

National Heavy Vehicle Regulator

Advanced Fatigue Management Business Rules

Version 1.2, November 2013

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1 Introduction

1.1 The National Heavy Vehicle Accreditation Scheme (NHVAS) allows for operators of heavy vehicles who implement management systems that achieve the objectives of particular aspects of the Heavy Vehicle National Law (HVNL) to be subject to alternative requirements under the Law. NHVAS participants have access to enhanced flexibility or conditions in return for improved systems and processes while maintaining safe and compliant operations.

1.2 Accreditation to one or more modules of NHVAS is intended to increase transport efficiency by reducing the costs of compliance and by allowing Participants greater flexibility in the management of their transport business.

1.3 The long-term objectives of the NHVAS are to:

- improve road safety; and
- increase the productivity of the transport industry through adoption of good management by responsible operators.

1.4 NHVAS offers Maintenance Management, Mass Management and Fatigue Management Modules to approved Participants.

2 AFM Business Rules

2.1 About these Business Rules

2.1.1 The purpose of this document is to provide a framework for the administration of the Advanced Fatigue Management (AFM) module of the NHVAS. It also provides advice on the use of the Risk Classification System (RCS) utilised in assessing the suitability and safety of an operator's proposed work and rest arrangements under AFM.

2.1.2 This document sets out the current policies and procedures for the conduct of the Scheme, and is to be used by the National Heavy Vehicle Regulator (herein the "NHVR" or "The Regulator") any Transport Company/Organisation, State or Territory agency, or any person offering vehicle hire, management, consultant or audit services to a Transport Company/Organisation.

2.2 Legal status of these Business Rules

2.2.1 Participation in the Scheme is subject to the conditions contained in these Business Rules, entry prerequisites and compliance with the standards to which they refer.

2.2.2 These rules should be read in conjunction with the HVNL and Regulations. In particular, Chapters 6 and 8 of the HVNL deal with driver fatigue and accreditations respectively.

2.2.3 Chapter 8 of the HVNL creates the NHVAS and the AFM Module and empowers the Regulator to issue accreditation to participants who are able to meet the approval criteria. Chapter 8 sets AFM hours as the hours approved for the applicant as document on the AFM Certificate.

2.2.4 Chapter 6 of the HVNL sets out specific fatigue management obligations for participants of AFM and creates offences for non-compliance with these obligations.

2.2.5 The HVNL Fatigue Management Regulation (the Regulation) sets out additional enforcement obligations, including the possibility of offence escalation when breaches of AFM conditions exceed certain specified safety standards.

2.2.6 The following documentation must be provided to allow assessment of eligibility for AFM:

- Evidence of Identity (EOI) documents for participants;
- A Fatigue Management System that meets the 10 AFM standards;
- A Heavy Vehicle Driver Fatigue Audit Matrix AFM completed by an approved external auditor; and
- An RCS template.

In some circumstances a Safety Case is also required (see Section 4.2.5)

2.3 How these Business Rules will be amended

2.3.1 These Rules will be periodically revised to reflect changes in the Scheme, new requirements and suggestions from participants. Revisions may constitute a part or the whole of this document.

2.3.2 Changes to the AFM Business Rules that either correct editorial errors or improve clarity (without altering intent), or that are otherwise minor and do not alter intent may be endorsed by the Regulator and approved by the Commonwealth Minister for Transport and Infrastructure. All state and territory Transport Ministers must then be advised by the Regulator immediately following this outcome.

2.3.3 A proposed non-substantive amendment to the AFM Business Rules may be endorsed by the Regulator, then endorsed by Transport and Infrastructure Senior Officers Committee (TISOC) on behalf of their Ministers, provided the particular reform proposal or amendment is supported unanimously by TISOC. Transport Ministers would then be advised by the Regulator immediately following this outcome.

2.3.4 Non-substantive amendments would include editorial changes, changes to improve clarity without altering intent, and minor changes that are consistent with policy that has been approved by the Standing Council on Transport and Infrastructure (SCOTI).

2.3.5 Any amendment addressing substantive matters or any other amendment that is not unanimously supported by TISOC would be submitted to SCOTI for approval.

2.3.6 Any proposed amendment that is not supported unanimously by TISOC would fall within this category, even if the proposed reform relates to an administrative process only and even if the amendment is of a minor nature only.

2.3.7 Any amendments will be issued with a release number and date reflected in the footer on the NHVR website. Superseded rules should be removed from the document and replaced with the amended version.

2.3.8 All Participants must abide by the latest version of the Business Rules.

2.4 Definitions

Term	Definition
Accreditation	Approval of an applicant's Fatigue Management System to the NHVAS Standards and approval of their proposed operating arrangements against the Risk Classification System.
Accreditation Compliance History	Action taken by way of amendment, suspension or cancellation of a HVNL accreditation held by the applicant or an associate of the applicant in the previous 5 years (also referred to as Compliance History)
Accrediting Agency	The National Heavy Vehicle Regulator
AFM	Advanced Fatigue Management

Associate	As defined in section 5 of the Heavy Vehicle National Law Act (2013) where those persons have influence in the administration of the operator's accreditation.
Auditor - External	A person certified as an Auditor by RABQSA to undertake heavy vehicle audits.
Auditor – Internal	An employee of the NHVR or Jurisdictions who undertakes an audit of an AFM operator as part of a triggered or random audit program
Breach	A non-compliance with the standards established for a module or the requirements relating to heavy vehicles specified in relevant road transport legislation and regulations.
Certification	Evidence that a Fatigue Management System has been examined by an external auditor and is eligible for accreditation.
Certifying body	A body granted powers under the Scheme to certify persons as being auditors for the purposes of the Scheme.
EOI	Evidence of Identity (EOI) documents providing evidence of a person's identity that satisfy the requirements for a vehicle registration or driver licensing transaction in the jurisdiction of accreditation.
External Review/ Appeal	A review of a decision of the Regulator by an external body, normally the Courts, the Administrative Appeals Tribunal or the Ombudsman.
Fatigue Expert Reference Group (FERG)	Provides advice to the Regulator on applications for AFM and may also be asked by the Regulator to provide information on developments in fatigue research.
Fatigue Management System	The organisational structure, responsibilities, procedures, activities, capabilities, resources and records established by an operator with the aim of ensuring compliance with the 10 AFM NHVAS Standards. This also includes their processes for managing compliance with their Safety Case and overall operations to ensure fatigue safety.
Fatigue Regulated Heavy Vehicle	See definition in s8, Heavy Vehicle National Law Act 2013.
Independent Audit	A systematic and independent planned and documented activity performed by external auditors to verify by investigation, and the examination and evaluation of objective evidence, that applicable elements of a system have been developed, documented and effectively implemented in accordance with the relevant standards applicable to a particular module.
Internal Review/	A request to the Regulator to review a decision. An internal review

Appeal	must be in writing and lodged with the Regulator within 28 days of the posting of the notification of the decision.
Incident	An event occurring while a vehicle is being operated on a road or a road related area. It may involve damage to the vehicle and/or damage to another vehicle or third-party property, or matters relating to the loading of a vehicle, or matters relating to the Fatigue Management Module, or any other matter relating to the operation of the vehicle.
NHVAS (the Scheme)	National Heavy Vehicle Accreditation Scheme.
Operator	A person or company which has management and control of vehicles and/or drivers.
Participant	An individual or company approved by the Regulator to operate under a certified Fatigue Management System for a period nominated by the Regulator depending upon performance.
Participating Driver	A driver employed by the Participant participating in the Fatigue Management Module of the Scheme.
Prescribed Criminal History	A criminal history for the operation listing: <ul style="list-style-type: none"> • breaches against the HVNL or its predecessors • an offence involving fraud or dishonesty punishable on conviction by imprisonment of 6 months or more
RABQSA	RABQSA International – the certification body for Heavy Vehicle Auditor Certification Schemes
Referral Threshold	The criteria based on the RCS Matrix, for referral of an AFM application to the FERG for advice. This is outlined in section 4.11.2 of these rules.
Regulatory Audit	An audit undertaken by the Regulator or persons acting on behalf of the Regulator, to review compliance with the conditions of AFM operation and approval.
Risk Classification System	The description of work and rest options across seven principles and the scores applicable to work and rest arrangements.
Safety Case	A document produced by the transport operator seeking accreditation which: <ul style="list-style-type: none"> • Identifies the hazards and risks of a particular proposed AFM schedule • Describes how the risks are controlled and mitigated

System Accreditation Audit	A System Accreditation Audit (Entry Audit) is an Independent Audit which examines the underlying management controls including documented procedures and records management systems. It is designed to ensure that adequate procedures are in place to effectively and consistently achieve the outcomes required.
System Compliance Audit	A System Compliance Audit is an Independent Audit which assesses the effectiveness of the Fatigue Management Systems by examining and measuring the level of compliance actually achieved over a given period.

