

O.I.C. 2002/67
INTERGOVERNMENTAL AGREEMENTS ACT

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Pursuant to section 3 of the Intergovernmental Agreements Act, the Commissioner in Executive Council orders as follows:

1 The Minister responsible for the Department of Community and Transportation Services is hereby authorized to sign on behalf of the Government of the Yukon, the National Safety Code Contribution Agreement between Canada and the Yukon Territory, attached as a Schedule to this Order.

Dated at Whitehorse, in the Yukon Territory, this 25th day of March, 2002.

Commissioner of the Yukon

DÉCRET 2002/67
LOI SUR LES ACCORDS
INTERGOUVERNEMENTAUX

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Le commissaire en conseil exécutif, conformément à l'article 3 de la Loi sur les accords intergouvernementaux, décrète ce qui suit :

1 Le ministre responsable du ministère des Services aux agglomérations et du Transport est par les présentes autorisé à signer, pour le compte du gouvernement du Yukon, l'Accord de financement concernant le Code national de sécurité conclu entre le Canada et le territoire du Yukon, paraissant en annexe.

Fait à Whitehorse, dans le territoire du Yukon, ce 25 mars 2002.

Commissaire du Yukon

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CONTRIBUTION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____ 2002

BETWEEN:

**HER MAJESTY THE QUEEN IN
RIGHT OF CANADA**

herein represented by the Minister of
Transport (hereinafter referred to as
"Minister")

AND

GOVERNMENT OF YUKON

as represented by the Minister of
Community and Transportation Services
(hereinafter referred to as the "Recipient")

WHEREAS the federal, provincial and territorial governments desire to foster a safe, economic, efficient and adequate national transportation system;

AND WHEREAS the Council of Ministers Responsible for Transportation and Highway Safety, in March 1987, agreed on the desirability to establish uniform standards governing the safe operation of commercial vehicles nationally and internationally, and adopted the National Safety Code (NSC), a series of standards to ensure motor carrier safety throughout Canada;

AND WHEREAS the provinces and territories in December 1997 approved NSC Standard #14 - Safety Rating, rating which prescribes the assignment of a safety performance rating to all bus and truck carriers;

AND WHEREAS current federal motor carrier regulatory reform initiatives will focus on safety performance assessments based on the NSC and will require the consistent application of safety standards across Canada; and more specifically will require provinces and territories to issue a safety fitness certificate to extra-provincial carriers which have an appropriate safety rating in accordance with NSC Standard #14;

AND WHEREAS Standard #14 requires that "Satisfactory"; "Conditional", and "Unsatisfactory" safety ratings normally incorporate the results of a facility audit undertaken according to NSC Standard #15 Facility Audit;

AND WHEREAS the value of facility audit in determining the safety performance of a motor carrier is well recognized by researchers and regulators;

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AND WHEREAS the federal government is prepared to continue to provide financial assistance to the provincial/territorial jurisdictions to achieve consistent implementation of the NSC (in particular Standard #14), including the undertaking of facility audits;

AND WHEREAS Performance Objectives are regarded as an indication of the extent to which jurisdictions have achieved the foregoing;

AND WHEREAS the Minister and Recipient agree that it is practical and desirable for the Minister and Recipient to enter into an Agreement whereby the Minister would contribute financially to the consistent implementation of NSC standards, including the undertaking of facility audits in accordance with NSC Standard #15 Facility Audits, in Yukon;

AND WHEREAS the Governor in Council by Order in Council No. P.C. 2001-765 dated April 27, 2001 has authorized the Minister to execute this Agreement;

AND WHEREAS the Commissioner in Executive Council by Order in Council No. _____ dated _____, has authorized the Minister of Community and Transportation Services to execute this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and covenants contained herein, the parties agree as follows:

1. DEFINITIONS

In this agreement, "Base Jurisdiction" means the jurisdiction where the commercial vehicle is plated.

"Commercial Vehicle" means a truck, tractor, or trailer or combination thereof exceeding a registered gross vehicle weight of 4,500 kg or a bus, designed constructed and used in the transportation of passengers with a designated seating capacity of more than 10, including the driver, but excluding operation for personal use.

"Conviction" means any violation where the driver or carrier is prosecuted and found guilty, notwithstanding any appeals.

