

South Australia

Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008

under the *Road Traffic Act 1961*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Approved road transport compliance schemes—NHVAS

- 4 Prescription of National Heavy Vehicle Accreditation Scheme

Part 3—Administration of approved road transport compliance schemes

- 5 Authority to have regard to ATC business rules
- 6 Accreditation
- 7 Variation, suspension or revocation of accreditation
- 8 Variation of conditions of accreditation
- 9 Immediate suspension of accreditation in public interest
- 10 Authority may require return of accreditation certificates
- 11 Replacement of accreditation certificates
- 12 Mutual recognition
- 13 Effect of certain administrative actions of corresponding authorities
- 14 Offences relating to accreditations

Part 4—Additional provisions in relation to BFM and AFM accreditation

Division 1—Preliminary

- 15 Interpretation

Division 2—BFM accreditation

- 16 Additional provisions relating to granting etc BFM accreditation
- 17 Duties on operator granted BFM accreditation

Division 3—AFM accreditation

- 18 Additional provisions relating to granting etc AFM accreditation
- 19 Duties on operator granted AFM accreditation

Division 4—Miscellaneous

- 20 Offence relating to auditors etc
- 21 Referral of matters to the Fatigue Authorities Panel
- 22 Notification of corresponding Authorities about certain decisions
- 23 Register of decisions

Part 5—Miscellaneous

- 24 Waiver of fees and payment in instalments
- 25 Review of decisions
- 26 Appeal to District Court
- 27 Confidentiality

Schedule 1—Fees

- 1 Calculation of fees
- 2 Other fees payable

Schedule 2—AFM outer limits

- 1 Interpretation
- 2 AFM outer limits

Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*.

2—Commencement

These regulations will come into operation on 29 September 2008.

3—Interpretation

In these regulations, unless the contrary intention appears—

accreditation means accreditation under these regulations;

accreditation certificate means an accreditation certificate given to a person granted accreditation and includes—

- (a) a revised accreditation certificate given under regulation 7; and
- (b) a replacement certificate given under regulation 11;

Act means the *Road Traffic Act 1961*;

AFM accreditation means accreditation, as varied from time to time, in advanced fatigue management in the fatigue management module of the NHVAS granted under—

- (a) regulation 6; or
- (b) a corresponding fatigue law; or
- (c) a law of a participating jurisdiction corresponding to these regulations;

AFM Standards means the Advanced Fatigue Management Standards approved by the ATC by notice in the Commonwealth Government Gazette, as in force from time to time;

ATC means the Australian Transport Council;

Authority means the Minister;

BFM accreditation means accreditation, as varied from time to time, in basic fatigue management in the fatigue management module of the NHVAS granted under—

- (a) regulation 6; or
- (b) a corresponding fatigue law; or
- (c) a law of a participating jurisdiction corresponding to these regulations;

BFM Standards means the Basic Fatigue Management Standards approved by the ATC by notice in the Commonwealth Government Gazette, as in force from time to time;

corresponding fatigue law has the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*;

driver's licence has the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*;

NHVAS means the National Heavy Vehicle Accreditation Scheme approved by the ATC (including any changes to the Scheme approved by the ATC from time to time), comprised of the following modules:

- (a) mass management;
- (b) maintenance management;
- (c) fatigue management, comprising—
 - (i) basic fatigue management; and
 - (ii) advanced fatigue management;

NHVAS Business Rules means the National Heavy Vehicle Accreditation Scheme Business Rules approved by the ATC, as in force from time to time;

participating jurisdiction has the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*.

Part 2—Approved road transport compliance schemes— NHVAS

4—Prescription of National Heavy Vehicle Accreditation Scheme

For the purposes of the definition of *approved road transport compliance scheme* in section 5(1) of the Act, the NHVAS is an approved road transport compliance scheme.

Part 3—Administration of approved road transport compliance schemes

5—Authority to have regard to ATC business rules

The Authority must, in administering an approved road transport compliance scheme, have regard to, and seek to give effect to, any business rules approved by the ATC in relation to the scheme.