3 Structural Arrangements

3.1 Roles and Responsibilities

3.1.1 The Regulator offers, approves and administers participation in the AFM module of NHVAS, in accordance with:

- the HVNL;
- the AFM Policy ;
- the ten (10) standards in the AFM module; and
- the AFM Business Rules.

3.1.2 The Regulator is responsible for the development, approval, management and publication of:

- the AFM Policy;
- the ten (10) standards in the AFM module ;
- the AFM Business Rules;
- AFM module templates.

3.1.3 The RABQSA is responsible for the certification and monitoring of external auditors. If an individual or agency wishes to become an external auditor, they must apply for and gain certification through RABQSA.

3.1.4 The Regulator must establish a FERG to provide it with advice on the RCS, proposed AFM templates and individual applications for accreditation.

3.1.5 The Regulator, States and Territories must communicate the data specified in the Information Exchange section (section 11).

3.1.6 The Regulator, States and Territories agree that information relating to a particular Participant, which is sent to or received from another State, Territory or the Regulator is confidential, except where that confidentiality would conflict with existing freedom of information and privacy legislation and procedures.

3.1.7 The Regulator must monitor performance of the accredited participants' compliance with the Business Rules and Standards.

3.2 Entry requirements

3.2.1 The AFM module of NHVAS is available to transport operators with fatigue regulated heavy vehicles as defined in the HVNL.

3.2.2 The Regulator must recognise existing memberships approved by States and Territories as per the transitional arrangement in the HVNL. Further detail on this retention of previously approved arrangements is at Section 10 – Transitional Arrangements.

3.2.3 When reviewing a new application for accreditation in the AFM module of NHVAS, the Regulator must have regard to:

- the compatibility of the proposed work and rest tasks with the principles underpinning the RCS and the relevant scores;
- the overall fatigue likelihood risk of the proposed work arrangements taking into account the work schedule and mitigating factors and countermeasures;
- the conformance of the Fatigue Management System with the ten (10) standards in the AFM module as attested to by a certified independent external auditor;
- the suitability of the applicant to reliably manage the operations and fatigue risks as outlined in their application; and
- any advice about the application or suggested conditions received from the FERG.

3.3 Participation in accreditation

3.3.1 A Participant cannot transfer accreditation to another person or entity.

3.3.2 NHVAS participation does not exempt participants from the requirements of applicable road transport legislation. Any sanction imposed on a Participant as a result of a breach of the conditions of participation in the AFM accreditation scheme is in addition to any penalties that may be incurred by the participant in relation to a breach of road transport or other legislation.

3.4 Templates

3.4.1 The changes to AFM introduced from commencement of HVNL are intended to provide more streamlined administrative processes for both applicants and the Regulator. One part of this change is the introduction of published templates which applicants may utilise in developing their own AFM applications.

3.4.2 As AFM applications are approved, the Regulator may publish approved RCS templates. These templates will outline hours of work and rest based on risk offset combinations which have been approved for other operators including any additional risk mitigations required and specific conditions that may have been placed on the operator. They will not include personal information of the original applicant. New applicants or existing applicants may refer to these templates as the basis from which to develop their own AFM application.

3.4.3 Any approved AFM application may be considered for publication by the NHVR as a template. A condition of lodging an AFM application is the understanding that it may be used as the basis of a published template. In publishing the template the intention is to improve access by other Operators to AFM work hours and condition without impinging on

the commercial in confidence nature of the original operator's contractual or business arrangements. Published templates would not provide origin or destination information or specific hours of operation.

3.4.4 The past approval of an AFM application based on a published template does not automatically guarantee another applicant approval using the same template. This may occur for reasons relating to differences in the overall management systems and operational environments between operators. For instance one operator may have 24 x 7 staffing to deal with emergent situations or have in-vehicle telematics to assist with monitoring of performance and these support processes may not be utilised by another operator. However, the principle of published templates is that they should provide administrative efficiency for applicants and the Regulator, along with a good degree of certainty of outcome.

3.4.5 Published templates do not exempt an applicant from considering their own operation conditions, systems and processes in developing an AFM application.

3.5 AFM Cost Structure


3.5.1 NHVAS is a cost recovery service. The cost structure for the Scheme is as follows:

- the Regulator may charge the applicant for new applications, amendments and renewed membership based on the following principles:
 - a reasonable recovery of the variable costs of administering the NHVAS;
 - regard to whether the applicant is accredited in another module; and
 - regard to the differences in administering applications for larger fleets as opposed to smaller fleets so that the smaller sized operator is not disadvantaged.
- should an application be made and refused, the administration fee is non-refundable.
- any other costs specifically incurred in processing the application may be recovered from the applicant.
- compliance costs, including government fees for compliance histories, on-entry audit and scheduled audit costs are met by the applicant; and
- regulatory audit costs and enforcement costs are met by the Regulator. However in the case of a compliance audit triggered by intelligence relating to non-compliance, if non-compliance is confirmed, the NHVR may recover the cost of the audit from the Participant.

3.5.2 Recovery of any other costs must be consistent with the above principles. The NHVR will publish fees associated with NHVAS on their website www.nhvr.gov.au.

3.6 Review

3.6.1 Decisions of the Regulator are subject to internal and external review. The arrangements for the internal review and external appeals are summarised in the Section 7.