"Detention" means any violation that results in the driver or commercial vehicle being placed out of service according to Commercial Vehicle Safety Alliance (CVSA) criteria.

"Driver" means any person who drives a commercial vehicle subject to the National Safety Code.

"Eligible Costs" means the costs directly incurred by Recipient, to discharge the undertakings detailed in section 3 and subsection 5.2 hereof, as determined in accordance with generally accepted accounting principles, consistently applied.

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“Extra Provincial Carrier” means any carrier subject to the provisions of the *Motor Vehicle Transport Act 1987*, as amended from time to time.

“Facility Audit” means an assessment of the safety performance of a motor carrier in accordance with the provisions of NSC Standard #15, Facility Audits.

“Fiscal Year” means the period starting on April 1st of any year and ending on March 31st of the following year.

“Fleet Size” means the number of commercial vehicles under the carrier’s responsibility.

“Motor Carrier” means an entity that owns, leases or is responsible for the operation of a Commercial Vehicle for the purpose of transporting passengers or goods.

“NSC Standards” means the standards of the National Safety Code for Motor Carriers, as approved by the Canadian Council of Motor Transport Administrators.

“Performance Objectives” means the performance objectives and information elements listed in Schedule “A”.

“Reportable Accident” means any accident involving a commercial vehicle that is required to be reported to the police.

2. PURPOSE

The purpose of this Agreement is to establish the terms and conditions by which the Minister is to provide a financial contribution to the Recipient towards the administration, consistent application and enforcement of the NSC motor carrier safety standards, including the undertaking of Facility Audits, to Motor Carriers in the Recipient’s Jurisdiction.

3. UNDERTAKINGS

3.1 The Recipient undertakes to proceed diligently, at all times during this agreement, as it relates to all intra and extra provincial Motor Carriers operating in Recipient’s Jurisdiction, to:

(i) the administration, application, and enforcement of the NSC Standards outlined in subsection 3.2, and

(ii) the fulfillment of all the Performance Objectives related to the application of these NSC Standards, as specified in Schedule “A”

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3.2 The NSC Standards to be applied, administered and enforced in respect of intra and extra-provincial/territorial Motor Carriers operating in Recipient's Jurisdiction are:

(1) Carrier Profiles [NSC Standard #7]

Recipient shall ensure the operation of a system to create and maintain carrier profiles as specified in NSC Standard #7.

(2) Commercial Vehicle Safety Alliance (CVSA) On-Road Inspections [NSC Standard #12]

Recipient shall ensure the operation of a system for the application of CVSA criteria for the on-road inspection of vehicles and drivers.

(3) Safety Rating [NSC Standard #14]

Recipient shall ensure the operation of systems and procedures as specified in NSC Standard #14, required to issue a carrier safety rating, all in accordance with the issuance of a motor carrier Safety Fitness Certificate.

(4) Facility Audits [NSC Standard #15]

Recipient shall ensure the operation of a system whereby carriers are audited for compliance with applicable safety requirements as specified in NSC Standard #15.

4. FINANCIAL CONTRIBUTION

4.1 Subject to annual appropriations by the Parliament of Canada of the funds to be contributed, the Minister shall, in accordance with the terms stipulated herein, contribute a maximum total of \$523,520 apportioned in four (4) consecutive maximum yearly allotments commencing in Fiscal Year 2000/01 and terminating in Fiscal Year 2003/04 as set out hereunder

<u>2000/01</u>	<u>2001/02</u>	<u>2002/03</u>	<u>2003/04</u>
\$0	\$174,506.67	\$174,506.67	\$174,506.66

towards Eligible Costs incurred by Recipient to discharge the undertakings described in Section 3 and subsection 5.2 hereof.

4.2 In the event that Transport Canada departmental funding levels are changed by Parliament at any time while this Agreement is in force, the Minister shall be entitled to-reduce or otherwise cancel the contribution payable hereunder.

