



April 28, 2009

Minister Jim Bradley
Ministry of Transportation
Ferguson Block, 3rd Floor
77 Wellesley St. West
Toronto, Ontario
M7A 1Z8

Dear Minister:

Re: Federal Hours of Work

Enclosed for your review and consideration is the Canadian Urban Transit Association's (CUTA) response to a proposed amendment to the federal "Commercial Drivers Hours of Service" regulations to eliminate the current exemption for federally regulated public transit systems. As indicated in the regulatory impact analysis statement, Transport Canada intends to propose changes to provincial and territorial regulators to eliminate the transit exemption from the National Safety Code Hours of Service Standard No. 9, which would result in the Commercial Vehicle Driver Hours of Service regulation applying to all transit systems in Canada.

Ontario public transit systems not subject to federal jurisdiction (all systems excluding OC Transpo and Transit Windsor) fully support the CUTA position, for the reasons identified in the submission, that the Federal Government refrain from proposing changes to the provincial and territorial regulators amending the National Safety Code Hours of Service Standard No. 9 to remove the transit service exemption for all transit systems across Canada. Accordingly, Ontario transit systems are requesting the Ontario Government's support for maintaining the current exemption for Ontario transit systems should the Province receive a request to consider eliminating the exemption.

Further to the rationale set out in the CUTA submission, the request of Ontario transit systems of the Ontario Government is supported by:

- The excellent safety record of Ontario transit systems and the existence of ongoing programs to maintain and improve upon the record, noting that the Federal position is not supported by empirical evidence that removal of the exemptions will have any positive impact on health and safety or accident rates.
- Ontario has a comprehensive Employment Standards Act (ESA) which contains comparable hours of work provisions and requires the establishment of hours of work permits to be approved by the Ministry of Labour and signed by both the Union and

Employer (note: due to cross-border operations, Windsor and Ottawa are not subject to compliance with the ESA).

- Ontario has a comprehensive Occupational Health and Safety Act that obligates employers and employees to take every reasonable step to mitigate unsafe conditions.
- The ESA and provisions in the Highway Traffic Act for Hours of Service – while having a great deal of overlap – are different enough that they would require separate tracking and administration, thereby resulting in an unnecessary additional administrative burden. The establishment of additional administrative burden is inconsistent with the Ontario Government’s “Open for Business” initiative, intended to eliminate obsolete, duplicate, contradictory and/or competing requirements found in various Provincial regulations.

We would appreciate the opportunity to meet with you and/or your officials to discuss the hours of work issues. Your advice on a suitable date and time for such a meeting would be much appreciated.

Sincerely,



Larry Ducharme
Chair
CUTA Ontario Regional Committee



Kelly Paleczny
Chair
Ontario Public Transit Association

Enclosure

c.c. Minister Peter Fonseca – Ministry of Labour
Minister Jim Watson – Ministry of Municipal Affairs and Housing
Association of Municipalities of Ontario



Regulations Amending the Commercial Vehicle Drivers Hours of Service Regulations

Response to the Transport Canada
Regulatory Impact Analysis Statement

Canadian Urban Transit Association

April 2009

Introduction

The following submission outlines the Canadian Urban Transit Association's (CUTA) response to a Transport Canada regulatory proposal to amend the Commercial Vehicle Drivers Hours of Service regulations, as published in the 14 March 2009 issue of the Canada Gazette.

This submission is intended to demonstrate the fundamental commitment of Canadian transit systems to safety, transit's exemplary safety record, the unique nature of issues giving rise to the proposed amendment, and the importance of other existing provincial and territorial regulations governing transit systems with respect to work-rest rules and safety

As outlined in Vol. 143, No. 11 of the Canada Gazette, Transport Canada proposes to amend section 2, Application of the Commercial Vehicle Drivers Hours of Service Regulation by removing paragraph 2(1)(d). This would effectively end an exemption for the three transit systems operating under federal jurisdiction: OC Transpo, STO and Transit Windsor. All other transit systems operate entirely within one province or territory and are therefore under provincial or territorial regulations.

In addition, Transport Canada intends to propose changes to provincial and territorial regulators to eliminate the transit exemption from the National Safety Code Hours of Service Standard No. 9. This would result in the application of the Commercial Vehicle Drivers Hours of Service Regulation to all transit systems in Canada.

