



HEAVY VEHICLE NATIONAL LAW

Amendment to National Heavy Vehicle Accreditation Scheme 2021 (No.1)

1. Purpose

Pursuant to section 654(2) of the Heavy Vehicle National Law (the HVNL), this instrument gives notice of minor amendments made to the National Heavy Vehicle Accreditation Scheme (the NHVAS). The amendments consist of COVID-19 related measures relating to the remote conduct of audits by NHVAS third party auditors.

Note: The amendments and related materials are also published on the NHVH's website.

2. Authorising provisions

The minor amendments that are the subject of this instrument are made pursuant to the following provisions of Chapter 12 of the HVNL:

Section 654 – Responsible Minister's powers to approve or amend a scheme; and
Section 655A – Delegation by responsible Ministers

3. Amendments

- 1) The minor amendments subject of this instrument were approved by the Board of the National Heavy Vehicle Regulator on 4 August 2021.
- 2) The amendments are provided in the following schedules to this instrument, being:

Schedule 1: Temporary minor amendment of criteria for Standard 2 'Fitness for Duty' of the 'Basic Fatigue Management (BFM) Standards' in 'Appendix 1: The Standards' of the NHVAS Business Rules and Standards (Version 2.4, August 2019) and Standard 2 'Readiness for duty' of the AFM Standards (reference: NHVR0146-1-201807).

Schedule 2: Temporary minor amendment of criteria for Standard 2 'Health and wellbeing for performed duty' of 'Appendix 3: Fatigue Management Standards' in the NHVAS Business Rules and Standards (Version 3.1, June 2021)

Schedule 3: Temporary minor amendments to the National Heavy Vehicle Accreditation Scheme: Business Rules and Standards (Version 2.4, August 2019) rule 13 and to the Advanced Fatigue Management Business Rules (Version 1.2, November 2013) rule 4.4. (Version 1.2, November 2013) rule 4.4.

Schedule 4: Temporary minor amendments to the National Heavy Vehicle Accreditation Scheme: Business Rules and Standards (Version 3.1, June 2021), rule 21.

DATED: 14 October 2021

Steven Miller
Director, Service Delivery
National Heavy Vehicle Regulator

Schedule 1

National Heavy Vehicle Accreditation Scheme (NHVAS)

Sections 654 and 655A of the Heavy Vehicle National Law

Temporary minor amendment of criteria for Standard 2 'Fitness for Duty' of the 'Basic Fatigue Management (BFM) Standards' in 'Appendix 1: The Standards' of the NHVAS Business Rules and Standards (Version 2.4, August 2019) and Standard 2 'Readiness for duty' of the AFM Standards (reference: NHVR0146-1-201807).

Background

1. The COVID-19 pandemic limits the ability of operators under the National Heavy Vehicle Accreditation Scheme (NHVAS) Advanced Fatigue Management (AFM) and Basic Fatigue Management (BFM) modules to (1) ensure drivers are booked into and secure a mandatory medical examination in a timely manner and (2) consequently comply with criteria in the NHVAS Business Rules and Standards (Version 2.5, August 2019) and AFM Standards (reference: NHVR0146-1-201807) to that effect.

Approved Minor Amendments – BFM

2. The NHVR Board approves minor amendment to the criteria in numbered paragraph 2.1 of 'Basic Fatigue Management (BFM) Standards' under 'Appendix 1: The Standards' of the NHVAS Business Rules and Standards (Version 2.4, August 2019) as follows (the amendment appears in underlining):
 - 2.1 drivers are certified as being fit to drive a heavy vehicle by a medical practitioner according to the Assessing Fitness to Drive by Austroads (or equivalent document approved by the Australian Transport Council). The examination must include an assessment to detect drivers in the high risk group for sleep disorders. Examinations are to be conducted, as a minimum, once every three (3) years for drivers aged 49 or under, and yearly for drivers aged 50 or over.
 - 2.1A However should a certification of a driver have expired, given the COVID-19 pandemic and limited availability of medical practitioners, the expired certification is taken to satisfy the criteria in clause (1), provided that the certification expired on or after 31 July 2021 and under the expired certification the driver was certified as fit to drive according to the Assessing Fitness to Drive by Austroads (or equivalent document approved by the Australian Transport Council).
 - 2.1B Notwithstanding clause 2.1A, as soon as reasonably practicable (for instance, if medical practitioners are or become reasonably available), operators must ensure that drivers are certified as being fit to drive a heavy vehicle by a medical practitioner as outlined in clause 2.1.
3. This amendment is effective as of 13 August 2021, expiring on 30 January 2022, after which it will lapse.

