

TRANSPORT CANADA

ORDER PURSUANT TO SECTION 32.01 OF THE

RAILWAY SAFETY ACT, CHAPTER R-4.2, [R.S., 1985, C. 32 (4th SUPP.)]

Whereas the World Health Organization has characterized COVID-19 as a pandemic and this pandemic is affecting Canada;

Whereas, across Canada, all levels of government are taking measures to mitigate the transmission of COVID-19 or of new variants of the virus causing COVID-19 that pose risks that differ from those posed by other variants but that are equivalent or more serious;

Whereas evidence indicates that vaccines are very effective at preventing severe illness, hospitalization and death from COVID-19, including against the Alpha and Delta variants of concern and that the impact of vaccination on the frequency of outbreaks and the reduction of death rates and hospitalizations has been striking compared to the impact of other tools used prior to vaccination, including physical distancing;

Whereas, pursuant to section 32.01 of the *Railway Safety Act*, if the Minister considers it necessary in the interests of safe railway operations, the Minister may, by order sent to a company require the company to stop any activity that might constitute a threat to safe railway operations or to follow the procedures or take the corrective measures specified in the order;

Whereas, pursuant to subsection 4(4) of the *Railway Safety Act*, safe railway operations concern the safety of persons and property transported by railways and the safety of other persons and other property;

Whereas, pursuant to section 36 of the *Railway Safety Act*, the Minister may order that a company provide, in the specified form and within the specified period, information or documents that he or she considers necessary for the purposes of ensuring compliance with the *Railway Safety Act* and with the regulations, rules, orders, standards and emergency directives made under that Act.

And whereas, pursuant to section 45 of the *Railway Safety Act*, the Minister of Transport has, in writing, authorized the Director General, Rail Safety, to make an order under section 32.01 and section 36 of that Act.

Therefore, I, Michael DeJong, Director General, Rail Safety, consider it necessary in the interest of safe railway operations to make this order under sections 32.01 and 36 of the *Railway Safety Act* requiring railway companies listed in Annex A to follow the procedures set out below.

Section A: Application

1. This Ministerial Order applies to railway companies listed in Annex A.

Section B: Company-Wide Vaccination Policy

1. A railway company may develop and implement a company-wide vaccination policy for all employees, including both operating employees and all other employees employed by the railway company.
2. The railway company is not required to comply with Sections C, D and J of this Ministerial Order if:
 - a. the company-wide vaccination policy for employees described in section B(1) meets all the requirements set out in section B(3);
 - b. the railway company adheres to its company-wide vaccination policy on a continuous basis; and
 - c. the railway company complies with sections B(4),(5),(6), (7) and (8).
3. A company-wide vaccination policy must:
 - a. be developed and implemented by October 30, 2021;
 - b. require all employees to be fully vaccinated by no later than January 24, 2022, unless they fall within an exception as described in Section G;
 - c. require all persons employed by the railway company have received their first dosage of an approved COVID-19 vaccine by no later than November 15, 2021, unless they fall within an exception as described in Section G;
 - d. include a requirement for persons who are not fully vaccinated by November 15, 2021, to be tested using a COVID-19 test on a regular basis until they are fully vaccinated. If a test result is not acceptable as according to Section E and was obtained by a method other than a molecular test, the railway company must ensure that a COVID-19 molecular test result that is acceptable according to Section E is obtained before the employee has any contact with operating employees;
 - e. apply to all persons employed by the railway company who are not on leave;
 - f. include leave without pay as the sanction applicable to employees who are not fully vaccinated and do not fall within an exception as described in Section G as of January 24, 2022;
 - g. include a verification process that confirms employees' vaccination status by means of a proof of vaccination credential;
 - h. not provide for exception to the requirement that all employees be fully vaccinated in accordance with the vaccination policy other than exceptions described in Section G;
 - i. provide for accommodation measures, including COVID-19 testing on a regular basis, for employees who fall within the exceptions listed in the company wide-vaccination policy; and
 - j. include a plan for ensuring compliance with its company-wide vaccination policy.

4. A railway company must, on a continual basis, monitor the implementation of its company-wide vaccination policy.
5. A railway company must communicate its company-wide vaccination policy to its employees before November 15, 2021. After November 15, 2021, any changes to the policy must be communicate to the railway company's employees prior to the implementation of the changes to the policy.
6. A railway company must file with the Minister the company-wide vaccination policy before November 15, 2021. Any change to the policy must be filed with the Minister prior to the implementation of such changes.
7. A railway company must maintain records that include the name and position of an employee, their location of employment, their vaccination status, whether they are subject to an exception and, if so, the reason for the exception. These records must be maintained in accordance with the provisions in Section I.
8. A railway company must file with the Minister, every 7 days, summary data on the number of employees who:
 - a. are fully vaccinated;
 - b. are not fully vaccinated because they fall within an applicable exception category;
 - c. have received their first dose of vaccine and are awaiting their second dose; and
 - d. have been placed on leave without pay in relation to their vaccination status.