The CUTA Executive Committee has resolved that the three transit systems operating under federal jurisdiction are best able to respond directly to Transport Canada on the proposed amendments. Therefore, this submission is focused on the latter proposal by Transport Canada to provincial and territorial regulators to eliminate the transit exemption in all other transit systems that currently operate under provincial or territory jurisdiction.

Canadian Urban Transit Association

The Canadian Urban Transit Association represents the public transit industry in Canada and engages in a multitude of activities in support of its mission and goals. These include conferences, training, public affairs, awards, exhibitions, technical services, research, statistics and government relations.

Its mission is to establish public transit as the primary solution to urban mobility in the achievement of sustainable transportation, and to assist its members in the fulfillment of their mandates.

Membership is composed of transit systems, government agencies, manufacturers, consultants and affiliates. There are 120 transit system members at CUTA, which together represent over 90 percent of urban transit operations across Canada, in all ten provinces and two territories under a variety of operating conditions. System sizes range from 3 buses to over 1,500 buses mixed with streetcars, subways and other transit modes.

Safety at Canadian Transit Systems

The Canadian transit industry is committed to the safety of its customers, of its employees and of the general public. The safety priority permeates the culture of transit operations and is a centrepiece of day to day operations.

Canadian transit systems have developed extensive training programs which stress this safety culture and operating employees are provided with thorough training after initial employment, and participate in continual refresher training in areas such as defensive driving, health and safety, and customer service.

Transit systems participate in and comply with the occupational health and safety programs and regulations in their provinces or territories of operation, and in some cases under federal regulations, which in turn provide for safe and healthy workplaces. These values are constantly reinforced and instilled in the transit work environment.

Transit vehicles are subject to daily pre-trip inspections and rigorous preventive maintenance programs that are meant to ensure that vehicles are not only compliant with regulations, but ensure their safety and the safety of their occupants and other users of public roadways. A number of new initiatives, such as on-board security cameras, automated vehicle location systems and the introduction of transit special constables, have helped to further increase the safety of transit systems across Canada.

Canadian Transit Industry Vehicle Safety Record

In 2007, more than 39 million revenue vehicle hours were operated by bus, subway, light rail, commuter rail and ferry services across Canada. A majority of this service is provided by transit buses. The Canadian fleet of 13,746 transit buses operated over 700 million vehicle kilometres, with a total work force of 25,240 operators (bus drivers)¹. The average transit bus travels 50,924 km per year at an average operating speed of 22.4 km/h. Over 1.8 billion passengers were carried on Canadian urban transit buses in 2007, and on average, each transit bus carried close to 131,000 customers.

CUTA compiles safety statistics on a periodic basis, with the most recent available data being from 2003, in which year this information was assembled for transit systems operating in municipalities with populations greater than 150,000. A total of 1,190 vehicle contacts (collisions), with damage greater than \$1,000, were reported by these transit systems for 2003. The resulting vehicle contact rate was 1.7 per million revenue vehicle kilometres.

Based on these statistics, a frequent transit user² would be expected to experience a vehicle contact incident once every 1,557 years³ and, on average, a transit bus is

¹ Canadian Urban Transit Association (2008), Canadian Transit Fact Book – 2007 Operating Data.

² A frequent transit user is defined as 600 trips per year, or 50 trips per month.

³ Determined using 2003 ridership divided by 2003 vehicle contacts over \$1,000, and divided by number of trips per year by a frequent transit user (1,111,428,627 / 1,190 / 600)

involved in a vehicle contact once every 6.9 years⁴, or less than three times in its average lifespan.

Transport Canada Proposal

The regulatory proposal amending the Commercial Vehicle Drivers Hours of Service regulations by Transport Canada, as published in the 14 March 2009 issue of the Canada Gazette, presents arguments in favour of removing the transit exemption, but states that it has only undertaken a preliminary investigation.

Transport Canada's cost-benefit statement only reflects results anticipated for the Ottawa transit system. Due to the unique nature of OC Transpo work scheduling practices, it is unreasonable to expect similar favourable impacts – relating both to improvements in risk management and cost reductions – to accrue elsewhere in Canada, where systems operate under considerably different practices. In addition, as explained above, transit systems operating under provincial or territorial jurisdiction must comply with their respective Labour/Employment Standards legislation, which impose limitations on hours of work that approximate those in the federal regulations. *(An explanation of specifics to the OC Transpo work-rest scheduling system is provided in Annex 1 to this submission).*

The government has characterized the situation at the Ottawa transit system as alarming – a statement which cannot be translated into an industry crisis. In its own proposal, Transport Canada states it has only conducted a preliminary investigation and that there is an absence of collision data that are directly attributable to fatigue.