6—Accreditation

- (1) The Authority may, on application by a person, accredit, or renew the accreditation of, a person as a member of an approved road transport compliance scheme.
- (2) An accreditation may be granted or renewed on conditions specified by the Authority.
- (3) A person who contravenes or fails to comply with a condition of the person's accreditation is guilty of an offence.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
 - (b) if the offender is a body corporate—\$25 000.
- (4) Subject to these regulations, an application under subregulation (1) must—
 - (a) be made in a manner and form determined by the Authority; and
 - (b) be accompanied by any information reasonably required by the Authority.
 - (5) However, the Authority may only grant or renew accreditation under this regulation if the Authority is satisfied that—
 - (a) if the accreditation is, or includes, accreditation in a module of the National Heavy Vehicle Accreditation Scheme related to mass management—the person has in place a management and operating system that allows drivers and nominated vehicles to comply with mass limits determined by the Authority; or
 - (b) if the accreditation is, or includes, accreditation in a module of the National Heavy Vehicle Accreditation Scheme related to maintenance management—the person has in place a management and operating system in relation to nominated vehicles that allows the person to comply with any standard determined by the Authority to be relevant to this paragraph; or
 - (c) if the accreditation is, or includes, accreditation in a module of the National Heavy Vehicle Accreditation Scheme related to fatigue management—the person has in place a management and operating system that effectively manages driver fatigue in relation to nominated drivers (other than through compliance with a road law),

and, for the purposes of this subregulation, may take into account any matter it thinks fit.

- (6) The Authority must, on granting or renewing an accreditation to a person, give to the person notice in writing that sets out the fee (calculated in accordance with Schedule 1) payable in relation to the accreditation or renewal.
- (7) An accreditation, or renewal of accreditation, under this regulation—
 - (a) takes effect—
 - (i) on the date specified by the Authority; or
 - (ii) on payment of the fee set out in the notice under subregulation (6) (or, if the person is allowed to pay the fee in instalments, the first instalment of the fee),

whichever is the later; and

-
- (b) subject to these regulations, remains in force for the period (not exceeding 3 years) stated in the accreditation certificate.
 - (8) The Authority must, on the payment of the fee set out in the notice under subregulation (6), give to the person an accreditation certificate that sets out the details of, and conditions (if any) applying to, the accreditation.
 - (9) The Authority must determine an application made under this regulation as soon as is reasonably practicable after the application is received.

7—Variation, suspension or revocation of accreditation

- (1) The Authority may—
 - (a) of its own motion; or
 - (b) on the application of a person accredited under these regulations, vary, suspend or revoke an accreditation.
- (2) However, the Authority may only vary, suspend or revoke an accreditation under subregulation (1)(a) if the Authority is satisfied that—
 - (a) the application for accreditation or renewal of accreditation (as the case requires) by the accredited person was false or misleading in a material particular; or
 - (b) the accredited person has contravened a condition of his or her accreditation; or
 - (c) the accredited person has contravened a provision of a road law to which the accreditation relates and the contravention is—
 - (i) serious; or
 - (ii) part of a persistent series of contraventions by the person; or
 - (iii) taking into account the behaviour of all drivers relevant to the person's accreditation, amounts to a pattern of contravening behaviour on the part of the person; or
 - (d) the accredited person no longer meets the requirements set out in regulation 6(5); or
 - (e) in the case of a variation or revocation of the accreditation—it is no longer appropriate that the accredited person hold the accreditation without variation, or that he or she be accredited under these regulations (as the case requires); or
 - (f) the accredited person agrees to the variation, suspension or revocation; or
 - (g) a fee required to be paid under these regulations has not been paid.
- (3) Before varying, suspending or revoking the accreditation of a person under subregulation (1)(a), the Authority must—
 - (a) give notice in writing of the proposed variation, suspension or revocation to the person; and
 - (b) consider any submission provided by the person within the specified time in response to the notice.

