**Each truck, owned by an I/O, listed under licence must have a corresponding, sponsorship agreement signed by the same I/O.**

## Tag Allocation Criteria

All applicants must meet the mandatory criteria to be considered for a licence. If the requirements are met, the truck tag request will be assessed by evaluating the applicant's business case, compliance history and fleet efficiency data. If an applicant is a new entrant and there are additional tags available for allocation after all existing licensee applications have been reviewed, the new applicant's business case will be used to determine the number and type of tags allocated to the licence. The supplemental consultation document contained additional detail about the specific factors that will be considered for tag allocation decisions.

While most stakeholders did not disagree with the principle of compliance history being used as a factor to determine the number and type of truck tags allocated to a licence, many felt the quantum of a penalty or severity of the violation should be weighted accordingly. For example, licensees who were found to be underpaying drivers arising from a lack of clarity in the regulatory requirements should not be assessed in the same manner as a licensee who was found to be submitting forged documents during an audit. Stakeholder submissions with respect to the compliance assessment are supported by the OBCCTC and are consistent with the approach outlined by the OBCCTC in its supplemental consultation document.

In the event a truck tag is removed from an existing licensee applicant, stakeholders asked for confirmation regarding who (licensee or the OBCCTC) would decide which tags were removed. There are several factors which the OBCCTC considers when assessing which trucks should be un-tagged. These include the use of the truck (does it access terminals or if so, does it access terminals regularly) and the age of the truck. However, the individual circumstances of each licensee and their business model are also factors to be weighed. Therefore, upon notification of the OBCCTC's intent to remove truck tags, a licensee will be permitted to submit a proposal outlining which truck tags associated with which trucks should be removed. The OBCCTC will consider the licensee's submission prior to making its final determination.

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The validity and relevancy of using the "balanced scorecard" data to determine the allocation of truck tags was raised by stakeholders who noted that these reports do not accurately reflect the variety and volume of work they perform. Other factors such as terminal operations and reservation system challenges were also cited as impacting overall fleet performance and efficiency.

The OBCCTC recognizes that most fleets perform both on and off dock movements and that relying exclusively on dock performance to make tag decisions is not fair and that additional data concerning off-dock and ancillary container movements needs to be considered. That is why the truck tag assignment process will consider all information supplied by the applicants, not only the data contained on the performance score cards. Applicants will be required to submit supporting information to demonstrate truck tag utilization. It should be noted, however, that on-dock efficiency metrics do serve as a useful guide in determining the optimal size of the fleet that is required to access port terminals.

## Application Process

All current licences expire on July 1, 2020 and existing licensees and new applicants will be required to apply prior to the published deadline. All decisions detailed in this summary document will be incorporated into the final licensing package which will be available during the first week of April 2020. The application window will be 4-6 weeks and the closing date for applications will be identified in the final licensing package.

The review and assessment of the applications and tag requests will not begin until after the application deadline has passed. All applicants will receive a written response from the OBCCTC indicating whether their application was approved and will specify the number and type of truck tags allocated to the Licence. The letter will contain detailed reasons for the decision and will reference the stated criteria where applicable.

## Tag Management Policy Amendments

The Tag Policy was introduced in January 2018. The objective was to facilitate I/O movement to available work and balance the amount of work with the number of drivers in the industry in order to maintain fluidity at container terminals.

At the March 12, 2019 Industry Advisory Council meeting, the OBCCTC introduced a series of recommended changes to the policy based on concerns raised by licensees, drivers and other stakeholders. A major proposed change included the introduction of CTC Tags. Recent, additional proposed changes have sought to address the administrative challenges associated with provisional truck tags and the frequency of tag application windows.

Proposed amendments to the Tag Policy include:

- i. Creation of a CTC & TLS Truck Tag
- ii. Elimination of provisional truck tags
- iii. Annual tag application process during the licence term
- iv. Prohibition on truck tag conversions
- v. Updates to the Commissioner I/O List

## TLS & CTC Truck Tags

All licensees performing CTS (on and off-dock) are required to adhere to the rate set by the OBCCTC. Section 6.9 of the current Licence requires licensees to only use tagged trucks for the performance of CTS (on and off-dock). This requirement is made in support of section 25 of the *Regulation* which ties the number of truck tags assigned to a licence to the licensee's security requirement.