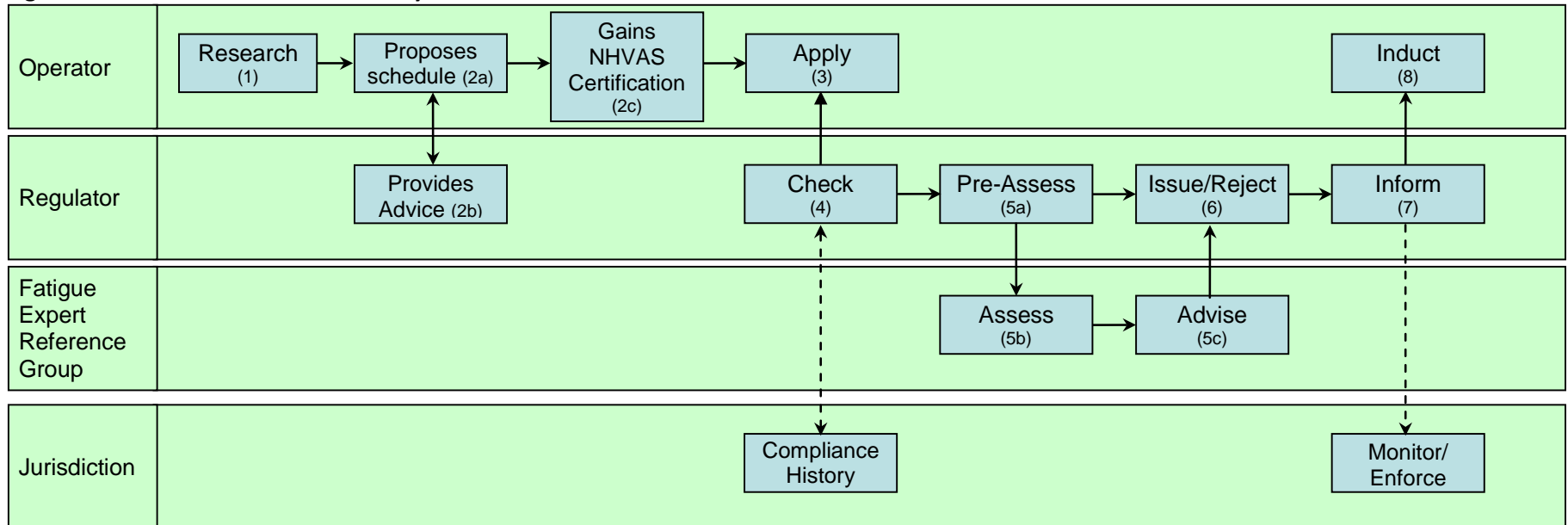


The process aligns with the HVNL and the NHVR's general review and appeal process, available on the NHVR website.

4 Entry

4.1 The figure and table below summarise the key steps for entry into the AFM module of NHVAS based on the RCS approach. The rules for each step are explained further in the following paragraphs.

Figure 1: Process Flow Overview - Entry



Key: Solid lines denote action requests, Dotted lines denote information flows, Alphabetic characters in actions numbers denote optional actions steps.

Table 1: Detailed Process and Responsibilities Description for Entry

Roles/responsibilities	Rules	Resources
(1) Research – An operator investigates the requirements for fatigue accreditation for their business		
<p><i>Operator –</i> Research information on accreditation; Assess business need.</p> <p><i>Regulator –</i> Publish information on accreditation requirements and processes; Approves template work and rest risk profiles; Respond to off line enquiries .</p> <p><i>FERG –</i> Nil</p> <p><i>Jurisdictions –</i> Refer Operators to NHVR.</p>		<p>On-line coaching tool (tailored content provision) AFM Business Rules AFM Policy AFM Guideline</p>
(2a) Propose Schedule – An operator reviews their operations, determines work and rest hours that meet their foreseeable schedules and uses the RCS on-line tool to identify key risks. Advice may be sought from the Regulator on the proposal		
<p><i>Operator –</i> Identify desirable work and rest arrangements and assess possible templates. Input desirable work and rest arrangements into the online RCS coaching tool to assess risks. If necessary, review proposed work and rest arrangements in line with the RCS or template. Advice may be sought from the Regulator on the proposed schedule, its overall risk and likelihood of approval.</p> <p><i>Regulator –</i> Publish information on accreditation requirements and processes; Maintains an on-line coaching tool, Respond to off line enquiries, Receive work and rest hour proposals.</p>	<p>AFM Business Rules – Requirements for Fatigue Management Systems AFM Business Rules – Requirements for RCS matrix and Safety Cases</p>	<p>On-line coaching tool (tailored content provision) On-line coaching tool (template systems) On-line coaching tool (risk assessment) AFM Policy AFM Business Rules AFM Guideline NHVAS Business Rules</p>

Roles/responsibilities	Rules	Resources
<p><i>FERG</i> – Nil</p> <p><i>Jurisdictions</i> – Refer Operators to NHVR</p>		
<p>(2b) If requested by the Operator, the Regulator reviews an applicant’s proposed work and rest hours, assesses the fatigue risks that need to be addressed in the safety case and provides advice on progression of the application</p>		
<p><i>Operator</i> – Nil</p> <p><i>Regulator</i> – Review proposed work and rest arrangements from operator. Assess the risk profile of proposed work and rest arrangements using the RCS matrix. Advise operator of specific risks to be addressed in the application and any other safety case requirements and general advice about the application’s overall risk .</p> <p><i>FERG</i> – Nil</p> <p><i>Jurisdictions</i> – Nil</p>	<p>AFM Business Rules – Requirements for Fatigue Management Systems AFM Business Rules – Requirements for RCS matrix and Safety Cases AFM Business Rules – Requirements for Independent Audit</p>	<p>On-line coaching tool (tailored content provision) On-line coaching tool (template systems) On-line coaching tool (risk assessment) AFM Policy AFM Business Rules AFM Guideline NHVAS Business Rules</p>
<p>(2c) Build System – An operator builds a Fatigue Management System to safely manage their proposed work and rest risk profile and has it audited</p>		
<p><i>Operator</i> – Make any appropriate changes to their business practices to implement a fatigue management system compliant within the 10 AFM standards . Arrange third party audit of their Fatigue Management System.</p> <p><i>Regulator</i> – Publish information on accreditation requirements and processes. Respond to off line enquiries.</p>	<p>AFM Business Rules – Requirements for Fatigue Management Systems AFM Business Rules – Requirements for RCS matrix and Safety Cases AFM Business Rules – Requirements for Independent Audit</p>	<p>On-line coaching tool (tailored content provision) On-line coaching tool (template systems) On-line coaching tool (risk assessment) AFM Policy AFM Business Rules AFM Guideline NHVAS Business Rules</p>

Roles/responsibilities	Rules	Resources
<p><i>FERG</i> – Nil</p> <p><i>Jurisdictions</i> – Refer Operators to NHVR</p>		
<p>(3) Applies – An operator submits their application to the NHVR for consideration</p>		
<p><i>Operator</i> – Complete the RCS matrix. Collate application form, Safety Case (where required), audit report, compliance declaration and fee payment . Submit application to NHVR.</p> <p><i>Regulator</i> – Provide application form and portal. Respond to off line enquiries .</p> <p><i>FERG</i> – Nil</p> <p><i>Jurisdictions</i> – Nil</p>	<p>AFM Business Rules – Requirements for eligibility for accreditation</p> <p>AFM Business Rules – Requirements for applications</p> <p>AFM Business Rules – Requirement for compliance history declaration</p>	<p>On-line coaching tool (risk assessment)</p> <p>NHVR application portal</p> <p>AFM Policy</p> <p>NHVAS Business Rules</p>
<p>(4) Check – The NHVR receives the application and checks that it is complete and conforming</p>		
<p><i>Operator</i> – Nil</p> <p><i>Regulator</i> – Initiate an application case within the workflow management system. Review the application to ensure payment of fee. Check NDN (or manually through jurisdictions intelligence network) for operator compliance history . Request compliance history from relevant stakeholders. Review applicant history declaration and accreditation . compliance history for consistency and determine if a prescribed</p>	<p>AFM Business Rules – Requirements for accepting applications</p>	<p>NHVR application portal</p> <p>NHVR workflow management system</p> <p>On-line coaching tool (templates)</p> <p>AFM Policy</p>

Roles/responsibilities	Rules	Resources
<p>criminal history check should be made. Ensure all required documentation has been submitted.</p> <p><i>FERG –</i> Nil</p> <p><i>Jurisdictions –</i> Provide compliance history for requested parties.</p>		
<p>(5a) Pre-Assess – The NHVR reviews the applicant’s Safety Case and refers non-conforming cases to the FERG</p>		
<p><i>Operator –</i> Nil</p> <p><i>Regulator –</i> Review completed RCS matrix, Safety Case (if submitted) and the 10 AFM standards.</p> <p>(1) If the application is under the threshold for FERG referral, or has utilised a published template, assess whether there are any aspects of the application that may require consideration before acceptance. If yes - Update assessment record and document issues/ concerns with risk profile of the application and develops a list of issues and questions about the application for FERG consideration. Refer assessment record and application to FERG. If no – approve the application, update the relevant systems and advise the applicant.</p> <p>(2) If over the threshold for referral to FERG examine the application and develop any specific questions or issues on which FERG advice is required.</p> <p><i>FERG –</i> If not referred to FERG – Nil If referred to FERG – Receive the Operator application, referral assessment record,</p>	<p>AFM Business Rules – Requirements for referral to Fatigue Expert Reference Group</p>	<p>NHVR workflow management system On-line coaching tool (templates) AFM Policy AFM Business Rules NHVAS Assessment Record FERG Terms of Reference</p>

