

Draft Regulation

Transport Act
(R.S.Q., c. T-12)

Brokerage of bulk trucking services — Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Regulation respecting brokerage of bulk trucking services, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation provides that a brokerage permit issued or renewed as of 1 April 2012 expires on 31 March 2017. It also specifies the conditions that will apply to the issue or renewal of such a permit. It also provides new obligations for brokerage permit holders. In addition, it specifies the periods during which an operator may enter into a contract of adhesion for brokerage services and, at the time of transfer of a registration associated with Region 1, the zone in which the operator may do so, the term of such a contract and the events that may lead to its cancellation. It also provides that a legal person operating in Region 10 may, even if the legal person does not have its principal establishment in that region, subscribe for brokerage services in the zone of that region closest to its principal establishment. The draft Regulation also updates the contract of adhesion by clarifying it and making it comply with the amendments made by this draft Regulation and the amendments made recently to the Transport Act. Lastly, the draft Regulation provides that, from now on, the fees prescribed in the Regulation will be adjusted by operation of law on 1 April of each year rather than on 1 January.

The amendments provided for in the draft Regulation have little impact on enterprises since most amendments made are meant to relax or specify the provisions of the Regulation respecting brokerage of bulk trucking services. The amendments do not impose a significant administrative burden for brokerage permit holders.

Further information on the draft Regulation may be obtained by contacting Denis Bédard, Service des politiques économiques, Direction du transport routier des marchandises, Ministère des Transports du Québec, 700, boulevard René-Lévesque Est, 2^e étage, Québec (Québec) G1R 5H1; telephone: 418 644-4719, extension 2276; fax: 418 644-5178; email: denis.bedard2@mtq.gouv.qc.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the Minister of Transport, 700, boulevard René-Lévesque Est, 29^e étage, Québec (Québec) G1R 5H1.

PIERRE MOREAU,
Minister of Transport

Regulation to amend the Regulation respecting brokerage of bulk trucking services

Transport Act
(R.S.Q., c. T-12, s. 5, pars. *d, f, k, m, n, o, o.1, o.2* and *q*)

1. The Regulation respecting brokerage of bulk trucking services (R.R.Q., c. T-12, r. 4) is amended in section 4

(1) by inserting the following after the first paragraph:

“For the purposes of the first paragraph, where the application is for a brokerage permit in Region 10, operators that are registered in the bulk trucking register and that have signed, during the subscription period and pursuant to the second paragraph of section 16, a contract for brokerage services in that region, are added to the operators referred to in the first paragraph.”;

(2) by striking out “de la” in the fourth paragraph of the French text after “zone de courtage”;

(3) by replacing “second” in the fifth paragraph by “third”.

2. Section 5 is amended

(1) by striking out “, within 10 days of the expiry of the subscription period,” in the first paragraph;

(2) by replacing subparagraph 1 of the first paragraph by the following:

“(1) within 10 days of the expiry of the subscription period,

(a) file with the Commission

i. the application and the information that will establish its representativeness, using the appropriate forms;

ii. the originals of all brokerage contracts, upon request by the Commission;

iii. the contract for the hiring of the brokerage director;

(b) pay costs of \$304 to the Commission;”;

(3) by replacing subparagraph 2 of the first paragraph by the following:

“(2) within 40 days of the expiry of the subscription period,

(a) file with the Commission its revenue and expenditure forecasts;

(b) submit to the Commission for approval the by-laws referred to in section 8 of the Transport Act, particularly those respecting disciplinary provisions, a description of the brokerage director’s duties and brokerage fees;

(c) show the Commission that the requirements of section 47.13.1 of the Transport Act were complied with, in particular by filing

i. a copy of the notice of a special meeting accompanied by the by-laws that were submitted for approval at the meeting;

ii. a list of the subscribers to the brokerage services of that legal person on the date on which the special meeting is held;

iii. a list of the members present at the special meeting;

iv. the result of votes taken at that meeting.”;

(4) by striking out subparagraph 3 of the first paragraph;

(5) by inserting the following after the first paragraph:

“The by-laws referred to in subparagraph *b* of subparagraph 2 of the first paragraph may not provide mediation and arbitration procedures.”.

3. Section 6 is amended by replacing “paragraph 2” in paragraph 2 by “subparagraph *b* of subparagraph 2 of the first paragraph”.

4. Section 7 is amended by replacing “this Division” by “this Regulation”.

5. Section 9 is replaced by the following:

“**9.** Every brokerage permit issued or renewed as of 1 April 2012 expires on 31 March 2017.”.

6. Section 14 is amended

(1) by adding “, as the case may be,” in the part preceding subparagraph 1 of the first paragraph after “services”;

(2) by adding the following at the end of the first paragraph:

“(5) within 30 days of the transfer of the principal establishment of an operator in another zone of the same region;

(6) within 30 days of the cancellation of a brokerage contract made pursuant to the first paragraph of section 17.2.”.