- (4) A notice under subregulation (3) must—
- (a) give the reasons for the variation, suspension or revocation; and
 - (b) detail the ground for the proposed variation, suspension or revocation (including any information forming the basis for the ground); and
 - (c) invite the person to make a submission in writing to the Authority within a specified time (being not less than 14 days after the notice is given to the person) as to why the proposed variation, suspension or revocation should not be made.
- (5) An application under subregulation (1)(b) must—
- (a) be made in a manner and form determined by the Authority; and
 - (b) be accompanied by the fee set out in Schedule 1; and
 - (c) be accompanied by the current accreditation certificate issued to the operator; and
 - (d) be accompanied by any other information reasonably required by the Authority.
- (6) The Authority may, by notice in writing, require an applicant under subregulation (1)(b) to provide the Authority with additional information reasonably required to determine the application.
- (7) The Authority must determine an application made under subregulation (1)(b) as soon as is reasonably practicable after the application is received.
- (8) If the Authority varies, suspends or revokes an accreditation under this regulation, or refuses to vary, suspend or revoke an accreditation, the Authority must, by notice in writing, inform the person to whom the accreditation was granted of that fact.
- (9) A notice under subregulation (8) must state—
- (a) the Authority's decision; and
 - (b) the reasons for the Authority's decision; and
 - (c) that the person may apply to have the decision reconsidered.
- (10) The Authority must, if the Authority varies an accreditation under this regulation, give to the person a revised accreditation certificate that sets out the details of, and conditions (if any) applying to, the accreditation as varied.
- (11) A variation, suspension or revocation under this regulation has effect—
- (a) in the case of a variation—when the revised accreditation certificate is given to the person to whom the exemption was granted (or on such later date as may be specified in the revised accreditation certificate); or
 - (b) in the case of a suspension or revocation—when the notice under subregulation (8) is given to the person to whom the accreditation was granted (or on such later date as may be specified in the notice).

8—Variation of conditions of accreditation

- (1) A person granted accreditation under these regulations may apply to the Authority for a variation of any condition to which the accreditation is subject.

-
- (2) An application for variation of a condition must be made as if it were an application for variation of an accreditation (and regulation 7 applies accordingly).

9—Immediate suspension of accreditation in public interest

- (1) Despite any other provision of these regulations, the Authority may, by notice in writing, suspend the accreditation of a person if the Authority considers that it is necessary in the interest of public safety to do so.
- (2) A notice under subregulation (1) must—
- (a) give the reasons for the suspension; and
 - (b) set out that the person's accreditation will be revoked on the date specified in the notice unless he or she satisfies the Authority that the accreditation should not be revoked and that the notice should be withdrawn.
- (3) A suspension of an accreditation under this regulation has effect when the notice under subregulation (1) is given to the accredited person and continues—
- (a) for the period specified in the notice (being a period of not more than 56 days after the notice under subregulation (1) is given to the accredited person); or
 - (b) until the Authority varies, suspends or revokes the accreditation under regulation 7,
- whichever is the earlier.
- (4) The Authority may, by further notice in writing, vary or revoke a notice under subregulation (1).

10—Authority may require return of accreditation certificates

- (1) The Authority may, by notice in writing, require an operator to return an accreditation certificate given to the operator if the accreditation to which the certificate relates has been varied, suspended or revoked.
- (2) The operator must comply with a notice under subregulation (1) within 7 days or such longer time as may be specified in the notice.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

11—Replacement of accreditation certificates

- (1) A person to whom an accreditation certificate is given, may, if the certificate is lost, destroyed, stolen or defaced, apply to the Authority for a replacement certificate.
- (2) An application under subregulation (1) must—
- (a) be made in a manner and form determined by the Authority; and
 - (b) be accompanied by the fee set out in Schedule 1; and
 - (c) be accompanied by any other information reasonably required by the Authority.

- (3) The Authority must, on the making of an application in accordance with this regulation, if satisfied that a person's accreditation certificate has been lost, destroyed, stolen or defaced, give a replacement certificate to the person as soon as is reasonably practicable.

12—Mutual recognition

- (1) For the purposes of section 41P of the Act, administrative actions of an administrative authority of the following kinds are prescribed:
- (a) a decision related to granting BFM accreditation;
 - (b) a decision related to the variation, suspension or revocation of AFM or BFM accreditation.
- (2) Nothing in this regulation prevents the Authority from giving effect to or otherwise recognising any other decision or administrative action of an administrative authority.

