



**NZ TRANSPORT AGENCY**  
WAKA KOTAHI

## **NZ Transport Agency**

# **Work Time Variation for Critical Agricultural Operations**

**20 December 2010 (Revised September 2012)**

## **This document**

This document outlines what the NZ Transport Agency (the Agency) must consider before granting an agricultural contractor a variation of work time hours. It also details the conditions and terms the Agency may apply to any work time variation it issues.

This document is **not** a variation and has no legal effect.

A variation must be:

- Applied for in writing by an agricultural contractor
- Approved by in writing and issued to that person by the Agency before it can be used

## **Purpose**

The purpose of this variation is to enable the completion of critical agricultural tasks including harvesting. An allowance is also made for tasks such as preparing for planting or spraying a crop.

## **Terms and Definitions used in this document**

<b>Term</b>	<b>Means</b>
Agricultural operation	Any activity that is involved in the establishment, maintenance and harvesting of agricultural or arable crops for food; such as; ploughing, planting, pruning, spreading fertiliser, spraying to control pests or weeds, cutting, picking, or gathering of harvested crops.
Critical agricultural operation	Any agricultural operation that must be undertaken urgently to avoid the adverse impact of a biological event or change in the weather.
Cumulative work day	Has the same meaning as in the Land Transport Act 1998
Cumulative work period	Has the same meaning as in the Land Transport Act 1998
Depot	Has the same meaning as in the Land Transport Rule: Work Time and Logbooks 2007.
Driver	A person who on any day drives a vehicle subject to work time on a road.
Extended day	Any day in which the total work time hours exceed 13 and/or the work time finishes more than 14 hours after the start time.
LTSA	Land Transport Safety Authority (Now the NZ Transport Agency)
NTC	National Transport Committee (Australia)
Task	A critical agricultural operation.

The Act	The Land Transport Act 1998
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## Principles

Any work time variation is based on the principles and recommendations contained in the report: *Fatigue Expert Group, Options for regulatory Approach to fatigue in drivers of heavy vehicles in New Zealand and Australia* (2001) and incorporated into NTC guidelines on Fatigue Management (2008). These recommendations include:

- The minimum period for sleep between days is six continuous hours
- Six hour's sleep is adequate for one day but not on an extended basis
- Restorative sleep is more effective if it is taken overnight
- Short naps are no substitute for restorative sleep
- Driving in the period after midnight is the highest risk period

## Land Transport Act Section 166 (S 166)

When considering any variation to work time the Act requires the Agency to consider the requirements of S 166. This says:

*(1) The Agency may, if the Agency considers it appropriate and upon such conditions as the Agency considers appropriate, exempt a person, vehicle, rail vehicle, or land transport related service from a specified requirement in a rule made under this Part.(of the Act).*

*(2) Before granting an exemption under this section, the Agency must be satisfied in the circumstances of each case that the risk to safety will not be significantly increased by the granting of the exemption and that—*

- *(a) the requirement has been substantially complied with and that further compliance is unnecessary; or*
- *(b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or*
- *(c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or*
- *(d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case.*

## **Scope of Variation**

Any variation:

1. Will be issued under the authority of s30ZA (1)(a) of the Act; and
2. Apply from the date of its issue until, but not including, 1 July 2013 unless revoked beforehand by the Agency in writing; and
3. When issued to an operator, will cover that person (when managing a task), and any drivers either employed by, or directly contracted to that person, when they involved in a critical agricultural operation.

The variation will apply to the drivers of specialist agricultural machines (including tractors) used in an agricultural operation and to drivers of support vehicles, (such as goods service vehicles), that are essential to the completion of an agricultural operation. In this context essential means the vehicles are undertaking activities such as transporting product from the place of harvest to the nearest place of storage.

The variation only applies on days when on-road driving relates to:

1. Moving vehicles from a depot to the task, (where the crop is located); or
2. Returning the vehicles to a depot; or
3. Moving between the task and a place of storage.