Roles/responsibilities	Rules	Resources
<p>issues identified for consideration by the Regulator. Commence FERG engagement and review process.</p> <p><i>Jurisdictions –</i> Nil</p>		
(5b) Assess – The FERG reviews the application		
<p><i>Operator –</i> Nil</p> <p><i>Regulator –</i> Participate in FERG engagement processes. Involvement is to ensure correct process is followed.</p> <p><i>FERG –</i> Declare any conflict of interest. Review material provided by the Regulator. Assess safety of the applicant’s proposal and address the issues referred for consideration by the Regulator. Identify any issues with the proposed work and rest arrangements and if appropriate consider conditions that could reduce the risk . Identify gaps in fatigue management body of knowledge that may require further research. Seek additional information from the applicant if considered appropriate..</p> <p><i>Jurisdictions –</i> Nil</p>	<p>AFM Business Rules - Requirements for FERG when assessing applications</p>	<p>AFM Business Rules NHVAS Assessment Record</p>
(5c) Advise – The FERG makes recommendations on the application, noting risks, points of contention with the science and potential conditions		
<p><i>Operator –</i> Nil</p> <p><i>Regulator –</i> Receive advice from FERG</p>	<p>AFM Business Rules –Requirements for FERG when making recommendations</p>	<p>AFM Business Rules NHVAS Assessment Record FERG Terms of Reference</p>

Roles/responsibilities	Rules	Resources
<p><i>FERG –</i> Develop advice based on identified safety risks and considerations and in response to issues raised by the Regulator. Provide written advice to the Regulator and note any matters where the views of the FERG members differ Distribute the assessment and advice record to NHVR.</p> <p><i>Jurisdictions –</i> Nil</p>		
(6) Issue/Reject – The NHVR determines whether to issue, conditionally issue or reject the application and prepares accreditation documentation		
<p><i>Operator –</i> Nil</p> <p><i>Regulator –</i> Review application documentation, assessment record and FERG advice and make a decision on the application. If the decision is not in alignment with the FERG advice, document the reasons for this and consider whether referral of the matter back to FERG for any further input is required. Generate response letter, including, if appropriate, accreditation documentation including accreditation certificate, conditions etc Update accreditation status in workflow management system, including (if granted) programmed audit activities and renewal prompts.</p> <p><i>FERG –</i> If requested by the NHVR provide any further advice prior to the Regulator decision.</p> <p><i>Jurisdictions –</i> Nil</p>	<p>AFM Business Rules – Requirements for approving accreditation requests</p>	<p>On-line coaching tool (application portal) NHVR Workflow management system AFM Business Rules</p>
(7) Inform – The NHVR advises stakeholders of the application outcome and provides accreditation document		
<p><i>Operator –</i></p>	<p>AFM Business Rules – Requirements for</p>	<p>NHVR Application Portal</p>

Roles/responsibilities	Rules	Resources
<p>Nil</p> <p><i>Regulator –</i> Distribute advice of the decision and if relevant accreditation documentation to Operator. If granted – Produce the AFM certificate on which roadside enforcement will be based . Record accreditation document .</p> <p><i>FERG –</i> Nil</p> <p><i>Jurisdictions –</i> Receive accreditation documentation (e.g., AFM certificates) and accreditation conditions. Distribute accreditation documentation and conditions to relevant personne.</p>	<p>granting accreditation AFM Business Rules – Requirements for refusal to grant accreditation</p>	<p>NHVR Workflow management system AFM Business Rules</p>
<p>(8) Induct – On receipt of the accreditation documentation the Operator inducts drivers into their safety management system</p>		
<p><i>Operator –</i> Receive and consider the decision of the Regulator. (1) Accept the decision and make changes to systems and processes if necessary to meet any conditions. Induct drivers and issue letter of induction; (2) Decide to appeal the decision and submit a request for review; (3) Decide to amend application based on feedback and develop a revised package and submit to the Regulator.</p> <p><i>Regulator –</i> Respond to applicant enquiries and if necessary make arrangements for an internal review.</p> <p><i>FERG –</i> Nil</p>	<p>HVNL requirements for decision, grounds and appeal options to be transmitted to applicants.</p>	<p>NHVR Workflow management system AFM Business Rules</p>

Roles/responsibilities	Rules	Resources
<i>Jurisdictions –</i> Nil		

4.2 Requirements for Fatigue Management Systems

4.2.1 An applicant for AFM must develop a Fatigue Management System that meets the ten (10) standards for the AFM module of NHVAS available on the Regulator's website.

4.3 Requirements for Risk Classification matrix and Safety Cases

4.3.1 An applicant must develop a work schedule outlining work and rest arrangements that they will use to direct driver activities.

4.3.2 Each element of the work schedule must specify frequencies to enable assessment of the seven principles in the RCS Matrix, and be scored as per the matrix.

4.3.3 To support their claim of safety, an applicant may provide additional evidence that addresses specific elements of their risk profile. This information would form the Safety Case which is developed to support the RCS matrix and application overall. The level of information to be included in the Safety Case would be commensurate with the level of innovation beyond that envisaged by the RCS. The NHVR will develop guidance material for Operators in the production of a Safety Case.

4.3.4 A Safety Case would be required when the application has any one of the following features:

- more than two (2) high risks;
- two (2) high risks and any medium risks ;
- one (1) high risk and more than two (2) medium risks ;
- more than three (3) medium risks ;
- has an element which exceeds the high risk description in the RCS;
- is based on a published template which requires the provision of a Safety Case.

4.4 Requirements for Independent Audit

4.4.1 Compliance audits are for Entry into the NHVAS Scheme, Renewal of Accreditation, and Maintenance of Accreditation and must be carried out in accordance with the NHVAS Independent Audit Framework. The framework is published by the NHVR website at: www.nhvr.gov.au.

4.4.2 Compliance audits must be carried out by an independent, external auditor certified by RABQSA. The external auditor must disclose any conflicts of interest that may impact their independence, including any relationship or association with other certified auditors involved with the participant's accreditation (e.g., conducting previous compliance audits, consulting on the Fatigue Management System, or administering the accreditation). If no conflict exists, the auditor must make a statement to this effect.

4.4.3 Providing false or misleading information to the Regulator is an offence under the HVNL. Persons who do so may be subject to a financial penalty or other sanctions.

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.

4.5 Requirements for eligibility for accreditation

4.5.1 An individual, partnership, company registered with the Australian Securities and Investments Commission (or its successors), government department or section of a government department may apply for admission to the Scheme.

4.5.2 The entity applying for accreditation must be responsible for controlling or directing the operations of the vehicles covered under the accreditation. Whilst a holding company is not prohibited from applying for accreditation for a subsidiary, they must be able to demonstrate that they have control or direction of the subsidiary's vehicles.

4.6 Requirements for applications

4.6.1 Applicants must submit all of the following:

- The application form;
- A statement by the applicant that the applicant has a Fatigue Management System for ensuring compliance with the relevant standards and business rules;
- A statement from an approved external auditor that they consider the applicant's relevant management system will ensure compliance with the relevant standards and business rules;
- A completed RCS matrix;
- A Safety Case (where required);
- Any other information required for the application under the relevant standards and business rules;
- Any prescribed fee;
- EOI documents as listed on the application;
- Company name, trading name, ACN or ABN and names of any subsidiary company (ACN and ABN) included in the accreditation application;
- Nominated place for compliance audits;
- Criminal and compliance history as outlined in section 4.7.