13—Effect of certain administrative actions of corresponding authorities

- (1) Despite section 41P(4) of the Act, the Authority may, by notice in writing, determine that an administrative action, or a class of administrative actions—
- (a) of a kind that may be made or done under these regulations or a corresponding road law; and
 - (b) that is made or done by a corresponding Authority,
- has the same effect in this State as it has in the other jurisdiction.
- (2) A determination under subregulation (1) may be conditional or unconditional.
- (3) The Authority may, by further notice in writing, vary or revoke a determination under subregulation (1).

14—Offences relating to accreditations

- (1) A person must not—
- (a) hold out that he or she is accredited under these regulations when he or she is not, in fact, so accredited; or
 - (b) hold out that he or she is working under an accreditation when he or she is not, in fact, working under such accreditation.

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
- (b) if the offender is a body corporate—\$50 000.

- (2) A person must not have in his or her possession a document purporting to be a BFM or AFM accreditation certificate if the person knows, or ought to know, that the document is not, in fact, a BFM or AFM accreditation certificate.

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
- (b) if the offender is a body corporate—\$50 000.

Part 4—Additional provisions in relation to BFM and AFM accreditation

Division 1—Preliminary

15—Interpretation

- (1) In this Part—

AFM fatigue management system means a system put in place by an operator for the purpose of ensuring compliance with the NHVAS Business Rules and the AFM Standards and incorporating at least the following components:

- (a) the recording of the name, contact details and driver's licence number of each driver operating, or to be operating, under AFM accreditation (if granted);
- (b) provisions to ensure that each such driver meets any medical requirements specified by the Authority in relation to AFM accreditation and is in a fit state to safely perform his or her duties;
- (c) provisions to ensure that—
 - (i) each such driver; and
 - (ii) each person employed by the operator and who has responsibilities related to the scheduling of, or managing the fatigue of, such drivers, has been inducted into the operator's AFM fatigue management system and is informed of the AFM hours applicable under the accreditation;

AFM outer limits—the table in Schedule 2 sets out the AFM outer limits for the maximum permitted amount of work time, and minimum required amount of rest time, in relation to a driver;

BFM fatigue management system means a system put in place by an operator for the purpose of ensuring compliance with the NHVAS Business Rules and the BFM Standards and incorporating at least the following components:

- (a) the recording of the name, contact details and driver's licence number of each driver operating, or to be operating, under BFM accreditation (if granted);
- (b) provisions to ensure that each such driver meets any medical requirements specified by the Authority in relation to BFM accreditation and is in a fit state to safely perform his or her duties;
- (c) provisions to ensure that—
 - (i) each such driver; and
 - (ii) each person employed by the operator and who has responsibilities related to the scheduling of, or managing the fatigue of, such drivers, has been inducted into the operator's BFM fatigue management system and is informed of the BFM hours.

Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008—29.9.2008 to 30.6.2010

Part 4—Additional provisions in relation to BFM and AFM accreditation

Division 1—Preliminary

- (2) In this Part, the following terms have the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*:
- (a) *AFM hours*;
 - (b) *Authority*;
 - (c) *BFM hours*;
 - (d) *driver*;
 - (e) *Fatigue Authorities Panel*;
 - (f) *participating zone*;
 - (g) *regulated heavy vehicle*;
 - (h) *rest time*;
 - (i) *scheduler*;
 - (j) *this jurisdiction*;
 - (k) *work time*.

Division 2—BFM accreditation

16—Additional provisions relating to granting etc BFM accreditation

- (1) The Authority may only grant BFM accreditation under these regulations to an operator of a regulated heavy vehicle.
- (2) It is a condition of each BFM accreditation granted under these regulations that the operator must comply with the NHVAS Business Rules and the BFM Standards.
- (3) A requirement that an applicant for BFM accreditation provide certain information under regulation 6(4)(b) may only be made in accordance with the NHVAS Business Rules and the BFM Standards.
- (4) An application under regulation 6 for the granting or renewal of BFM accreditation must (in addition to any requirement of that regulation) be accompanied by—
 - (a) a statement by the operator that the operator has prepared a BFM fatigue management system to ensure compliance with the NHVAS Business Rules and the BFM Standards; and
 - (b) a statement by an auditor (of a class approved by the ATC by notice in the Commonwealth Government Gazette) that the auditor considers the operator's BFM fatigue management system will ensure compliance with the NHVAS Business Rules and the BFM Standards; and
 - (c) a statement containing the following information, made by the operator to the best of his or her knowledge after taking all reasonable steps to ascertain the information:
 - (i) whether in the 5 years immediately preceding the application, the operator or an associate of the operator has contravened these regulations, the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*, a corresponding fatigue law or an Australian road law (and, if so, details of any such contravention);