Approved Minor Amendments – AFM

4. The NHVR Board approves minor amendment to the criteria in numbered paragraph 7.1 of 'Health' in the AFM Standards (reference: NHVR0146-1-201807) as follows (the amendment appears in underlining):
 - 7.1 drivers are certified as being fit to drive a heavy vehicle by a medical practitioner according to the Assessing Fitness to Drive by Austroads (or equivalent document approved by the Australian Transport Council). The examination must include an assessment to detect drivers in the high risk group for sleep disorders. Examinations are to be conducted, as a minimum, once every three years for drivers aged 49 or under, and yearly for drivers aged 50 or over.
 - 7.1A However should a certification of a driver have expired, given the COVID-19 pandemic and limited availability of medical practitioners, the expired certification is taken to satisfy the criteria in clause (1), provided that the certification expired on or after 31 July 2021 and under the expired certification the driver was certified as fit to drive according to the Assessing Fitness to Drive by Austroads (or equivalent document approved by the Australian Transport Council).
 - 7.1B Notwithstanding clause 7.1A, as soon as reasonably practicable (for instance, if medical practitioners are or become reasonably available), operators must ensure that drivers are certified as being fit to drive a heavy vehicle by a medical practitioner as outlined in clause 7.1.
5. This amendment is effective as of 13 August 2021, expiring on 30 January 2022, after which it will lapse.

Authority

6. The NHVR Board is authorised to make the approvals herein by delegation of the responsible Ministers pursuant to section 655A of the Heavy Vehicle National Law.

Declaration

Delegate of the National Heavy Vehicle Regulator

Schedule 2

National Heavy Vehicle Accreditation Scheme (NHVAS)

Sections 654 and 655A of the Heavy Vehicle National Law

Temporary minor amendment of criteria for Standard 2 'Health and wellbeing for performed duty' of 'Appendix 3: Fatigue Management Standards' in the NHVAS Business Rules and Standards (Version 3.1, June 2021)

Background

1. The COVID-19 pandemic limits the ability of operators under the National Heavy Vehicle Accreditation Scheme (NHVAS) Advanced Fatigue Management (AFM) and Basic Fatigue Management (BFM) modules to (1) ensure drivers are booked into and secure a mandatory medical examination in a timely manner and (2) consequently comply with criteria in the NHVAS Business Rules and Standards (Version 3.1, June 2021) to that effect.

Approved Minor Amendments

2. The NHVR Board hereby approves minor amendment to the criteria in paragraph '(1)' under 'Criteria' of Standard 2 'Health and wellbeing for performed duty' in 'Appendix 3: Fatigue Management Standards' of the NHVAS Business Rules (Version 3.1, June 2021) as follows (the amendment appears in underlining):
 - (1) Drivers are certified as being fit to drive a heavy vehicle by a medical practitioner according to Austroads' Assessing Fitness to Drive guidelines (or an equivalent document approved by the NHVR). The examination must include an assessment to detect drivers in the high risk group for sleep disorders. Examinations are to be conducted, as a minimum, once every three (3) years for drivers aged 49 or under, and yearly for drivers aged 50 or over.
 - (1A) However should a certification of a driver have expired, given the COVID-19 pandemic and limited availability of medical practitioners, the expired certification is taken to satisfy the criteria in clause (1), provided that the certification expired on or after 31 July 2021 and under the expired certification the driver was certified as fit to drive according to Austroads' Assessing Fitness to Drive guidelines (or equivalent document approved by the NHVR).
 - (1B) Notwithstanding clause (1A), as soon as reasonably practicable (for instance, if medical practitioners are or become reasonably available), operators must ensure that drivers are certified as being fit to drive a heavy vehicle by a medical practitioner as outlined in clause (1).
3. This amendment is effective as of 13 August 2021, expiring on 30 January 2022, after which it will lapse.

Authority

4. The NHVR Board is authorised to make the approvals herein by delegation of the responsible Ministers pursuant to section 655A of the Heavy Vehicle National Law.

Declaration

Delegate of the National Heavy Vehicle Regulator

Schedule 3

National Heavy Vehicle Accreditation Scheme (NHVAS) Business Rules Temporary Change to auditing

Sections 654 and 655A of the Heavy Vehicle National Law

Temporary minor amendments to the National Heavy Vehicle Accreditation Scheme: Business Rules and Standards (Version 2.4, August 2019) rule 13 and to the Advanced Fatigue Management Business Rules (Version 1.2, November 2013) rule 4.4.

Background

1. The COVID-19 pandemic restricts the ability of auditors to conduct on-site or in-person audits, as required by rule 13.7 of the National Heavy Vehicle Accreditation Scheme: Business Rules and Standards (Version 2.4, August 2019) (NHVAS Business Rules and Standards) and rule 4.4 of the Advanced Fatigue Management Business Rules (AFM Business Rules) (Version 1.2, November 2013).

