

PROPOSAL TO AMEND REQUIREMENTS UNDER THE TRAVEL INDUSTRY ACT, 2002

REDUCING REGULATORY BURDEN AND HARMONIZING PRICING REQUIREMENTS UNDER THE ACT

Overview

The Ministry of Government and Consumer Services is seeking input on proposals to amend Ontario Regulation 26/05 made under the Travel Industry Act (TIA) to reduce regulatory burden and harmonize pricing provisions for all types of travel services.

If approved and implemented, the proposed regulatory amendments would:

- Exempt businesses and individuals that offer one day tours from the requirements under TIA;
- Modify specific registration and operating requirements to allow for flexibility for lower risk businesses; and
- Require all businesses registered under TIA to display the total price to consumers, including all fees, levies and other charges, when advertising travel services.

In addition, the ministry is proposing to make a technical amendment to align the timing for claim submissions.

Background

TIA provides the legislative framework to regulate the nearly 2,500 travel agents and wholesalers selling travel services in Ontario. Under TIA, travel services are defined as “transportation or sleeping accommodation for the use of a traveller, tourist or sightseer or other services combined with that transportation or sleeping accommodation.”

The Travel Industry Council of Ontario (TICO) is the delegated administrative authority that administers and enforces the TIA requirements. Travel agents and wholesalers must be registered with TICO to operate in Ontario.

Under TIA, a travel agent is defined as “a person who sells, to consumers, travel services provided by another person.” A travel wholesaler is defined as “a person who acquires rights to travel services for the purpose of resale to a travel agent or who carries on the business of dealing with travel agents or travel wholesalers for the sale of travel services provided by another person.”

Currently, the regulation under TIA set outs specific requirements that must be met as part of the registration process as well as requirements for those operating as travel agents and wholesalers in Ontario. The regulation also exempts “classes” of persons

from the requirements under TIA (e.g., public carriers who sell scheduled transportation).

Proposed Regulatory Changes

The ministry is seeking your feedback on the following proposed amendments to the regulation. These proposed amendments are intended to reduce regulatory burden on lower risk businesses and harmonize requirements for displaying or advertising the price of travel services.

1) *Exempt businesses and individuals that offer one day tours from the requirements under TIA*

Currently, tourism businesses and individuals that offer one day tours that include transportation or accommodation provided by another business are required to register as a travel agent or wholesaler and meet all of the requirements under TIA. For example, winery tour operators that contract with a bus company to transport consumers to multiple wineries or include overnight accommodation at a local hotel in their tour packages would be required to be registered under TIA.

Businesses that focus on one day tours to promote tourism in Ontario have raised concerns that the requirements under TIA are overly burdensome and should not apply (e.g., businesses that solely arrange tours involving overland transportation for their customers to promote other Ontario businesses/attractions). The ministry is proposing to exempt these types of businesses and is looking for input on the scope and definition of the exemption.

Key Questions:

- 1.1. Should businesses and individuals that offer one day tours to consumers be exempt from TIA? Why or why not?
- 1.2. If yes, should the exemption be limited to those businesses/individuals that exclusively offer one day tours (i.e. if any other travel services are sold, the business would not be eligible for the exemption)?
- 1.3. If yes, should the definition of "one day" include overnight (e.g., 24 or 36 hours) or be limited to same day return?
- 1.4. If yes, should any travel services be included in the exemption (i.e. transportation and sleeping accommodation) or should the exemption be limited to overland transportation services only?
- 1.5. If yes, should the exemption apply to tours that remain within Ontario only or should it include cross-border (i.e. interprovincial and international) tours?
- 1.6. Are there other criteria that could be considered as part of a potential exemption (e.g., cost of the tour)?
- 1.7. If no to any of the above, what concerns do you have with a potential exemption?
- 1.8. Are there any other types of businesses that could be exempt from TIA?
- 1.9. Do you have any other comments or concerns regarding the proposed changes?

If approved and implemented, this proposed amendment would exempt businesses and individuals that offer one day tours from the requirements under TIA and as a result, those businesses would not be required to register with TICO.

2) *Modify specific registration and operating requirements to allow for flexibility for lower risk businesses.*

Currently, applicants for registration under TIA must provide a security deposit of \$10,000 to TICO if they have not been registered during the previous 12 months. The security deposit is returned to the registrant after two consecutive annual financial statements have been filed if the registrar has no compliance concerns. If the registrar has concerns about the registrant's compliance, the security deposit is returned only when those concerns have been resolved. In addition, registrants must maintain a minimum working capital based on the registrant's sales in the previous fiscal year (e.g., sales \$500,000 or less are required to have at least \$5,000 in working capital).

Concerns have been raised about the security deposit requirements by businesses that can demonstrate they have a lower risk profile (e.g., businesses that are closely tied to municipal governments or those that have been operating in another capacity for many years without any financial concerns). In addition, not-for-profit organizations that operate on a zero-based budget have raised concerns with the working capital requirements.