7. Section 16 is amended

(1) by replacing “A natural person” in the second paragraph by “An operator”;

(2) by replacing “domicile” wherever it appears in the second paragraph by “principal establishment”;

(3) by replacing “08” in the second paragraph by “8”;

(4) by striking out “de la” in the second paragraph of the French text after “zone de courtage”;

(5) by adding the following at the end:

“Any operator may subscribe for brokerage services, for which the region recorded in the operator’s registration in the bulk trucking register is Region 1,

(1) in the Îles-de-la-Madeleine zone if the operator or, in the case of a transfer, the transferor is or was subscribed in that zone;

(2) in a zone of Region 1, except in the Îles-de-la-Madeleine zone, if the operator or, in the case of a transfer, the transferor is not or was not subscribed in the Îles-de-la-Madeleine zone.”.

8. Section 17 is replaced by the following:

“**17.** For the purposes of this Regulation, where a brokerage contract was signed during

(1) the periods provided for in subparagraph 1, 2 or 3 of the first paragraph of section 14 of the year in which the broker applies to the Commission des transports du Québec for the issue or renewal of a brokerage permit, the operator remains subscribed to brokerage services of the brokerage permit holder from the date on which the last signature is affixed to the brokerage contract until the expiry date of the brokerage permit issued or renewed, as the case may be;

(2) any other period than those referred to in subparagraph 1 of the first paragraph, the operator remains subscribed to brokerage services of the brokerage permit holder from the date on which the last signature is affixed to the brokerage contract until the expiry date of the valid brokerage permit at the time of the signature.

17.1. Despite section 17, a brokerage contract ends if the operator

(1) is removed by the permit holder as a disciplinary measure;

(2) is removed from the bulk trucking register;

(3) transferred the operator's registration;

(4) subscribed to a brokerage service in another zone of the same region following the transfer of the operator's principal establishment;

(5) subscribed to a brokerage service during the subscription period referred to in section 4 of the year in which a brokerage permit holder to which the operator is already subscribed applies to the Commission for the renewal of the permit or during the time where the application is heard;

(6) that is registered with the brokerage permit holder whose issued or renewed permit has been valid for 3 years or more, subscribed to another brokerage service between 1 January and 10 February of the year during which the legal person to which the operator is newly subscribed applies to the Commission for the issue of a brokerage permit.

The signing of the brokerage contract referred to in subparagraphs 5 and 6 of the first paragraph with a legal person that is not a brokerage permit holder at the time of the subscription ends the subscription referred to in the first paragraph only on the date of issue of the brokerage permit to the legal person.

Despite paragraph 1 of section 17 and subparagraph 5 of the first paragraph, where an operator signs 2 brokerage contracts during the subscription period provided

for in section 4, only the contract of adhesion for brokerage services to which the operator subscribes, following the request by the Commission referred to in the third paragraph of section 4, is valid.

17.2. Despite section 17, the operator may cancel the brokerage contract

(1) within 120 days following the coming into force of a by-law for which the brokerage permit holder obtained the approval provided for in section 8 of the Transport Act and that provides that all the permit holder's by-laws in force concerning transport brokerage services under government contracts, and only those by-laws, also apply to contracts other than government contracts to which the permit holder is a party;

(2) for any other reason, where the brokerage permit issued or renewed has been valid for 3 years or more.

The cancellation referred to in subparagraph 2 of the first paragraph may take effect only if prior notice of at least 30 days was sent to the brokerage permit holder by registered mail."

9. Section 21 is amended

(1) by replacing "circumstances" in the part preceding paragraph 1 by "cases";

(2) by striking out "qui" in the French text wherever it appears in paragraphs 1 to 4.

10. Section 24 is amended by replacing the second paragraph by the following:

"Where the budget involves a change in the permit holder's brokerage fee, the budget may not be applied unless the new fee has been approved by the Commission."

11. Section 26 is amended by adding the following at the end:

"The brokerage permit holder must, within 30 days of the brokerage director's taking office or within 30 days of the change to the contract for the hiring of the brokerage director, as the case may be, file with the Commission a copy of that contract."

12. Section 29 is amended by adding the following at the end:

"(4) part of a sum received under section 42.1 of the Transport Act that corresponds to brokerage fees."

13. The following is inserted before section 34 in Division V:

“**33.1.** The fees provided for in this Regulation are adjusted by operation of law on 1 April of each year by the rate provided for in section 83.3 of the Financial Administration Act (R.S.Q., c. A-6.001). The rate may not be lower than zero.

The Regulation respecting the rounding off of adjusted fees (R.R.Q., c. A-6.001, r. 0.1) applies to the adjustment, adapted as required.

The Commission publishes the result of the adjustment of the fees in the *Gazette officielle du Québec*.”