Section C: Proof of Vaccination for Operating Employees

1. In accordance with the requirements and timelines set out in this Section, a railway company must not operate railway equipment on a railway unless the company has confirmed every operating employee who is not on leave and does not fall within an exception described in Section G has provided proof of vaccination credential (PVC), before they enter any place, or board any equipment, owned or controlled by the railway company.
2. Subject to Sections G and H, a railway company must require all operating employees to have received their first dosage of an approved COVID-19 vaccine by November 15, 2021.
3. Subject to Sections G and H, a railway company must require all operating employees to be fully vaccinated by December 29, 2021.

Section D: Testing Regime

1. A railway company must implement a testing regimen to monitor for the presence of COVID-19, using a COVID-19 test for all employees as well as for all company contractors and agents who enter onto the premises, at any company location frequented

by operating employees. If the test result is not acceptable as according to Section E and was obtained by a method other than a molecular test, the railway company must ensure that proof of a COVID-19 molecular test result that is acceptable according to Section E is obtained before the employee has access to a company location frequented by operating employees.

2. A railway company must ensure that an operating employee who comes into contact with any person who is not an operating employee and who begins demonstrating symptoms of COVID-19, not operate railway equipment or have access to railway company locations until the operating employee provides an acceptable COVID-19 test result according to Section E. If the COVID-19 test result is not acceptable and was obtained by a method other than a molecular test, the railway company must ensure that a proof of a COVID-19 molecular test result that is acceptable according to Section E is obtained before the employee has any contact with operating employees. The operating employee may only have contact with other operating employees once the operating employee provides the railway company with an acceptable proof of a COVID-19 molecular test result as described in section E, and is authorized to do so by local public health authorities.

Section E: COVID-19 molecular test results

1. A COVID-19 test result, a COVID-19 molecular test result or a proof of a COVID-19 molecular test result is considered acceptable if it falls within the following categories:
 - a. a negative result for a COVID-19 molecular test that was performed on a specimen collected no more than 72 hours prior to receipt by the railway company; or
 - b. a positive result for such a test that was performed on a specimen collected at least 14 days and no more than 180 days prior to receipt by the railway company.
2. Any operating employee who undergoes a COVID-19 molecular test and does not provide an acceptable result, as described in section E(1), may not be permitted by the railway company to return to any location controlled by the railway company until the employee is able to provide an acceptable proof of a COVID-19 molecular test result and is authorized to return by local public health authorities.

Section F: False declaration

1. The railway company must advise every employee not to provide a proof of vaccination credential (PVC), a proof of a COVID-19 test result or any written evidence or attestation related to an exception in a way that they know to be false or misleading and that doing so may constitute fraud or perjury under the *Criminal Code*.

Section G: Exceptions

1. Subject to section H, a railway company is not required to verify proof of vaccination credential or to ensure an employee is fully vaccinated for any employee who has not

completed a COVID-19 vaccination regime due to a medical contraindication or the employee's sincerely held religious beliefs.

2. For the purposes of section G(1), a railway company must only accept an employee's medical contraindication if the employee submits a medical certificate from a medical doctor or nurse practitioner certifying that the employee cannot be vaccinated due to a medical condition.
3. For the purpose of section G(1), a railway company must only accept, in the case of an employee or a person hired by the railway company to provide a service, an exception on the basis of an person's sincerely held religious belief if the railway company is obligated to accommodate the employee on the basis of this ground under the *Canadian Human Rights Act*, or other applicable legislation, by providing such an exception.
4. For the purposes of section G(1), a railway company must only accept an employee's sincerely held religious belief if the employee submits an attestation, sworn by the employee, that the employee has not completed a COVID-19 vaccination regime due to the employee's sincerely held religious beliefs.
5. For the purposes of G(2) and (4), the railway company must only accept medical certificates and sworn attestations, as applicable, provided in the form specified by Transport Canada

Section H: Accommodation Measures

1. In the case of an employee referred to in C(2) that is not yet fully vaccinated, the railway company must verify that the employee provides an acceptable proof of a COVID-19 test result every 72 hours. If a result other than an acceptable result is obtained by a method other than a molecular test, the railway company must ensure that an acceptable proof of a COVID-19 molecular test result is obtained.
2. In the case of employees for which the railway company is not required to verify proof of vaccination credential under G, the company must verify that the employee provides an acceptable proof of a COVID-19 test result every 72 hours. If a result other than an acceptable result is obtained by a method other than a molecular test, the railway company must ensure that an acceptable proof of a molecular COVID-19 test result is obtained.
3. A railway company must have in place any other accommodation measures as set out in local public health guidance for employees described under Sections G and C(2) that are not yet fully vaccinated.