It has not been demonstrated that complying with the federal hours of service regulations presents a measurably higher level of safety than the status quo. Nor has it been demonstrated that such a change would result in efficiency gains in annual operating costs and fleet optimization. On the contrary, preliminary evidence from transit systems suggests that complying with an additional set of regulatory requirements on work-rest rules would incur increased costs to the public purse, primarily related to added crewing requirements and administrative needs.

Furthermore, commercial vehicle driver fatigue research referenced in the Transport Canada statement has been drawn from jurisdictions outside Canada or from other industries that have not been demonstrated to be applicable to the Canadian context.

Rigorous national data on transit safety (including vehicle contacts) that can be benchmarked over time is required to arrive at meaningful conclusions. In the absence of such data, Transport Canada is encouraged to develop and resource a robust safety research and reporting program.

⁴ Determined using 2003 Revenue vehicle hours divided by 2003 vehicle contact incidents with damage over \$1,000, and divided by the average number of kilometres per transit bus per year (419,164,117 / 1,190 / 50,924)

Existing Provincial and Territorial Regulations

With the exception of the Province of British Columbia, transit systems falling under provincial or territorial jurisdiction have the same exemption from provincial hours of service regulations as do the three that are federally regulated. They are nonetheless subject to provincial or territorial Labour / Employment Standard Acts. These acts, while different from the hours of service regulation, often accomplish a similar intent with provisions for minimum required hours of rest between work shifts and required rest periods on a weekly or fortnightly basis.

For example, transit systems in the province of Newfoundland and Labrador are subject to that province's Labour Standards Act. This legislation defines maximum hours by way of required rest: "an employee shall take not less than 8 consecutive hours off work in each unbroken 24 hour period of employment."⁵ Additionally, with respect to maximum work hours in a week/continuous time off in a week, the act makes provisions regarding a period of rest of not less than 24 consecutive hours during each week of employment.

In Ontario, all provincially regulated transit systems except for the Greater Toronto Transit Authority (GO Transit), are exempt from Ontario Regulation 555/06⁶ -- the provincial equivalent of the Commercial Vehicle Drivers Hours of Service regulation. These same transit systems are nonetheless subject to Ontario's Employment Standards Act (Ontario Regulation 390/05). This Act provides similar safeguards for safety and fatigue as the hours of service regulations by stipulating that an employer shall give an employee a period of at least eight consecutive hours free from performing work in each day⁷ and that an employer shall give an employee a period free from the performance of work equal to: (a) at least 24 consecutive hours in every work week; or (b) at least 48 consecutive hours in every period of two consecutive work weeks⁸.

Similarly, in Alberta, the Employment Standards Code stipulates that an employee's work hours "must fall within a 12-hour period in a workday unless an unforeseeable emergency occurs, and an employer must give an employee one day of rest each week, two consecutive days of rest in each period of two consecutive weeks, three consecutive days of rest in each period of three consecutive weeks and four consecutive days of rest in each period of four consecutive weeks."⁹

Likewise, the Saskatchewan Labour Standards Act provides that "no employer shall require an employee to work or to be at the disposal of the employer for periods that are scheduled so that the employee does not have a period of eight consecutive hours of

⁵ Newfoundland & Labrador Labour Standards Act, 1977 c52 s22; 2001 c33 s8; 2004 c47 s22

⁶ Ontario Highway Traffic Act, Regulation 555/06, s. 3 (1): A bus that is operated by or on behalf of a municipality as part of the municipality's public transit service, either within the municipality or within 25 kilometres of the boundary of the municipality.

⁷ Ontario Employment Standards Act, Regulation 390/05, s. 4 (2): An employer shall give an employee a period of at least eight consecutive hours free from performing work in each day.

⁸ 2000, c. 41, s. 18 (4): An employer shall give an employee a period free from the performance of work equal to: (a) at least 24 consecutive hours in every work week; or (b) at least 48 consecutive hours in every period of two consecutive work weeks. 2000, c. 41, s. 18 (4).

