

# Port Transportation Association



Mr. Glen MacInnes  
Office of the British Columbia Container Trucking Commissioner  
1085 Cambie Street  
Vancouver, BC V6B 5L7

February 23, 2024

**RE: PTA Submission to the OBCCTC Addendum II to 2023 Rate Review Consultation Report - Overtime Calculation for Independent Operators**

Dear Mr. MacInnes,

The Port Transportation Association (PTA) has reviewed the Office of the British Columbia Container Trucking Commissioner Addendum II to 2023 Rate Review Consultation Report - Overtime Calculation for Independent Operators, and would like to address the additional proposals individually, as well as key notes and concerns that may have been overlooked in the proposals.

**Overtime Rate for I/Os Paid Hourly:**

Overtime Payment^	=	(Company Driver Hourly Rate x 1.5) + (Regular I/O Hourly Rate – Company Driver Hourly Rate)
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*^ More than 9 hours a day or 45 hours in a week. Only the first 9 hours in a workday will be calculated towards the 45 hours in a work week. Week is defined as Sunday to Saturday.*

*The PTA has consistently maintained that by moving all I/Os to an hourly based pay structure. This creates an easy and quickly verifiable calculation for payroll, reducing the risk of error.*

*The transition into an I/O hourly rate also simplifies the electronic tracking required for proper payroll.*

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*By paying I/Os on an hourly rate, this allows for compliance with the Regulation, and immediate payment for the hours worked by the I/O without delayed payment for any overtime worked.*

## **Overtime Rate for I/Os Paid by Trip Rate:**

Overtime Payment <sup>^</sup>	=	(Trip Rate Payments + PMR + Wait Time)*	OR	(IO Hourly Rate + IO Hourly Overtime Rate)*
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The I/O will be paid the greater of (1) the sum of the Trip Rate, PMR, and wait time earned during the same period of time as the wait time payment and (2) the I/O hourly rate for 9 hours plus the hourly overtime rate (as calculated for I/Os paid hourly) that would have been paid during the same period of time as the wait time payment.

*The PTA believes that while the calculations proposed are a fair determination of an overtime rate, the fact that two calculations are required for the final payment will create unnecessary work and a risk of inadvertent error. I/Os will need to have systems set up for electronic tracking for both trip and hourly.*

*There is also the issue of fairness. Due to the Regulation and the inability to use a hybrid payroll model, changes would need to be made and drivers on a trip-based pay system would see overtime payments delayed by 90 days, unlike their hourly paid counterparts who would be receiving their overtime payments in a timely manner, making it easier for them to reconcile their statements and catch any errors.*

## **New Rate In Lieu of Overtime:**

*The PTA believes that the implementation of overtime is preferred to setting a new rate in lieu of overtime. Not only would a new rate extend the length of time before implementation and be an additional cost of an empirical study of the average overtime, the PTA worries that without the use of overtime, I/Os will still risk being subject to unfair dispatching.*

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The PTA understands that there were previous objections to the transition to an all-hourly model, however we would like to encourage this proposal to be revisited. There has been a significant rate increase since the suggestion was first broached in 2018, and with the implementation of overtime, a simplified pay structure and no delay in overtime payment make the transition more attractive to both I/O and Licensee.

To ensure compliance and eliminate risk of confusion for Licensees, the PTA would like the OBCCTC to publish the test that will be used by its auditors in audits and investigations to determine whether an I/O falls within the employee category or independent contractor category for overtime before or with the revised Rate Order.

When creating parameters of this test for auditors, the PTA would like to stress that for an I/O to truly be 'self-employed' they would be operating units under their own operating authority and insurances (NSC, cargo insurance, non-owned trailer insurance, etc.) with their own company names on the trucks and the ability to work for other carriers within the TLS or out of the TLS.

Without meeting the above criteria, the drivers are in-fact company drivers.

We don't believe that a wait and see approach (Audit) to stress test companies as I/Os is appropriate. Companies that want to be compliant deserve to have the rules of engagement set out for them and the option to follow them accordingly. Companies that do not have a clear understanding of what tests an I/O could be on the hook for millions of dollars, thus creating instability within the system.

The Commissioner has the authority to set rates and is not required to fall in line with the ESA, both provincially and federally.

This has already been demonstrated by compelling companies that are federally regulated to adhere to provincially regulated overtime hours.

The PTA would also like to note that with the current regulations, I/Os are running under the company's NSC authority and are not able to conduct freelance work, and as well operating

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under the company's Port issued tags that are non-transferable. Another easy option would be to look at whether the I/Os have any other work, other than for the licensee, that is known and approved by the licensee; when the answer is "NO", then the I/O is a reliant licensee. These two points should serve as a clear-cut reminder to everyone that I/Os are tied to these companies and depended on them for their daily work.

Thank you for your consideration.

Sincerely,

Sharn Gill, Harry Rattan, Tom Johnson, Sucha Seikhon, Gurveen Bath  
2024 Board of Directors  
Port Transportation Association

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## About the Port Transportation Association

The Port Transportation Association (PTA) was founded in 2019 to advocate for Vancouver drayage companies during industry changes initiated by the Vancouver Fraser Port Authority and The Office of the British Columbia Container Trucking Commissioner.

The PTA has since grown to expand its focus to include industry safety, terminal fairness, and overall improvement to Canada's supply chain.

As of 2024, the PTA represents more than 50% of VFPA's approved local dray companies within the TLS system, and approximately 50% of all active tags.

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P.O. Box 1791 Parksville, BC V9P 2H6

778-228-0544

[administration@ptavancouver.com](mailto:administration@ptavancouver.com)

<https://ptavancouver.com/>

*For transparency and industry purposes, the PTA intends to distribute all content and post all meaningful dialogue on our website, to be viewed by both industry and the public.*

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