14. The following is inserted after section 37.1:

“**37.2.** At the time of renewal of a brokerage permit in 2012, the legal person must again submit to the Commission for approval the by-laws referred to in subparagraph *b* of subparagraph 2 of the first paragraph of section 5. In accordance with section 47.13.1 of the Transport Act (R.S.Q., c. T-12), the by-laws must have been previously approved by the subscribers.”

15. Schedule 1 is amended

(1) by replacing “is related within the meaning of the Taxation Act (R.S.Q., c. I-3) to the following corporations that operate a bulk trucking enterprise or a contractor’s licence issued by the Régie du bâtiment;” in subparagraph *d* of Part 1 by “, if the Operator is a legal person, declares being related within the meaning of the Taxation Act (R.S.Q., c. I-3) to the following legal persons that are subscribed with the broker and that operate a bulk trucking enterprise or a contractor’s licence issued by the Régie du bâtiment;”;

(2) by inserting “, including, where applicable, those offered with the authorization of the Commission des transports du Québec in contracts other than government contracts,” after “by the broker” in subparagraph *f* of Part 1;

(3) by striking out “, approved by the Commission des transports du Québec” in subparagraph *g* of Part 1;

(4) by replacing the second sentence in subparagraph *j* of Part 1 by the following: “Where the Operator is a legal person, that obligation also applies to the legal persons that are related to the Operator within the meaning of the Taxation Act and that are subscribed with the broker”;

(5) by replacing the second sentence in subparagraph *l* of Part 1 by the following: “Where the Operator is a legal person, the Operator must also abide by this undertaking with respect to its related legal persons within the meaning of the Taxation Act and that are subscribed with the broker, specifically those referred to in subparagraph *d*;”;

(6) by inserting the following after Part 1:

“1.1. TERM OF THE BROKERAGE CONTRACT

This contract comes into force on the date on which the last signature is affixed.

This contract ends on the expiry date of the brokerage permit currently in force or for which an application for the issue or renewal is or will be made to the Commission des transports du Québec in February or March of the year in which the contract is signed.

The Operator remains subscribed to brokerage services throughout the term of the brokerage permit unless

(a) the Operator is removed by the permit holder as a disciplinary measure;

(b) the Operator is removed from the bulk trucking register;

(c) the Operator transfers the Operator’s registration;

(d) the Operator subscribes to another brokerage service in the same region following the transfer of the Operator’s principal establishment;

(e) the Operator subscribes to a brokerage service during the subscription period of the year in which the broker applies to the Commission des transports du Québec for the renewal of a brokerage permit or during the time where the application is heard;

(f) the broker’s permit has been valid for 3 years or more and the Operator has subscribed to another brokerage service between 1 January and 10 February of the year in which the legal person to which the Operator is newly subscribed applies to the Commission des transports du Québec for the issue of a brokerage permit.

The signing of the brokerage contract referred to in subparagraphs *e* and *f* of the third paragraph with a legal person that is not a brokerage permit holder at the time of the subscription terminates this brokerage contract only on the date of issue of a brokerage permit to that legal person.

Despite the foregoing, the Operator may cancel the brokerage contract

(1) within 120 days following the coming into force of a by-law for which the brokerage permit holder obtained the approval provided for in section 8 of the Transport Act and that provides that all the permit holder's by-laws in force concerning transport brokerage services under government contracts, and only those by-laws, also apply to contracts other than government contracts to which the permit holder is a party;

(2) for any other reason, where the brokerage permit issued or renewed has been valid for 3 years or more.

The cancellation referred to in subparagraph 2 of the fifth paragraph may take effect only if prior notice of at least 30 days was sent to the broker by registered mail.

Broker	Operator
_____	_____
Signed at _____	Signed at _____
Date: _____	Date: _____”.

(7) by adding the following at the end of the first paragraph of Part 2:

“Despite the foregoing, where the region provided for in the transferor's registration is Region 1, the transferee must, where the transferee undertakes to become a subscriber to a brokerage agency in a zone of that region, do so

(a) in the Îles-de-la-Madeleine zone if the transferor is subscribed in that zone;

(b) in a zone of Region 1, except in the Îles-de-la-Madeleine zone, if the transferor is not subscribed in the Îles-de-la-Madeleine zone.”.

16. For the purposes of section 83.4 of the Financial Administration Act, on 1 January 2012, the fees provided for in the Regulation respecting the brokerage of bulk trucking services are presumed to have been set on (*insert the date of coming into force of this Regulation*).

17. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except paragraph 5 of section 2 and section 5 which come into force on 1 April 2012.

Despite the foregoing, until 1 April 2012, subparagraph *b* of paragraph 2 of section 5 of the Regulation respecting the brokerage of bulk trucking services, made by paragraph 3 of section 2, must be read as follows:

“(b) submit to the Commission for approval the by-laws referred to in section 8 of the Transport Act, particularly those respecting disciplinary provisions, a description of the brokerage director's duties, arbitration procedures and brokerage fees;”.

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