⁹ Alberta Employment Standards Code, 1996 cE-10.3 s16 and 1996 cE-10.3 s19

rest in any period of 24 hours, except in emergency circumstances.” “Furthermore, employers are required to “grant to every employee who is usually employed for 20 hours or more in a week a rest period of one day in every seven days.” “Where there are more than 10 employees in any establishment, the employer shall grant to every employee who is usually employed for 20 hours or more in a week a rest period of two consecutive days in every seven days, and one of those days is to be a Sunday wherever possible.”¹⁰

Collective agreements between transit systems (employers) and their respective employee unions also make provisions for the maximum spread of work schedules, often more stringent than relevant legislation. This constraint, similar to the Commercial Vehicle Drivers Hours of Service 16 hour maximum between the beginning and end of a work shift, limits the maximum hours between the start and end of an operator’s work schedule. The vast majority of collective agreements in force at Canadian transit systems specify a 12-hour spread limit. The maximum spread among CUTA member transit systems is 13.5 hours, and is found in only a limited number of instances¹¹.

Summary

Over 120 transit systems across Canada are members of CUTA and provide service to 22.8 million Canadians who reside in the service areas of these systems. In 2007, they provided over 700 million kilometres of revenue service and transported some 1.8 billion passenger trips.

Canadian transit systems have comprehensive safety training and operational procedures which provide a safe environment for work and travel. Programs such as defensive driving and occupational health & safety are examples of the dedication of the systems and their employees to providing safe and reliable service to all Canadians.

These initiatives are reflected in an enviable safety record. For example, a frequent transit user would not experience a transit vehicle contact (collision) during his or her lifetime. In fact, based on 2003 statistics, a frequent transit user would only experience a vehicle contact incident once every 1,557 years. On average, a transit bus is involved in a vehicle contact only once every 6.9 years.

Labour and Employment Standards Acts across the country – while different from the hours of service regulation – accomplish a similar intent by specifying minimum required hours between work shifts and required periods free from the performance of work.

Canadian transit systems remain committed to the safety of the riding public, its employees and those around it. Safety has been and will continue to be the primary focus of the Canadian public transit industry.

¹⁰ Saskatchewan Labour Standards Act, 1994, c.39, s.8; 2004, c.40, s.3.

¹¹ Canadian Urban Transit Association, Summary of Collective Agreements of Canadian Transit Systems (Operating and Maintenance Personnel), 2007.

The Canadian Urban Transit Association continues to believe that current practices at transit systems in Canada lead to safe working and operating environments and that removing the exemption for transit systems from the Commercial Vehicle Drivers Hours of Service Regulation would not yield any safety benefits. The situation at the Ottawa transit system may be alarming, but it cannot be translated into an industry crisis. Furthermore, removal of the exemption would lead to an additional set of regulatory requirements on work-rest rules that would increase costs, primarily related to added crewing requirements and administrative needs for a vast majority of transit systems. These costs would be borne largely by transit users and municipal governments, who currently cover the vast majority of transit operating costs.

For the reasons stated above, CUTA requests that the Government refrain from proposing changes to the other provincial and territorial regulators that would amend the National Safety Code Hours of Service Standard No.9 to remove the transit service exemption for all transit systems across Canada.

ANNEX 1

Ottawa Transit System (OC Transpo) Work-Rest Scheduling

The Transport Canada proposal refers to projected operating cost savings for the Ottawa transit system if the exemption for public transit is removed from the Commercial Vehicle Drivers Hours of Service Regulation. The Ottawa transit system's operating conditions are unique and there is no substantial evidence to suggest that conclusions about the Canadian transit industry in general can be based solely on experiences in the Ottawa environment. This is due to the nature of Ottawa's work scheduling system.

The process of assembling operating crews for bus drivers in Ottawa is unique in that pieces of work are created by the employees themselves, whereas in most other systems these are packaged into daily or weekly assignments by the employer. In nearly all cases, the resultant work pieces are produced following guidelines set out in the collective agreements and any applicable Labour/Employment standards. The operators are asked to select their preferred work based on seniority. This system maintains control of the work scheduling by the employer and permits safe work practices while minimizing annual operating costs and fleet optimization,

The work scheduling system currently in place in Ottawa is based on a collective agreement negotiated in 1999, which transferred the assembly of work pieces to the operators themselves. This measure enables employees to build their work pieces without the employer supervising the process and does not always provide the most efficient use of available resources. Operators with the most seniority typically create the most convenient work, usually with unbroken shifts and a guaranteed number of paid hours, or they will create work pieces that maximize premiums available in the collective agreement. The remaining work is composed of short runs that must be covered by operators with lower seniority. The result is that – while offering maximum employee flexibility –, a greater number of vehicles and operators is required, which increases capital and operational (service and maintenance) costs.