OBCCTC audits have identified instances of licensees operating untagged "shadow fleets" that perform off-dock container trucking services in violation of the *Act*, *Regulation* and Licence. In response, the OBCCTC re-stated its proposal to introduce and issue CTC Truck Tags for any declared truck exclusively engaged in performing off-dock container trucking services. This separate class of tags was proposed to ensure that there would not be an increase to the number of trucks which can access a port terminal. It was intended that affixing a CTC Tag to un-tagged off-dock trucks would enable the OBCCTC to better

enforce rate compliance and confirm that the licensed carrier had obtained a sufficient bond based on its total fleet size.

Some stakeholders raised concerns that the unlimited issuance of CTC Truck Tags could lead to unintended growth in the size of off dock fleets under licence resulting in increased road and facility congestion, the continued use of older trucks and the potential for TLS tagged trucks to lose work to CTC tagged trucks. Unions were concerned that the issuance of CTC tags could lead to the creation of dual fleets under a single licence and interfere with the assignment of work based on seniority provisions in a collective agreement.

The CTC Tag proposal was not intended to create more complexity within the industry and the OBCCTC is particularly concerned that the already occurring split of on and off-dock movements within a fleet is not exacerbated by OBCCTC policy. Therefore, CTC Tags will not be issued; however, all trucks declared under a licence will remain subject to compliance auditing and security/bonding requirements and all trucks performing container trucking services must be tagged in accordance with existing licence conditions.

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## **Provisional Truck Tags**

Provisional Truck Tags were created to allow a licensee to maintain the number of active trucks in its fleet in the extraordinary event that an I/O could not perform container trucking services. To date, very few Provisional Tags have been requested or issued by the OBCCTC. In the few cases where the OBCCTC has issued a Provisional Tag, the duration of the driver's absence has always exceeded 90 days and, in each case, a return date for the driver has been open ended. As a result, the tracking of these tags has become administratively difficult. The OBCCTC has proposed that in cases where a Provisional Tag has been issued in the past, that the sponsorship with the company the driver has left will be terminated and a new sponsorship with the receiving company will be completed. Once the circumstances have resolved, the OBCCTC will work with both companies to facilitate the movement of the driver if necessary.

**In circumstances where licensees have a need to accommodate an I/O leave of absence, due to extraordinary circumstances, that have exceeded or is expected to exceed one month in duration, the OBCCTC will place the I/O on "Inactive" status on the I/O List. In the event the I/O returns to the industry and/or their previously sponsoring licensee, the OBCCTC will consider the issuance of a new tag.**

## Annual Tag Application Process

Since the introduction of the first Tag Policy, the OBCCTC has accepted additional tag applications throughout the licence term. Increasingly, the OBCCTC has found that many applicants were altering their dispatch practices in order to manipulate performance data results and demonstrate increased trips per day before submitting applications.

The OBCCTC has proposed a scheduled annual intake window for new tag applications, subject to the Commissioner's discretion. An annual tag application period will allow the OBCCTC to better assess fleet performance and compare performance against historic fleet specific and industry wide trends. It will also allow for more certainty in licensee business planning and in the administrative processes of the OBCCTC.

Stakeholders expressed concern that their ability to grow and diversify their businesses was impeded by not being able to apply for and receive truck tags upon request. They indicated new customers are less likely or unwilling to finalize business contracts unless there was certainty that the fleet had enough capacity to meet the customer's needs.

The truck tag performance program is intended to ensure that licensees are maximizing the use of each truck tag and balance the total number of truck tags with the total amount of TEUs moving through the Gateway. These are primary considerations when assessing additional truck tag applications. Applicants must demonstrate that new or existing business cannot be serviced with their existing tag allotment. To date, many applicants have been unable to demonstrate that their existing tag allotment is insufficient which is why the number of allocated tags has remained stable since 2015.

There is a distinction between new customers or growth in existing business in the Gateway and existing customers who are seeking to move business to other carriers. In the case of existing business moving, the Policy is designed to move truck tags between licensees to accommodate these fluctuations and can occur at any time. If an existing customer seeks to increase its volumes or a new customer is considering using the Gateway, the introduction of a set additional truck tag application period will provide certainty in business planning.