To address these concerns, the ministry is proposing to provide flexibility in the regulation so that the registrar can accept alternative forms of financial guarantee for these requirements, such as a letter of credit from a municipality that is affiliated with the business. The registrar would use his or her discretion in determining which businesses meet the criteria in order to qualify for the alternate requirements.

Key Questions:

- 2.1. What criteria should be considered in determining the definition of a "low risk" business?
- 2.2. What types of alternative financial guarantees should be acceptable?
- 2.3. Do you have any other comments or concerns regarding the proposed changes?

3) *Require that all registrants display the total price of the travel services, including all fees and other charges.*

Currently, the regulatory requirements provide flexibility for registrants when advertising the price for travel services. Prices can be set out as either:

- the total price for the travel services including all fees, levies and other charges (i.e. "all-in" pricing); or

- the price for the travel services excluding fees, levies and other charges, along with: (1) a separate itemized list of the cost of each fee/levy/charge or (2) the total cost of the fees/levies/charges.

As a result of this flexibility, as well as changes to federal aviation requirements to mandate all-in-pricing when advertising airfares, consumers have expressed confusion and concerns with a lack of price comparability for packaged travel services (e.g., bundling airfares with other features such as accommodation or tours).

To address these concerns, the ministry is proposing to remove the flexibility that currently exists by requiring that all prices for travel services be set out as the total price, including all fees, levies and other charges (i.e. “all-in-pricing”). The regulation would continue to allow retail sales tax and/or federal good and services tax to be shown separately.

Key Questions:

- 3.1. Are there additional disclosure requirements that should be incorporated in the regulation? For example, requirements to ensure that consumers have access to itemized information on the costs that are included in the total price in order to compare different travel packages?
- 3.2. If the proposed changes are approved, do you have any suggestions regarding the length of time affected businesses would need prior to implementation?
- 3.3. Do you have any other comments or concerns regarding the proposed changes?

Additional Technical Amendment - Align the filing deadline for both types of claim submissions.

Currently, the deadline to file a claim submission to TICO to be reimbursed for trip completion costs (e.g. costs incurred to complete a trip that is in progress and could not be completed due to the failure of a registrant) is three months from the date the failure occurred. The deadline to file a standard claim (e.g., due to the failure of a registrant prior to the trip’s departure date) is six months from the date the failure occurred. TICO has indicated that the inconsistency in the deadlines has caused confusion for consumers in submitting claims.

The ministry is proposing to extend the deadline for trip completion claims to six months in order to align the deadlines for both types of claims.

The following chart summarizes the changes the ministry is proposing:

Provision of the Regulation under TIA	Description of Current Requirement	Proposed Change
Exemptions (section 2)	<ul style="list-style-type: none"> One day tour operators that are not public carriers (and otherwise meet the definition of a travel agent or wholesaler) are required to be registered under TIA 	<ul style="list-style-type: none"> Exempt certain businesses that offer one day tours from the requirements under TIA
Security Deposit (section 25)	<ul style="list-style-type: none"> Applicants that have not been registered during the previous 12 months must provide a security deposit to TICO (\$10,000) when applying for registration 	<ul style="list-style-type: none"> Provide flexibility for the Registrar to accept alternative forms of financial guarantee at his or her discretion (e.g., letter of credit)
Working Capital (section 24)	<ul style="list-style-type: none"> Registrants are required to maintain a minimum amount of working capital based on the registrant's sales in Ontario during the previous fiscal year 	<ul style="list-style-type: none"> Provide flexibility for the Registrar to accept alternative forms of financial guarantee at his or her discretion (e.g., letter of credit)
Pricing (section 33)	<ul style="list-style-type: none"> Flexibility to set out the price for travel services as either: <ul style="list-style-type: none"> the total price for the travel services including all fees, levies and other charges (i.e. "all-in" pricing); or the price for the travel services excluding fees, levies and other charges, along with: (1) a separate itemized list of the cost of each fee/levy/charge or (2) the total cost of the fees/levies/charges 	<ul style="list-style-type: none"> Require that the price for travel services be set out as: <ul style="list-style-type: none"> the total price for the travel services including all fees, levies and other charges (i.e. "all-in" pricing) Continue to allow retail sales tax and/or federal goods and services tax to be shown separately
Claim Deadline (section 60)	<ul style="list-style-type: none"> Deadlines for submitting claims is currently six months for standard claims and three months for trip completion claims 	<ul style="list-style-type: none"> Align the deadlines for both types of claims at six months

What Happens Next

The Ministry of Government and Consumer Services will review and analyze comments and suggestions received during the consultation process. Industry stakeholders will have an opportunity to clarify any outstanding concerns when regulatory amendments are drafted.

You may send your response by e-mail with "TIA regulation changes" in the subject line to:

Travelindustryact@ontario.ca

You may also mail your response to:

Attention: Kelly Houston-Routley
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