5. PAYMENT PROCEDURES

5.1 Within three (3) months of the termination of each Fiscal Year, or, at Recipient's option, within three (3) months of the termination of each six (6) month period forming part of each Fiscal Year, Recipient shall submit to the Minister, in a form

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satisfactory to the Minister, one (1) claim, supported by accounting statement(s), detailing the Eligible Costs incurred by Recipient during the preceding year or six (6) month period, as the case may be, to discharge the undertakings described in section 3 and subsection 5.2 hereof, as applicable, and certified by a senior financial officer of Recipient to be true and correct, and accompanied by such relevant invoices, vouchers and other documentation as the Minister may require. The yearly claim, or the two (2) half-yearly claims thus submitted by Recipient, shall not exceed the maximum yearly allotment stipulated in subsection 4.1 hereof for the corresponding year.

- 5.2 Within six (6) months of the termination of each Fiscal Year, Recipient shall submit a progress report to the Minister outlining Recipient's progress during the preceding Fiscal Year in carrying out the undertakings more fully described in Schedule "A" hereof.
- 5.3 All conditions for payment relating to a Fiscal Year, as noted in subsections 5.1 and 5.2, must be met, or resolved by mutual agreement between the Minister and Recipient, in order for any payment to be made.

6. RECORDS AND AUDITS

- 6.1 Recipient shall maintain adequate records of all Eligible Costs incurred and undertakings fulfilled pursuant to this Agreement, supported by the proper documents, and shall make such records and documents available for the purposes of an audit at the request of the Minister, such audit to be conducted by a party selected or approved by the Minister. The records and documents shall, upon reasonable notice by the Minister, be made available at all times during the term of this Agreement and two years following the termination or expiry thereof.
- 6.2 Any discrepancy between the amounts paid by the Minister and the amounts payable by the Minister shall be promptly adjusted by the parties.
- 6.3 Where the Minister contests any amount submitted by Recipient in a claim as payable pursuant to the terms hereof, the Minister shall so notify Recipient and provide an opportunity to Recipient to confirm or verify the claim or any part thereof contested by the Minister.
- 6.4 Without prejudice to any other remedy available to the Minister, where the Minister establishes, and by notice in writing to Recipient declares, that an overpayment has been made under this Agreement, or that a sum contributed has not been expended or incurred by Recipient to discharge its undertakings as detailed in section 3 and subsection 5.2 hereof, or has otherwise been disallowed as an Eligible Cost hereunder, the amount of such overpayment, unexpended balance or disallowed expense shall constitute a debt due to Her Majesty the Queen in right of Canada and

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be reimbursed forthwith, on demand, to the Minister. Alternatively, any amount thus determined to have been overpaid by the Minister may be deducted from, or offset against, any amounts payable by the Minister hereunder. Any debt remaining owing and unpaid shall carry interest calculated and compounded monthly at the average bank rate, within the meaning of such expression as contained in the *Interest and Administrative Charges Regulations*, SOR/96-188, plus three percent, from the due date to the settlement date.

7. DEFAULT

7.1 The following constitute Events of Default under this Agreement, if during this Agreement:

- a) Recipient submits false or misleading information to the Minister which would materially adversely affect this Agreement; or
- b) Recipient is in default under any material provision of this Agreement and which default is not cured or begun to be cured within twenty (20) day-written notice by the Minister to Recipient; provided, however, that if the nature of the default is such that more than twenty (20) days are reasonably required for its cure, then Recipient shall not be in default if it commences to cure said default within the said twenty (20) day period and diligently pursues completion of such curative measures.

7.2 If an Event of Default has occurred and is continuing, the Minister may, at his discretion, by written notice communicated to Recipient, exercise any of the following remedies:

- a) terminate any obligation by the Minister under this Agreement; and
- b) direct Recipient to repay forthwith all or part of the contribution.

8. COMMUNICATIONS

8.1 The Minister and Recipient agree that all arrangements covering public information in this agreement shall be consistent with any objective and policy guidelines of the Minister and Recipient.