- (ii) whether the operator or an associate of the operator has at any time had their BFM or AFM accreditation varied, suspended or revoked (and, if so, details of the variation, suspension or revocation).
- (5) However, the Authority may only grant or renew BFM accreditation under regulation 6 if the Authority is satisfied that—
- (a) the operator is able to comply with these regulations and the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*; and
 - (b) the operator is a fit and proper person to be granted BFM accreditation,
- and, for the purposes of this subregulation, the Authority may take into account any matter it thinks fit.
- (6) The Authority must, in making a determination to grant or refuse BFM accreditation to an operator, have regard to, and seek to give effect to, any recommendation made, or guidelines published in the Commonwealth Government Gazette, by the Fatigue Authorities Panel in relation to the granting of BFM accreditation.
- (7) A BFM accreditation certificate given to a person under regulation 6(8) must be in a form approved by the ATC by notice in the Commonwealth Government Gazette.

17—Duties on operator granted BFM accreditation

- (1) An operator granted BFM accreditation under these regulations must ensure that each driver who is to work under the operator's BFM accreditation—
- (a) is inducted into the operator's BFM fatigue management system; and
 - (b) meets the requirements (if any) relating to drivers under the operator's BFM accreditation.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

- (2) An operator granted BFM accreditation under these regulations must make the following records:

- (a) a list of the drivers currently working under the operator's BFM accreditation;
- (b) records demonstrating the requirements under subregulation (1) have been satisfied.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

- (3) An operator must keep a record required to be made under subregulation (2) for a period of not less than 3 years after the date on which the record is made.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008—29.9.2008 to 30.6.2010

Part 4—Additional provisions in relation to BFM and AFM accreditation

Division 2—BFM accreditation

- (4) A record required to be kept under subregulation (3) must be kept in a manner that ensures the record—
- (a) is reasonably accessible to an authorised officer or police officer; and
 - (b) remains legible and reasonably capable of being understood; and
 - (c) is capable of being used as evidence.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
 - (b) if the offender is a body corporate—\$12 500.
- (5) The Authority may, by notice in writing, require an operator granted BFM accreditation under these regulations to provide the Authority with the list of drivers currently working under the operator's BFM accreditation.
- (6) A notice under subregulation (5) must specify the manner in which, and the period within which, the list of drivers is to be provided.
- (7) An operator granted BFM accreditation under these regulations must not refuse or fail to comply with a requirement under subregulation (5).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
 - (b) if the offender is a body corporate—\$12 500.
- (8) An operator granted BFM accreditation under these regulations must, as soon as practicable after the BFM accreditation is varied, suspended or revoked, inform each driver or scheduler who may be affected by the variation, suspension or revocation of that fact.

Maximum penalty:

- (a) for a first offence—
 - (i) if the offender is a natural person—\$2 500;
 - (ii) if the offender is a body corporate—\$12 500;
 - (b) for a second or subsequent offence—
 - (i) if the offender is a natural person—\$5 000;
 - (ii) if the offender is a body corporate—\$25 000.
- (9) A person charged has the benefit of the reasonable steps defence for an offence against subregulation (8).

Division 3—AFM accreditation

18—Additional provisions relating to granting etc AFM accreditation

- (1) The Authority may only grant AFM accreditation under these regulations to an operator of a regulated heavy vehicle.
- (2) It is a condition of each AFM accreditation granted under these regulations that the operator must comply with the NHVAS Business Rules and the AFM Standards.