4.6.2 Providing false or misleading information to the Regulator is an offence under the HVNL. Applicants, participants or their agents who do so may be subject to a financial penalty or other sanctions including possible exclusion from NHVAS.

4.7 Requirements for fees

4.7.1 Fees charged for entry into NHVAS are gazetted and included in fee schedules under the vehicles standards and safety, mass dimensions and loading, and the fatigue management regulations. The fee structure components are:

- A non-refundable application fee charged for the assessment of an application for each module;
- A fee per vehicle nominated for the maintenance management and mass management modules;
- Intercept report book fee for AFM and BFM drivers (optional). The intercept report book cost is included with the maintenance management and mass management modules fees to add vehicles.

4.7.2 Fees are subject to periodic adjustment.

4.8 Requirements for history declaration

4.8.1 An applicant must complete a declaration providing information in regard to their:

- Prescribed criminal history;
- Accreditation compliance history.

4.8.2 The Regulator may request a prescribed criminal history search for an applicant from the relevant police commissioner or justice agency. The Regulator may recover costs for obtaining this information. If the applicant objects to the Regulator obtaining the applicant's prescribed criminal history, the application is taken to be withdrawn.

4.8.3 The Regulator must review each applicant's prescribed criminal and accreditation compliance history and be satisfied that an applicant is capable of managing their operations to ensure continued compliance with the 10 AFM standards and the proposal put forward in their AFM application, and effectively manage their driver fatigue risks.

4.9 Requirements for identification

4.9.1 An individual, company, or other organisation must establish evidence of identity to apply for accreditation to the NHVAS.

4.9.2 A company, operating nationally, can be accredited once or can elect for any subsidiary company having its own ACN and seeking accreditation in AFM accreditation to be separately accredited.

4.9.3 For companies, businesses, corporations, etc. where there are multiple directors, partners or owners, the applicant must nominate one of these directors, partners or owners as a responsible person who can perform business with the Regulator on behalf of the company or business.

4.9.4 The responsible person is to ensure all documents submitted are applied, revised and followed in the workplace by all employees, directors, partners, owners.

4.10 Requirements for accepting applications

4.10.1 The Regulator will only accept applications that are complete and meet the following criteria:

- The applicant has provided all the information required in the approved application form;
- The applicant declares that they have read, understood, and agrees to abide by the AFM Business Rules;
- The applicant meets the eligibility requirements for participating in the NHVAS;
- Evidence of identity has been established to the Regulator's satisfaction;
- The applicant has included a description of their proposed work and rest arrangements, completed the RCS and provided sufficient information to assess the application against the 10 AFM standards and RCS framework;
- The audit statement provided by the applicant:
 - is in the approved form and complete
 - is signed by the participant
 - is signed by an external auditor registered with the RABQSA
 - is less than 6 months old
 - indicates that there are no unresolved non conformance reports
 - indicates that there is no conflict of interest
- The prescribed fee is correct and proceeds banked to the NHVR;
- A check of the Australian Security and Investments Commission verifies the company name, trading name, ACN or ABN and names of any subsidiary company (ACN and ABN) included in the accreditation application;
- The nominated place for compliance audits is confirmed as a physical location within Australia and the jurisdiction of the HVNL.

4.10.2 The Regulator may, on receiving an incomplete application, contact the applicant in writing or via the telephone and provide guidance to allow the participant to satisfy all the requirements for acceptance of the application. If the application is not completed within 20 business days of the guidance being given, the application is rejected.

4.10.3 The Regulator may reject an application, without refund of the administrative component of the prescribed fee, if it is not complete.

4.11 Referral of AFM Applications to FERG

4.11.1 The Regulator must confirm the RCS matrix risk scores and risk profile in the application.

4.11.2 Subject to the exclusions outlined in section 4.10.3, the Regulator must refer an application to the FERG in any of the following circumstances:

- Any of the proposed tasks exceed the high fatigue likelihood/safety risk in any of the principles in the RCS Matrix;
- The application contains any one of the following:
 - more than two (2) high risks;
 - two (2) high risks and any medium risks ;
 - one (1) high risk and more than two (2) medium risks ;
 - more than three (3) medium risks .
- The application is based on a published template which requires the submission of a Safety Case;
- The Regulator determines that independent fatigue expert advice will be useful in assessing the safety risks associated with the application or is seeking advice on conditions to mitigate anticipated safety risks associated with the application.

4.11.3 The Regulator is not required to refer an application to the FERG when the application is based on:

- A previously approved application for that Operator and the risk has not changed from the previous approval;
- A published template and the operator's systems and processes conform to the risk management requirements of that template.

4.11.4 When referring an application to the FERG, the Regulator must prepare a statement as to the advice being sought from FERG. Requested advice may include questions on the safety risks, adequacy of countermeasures, necessity of conditions and other relevant considerations to which the Regulator requires answers to assess the safety of the proposed operating arrangements.

4.11.5 The Regulator must be satisfied that the countermeasures described in the RCS and Safety Case mitigates for the safety risks. The Regulator must consider any advice provided by the FERG and where this is not accepted document the reasons for this in the final decision. The FERG may be given the opportunity by the Regulator to provide further comment on the Regulator's proposed decision and reasons.

4.12 Composition and Role of FERG

4.12.1 The FERG will be comprised of three (3) – six (6) experts with experience in the areas of:

- Fatigue.

- Human factors.
- Behavioural science.
- Risk management.

4.12.2 The role of FERG is advisory. Its role is to provide expert advice on fatigue management to assist the Regulator in their decision making in relation to individual AFM applications or proposed templates. They may also be asked to provide advice in relation to fatigue research and its potential implication for AFM and the RCS.

4.12.3 The NHVR must develop Terms of Reference for the FERG which cover its operations including appointments, length of service, declarations of conflicts of interest, process and timeframes for provision of advice.

4.13 Requirements for FERG when assessing applications or proposed templates

4.13.1 The Chairperson is required to actively engage FERG members within 7 business days to consider the matters put to them. Where it is considered that additional information will be required to address the issues put by the NHVR this should be identified and sought as quickly as possible.

4.13.2 The performance measure for the FERG's provision of advice to the NHVR is 20 business days from the date of the referral. It is recognised that there may be circumstances in which this cannot be achieved, however all efforts are to be made to provide prompt advice and where delays are expected these should be advised to the NHVR as soon as practical.

4.13.3 Without limiting the process to be following by FERG in undertaking their deliberations, the following are minimum areas of consideration:

- Determine the scope of their assessment based on the information sought by the Regulator;
- Review the application and any supporting information provided by the Regulator or applicant;
- Confirm risk scores and identify all risks and gaps in scientific knowledge of fatigue risks relevant to the application;
- Assess the adequacy of the applications proposed countermeasures and additional measures specified in their application;
- Assess the reasonableness of possible conditions taking in to account desired safety outcomes .

4.13.4 In providing their advice in relation to AFM applications, the FERG must focus on the likely fatigue risks in the overall proposed AFM work schedule. They should consider not only the hours of work and rest and the scores of the RCS, but also any mitigating factors which have been put forward by the applicant. They must consider the circumstances of the

specific application and determine, based on their expertise and knowledge and any additional information obtained during the course of consideration of the application, whether the level of risk in the proposed arrangements is acceptable and in general equivalent to that of standard hours or BFM.

4.13.5 The FERG advice may include commentary on areas where revision of the application may result in an acceptable safety level (eg: through adjustment of work and rest hours; introduction of mitigating factors or practices). Where the FERG has engaged with the AFM applicant as part of the process it is acceptable for advice to be provided to the applicant on how risk could be managed, noting that the FERG must not state or infer that the inclusion of changes will result in the application being approved by the NHVR.

4.13.6 The advice provided must:

- Address all questions or issues raised by the Regulator in the referral;
- State any conditions which should be placed on the operator to promote the safety of the proposed work arrangements;
- Advise whether the advice was supported by all FERG members and if not document the views of the dissenting members;
- Provide a rationale for the advice.

