



Explanatory Paper

Ontario Regulation 170/16 made under the Travel Industry Act, 2002

What the New Rules Mean to You

This document will explain in detail the changes to Ontario Regulation 26/05 (Regulation). Any questions with respect to the information contained in this document should be directed to the Travel Industry Council of Ontario (TICO).

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EXECUTIVE SUMMARY

The Ministry of Government and Consumer Services consulted on proposed changes to the regulations under the *Travel Industry Act, 2002* (Act) in two phases during November/December 2015 and March/April 2016.

The following amendments to the Regulation come into force on July 1, 2016:

- Exempting businesses that exclusively offer one day tours from the requirements of the Act.
- Modifying the security deposit and working capital requirements to provide some flexibility for lower risk businesses that are closely tied to government.
- Aligning the filing deadline for regular claims and trip completion claims at six months.

The following amendment to the Regulation comes into force on January 1, 2017:

- All-in pricing. This provision will require registered businesses to display the total price to consumers, including all fees, levies, taxes and other charges, when advertising travel services.

EXEMPTIONS – ONE DAY TOURS

Section 2 of the Regulation identifies a number of groups that are exempt from the requirements of the Act and Regulation. These groups do not require registration and are not covered by the Compensation Fund.

- The section has been amended to exempt “a person who sells one day tours”.

Do I qualify for the exemption?

- The exemption only applies if the person does not otherwise act as a travel agent or travel wholesaler.
- **To be exempt, you must be selling one day tours exclusively.**
- “One day tour” is defined in the Regulation to mean a tour that,
 - (a) commences at a departure point and concludes at the same point within a 24-hour period, and

(b) includes travel services, except for accommodation.

- The exemption is intended to capture shuttle type services, where consumers are taken to an attraction or event and back within a day. Examples would include return trips to a concert, sporting event, play, casino, shopping mall, museum, ski hill, etc. that take place **within a 24-hour period** and **do not include any accommodations**.
- Any registered entities that only sell one day tours and no longer require registration can contact TICO to voluntarily terminate their registration. Refunds will be provided on a pro rata basis for any registration fees from July 1, 2016 until the registration expiry date.

NOTE: If you are selling one day tours and multi-day tours, the exemption would not apply and you would still need to be registered under the Act and meet all of the regulatory requirements.

If you are required to be registered, you would need to report your one day tour sales as part of your Ontario sales and pay into the Compensation Fund on those sales.

The Compensation Fund would cover one day tours of registered travel agents and wholesalers pursuant to the requirements of the Regulation.

FINANCIAL STATEMENTS

Section 22 of the Regulation details the financial reporting requirements.

- The registrar currently has the authority to require that a registrant provide a written statement of the registrant's current net working capital within a specified time if there are concerns that a registrant is in financial difficulty. The section has been amended to recognize the new exemption from the working capital requirement for lower risk businesses that are closely tied to government.
- A registrant that is exempt from the working capital requirement would not be required to provide a written statement of the registrant's current net working capital. A registrant that meets the exemption criteria would be required to provide a written statement indicating that he/she/it is a person that meets the exemption criteria.
- The registrant is required to provide the applicable written statement within the time that the registrar specifies.

WORKING CAPITAL

Section 24 of the Regulation sets out the working capital requirements.

- The section has been amended to create an exemption for lower risk businesses that promote tourism and are closely tied to government.

Do I qualify for the exemption?

In order to be exempt from the working capital requirement, all of the following conditions must be met:

- The registrant is a not-for-profit corporation without share capital.
- The registrant has entered into a transfer payment agreement or other funding agreement with the Crown in right of Ontario or a municipality.
- The term of the agreement is set out in the agreement, is for a period of not less than one year and has not expired.
- The agreement requires the registrant to promote tourism in any geographic area of Ontario.
- A copy of the agreement with the province or municipality is provided to the registrar within the time and within the manner that the registrar specifies.
- Any additional information that is required by the registrar about facts affecting matters dealt with in the agreement is provided within the time and in the manner that the registrar specifies.
- The registrant provides written notice to the registrar of any amendments to the agreement within a reasonable time following an amendment.

SECURITY – NEW APPLICANTS

Section 25 of the Regulation sets out the security requirements for new applicants. A person applying for registration, who has not been registered during the previous 12 months, must provide \$10,000 in security to TICO.

- The section has been amended to add an exemption for lower risk businesses that promote tourism and are closely tied to government.

Do I qualify for the exemption?

In order to qualify for the exemption, the following conditions must be met:

- The registrant is a not-for-profit corporation without share capital.
- The registrant has entered into a transfer payment agreement or other funding agreement with the Crown in right of Ontario or a municipality.

- The term of the agreement is set out in the agreement, is for a period of not less than one year and has not expired.
- The agreement requires the registrant to promote tourism in any geographic area of Ontario.
- A copy of the agreement with the province or municipality is provided to the registrar within the time and within the manner that the registrar specifies.
- Any additional information that is required by the registrar about facts affecting matters dealt with in the agreement is provided within the time and in the manner that the registrar specifies.
- The registrant provides written notice to the registrar of any amendments to the agreement within a reasonable time following an amendment.