8.2 Any notice or other communication with respect to this Agreement shall be effectively given if delivered or sent by registered letter, or fax addressed

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- a) in the case of the Minister to

Mr. Derek Sweet
Director General
Road Safety Directorate (ASF)
Transport Canada
330 Sparks St., Tower C, 8th Floor
Ottawa, Ontario
K1A 0N5

Fax: (613) 990-2914

- b) in the case of Recipient to

Ms. Jennie Howie
Director, Transport Services and Registrar of Motor Vehicles
Department of Community and Transportation Services
Government of Yukon
Lynn Building
308 Steele St., 2nd Floor
Whitehorse, YT
Y1A 2C6

Fax: (867) 393-6404

9. GENERAL

- 9.1 This agreement shall have effect retroactive to April 1, 2000.
- 9.2 Subject to 9.3, this agreement may be amended as mutually agreed in writing by the Minister and Recipient.
- 9.3 Any amendment to sections 2,3,6 and subsection 4.1 of this Agreement shall require the prior approval of the Governor in Council.
- 9.4 Nothing in this Agreement is intended to alter the respective jurisdiction of the parties over transportation undertakings or over regulatory or other matters referred to herein.
- 9.5 Notwithstanding any other provision in this Agreement, all obligations of the Minister incurred by virtue of this agreement shall be subject to section 40 of the *Financial Administration Act* (Canada).
- 9.6 No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

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- 9.7 No current or former public office holder or public servant who is not in compliance with the *Conflict of Interest and Post-employment Code for Public Office Holders* (Canada) or the *Conflict of Interest and Post-employment Code for the Public Service* (Canada) shall derive a direct benefit from this Agreement.
- 9.8 Schedule "A" forms an integral part of this Agreement.

IN WITNESS THEREOF this Agreement has been executed on behalf of Her Majesty the Queen in right of Canada, by the Minister of Transport, and on behalf of the Government of the Yukon, by the Minister of Community and Transportation Services, through their duly authorized representatives, on the date first above written.

**HER MAJESTY THE QUEEN IN
RIGHT OF CANADA**
as represented by the, Minister of Transport

Witness

Per: _____
Derek Sweet, Director General
Road Safety Directorate

GOVERNMENT OF YUKON
As represented by the Minister of
Community and Transportation Services

Witness

Per: _____

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SCHEDULE "A"

The Performance Objectives to be fulfilled by the Recipient pursuant to subsection 3.1 ii of this Agreement are:

- A. To improve safety by implementing NSC Standard #14 - Safety Rating such that comparable carrier performance results in a similar safety rating in every jurisdiction in Canada, including:

1. transmitting electronically to other jurisdictions timely reportable accident, conviction, and detention information respecting the safety performance of carriers base-plated in such other jurisdictions; and incorporating similar data from other jurisdictions in the safety ratings of carriers base-plated in the Yukon Territory;
2. producing and assigning a current safety rating to every carrier base plated in the Yukon Territory;
3. conducting a minimum annual number of Facility Audits on extra-provincial carriers (per NSC Standard #15) as follows:

<u>2000/01</u>	<u>2001/02</u>	<u>2002/03</u>	<u>2003/04</u>
1	1	3	3

4. conducting a minimum annual number of CVSA Inspections, Levels #1-5 as follows:

<u>2000/01</u>	<u>2001/02</u>	<u>2002/03</u>	<u>2003/04</u>
562	562	562	562

- B. To collect and annually transmit to Transport Canada, by June 30th, for the previous Fiscal Year, performance data as below:

(a) number of base-plated extra-provincial motor carriers (truck and bus; by fleet size category (per NSC Standard #15));

(b) number of base plated intra-provincial motor carriers (truck and bus; by fleet size category (per NSC Standard #15));

(c) number (full-time equivalent positions) of in-house enforcement personnel (for each of roadside and facility audit activities);

(d) number of safety fitness certificates issued (new entrant, renewal);

(e) safety rating threshold levels and any changes in past year;

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- (f) number of carriers per rating category at March 31 (satisfactory; satisfactory unaudited; conditional; unsatisfactory) by fleet size category;
 - (g) number of carriers whose rating changed, by rating category (from _____ to _____);
 - (h) number of reportable accidents/collisions;
 - (i) number of convictions by rating factor (driver license (NSC Standards #1; #4); hours of service (NSC Standard #9); vehicle maintenance (NSC Standards #11; #12; #13); load security (NSC Standard #10); transport of dangerous goods; weights and dimensions);
 - (j) number of ratings incorporating out of territory performance data;
 - (k) number of out of territory carriers for which performance data was transmitted to base jurisdiction (by jurisdiction);
 - (l) number of CVSA inspections (by level #1-5);
 - (m) number of facility audits.
- C. To participate in national or regional meetings and/or studies at the request of Transport Canada or the territory, and as mutually agreed.