4.13.7 If additional information is required by the FERG, the Regulator must contact the applicant within two (2) business days of receipt of the advice to request the additional information. If the additional information is not provided by the applicant within 28 days of the request, the application lapses and the Regulator must reject it.

4.14 FERG Advice on the Scheme Operation

4.14.1 The Regulator may ask the FERG to reassess the appropriateness of the FERG referral thresholds, the RCS principles and scores if it:

- Believes that there has been a relevant development in the scientific knowledge of fatigue management;
- Is of the view that the RCS principles and scoring categories are failing to correctly assess the risks associated with applicants' risk profiles;;or
- Is more than two (2) years since the last review of the RCS.

4.14.2 If requested to reassess the RCS the FERG may consider:

- Any new scientific evidence not available at the time of the last assessment;
- The performance of current AFM members such as:
 - crash involvement;
 - compliance with AFM standards and participants' Fatigue Management Systems;
 - compliance data;

- frequency of use of upper limits;
- other Operator provided data .
- Other matters determined to be relevant .

4.14.3 The FERG must consult with a range of stakeholders including:

- The scientific community;
- Relevant regulatory agencies ;
- The police;
- The transport industry;
- Road freight customers;
- Trade unions;
- Road safety advocates.

4.14.4 The FERG must provide a written statement to the Regulator outlining any proposed changes to the FERG referral thresholds, the RCS principles, the categories and relative scores. The rationale behind the proposed changes must be outlined. Any dissenting views must be included in the response to the Regulator.

4.14.5 The Regulator may accept the advice of FERG to alter the RCS and its operation within AFM if the Regulator considers the advice enhances AFM as a tool to promote safety and economic productivity. If the Regulator proposes changing the RCS and its operation, they must brief the Standing Council on Transport and Infrastructure (SCOTI), or its successor, and obtain majority approval to amend the AFM Business Rules to adopt the revised arrangements. The revised arrangements will be applied twelve (12) months after approval or at a date specified by SCOTI.

4.14.6 If the SCOTI approves a change to the RCS and its operation, the Regulator will preserve all existing AFM accreditations under the HVNL. (See Section10 – Transitional Arrangements) .

4.15 Requirements for Approving Accreditation requests

4.15.1 Completed applications that satisfy the acceptance requirements will be assessed with consideration of any other information the Regulator may hold about the applicant. As public safety is a primary focus for Regulator, if the appropriate authority within Regulator determines that accreditation under the NHVAS significantly impacts public safety beyond the impacts permissible when operating under standard hours, the application must be refused.

4.15.2 The Regulator will consider an application for accreditation within 28 days of receiving all relevant information. A decision whether to grant the application, with or without discretionary conditions, or to refuse the application will then be made. The

Regulator may extend this timeframe by an additional 14 days if the application is referred to FERG for consideration.

4.15.3 The Regulator must have regard to the applicant's:

- Adequacy of countermeasures to mitigate risks described in the Safety Case ;
- Ability and likelihood of reliably implementing the countermeasures described in the Fatigue Management System to ensure safety outcomes are maintained ;
- Compliance history including unsatisfactory compliance audits, sanctions and breaches of transport regulations within 5 years. After this period, the information should not be considered in a membership application.

4.15.4 In determining the adequacy of the countermeasures described in the application, the Regulator must give regard to:

- scientific body of knowledge around road safety, fatigue and risk management; and
- the advice of the FERG, including any dissenting views .

4.15.5 The Regulator may approve an application (with or without conditions) where it considers that;

- the applicant has provided the prescribed documents and fees;
- there are no identifiable unmanaged compliance or safety risks in granting accreditation; and
- the applicant has demonstrated their capability of complying with the legislation and standards.

4.15.6 Alternatively, if the Regulator's assessment identifies deficiencies in any of the above, they will determine to refuse the application. The Regulator may send a notice to the applicant allowing additional submissions to be made. These submissions will be taken into account by the Regulator when making a final recommendation and final decision on the application.

4.16 Requirements for Granting Accreditation

4.16.1 If the Regulator decides to grant the accreditation, it must give the applicant a signed notice of the decision within fourteen (14) days of making the decision. The accreditation notice must state:

- participant's name and place of business;
- participant's accreditation number;
- commencement and expiry date for accreditation;
- any conditions imposed by the Chief Executive on the accreditation.

4.16.2 Successful applicants are referred to as “participants” and are accredited for up to three (3) years. Generally, participants will be accredited for 2 years. The Regulator may choose a different time period if certain circumstances apply, including:

- extending accreditation up to 3 years for operators with no non-compliance history;
- shortening accreditation if:
 - the applicant is new to accreditation;
 - there are unresolved issues from the FERG that they want to see the operation of for a limited time; or
 - the shorter period aligns the renewal date with the applicant’s other accreditations.

4.16.3 All participants are issued with the following items:

- approval letter and certificate of accreditation; and
- intercept report books for requested at application.

4.16.4 The HVNL provides that the Regulator may impose conditions on the accreditation not sought by the applicant for the period of the accreditation (for example, increased rest requirements). If a condition is imposed, the Regulator must provide the applicant with a notice detailing what the condition is and how applicant can seek a review of the condition.

4.16.5 Where an operator who is already accredited in one NHVAS module seeks accreditation in AFM, the Regulator will facilitate the alignment of accreditation cycles for the various modules.

4.17 Requirements for refusal to grant accreditation

4.17.1 If a decision is made to refuse an application, the Regulator will document the reason for the decision and provide this to the applicant. This documentation must state:

- that the application has been rejected;
- the grounds for the rejection;
- the facts and circumstances forming the basis for the decision;
- the ways in which the applicant can have their decision reviewed.

Applicants refused entry into the AFM Module of NHVAS are entitled to have their decision reviewed (see Section 7).

5 Participating in Accreditation

5.1 A participant in the AFM module of NHVAS must comply with the NHVAS Business Rules, AFM Business Rules and ten (10) standards for AFM and the RCS framework as a condition of accreditation.

5.2 Requirements for driver induction

5.2.1 Participants must induct their drivers into their fatigue management systems and conditions of AFM approval, including drivers directly employed by the participant or drivers engaged through other contractual arrangements. The Participant must keep a current list of their drivers inducted into the Participant's fatigue management system and must keep evidence that a driver has been inducted and meets the requirements of the particular accreditation.

5.3 Requirements for record keeping

5.3.1 Participants are required to meet all provisions of the HVNL relating to AFM accreditation.

5.3.2 All drivers of fatigue regulated heavy vehicles who have been inducted into the Participant's AFM accreditation and intend to operate task approved as part of the AFM accreditation must carry a National Heavy Vehicle work diary or utilise an approved Electronic Work Diary.

5.3.3 A driver must record in his or her work diary the AFM accreditation number of the Participant for whom he or she is working. The Participant is also required to ensure that the driver complies with this requirement. It is an offence not to record this information.

5.3.4 All driving records must be kept by the participant's nominated record keeper for three (3) years.

5.4 Requirements for maintaining accreditation

5.4.1 The maintenance of accreditation is dependent upon a Participant's compliance not only with the terms and conditions of the Scheme, but also with other aspects of relevant road transport legislation.

5.4.2 Performance is monitored through a program of:

- compliance audits;
- investigation of complaints; and
- random compliance checks.

5.5 Requirements to undergo Compliance Audits

5.5.1 A compliance audit assesses the effectiveness of a fatigue management systems' process by examining and measuring, over a period of time, the level of adherence to

proposed and accredited systems. The primary place for the compliance audits should be agreed by the applicant and the Regulator at the time of entry to NHVAS.

