

TRANSPORT CANADA RELAXES MANDATORY OFF-DUTY TIME FOR TRUCK DRIVERS TRANSPORTING ESSENTIAL CARGO

Posted on March 30, 2020

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Transport Canada has temporarily relaxed hours of service regulations for federally regulated motor carriers and their drivers who are engaged in transporting essential supplies and equipment in direct assistance to the emergency relief efforts during the response to COVID-19. The exemption issued on March 24, 2020 after consultation with the provinces and permits trucking companies and their drivers to exceed the maximum on-duty time and driving time prescribed in the *Commercial Vehicle Drivers Hours of Service Regulations under the Motor Vehicle Transport Act* of Canada (see the Exemption [here](#)).

The Exemption imposes some mandatory off-duty periods, but gives drivers operating under the Exemption greater flexibility to determine when to take off-duty time.

Who is eligible?

The Exemption is available to “extra-provincial truck undertakings” – trucking companies that are licensed to operate beyond the limits of their home province – and their drivers. These companies may invoke the Exemption regardless of whether they are transporting goods within a province or across provinces.

Trucking companies with “conditional” or “unsatisfactory” safety ratings from the motor carrier safety regulator in their home or base jurisdiction are not eligible.

What can be transported under the Exemption?

The Exemption applies to transportation directly assisting the emergency relief efforts during the response to COVID-19 outbreaks including transportation to meet immediate needs for:

- medical supplies and equipment related to testing, diagnosis and treatment of COVID-19;
- supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19;
- food, paper products and other groceries for emergency restocking of distribution centers or stores;
- immediate precursor raw materials, such as paper, plastic or alcohol, that are required and to be used for the manufacture of the above;

- fuel; and
- equipment and supplies necessary to establish and manage temporary housing, quarantine and isolation facilities related to COVID-19.

Routine commercial deliveries and transportation of mixed loads composed of essential and non-essential cargo are specifically excluded from the Exemption.

What conditions must be met?

The Exemption is subject to certain conditions, including:

- before operating under the Exemption, a trucking company must notify the provincial authority in its home jurisdiction of its intention to do so and provide information and weekly updates on the vehicles and drivers operating under the Exemption;
- drivers' daily logs must continue to be kept and must document any operations under the Exemption;
- drivers must request off-duty time if they feel the need for immediate rest or if their ability to operate a commercial vehicle is impaired through fatigue, and trucking companies cannot refuse a driver's request;
- trucking companies must encourage their customers to indicate on the shipping documentation that the supplies and equipment being transported are in direct assistance to emergency relief efforts;
- copies of the Exemption and supporting documentation must be carried in the vehicle and maintained at the trucking company's principal place of business;
- drivers must take at least 10 consecutive hours of off-duty time after a delivery of essential cargo and at least 24 hours of off-duty time in every 14 day period; and
- the Exemption will be lost if a commercial vehicle is used while either the vehicle or the driver are the subject of an "out of service" order (an administrative order that is issued - often road-side - by a government safety inspector or peace officer for violation of applicable legislation and that precludes the vehicle or the driver from proceeding).

How long is the Exemption available?

The Exemption took effect on March 24, 2020, and will remain in force until April 30, 2020, unless cancelled at an earlier date.

What about trucking companies that are not "extra-provincial"?

The Exemption does not cover trucking companies that are licensed to operate exclusively within a province, and the scope for exemptions under applicable provincial regulations varies considerably. Existing regulations in several jurisdictions (for example, British Columbia, Ontario and Nunavut) exempt the transportation of

goods for the purpose of providing relief during an epidemic or an emergency. Some jurisdictions (for example, Nova Scotia, Prince Edward Island and the North West Territories) make these exemptions contingent on federal or provincial emergency declarations, in some instances raising questions as to whether a declaration under public health legislation is sufficient to trigger an exemption that is explicitly premised on a declaration under a different emergency statute. Regulations in some jurisdictions (for example, Manitoba) incorporate the requirements of the federal regulations but are silent on exemptions, raising potential issues regarding the effectiveness of the federal Exemption for intra-provincial carriers. A number of provinces, including Ontario, are issuing parallel exemptions or guidance materials to provide greater clarity.

Please do not hesitate to contact us if you wish to set up a private briefing to discuss the implications of the Exemption.

by Lucia Stuhldreier

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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