The variation is **not** available for the transport of agricultural produce which are not a direct component of an agricultural operation. To avoid any doubt, the variation is **not** available for operations such as moving stock, forestry or transporting milk.

## **When variation may be used**

The variation can be used to extend one or two work days within a cumulative work period when, due to adverse weather conditions, the time available to complete a necessary agricultural activity has been reduced to the point that the activity has become time critical.

Examples of these activities include;

1. Harvesting a crop before a predicted storm which is likely to lead to significant product loss;
2. Spraying operations that can only be undertaken in the early morning or evening when there is little or no wind.

### **Work time limits**

1. A cumulative work day may be extended to complete the task. (An extended work day).
2. An extended day cannot exceed 17 hours of worktime, or 18 hours between the start time of work for a work day, and the completion of work; and
3. Immediately preceding or following an extended work day a minimum rest period of eight hours must be taken. This must include an opportunity for a minimum six continuous hours of quality sleep. (An opportunity to sleep is **not** met when drivers are still in transit to a place of rest).
4. Only one minimum rest period of eight hours can be taken in a cumulative work period.
5. All other rest periods within the cumulative work period must be a minimum of 10 hours.
6. Only two extended work days can be taken in any cumulative work period.
7. A minimum rest break of at least 24 hours must be taken after 70 hours work.

### **Rest breaks**

Within any cumulative work day, drivers must be given rest breaks as follows:

1. One period of at least 30 minutes as close to the middle of the work day as is practical.
2. Two periods of at least 15 minutes, separate from the 30 minute break.

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An opportunity to sleep is not met where drivers are not at their place of rest.

A cumulative work period (as defined in the Act) may not exceed a total of 70 hours of work time. A rest period of at least 24 hours must be taken between cumulative work periods (and resets the total of hours across consecutive days).

## **Responsibilities of persons using the Variation**

Your company must ensure this variation is only used by drivers whose names and driver licence numbers have been provided to the Agency with your application or at a later date.

The person within your company who has responsibility for managing the task must ensure that when an extended work day is planned or used:

- drivers are informed as soon as possible that an extended work day is planned
- drivers are given short periods of rest as the task permits
- the fatigue of drivers is monitored and a record of this monitoring is kept
- a record is made of start and finish times for each driver
- a record is made of the situation requiring the extended day. This is to include a description of the task, the weather at the time, and any forecast relied upon when deciding to extend the day's work.

## **Records**

The records made in respect of this variation must be produced to an enforcement officer upon demand. These records include:

- the records required by section 30ZD of the Land Transport Act 1998
- a copy of the application form sent to the Agency and any subsequent approval.
- the record used for monitoring the fatigue of drivers.
- the record of the start and finish times for each driver
- the record made of the situation that required the use of the extended work day.

**Compliance with this variation does not remove the responsibility of any employer to manage the health and safety of their employees and/or contractors. It does not remove general duty-of-care obligations.**

## **Breaches of Variation**

Any drivers who do not comply with any of the terms or conditions of this variation, including failing to take the required rest breaks will be in breach of its terms and conditions.

The Agency reserves the right to revoke this variation where the operator (or their drivers) has/have committed any breaches. Permitting drivers to operate under the variation who do not hold a current and valid driver licence will be considered a breach of the terms and conditions.

## **Application**

This variation will not be issued as of right.

An operator must apply to the Agency by email seeking the variation. A form is provided for this on the Agency's website. Telephone requests will not be accepted.

The application must be completed in full and include:

- the name of the company (if applicable)
- the name of the person applying
- contact details
- the region(s) in which that person normally operates
- the transport service licence number (if held)
- the full names and driver licence numbers of all drivers who may work under the variation.

Application forms that are not completed correctly may be returned to the applicant. This will delay the application process.

Completed application forms must be sent to [agvariation@nzta.govt.nz](mailto:agvariation@nzta.govt.nz). Telephone applications will not be accepted.