**The OBCCTC will set an annual fixed application period (at time of licensing and once during the term of the Licence) to accept additional tag applications. The OBCCTC will continue to issue truck tags throughout the term of the Licence at its discretion and in exceptional circumstances. Where additional truck tags are issued, they will be effective on the 1<sup>st</sup> of the following month.**



## Truck Tag Conversions

Appendix A to Schedule 1 of the Licence prohibits the forced conversion of an employee, I/O or indirectly employed operator. Past decisions and audits have identified instances where company drivers were either encouraged or forced to purchase trucks and become I/Os or where I/O sponsorships were severed and replaced with company truck tags.

While the OBCCTC does not seek to unduly interfere with a licensee's ability to conduct its business, past behavior by some licensees has resulted in the mistreatment of drivers resulting in significant financial and emotional stress.

**The OBCCTC will not permit the conversion of truck tags during the term of the Licence.**

## Commissioner's I/O List

The I/O List was introduced to ensure that I/Os are able to remain financially stable by balancing the number of available I/Os with the volume of available work. It was also intended to encourage I/Os to move to compliant companies.

Licensees state that the I/O List has provided a false protection for qualified I/Os who have, for the most part, elected to not move companies. However, many of these licensees operate seniority systems and promote business practices which are not appealing to some I/Os and therefore have had trouble attracting I/Os.

Drivers have reported feeling trapped by the I/O list in that it does not provide them with the freedom to move to a company of their choice. However, it is unclear how much of this sentiment originates from the feeling that terminal access should be granted to I/Os rather than licensees (as was the case prior to 2007) versus the current state where tags are allocated to a licensee. Larger companies expressed frustration with the list in that it prevents them from hiring drivers from other divisions within their fleets (i.e. commercial or long haul) who have expressed an interest in working in the drayage sector. These stakeholders feel that there should be flexibility to appoint or nominate drivers from within their companies to be added to the I/O list to fill vacant tags.

Union representatives submit that the Commissioner's I/O List restricts union drivers who drive for a licensee in an untagged truck from becoming an I/O and accessing Port of Vancouver terminals. It also interferes with a union's seniority system.

The I/O List is not intended to adversely impact a licensee's ability to promote within nor is it intended to interfere with a union process. Therefore, the Commissioner's I/O list will remain in place but will be amended to allow licensees to nominate drivers from other divisions within their fleet to be placed on the I/O list for the express purpose of filling a vacant I/O tag within their fleet. The driver's placement on the I/O list will be revoked if he/she leaves the licensee that nominated them.

**The Commissioner's I/O list will remain in place but will be amended to allow licensees to nominate drivers from other divisions within their fleet to be placed on the I/O list for the express purpose of filling a vacant I/O tag within their fleet. The driver's placement on the I/O list will be revoked if he/she leaves the licensee that nominated them.**

## Conclusion

The OBCCTC proposed a series of licence reforms and tag policy amendments that are intended to increase compliance, increase the overall efficiency and effectiveness of the Gateway and encourage the professionalization of the fleet. The OBCCTC recognized the impact these proposed changes would have on drivers, licenced companies and other stakeholders across the sector and developed a comprehensive engagement strategy that enabled groups and individuals to provide input into the proposed changes. The OBCCTC is committed to continuous engagement and is always seeking ways in which to improve the Lower Mainland drayage sector which is why the feedback received from stakeholders was critical in shaping the final licence application process and the revised Truck Tag Policy outlined in this document.

All decisions detailed in this summary document will be incorporated into the final licensing package which will be available during the first week of April 2020. The application window will be 4-6 weeks and the closing date for applications will be identified in the final licensing package.

## Appendix I

Submission Number	Name of Company
1	Gur-ish Trucking Ltd.
2	Unique Trucking Ltd.
3	BC Trucking Association
4	Port Transportation Association
5	H. Rattan Trucking Ltd.
6	Port Transportation Association
7	Supersonic Transport Ltd.
8	Canstar Trucking Co. Ltd.
9	Coast Pacific Carrier Inc.
10	Super Star Trucking Ltd.
11	Jeevan Chohan Transport Ltd.
12	MDW Express Transport Ltd.
13	Teamsters Local Union No. 31
14	Safeway Trucking Ltd.
15	Rideway Transport Ltd.
16	Sukh Dhaliwal, MP
17	Terry Beech, Pacific Liberal Caucus Chair
18	Future Trucking Ltd.
19	Can-American Enterprises Ltd.
20	BC Trucking Association
21	Full Load Transport Services Inc.
22	Randeep Sarai, MP
23	Harbour Link Container Services Inc.
24	AG Transport Ltd.
25	Big Boss Transport
26	Royal City Roadline
27	Bagri Bros. Enterprises Inc.
28	Quality Forest Products Ltd.
29	KD Truckline Ltd.
30	Goodrich Transport Ltd.
31	United Truckers Association
32	Unifor
33	HAP Enterprises Ltd.
34	Canadian Boys Transport Ltd.
35	Trans BC Freightways Ltd.
36	Seaville Transport Logistics Ltd.
37	Aquatrans Distributors Inc.
38	TrasBC Freight Ltd.
39	Ocean Trailer