5.5.2 Compliance audits fall into two categories: scheduled or triggered.

5.5.1 Requirements for Scheduled Audits

5.5.1.1 For the first accreditation period, the participant's systems and processes must undergo a scheduled compliance audit within the first six (6) months of operation, and a second audit within twelve (12) months prior to the end of the accreditation period.

5.5.1.2 Prior to a compliance audit, participants MUST provide the external auditor with the following information from their own records (i.e., not from Regulator)

- a list of all drivers which have been approved for use under accreditation since the previous scheduled audit and is up to date; and
- details of their compliance history (e.g., intercept reports, infringement notices/breach notices, details of participant's relevant compliance history since the previous accreditation/application period); and
- the participant's previous audit report.

5.5.1.3 The provision of this information must be made prior to each audit, however information provided will be subject to the requirements of privacy legislation in the particular jurisdiction (for example, offences recorded against drivers).

5.5.1.4 After the first accreditation period, the system is subject to one scheduled compliance audit every accreditation period, within the last 12 months of the accreditation period. Every effort should be made to align the scheduled compliance dates for different NHVAS modules to avoid the participant having differing audit cycles.

5.5.1.5 All scheduled audits or summary external auditor reports in a format prescribed by the Regulator are to be sent to the Regulator within 20 business days of the audit.

5.5.1.6 Normally, the scheduled compliance audits are undertaken at the location agreed by the Participant and the Regulator on entry to the Scheme. However, at the request of a participant, and at the discretion of the Regulator, the audit may be performed at another location and by such means as approved by the Regulator, provided that the number of audits conducted away from the Participant's nominated premises is limited to two consecutive audits.

5.5.1.7 When an external auditor has carried out two consecutive audits on an operator, a different auditor must conduct the next audit. These provisions may, after written application by a Participant, be waived by the Regulator in extenuating circumstances such as in remote areas.

5.5.2 Requirements for Triggered Audits

5.5.2.1 Where information (e.g. on-road breach, serious crash, compliance history, an intercept report, a compliance statement or a complaint) suggests that the Participant or its' agents may be acting in contravention of the conditions of accreditation, the Regulator must satisfy themselves that there is some substance to the allegation or issue before initiating a triggered audit. This substantiation may come from information received from a spot check. The Regulator may require the audit to be undertaken at any of the operator's premises or at a location nominated by the Regulator.

5.5.2.2 The Regulator may initiate or conduct a triggered audit on any Participant.

5.5.2.3 Another agency or an enforcement officer may request the Regulator to initiate a triggered audit on a Participant.

5.5.2.4 The Regulator must choose an approved external or internal auditor that is independent of the Participant, to undertake a triggered audit.

5.6 Requirements to investigate complaints

5.6.1 A complaint may be received from another agency or any member of the public, verbally or in writing. The Regulator has the discretion not to act on a complaint that relates directly to the conditions of accreditation and reserves the right not to act upon, or reply to, vexatious or anonymous complaints. Where a complaint is in writing, the Regulator should respond to the complainant in writing.

5.6.2 While a complaint is being investigated, the Regulator may choose not to advise the Participant of the complaint. Where the Regulator decides to take some action after investigation, the Participant must be advised in writing of the complaint.

5.6.3 If, after investigation, the complaint is substantiated, the Regulator may take action against the Participant (see Sanctions section 9).

5.6.4 If action is taken, the Regulator must keep a record of the complaint and action taken. This is to be filed with other information about the Participant and may be taken into consideration when renewing accreditation (see Renewal section 6).

5.7 Requirements for random compliance checks

5.7.1 The Regulator may conduct or initiate random compliance checks to gather information on a participant's level of compliance. These checks cover compliance with the terms and conditions of the AFM module of NHVAS, the NHVAS generally, the fatigue arrangements as proposed in the RCS and Safety Case and compliance with relevant road transport legislation.

5.7.2 Random compliance checks can be carried out in a variety of ways, namely by:

- on-road intercepts;
- review of quarterly compliance statements or requesting other information;
- spot checks to determine satisfactory compliance; and

- any combination of the above.

5.7.3 Requirements for On-road Intercepts

5.7.3.1 On-road intercepts can be carried out by agencies and/or police to provide information on compliance with the conditions of the AFM module of NHVAS as well as with relevant road transport legislation.

5.7.3.2 When a driver of a participant is intercepted on the road, an intercept report (hardcopy or electronic) should be completed by the enforcement officer. Where a breach is identified, the intercept report should be forwarded to the Regulator. Where no breach is identified, the Regulator should be advised of the intercept.

5.7.3.3 The Regulator and participant must keep a record of the intercept report for a minimum period of three (3) years for audit and renewal purposes.

5.7.4 Compliance Statements

5.7.4.1 As part of the internal review standards for each module, a participant is required to complete quarterly compliance statements. These statements must contain a record of compliance with the key outcomes required for AFM under the ten (10) standards for AFM and the approved RCS and Safety Case.

5.7.4.2 Review of quarterly compliance statements may be undertaken at the participant's premises or the Regulator may request a participant to provide the statements directly to the Regulator at specified intervals.

5.7.4.3 If the Regulator requires access to these statements, it must be included in the conditions agreed between the relevant parties. These conditions should also include the consequences of not providing them as requested.

5.7.4.4 If a discrepancy is found, the accrediting agency may choose to take action against the participant.


5.7.4.5 The Regulator and participants must keep records of compliance statements for a minimum period of three (3) years for audit and renewal purposes.

5.7.4.6 The HVNL contains additional powers to require persons to answer questions or produce documents.

5.7.5 Spot Checks

5.7.5.1 A spot check may be carried out either on-site or as a desk-top review of specific records by competent persons or enforcement officers.

5.7.5.2 A spot check could be triggered because of information received that an operator may not be complying with the ten (10) standards for AFM or their approved RCS and Safety Case. This information can come from on-road intelligence (intercept report, weigh in motion (WIM) data, a non-compliance report as part of Intelligent Access Program (IAP) etc), a complaint, advice from another jurisdiction or a discrepancy in an audit report that an agency would like to investigate further. A spot check is used as a preliminary step to establish



whether action needs to be taken. If the discrepancy is proven and indicates a systemic problem, the accrediting agency could initiate a triggered audit to investigate the non-compliance further.

6 Sanctions

6.1 When determining the sanction to apply to a substantiated non-compliance with the Scheme, consideration should be given to the severity of the case, any mitigating circumstances and any related advice from the FERG.

6.2 Sanctions that can be imposed on a Participant include:

- counselling;
- a written warning notice;
- an improvement notice;
- issuing a notice to take corrective action within a specified period;
- increasing the frequency of scheduled compliance audits;
- variation of the terms and conditions of accreditation;
- issuing a notice of intention to suspend, amend or cancel an accreditation;
- immediate suspension of an accreditation.

6.3 A participant must respond to all notices of an intention to suspend, amend or cancel an accreditation within 14 days of the date of posting of the notice. At the end of the 28 days notification period, the Regulator must consider all information provided and make a decision.

6.4 The Regulator must advise the participant in writing of the Regulator's decision and, if necessary, of the appropriate mechanism for review of the decision.

6.5 A participant must keep a record of any imposed sanction and the reasons for making that determination. Any sanction taken against a participant is in addition to the normal penalties incurred for a breach of road transport legislation.

6.6 Providing false or misleading information to the Regulator is an offence under the HVNL. Persons who do so may be subject to a financial penalty in addition to other sanctions. It is an offence to claim accreditation through use of a label or any other means. Persons who do so may also be subject to a financial penalty.

7 Requirements for Review of Decisions

7.1 The Regulator must give applicants and participants the opportunity to apply for a review of decisions in as open a manner as possible. Correspondence detailing decisions by the Regulator should include:

- grounds for the decision; and
- information on internal and external review processes; and
- timeframes for these processes.

7.2 An applicant refused entry to a module may request an internal review of the decision within 28 days of the posting of the notification of the application outcome by the Regulator. If the original decision is confirmed, the participant may seek external review under the law of the jurisdiction of the registered address of the participant.