-
- (3) In imposing a condition related to the work time and rest time hours limits applicable under AFM accreditation, the Authority—
- (a) must be satisfied that the limits provide a safe balance between work, rest, risk management and fatigue countermeasures; and
 - (b) must not set a limit or limits—
 - (i) that would allow a driver to undertake more work time, or less rest time, than that permitted by the AFM outer limits; or
 - (ii) that the Authority considers would be unsafe.
- (4) A requirement that an applicant for AFM accreditation provide certain information under regulation 6(4)(b) may only be made in accordance with the NHVAS Business Rules and the AFM Standards.
- (5) An application under regulation 6 for the granting or renewal of AFM accreditation must (in addition to any requirement of that regulation) be accompanied by—
- (a) a copy of the operator's AFM fatigue management proposal; and
 - (b) a statement by the operator that the operator has prepared an AFM fatigue management system to ensure compliance with the NHVAS Business Rules and the AFM Standards; and
 - (c) a statement by an auditor (of a class approved by the ATC by notice in the Commonwealth Government Gazette) that the auditor considers the operator's AFM fatigue management system will ensure compliance with the NHVAS Business Rules and the AFM Standards; and
 - (d) a statement containing the following information, made by the operator to the best of his or her knowledge after taking all reasonable steps to ascertain the information:
 - (i) whether in the 5 years immediately preceding the application, the operator or an associate of the operator has contravened these regulations, the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*, a corresponding fatigue law or an Australian road law (and, if so, details of any such contravention);
 - (ii) whether the operator or an associate of the operator has at any time had their BFM or AFM accreditation varied, suspended or revoked (and, if so, details of the variation, suspension or revocation).
- (6) However, the Authority may only grant or renew AFM accreditation under regulation 6 if the Authority is satisfied that—
- (a) the operator is able to comply with these regulations and the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*; and
 - (b) the operator is a fit and proper person to be granted AFM accreditation; and
 - (c) the driver fatigue management practices stated in the operator's AFM fatigue management proposal would, if implemented, safely manage the risk of driver fatigue; and

Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008—29.9.2008 to 30.6.2010

Part 4—Additional provisions in relation to BFM and AFM accreditation

Division 3—AFM accreditation

- (d) the operator, and the drivers of the operator's regulated heavy vehicles, are likely to implement the driver fatigue management practices stated in the operator's AFM fatigue management proposal,

and, for the purposes of this subregulation, the Authority may take into account any matter it thinks fit.

- (7) The Authority must, in making a determination to grant or refuse AFM accreditation to an operator, have regard to, and seek to give effect to, any recommendation made, or guidelines published in the Commonwealth Government Gazette, by the Fatigue Authorities Panel in relation to the granting of AFM accreditation.
- (8) An AFM accreditation certificate given to a person under regulation 6(8) must be in a form approved by the ATC by notice in the Commonwealth Government Gazette.
- (9) In this regulation—

AFM fatigue management proposal means a proposal in writing setting out at least the following components:

- (a) the proposed work time and rest time limits that are to apply to a driver working under the AFM accreditation (if granted);
- (b) the risks involved in working under the proposed work time and rest time limits;
- (c) any other information required to be set out in the proposal under the NHVAS Business Rules and the AFM Standards.

19—Duties on operator granted AFM accreditation

- (1) An operator granted AFM accreditation under these regulations must ensure that each driver who is to work under the operator's AFM accreditation—
- (a) is inducted into the operator's AFM fatigue management system; and
- (b) is informed of the AFM hours under the operator's accreditation; and
- (c) meets the requirements (if any) relating to drivers under the operator's AFM accreditation.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

- (2) An operator granted AFM accreditation under these regulations must make the following records:

- (a) a list of the drivers currently working under the operator's AFM accreditation;
- (b) records demonstrating the requirements under subregulation (1) have been satisfied.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

- (3) An operator must keep a record required to be made under subregulation (2) for a period of not less than 3 years after the date on which the record is made.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

- (4) A record required to be kept under subregulation (3) must be kept in a manner that ensures the record—

- (a) is reasonably accessible to an authorised officer or police officer; and
- (b) remains legible and reasonably capable of being understood; and
- (c) is capable of being used as evidence.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (5) The Authority may, by notice in writing, require an operator granted AFM accreditation under these regulations to provide the Authority with the list of drivers currently working under the operator's AFM accreditation.

- (6) A notice under subregulation (5) must specify the manner in which, and the period within which, the list of drivers is to be provided.