Written submissions can be accessed by using the link below

<https://obcctc.ca/industry-communications/commissioner-consultations/cts-licence-reform-submissions/>

## Appendix II

Date	Stakeholder		
<b>September 25, 2019</b>	Industry Advisory Committee		
<b>September 30, 2019 &amp; October 7, 2019</b>	Vancouver Fraser Port Authority		
<b>October 7, 2019</b>	BC Trucking Association		
<b>November 4, 2019</b>	BC Trucking Association – Intermodal Committee		
<b>November 12, 2019</b>	Unifor		
<b>November 25 &amp; 27, 2019 December 2 &amp; 3, 2019</b>	Truck Driver Focus Groups – attended by 31 Drivers		
<b>December 3, 2019</b>	Industry Advisory Committee		
<b>December 8, 2019</b>	Shipping Federation		
<b>December 9, 2019</b>	Canadian Tire		
<b>December 10, 2019</b>	Teamsters		
<b>January 23, 2020</b>	Global Pacific Resources		
<b>February 3, 2020</b>	Vancouver Fraser Port Authority		
<b>February 18 – 20, 2020 February 24 – 26, 2020</b>	<p>Licensee Consultation Sessions – attended by 39 companies</p> <table border="0"> <tr> <td data-bbox="529 837 1008 1478"> A-Can Transport  Aheer Transportation  AMK Carrier Inc.  Aquatrans Distributors Inc.  Bagri Bros. Enterprises Ltd.  Big Boss/Royal City Roadline Inc.  Can American Enterprises Ltd.  Canaan Shipping Co. Ltd.  Canada Drayage Inc.  Canada West Warehousing Ltd.  Canstar Trucking Co. Ltd.  CNTL  Ferndale Transport Ltd.  Forfar Enterprises Ltd.  Future Trucking Ltd.  Gantry/TSD Holding Inc.  Goodrich Transport Ltd.  GRL Freightways Ltd. </td> <td data-bbox="1008 837 1498 1478"> Gur-ish Trucking Ltd.  Harbour Link Container Services Inc.  Intertran Holdings Ltd.  MDW Express Transport Ltd.  Pro West Trucking Ltd.  Prudential/Provincial Transportation Ltd.  Rideway Transport Ltd.  Sahir Trucking Ltd.  Seaville Transport Logistics Ltd.  Simard Westlink Inc.  Supersonic Transport Ltd.  Trans/Tras BC/Raja Road Rail Services Ltd.  Unique Trucking Ltd.  Vicinity Transportation Ltd.  Villager Transport Ltd.  West Coast Freight </td> </tr> </table>	A-Can Transport Aheer Transportation AMK Carrier Inc. Aquatrans Distributors Inc. Bagri Bros. Enterprises Ltd. Big Boss/Royal City Roadline Inc. Can American Enterprises Ltd. Canaan Shipping Co. Ltd. Canada Drayage Inc. Canada West Warehousing Ltd. Canstar Trucking Co. Ltd. CNTL Ferndale Transport Ltd. Forfar Enterprises Ltd. Future Trucking Ltd. Gantry/TSD Holding Inc. Goodrich Transport Ltd. GRL Freightways Ltd.	Gur-ish Trucking Ltd. Harbour Link Container Services Inc. Intertran Holdings Ltd. MDW Express Transport Ltd. Pro West Trucking Ltd. Prudential/Provincial Transportation Ltd. Rideway Transport Ltd. Sahir Trucking Ltd. Seaville Transport Logistics Ltd. Simard Westlink Inc. Supersonic Transport Ltd. Trans/Tras BC/Raja Road Rail Services Ltd. Unique Trucking Ltd. Vicinity Transportation Ltd. Villager Transport Ltd. West Coast Freight
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<b>February 19, 2020</b>	Port Transportation Association		
<b>February 26, 2020</b>	Unifor		