If the registrant has entered into a transfer payment agreement or other funding agreement with a municipality, the following additional conditions apply:

- The municipality has entered into a financial arrangement, financial commitment, guarantee, indemnity or similar transaction with TICO that provides that the municipality has a contingent liability to TICO for the amount of any deduction that would have been required under the section for any claims paid or anticipated to be paid from the Fund because of the registrant's bankruptcy, insolvency or ceasing to carry on business if the registrant were not exempt from the section.
- The registrar has provided confirmation in writing to the registrant that the above financial condition has been satisfied.

What happens if I cease to be exempt?

- If a registrant who is exempt ceases to be exempt **before the registrant has filed two consecutive annual financial statements**, the registrant shall provide \$10,000 in security to the administrative authority as soon as practicable after the registrant ceases to be exempt.
- If a registrant who is exempt ceases to be exempt **after the registrant has filed two consecutive annual financial statements**, the registrant shall provide written notice to the registrar as soon as practicable after the registrant ceases to be exempt.
- When the registrar receives written notice that a registrant has ceased to be exempt, the registrar shall give the registrant written notice of the following within a reasonable time:

- If the registrar has no concerns about the registrant's compliance with the Act or Regulation, a statement of that fact.
- If the registrar has concerns about the registrant's compliance with the Act or Regulation, a specification of the time within which the registrant shall provide \$10,000 in security to TICO.
- If there are any claims anticipated to be paid to customers of the registrant from the Fund because of the registrant's bankruptcy, insolvency or ceasing to carry on business, a specification of,
 - the amount that the registrant shall pay to TICO for any such claims, which amount shall not exceed \$10,000, and
 - the time within which the registrant shall provide the amount to TICO and the manner in which the amount is to be provided.
- A registrant who receives a notice from the registrar requiring that security be provided shall provide the amount within the time and in the manner specified in the notice.
- A registrant who receives a notice from the registrar requiring that a specified amount be provided for claims shall provide the amount within the time and in the manner specified in the notice.
- If the registrant has a transfer payment agreement or other funding agreement with a municipality and the municipality has entered into a financial arrangement with TICO that provides that the municipality is responsible for the obligation and TICO has confirmed that the condition has been satisfied, no further action is required by the registrant.

Will I get the security back?

- The security provided by new applicants will be returned to the registrant after the registrant has filed two consecutive annual financial statements provided that the registrar has no concerns about the registrant's compliance with the Act or Regulation.
- If the registrar has concerns regarding the registrant's compliance, the security can be held by TICO until the concerns are resolved.

- When the security is returned to the registrant, an amount will be deducted for any claims paid or anticipated to be paid to customers of the registrant from the Fund because of the registrant's bankruptcy, insolvency or ceasing to carry on business.

ALL-IN PRICING

Section 33 of the Regulation outlines requirements for any representation that refers to a price.

- The section is being amended to remove the flexibility that registrants had when displaying prices.
- Prior to the amendment coming into force, the amount could be expressed either as:
 - a total price; or
 - a base price plus total taxes, fees and additional charges; or
 - a base price with a detailed breakdown of all taxes, fees and additional charges.
- Further, the representation was not required to deal with retail sales tax or federal goods and services tax.
- Effective January 1, 2017, any representation that refers to a price shall set out the total amount that the customer will be required to pay for the travel services, including all fees, levies, service charges, surcharges, taxes and other charges. In other words, "all-in" pricing is required.
- Retail sales tax or federal goods and services tax must be included in the total price.
- Registrants that charge counselling fees or service charges must include those amounts in the total price.
- The goal of this change is to ensure that consumers know exactly what they will be required to pay for travel services and to make it easier for consumers to compare prices.
- The change will also help to ensure that there is fair competition and a level playing field when registrants advertise the price of travel services in the province.

- While TICO enforcement staff will be focused on the obligations of registrants under the *Travel Industry Act, 2002* and Ontario Regulation 26/05, it should be noted that the changes to Ontario Regulation 26/05 do not alter any obligations that registrants may have pursuant to other statutes. It is the registrant's responsibility to ensure that they comply with the requirements of any Act or regulation under it respecting advertising of prices or in respect of taxes.
- For example, subsection 40(1) of the *Retail Sales Tax Act* provides that no vendor shall advertise or post or otherwise quote a price that includes the tax imposed by that Act unless the vendor specifies separately the amount of the tax payable under that Act. Thus, that amount would have to be specified separately in addition to the representation.
- Please note that TICO staff members are not experts with respect to the requirements of other statutes and TICO is unable to provide registrants with legal advice regarding those obligations. TICO recommends that registrants seek legal advice if they are unsure about their obligations under other statutes.

CLAIM FILING DEADLINE

Section 60 of the Regulation outlines the filing deadlines for claims on the Compensation Fund.

- The section has been amended to change the filing deadline for trip completion claims from three months to six months. This will provide a longer period of time for those filing trip completion claims, which will be helpful for consumers with long stays.
- The change should also make the process simpler. Having the same filing deadline for both regular claims and trip completion claims will make things less confusing for the consumer.

HOUSEKEEPING AMENDMENTS - REMOVAL OF TRANSITION PROVISIONS

- **Section 14 of the Regulation** dealing with supervision of an office was removed. The section ceased to apply on June 30, 2009.
- **Section 23 of the Regulation** dealing with working capital was removed. The transitional provision ceased to apply on December 31, 2005.