- (7) An operator granted AFM accreditation under these regulations must not refuse or fail to comply with a requirement under subregulation (5).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (8) An operator granted AFM accreditation under these regulations must, as soon as practicable after the AFM accreditation is varied, suspended or revoked, inform each driver or scheduler who may be affected by the variation, suspension or revocation of that fact.

Maximum penalty:

- (a) for a first offence—
 - (i) if the offender is a natural person—\$2 500;
 - (ii) if the offender is a body corporate—\$12 500;
- (b) for a second or subsequent offence—
 - (i) if the offender is a natural person—\$5 000;
 - (ii) if the offender is a body corporate—\$25 000.

- (9) A person charged has the benefit of the reasonable steps defence for an offence against subregulation (8).

Division 4—Miscellaneous

20—Offence relating to auditors etc

A person who—

- (a) holds out that he or she is an auditor of a class approved by the ATC by notice in the Commonwealth Government Gazette for the purposes of regulation 16(4)(b) or 18(5)(c) when he or she is not, in fact, such an auditor; or
- (b) states that he or she has audited an operator's BFM or AFM fatigue management system when he or she has not, in fact, done so,

is guilty of an offence.

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
- (b) if the offender is a body corporate—\$50 000.

21—Referral of matters to the Fatigue Authorities Panel

- (1) The Authority must, if the Authority proposes to make a decision under these regulations that—
 - (a) will have, or may have, application in another participating jurisdiction; and
 - (b) is a decision related to—
 - (i) granting or renewing AFM accreditation under these regulations, the variation, suspension or revocation of such accreditation or the variation or revocation of a condition of such accreditation; or
 - (ii) the variation, suspension or revocation of BFM or AFM accreditation granted by a corresponding Authority,

inform the Fatigue Authorities Panel of the proposed decision by notice in writing, and specify a period within which the Fatigue Authorities Panel may make recommendations in relation to the proposed decision.

- (2) The Authority must have regard to any recommendation made by the Fatigue Authorities Panel within the period specified in the notice under subregulation (1) in relation to a proposed decision.
- (3) The Authority may refer any other relevant matter under these regulations to the Fatigue Authorities Panel for consideration.

22—Notification of corresponding Authorities about certain decisions

- (1) The Authority must, if the Authority makes a decision to grant, renew, vary, suspend or revoke BFM or AFM accreditation under these regulations, give notice in writing of the decision to each corresponding Authority in the participating zone.
- (2) If the Authority decides not to follow a recommendation of the Fatigue Authorities Panel in acting under these regulations, or to only follow such a recommendation subject to conditions or other variations, the Authority must give notice in writing of the reasons for that decision to each corresponding Authority in the participating zone.

23—Register of decisions

- (1) The Authority must keep a register of the following kinds of decisions:
 - (a) a decision of the Authority under these regulations;
 - (b) a decision that has effect in this jurisdiction under section 41P of the Act and of which the Authority was notified under a provision of a corresponding fatigue law equivalent to regulation 22;
 - (c) a decision that has effect in this jurisdiction under section 41P(2a) of the Act.
- (2) The register must contain details of any variation or revocation of a decision registered in the register.
- (3) The register may be combined with any other register required to be kept under the Act.

Part 5—Miscellaneous

24—Waiver of fees and payment in instalments

- (1) The Authority may waive or reduce a fee payable by a person under these regulations.
- (2) The Authority may allow a person to pay a fee in instalments.

25—Review of decisions

- (1) A person affected by a decision of the Authority under these regulations may, by notice in writing, ask the Authority to review the decision.
- (2) An application under subregulation (1) must—
 - (a) be made within 28 days after notice of the decision was given to the person in accordance with these regulations; and
 - (b) be made in a manner and form determined by the Authority; and
 - (c) be accompanied by a statement—
 - (i) outlining the decision that the person requests be reviewed; and
 - (ii) setting out the outcome sought by the person as a result of the review; and
 - (iii) setting out any information the person wishes the Authority to take into account in reviewing the decision.
- (3) The Authority may, in the Authority's discretion, extend the time fixed for making an application for review of a decision, even if the time for making such an application has ended.
- (4) The Authority must, within 28 days after receiving an application under subregulation (1), review the initial decision and—
 - (a) confirm the initial decision; or
 - (b) vary the initial decision; or
 - (c) set aside the initial decision and substitute a new decision.