7.3 A participant wishing to contest a decision not to renew accreditation must lodge a request for internal review within 28 days of the posting of the notification. If the original decision is confirmed, the Participant may seek external review under the HVNL as applied in the jurisdiction of the registered address of the participant.

7.4 Where the review confirms the original decision, appeal, the accreditation ceases as from the renewal date.

7.5 A Participant wishing to contest a decision to vary, suspend or cancel accreditation prior to the end of the accreditation period must lodge a request for an internal review within 28 days of the posting of the notification. If the original decision is confirmed, a Participant may lodge an external review.

7.6 Sanctions are to be held in abeyance during the internal review but if the original decision is confirmed, they are to be imposed and remain in force unless overturned by the external review process.

8 Requirements for exiting accreditation

- 8.1 A participant may voluntarily leave the AFM module of NHVAS at any time or the accreditation may be cancelled by the Regulator.
- 8.2 Participants voluntarily leaving the AFM module of NHVAS must advise the Regulator in writing that they wish to do so.
- 8.3 On receipt of the request to leave the AFM module, the Regulator must request the return of the participant's accreditation certificate and the destruction of any copies held by drivers. A person must comply with a request within five business (5) days after receiving the notice.
- 8.4 A participant's accreditation does not transfer to a new owner in the event of the company being sold and acquired by another operator. If the ownership of a NHVAS participant changes, that participant must notify the Regulator of the changes prior to them coming into effect. If the new owner is not an accredited operator and chooses to enter the AFM module of the NHVAS, they must seek accreditation in their own right.
- 8.5 Where a participant's accreditation has been suspended or cancelled, the member must return the accreditation certificate and provide written advice that all copies have been destroyed within fourteen (14) days of the posting of the notification.
- 8.6 To ensure that all items have been returned, the Regulator may request access to the ex-participant's records to trace how and when the certificates were used. Reference can also be made to the original record of issue maintained by the Regulator.
- 8.7 The Regulator is to advise all jurisdictions of voluntary exits from the AFM module of NHVAS and of any suspensions or cancellations of accreditation once review procedures have been completed.

9 Re-Entry/Renewals

9.1 Participants must apply for re-entry/renewal to the AFM Module of NHVAS from three (3) months prior to the end of the current accreditation period. If an application is not received, the Regulator will automatically allow the accreditation to expire on the accreditation expiry date.

9.2 Towards the end of each accreditation period, a participant's performance in the AFM module of NHVAS must be reviewed by the Regulator. The accreditation period may be extended (to not more than 3 years) when the performance of the Participant has demonstrated sustained compliance with their NHVAS conditions. The accreditation period may be reduced, cancelled or no renewal granted if the performance of the Participant has been unsatisfactory during the previous accreditation period.

9.3 For the accreditation period to be increased from two to three years, a participant's performance shall be assessed in terms of whether there has been a major non-conformance over the accreditation period and where this has occurred, the extent to which their Fatigue Management System identified it and the action taken to correct it and prevent a recurrence. Where a participant's Fatigue Management System has failed to identify a known major non-conformance and/or implement corrective action, the Regulator may reduce, or cancel the next accreditation period.

9.4 Major non-conformances, which a participant's Fatigue Management System has failed to identify, may be detected through on-going performance monitoring such as compliance audits, complaint investigation and random compliance checks. The Regulator shall have regard as to whether the major non-conformance should reasonably have been detected by the participant's Fatigue Management System.


9.5 When determining whether to continue membership and the length of the next accreditation period, the Regulator must consider the following:

- the audit results over the accreditation period;
- any advice received from the FERG;
- the history of compliance with relevant road transport legislation; and
- the history of compliance with the terms and conditions of the Scheme.

9.6 Compliance history information is relevant for five (5) years for Fatigue Management from the date the non-compliance occurred. After this period, the information should not be considered in a renewal application.

9.7 If, after review, a participant's performance is not considered satisfactory in a module or group of modules, the Regulator may decide to cancel the participant's accreditation in the AFM module of NHVAS.

9.8 If the Regulator decides to take this course of action, the Regulator must advise the participant in writing of the reasons for the proposed action and allow 14 days to show cause why the accreditation should not be suspended, amended or cancelled. If, in the opinion of



the Regulator, the participant fails to show cause, the Regulator will advise the participant within 14 days that accreditation has been cancelled.

9.9 Within 1 days of that advice, the participant must return the identification labels and the accreditation certificate or provide written advice that they have been destroyed.

10 Transitional Arrangements

10.1 All existing AFM approvals will be maintained unchanged for the period of the current approval provided the operator does not provide the NHVR with grounds to cancel or amend the accreditation under section 473 of the HVNL.


10.2 Until the NHVR commences Release 2, all AFM renewals and new applications will be assessed under the existing AFM arrangements and processes. If successful, accreditation will be granted for up to 2 years and for expiry no later than 31 December 2015. Jurisdictions may continue to set conditions on AFM approvals (e.g., the 15 hour outer limit in NSW and Victoria).

10.3 After the commencement of Release 2, at the point of renewal, the NHVR will undertake an assessment of the approved AFM limits under the RCS:

- if the limits are assessed as fitting within the RCS, the renewal will be undertaken under the new AFM framework, including potential review by FERG;
- where the application contains approved AFM limits considered a high fatigue risk under the RCS, discussion will occur between the NHVR and operator about the adequacy of their Fatigue Management System and the NHVR will make recommendations for schedule adjustments and changes to the Fatigue Management System that must be considered to enable the risk profile to be managed within the RCS framework. The AFM operator will be given the option to incorporate these adjustments immediately and have their renewal undertaken under the new AFM framework, including potential review by FERG, or to continue with their existing arrangements ;
- where the Operator elects to continue with their existing arrangements, an approval will be given for a period ending no later than 31 December 2015 on the condition that the operator participate in a change management process to align their Fatigue Management System with the RCS. This condition will be included on the notification letter and AFM certificate.

10.4 Participants who wish to apply for the continuation of their operating arrangements as they were approved under the AFM arrangements prior to 10 February 2014 (and the introduction of the RCS) can only do so on the basis that:

- there is no change to their previously approved hours of work and rest and overall systems and processes ;
- no incidents have occurred which can be attributed to fatigue during the period of their prior approval;
- there is a history of compliance related to fatigue management;
- audit results indicate that systems and processes have been maintained and followed and that there were no major non-conformances which had not been found and rectified by the operator prior to audit or where there is a systemic and persistent minor non-conformances identified at audit.



10.5 An application will be assessed under the RCS only if, at the point of AFM renewal:

- the operator wishes to submit a revision to their previously approved AFM arrangements;
or
- the operator is not considered to be in good standing in relation to their AFM approval conditions and fatigue safety.

11 Information Exchange

11.1 The Regulator will transmit to each jurisdiction the following information:

- details of entry (name of participant) into the AFM module of NHVAS; and
- details of exits (voluntary, allowed to lapse, suspension, cancellation) from the AFM module of NHVAS, after all appeals, if any, have been exhausted.

11.2 The Regulator will also transmit the following information to jurisdictions as appropriate:

- the results of a triggered audit carried out on behalf of another jurisdiction;
- an enquiry regarding an audit or vehicle inspection on behalf of another jurisdiction;
- details of a complaint received about a Participant accredited by the Regulator;
- a response to a complaint transmitted from the Regulator; and
- a response to an enquiry regarding accreditation status.

11.3 Jurisdictions must provide information to the NHVR on request in relation to an applicant or Participant in AFM:

- infringement history
- audit and other investigation history
- prior complaints history



PO Box 492
Fortitude Valley
QLD 4006

Ph: 1300 MYNHVR (1300 696 487)
Fx: (07) 3309 8777
Email: info@nhvr.gov.au

www.nhvr.gov.au