Approved Minor Amendment – Rule 13.7 of the NHVAS Business Rules and Standards

2. The National Heavy Vehicle Regulator Board (the NHVR Board) approves minor amendment to rule 13.7 of the NHVAS Business Rules and Standards, being as follows (the amendment appears in underlining):
 - 13.7 The NHVAS auditor must carry out the compliance audits in person and not by telephone.
 - 13.7A However given the COVID-19 pandemic and restrictions upon movements and risks of exposure to coronavirus, should an NHVAS auditor consider that it is not reasonably practicable for the auditor to carry out the compliance audits in person, the NHVAS auditor may conduct audits remotely as the NHVAS auditor considers reasonably necessary, which may include:
 - a) Any documents or records that the auditor requires (whether for validation or otherwise) are made available electronically;
 - b) Conducting any interviews or enquires by telephone or other means;
 - 13.7B However, the Audit Summary report must record how the audit was conducted, the reason for conducting any aspect of the audit remotely, and a description of how records were made available for analysis and the names of the persons interviewed during the audit
3. This amendment is effective as of 13 August 2021, expiring on 31 January 2022, after which it will lapse.

Approved Minor Amendment – Rule 4.4.4 of the AFM Business Rules

4. The NHVR Board approves minor amendment to rule 4.4.4 of the NHVAS Business Rules and Standards, being as follows (the amendment appears in underlining):

4.4.4 Compliance audits must be carried out using the approved audit matrix, in person, not by telephone. An audit statement/matrix is valid for one year after the audit was conducted unless the participant or applicant makes changes to their Fatigue Management System after a quarterly internal review. If the Fatigue Management System is changed, all previous audit statements expire and the participant must obtain a new audit statement/matrix for future applications.

4.4.4A However given the COVID-19 pandemic and restrictions upon movements and risks of exposure to coronavirus, should an NHVAS auditor consider that it is not reasonably practicable for the auditor to carry out the compliance audits in person, the NHVAS auditor may conduct audits remotely as the NHVAS auditor considers reasonably necessary, which may include:

- a) Any documents or records that the auditor requires (whether for validation or otherwise) are made available electronically;
- b) Conducting any interview or enquiries by telephone or other means;

4.4.4B However, the Audit Summary report must record how the audit was conducted, the reason for conducting any aspect of the audit remotely, and a description of how records were made available for analysis and the names of the persons interviewed during the audit.

5. This amendment is effective as of 13 August 2021, expiring on 31 January 2022, after which it will lapse.

Final

6. The NHVR Board is authorised to make the approvals herein by delegation of the responsible Ministers pursuant to section 655A of the Heavy Vehicle National Law.

Declaration

Delegate of the National Heavy Vehicle Regulator

Schedule 4

National Heavy Vehicle Accreditation Scheme (NHVAS) Business Rules Temporary Change to auditing

Sections 654 and 655A of the Heavy Vehicle National Law

Temporary minor amendments to the National Heavy Vehicle Accreditation Scheme: Business Rules and Standards (Version 3.1, June 2021), rule 21.

Background

1. The COVID-19 pandemic restricts the ability of auditors to conduct on-site or in-person audits, as currently required by rule 21 (5) of the National Heavy Vehicle Accreditation Scheme (NHVAS), Business Rules and Standards (Version 3.1, June 2021).

Approved Temporary Minor Amendment – Rule 21 (5) of the NHVAS Business Rules and Standards

2. The National Heavy Vehicle Regulator Board (the NHVR Board) approves a temporary minor amendment to rule 21(5) of the NHVAS Business Rules and Standards as follows (the amendment appears in underlining):

21(5) The NHVAS auditor must carry out the entry and compliance audits in person and not by telephone.

21(5A) However given the COVID-19 pandemic and restrictions upon movements and risks of exposure to coronavirus, should an NHVAS auditor consider that it is not reasonably practicable for the auditor to carry out the compliance audits in person, the NHVAS auditor may conduct audits remotely as the NHVAS auditor considers reasonably necessary, which may include:

- a) Any documents or records that the auditor requires (whether for validation or otherwise) are made available electronically or otherwise;
- b) Conducting any interviews or enquires by telephone or other means;

21(5B) However, the Audit Summary report must record how the audit was conducted, the reason for conducting any aspect of the audit remotely, and a description of how records were made available for analysis and the names of the persons interviewed during the audit.

3. This amendment is effective as of 13 August 2021, expiring on 31 January 2022, after which it will lapse.

Final

4. The NHVR Board is authorised to make the approvals herein by delegation of the responsible Ministers pursuant to section 655A of the Heavy Vehicle National Law.

Declaration

Delegate of the National Heavy Vehicle Regulator