-
- (5) If an application under subregulation (1) is not determined within that period, the Authority is to be taken to have confirmed the initial decision.
 - (6) The Authority must, as soon as practicable after determining an application, by notice in writing, inform the applicant of, and give reasons for, the determination.

26—Appeal to District Court

- (1) An applicant for a review under regulation 25 who is not satisfied with the determination of the Authority on the review may appeal to the Administrative and Disciplinary Division of the District Court against the determination.
- (2) An appeal must be instituted—
 - (a) if the review under regulation 25 was not determined within 28 days of the application being received by the Authority—within 28 days after the day on which the Authority is to be taken to have confirmed the initial decision; or
 - (b) in any other case—within 28 days of the applicant being notified in accordance with regulation 25(6) of the determination appealed against.

27—Confidentiality

- (1) This regulation applies to a person engaged or previously engaged in the administration of these regulations and (without limiting the foregoing) to—
 - (a) an authorised officer or a police officer;
 - (b) a person who is or was a delegate of the Authority of a power or function under these regulations;
 - (c) a person who is or was employed by, or engaged to provide services to or on behalf of, the Authority;
 - (d) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Authority.
- (2) A person to whom this regulation applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of these regulations except—
 - (a) as required or authorised by or under the Act or any other Act; or
 - (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
 - (c) in connection with the administration of a road law, a corresponding road law or a corresponding fatigue law; or
 - (d) in connection with the administration of an approved road transport compliance scheme; or
 - (e) for law enforcement purposes or public safety; or
 - (f) to a court or in connection with any legal proceedings.

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
- (b) if the offender is a body corporate—\$50 000.

- (3) Nothing in this regulation prevents information being used to enable the Authority to accumulate statistical information and to enable the Authority to authorise use of the statistical information for the purposes of research or education.

Schedule 1—Fees

1—Calculation of fees

- (1) For the purposes of regulation 6(6), the fee payable on the grant or renewal of accreditation is the total of the administration fees payable in relation to each relevant module of accreditation as set out in the following table:

Module	Fee payable on grant or renewal of accreditation	Fee payable for each regulated heavy vehicle (other than trailers) in relation to each period of accreditation	Fee payable for each nominated trailer in relation to each period of accreditation
Mass management	\$80	\$25	\$0
Maintenance management	\$80	\$25	\$25
Fatigue management—			
(a) basic fatigue management;	\$80	—	—
(b) advanced fatigue management	\$80	—	—

- (2) In this Schedule—

regulated heavy vehicle has the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*.

2—Other fees payable

Application for variation, suspension or revocation of accreditation	\$0
Replacement of accreditation certificate	\$0

Schedule 2—AFM outer limits

1—Interpretation

In this Schedule, the following terms have the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*:

- (a) *approved sleeper berth*;
- (b) *driver*;
- (c) *night rest break*;
- (d) *regulated heavy vehicle*;
- (e) *rest time*;
- (f) *stationary rest time*;

(g) *two-up driver*;

(h) *work time*.

2—AFM outer limits

(1) In relation to a period referred to in column 1 of the following table, a driver of a regulated heavy vehicle—

- (a) must not exceed the amount of work time referred to in column 2; and
- (b) must have the remainder of the period as rest time, including at least the period referred to in column 3 which must be stationary rest time.

Period	Max work time	Min rest time
24 hours	16 hours	Either: <ul style="list-style-type: none">(a) 6 continuous hours; or(b) 8 hours taken in no more than 2 blocks
336 hours or 14 days	154 hours	2 night rest breaks
672 hours or 28 days	288 hours	4 blocks of 24 continuous hours

(2) Despite subclause (1), in the case of a two-up driver, a required period of stationary rest time of 6 continuous hours, or 8 hours taken in no more than 2 blocks, may be taken in an approved sleeper berth of the regulated heavy vehicle being driven under the two-up driving arrangement (whether or not the vehicle is stationary at the time such rest is taken).

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2008	251	<i>Gazette 11.9.2008 p4390</i>	29.9.2008: r 2
2010	97	<i>Gazette 10.6.2010 p2841</i>	1.7.2010: r 2