Section I: Privacy Requirements

1. A railway company must ensure that personal information is only created, collected, retained, used, disclosed, and disposed of in a manner that respects the provisions set out

in all applicable legislation, including but not limited to the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act*.

2. A railway company must ensure that it only collects information that is necessary to verify PVC or proof of a COVID-19 test result of employees and the requirements of this Ministerial Order.
3. If a railway company uses a virtual storage provider, including a cloud storage provider, to store or back employee information related to vaccination status, the company must ensure that the provider is accredited under a current internationally recognized standard respecting information security management systems.
4. A railway company must ensure that data related to personal information can only be accessed on a need to know basis.

Section J: Data Collection and Record Keeping Requirements

1. A railway company must maintain records that note the name, the position of the operating employee, their location of employment, their vaccination status, whether they were subject to an exception and, if so, the reason for the exception. These records must be maintained in accordance with the provisions in Section I.
2. A railway company must keep daily records for every operating employee of every train regarding vaccination status and whether any delays were incurred due to crewing issues.
3. A railway company must keep daily records related to the number of:
 - a. operating employees that are partially or fully vaccinated;
 - b. exceptions due to medical or religious reasons; and
 - c. operating employees that have been subject to sanctions.
4. The company must ensure that an acceptable PVC or proof of exception, as described in Section G, is carried by the operating employee at all times, such that it is readily available at the request of a rail safety inspector, for the purpose of verifying compliance with this order.
5. The company must keep the records referred to in Section G and J for a period of 24 months after the day on which they were created.

Section K: Filing requirement

1. Railway companies must submit a letter to Transport Canada, by October 30, 2021, indicating:
 - a. whether they will be issuing their own company-wide vaccination policy or be subject to the requirements outlined in Sections C, D, and J of in this Order;and

- b. a list of all employee positions that will be affected by the railway company's obligation to comply with Sections C, D, and J this Order (if applicable).
2. A railway company must file with Transport Canada, by November 15, 2021, their company-wide vaccination policy described in Section B and describe how it meets the requirements outlined in this Ministerial Order or explain how they intend to meet the requirements outlined in Sections C, D, and J of this Ministerial Order for their operating employees.
3. A railway company must file with Transport Canada, on a daily basis, records referred to in sections J (2) to (5), excluding any personal information as defined in section 3 of the *Privacy Act*, if applicable.

For the purpose of this order,

“COVID-19” means the coronavirus disease 2019.

“COVID-19 molecular test” means a COVID-19 screening or diagnostic test carried out by an accredited laboratory, including a test performed using the method of polymerase chain reaction (PCR) or reverse transcription loop-mediated isothermal amplification (RT-LAMP).

“fully vaccinated person” means a person who, at least 14 days prior, has completed, a COVID-19 vaccine dosage regimen if:

- a) in the case of a vaccine dosage regimen that uses a COVID-19 vaccine that is authorized for sale in Canada,
 - i. the vaccine has been administered to the person in accordance with its labelling, or
 - ii. the Minister of Health determines, on the recommendation of the Chief Public Health Officer, appointed under subsection 6(1) of the *Public Health Agency of Canada Act*, that the regimen is suitable, having regard to the scientific evidence related to the efficacy of that regimen in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19; or
- b) in all other cases,
 - i. the vaccines of the regimen are authorized for sale in Canada or in another jurisdiction, and
 - ii. the Minister of Health determines, on the recommendation of the Chief Public Health Officer, appointed under subsection 6(1) of the *Public Health Agency of Canada Act*, that the vaccines and the regimen are suitable, having regard to the scientific evidence related to the efficacy of that regimen and the vaccines in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or

spread of COVID-19.

For greater certainty, a COVID-19 vaccine that is authorized for sale in Canada does not include a similar vaccine sold by the same manufacturer that has been authorized for sale in another jurisdiction

“operating employee” means a person who is in a safety critical position, as defined by the *Rules Governing Safety Critical Positions*.

“proof of a COVID-19 molecular test result” means proof that contains the following information:

- a. the name and date of birth of the person whose specimen was collected for the test;
- b. the name and civic address of the laboratory that administered the test;
- c. the date the specimen was collected and the test method used; and
- d. the test result.

A proof of a COVID-19 molecular test includes both a paper and digital copy.

“proof of vaccination credential” (PVC) means evidence issued by the government or the non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered, and must contain the following information:

- i. the name of the person who received the vaccine;
- ii. the name of the government or the name of the non-governmental entity;
- iii. the brand name or any other information that identifies the vaccine that was administered; and
- iv. the dates on which the vaccine was administered or, if the evidence is one document issued for more than one dose and the document only specifies the date on which the most recent dose was administered, that date.

An acceptable proof of vaccination credential includes both a paper PVC and a digital PVC. In all cases, the PVC must be in English or French and any translation into English or French must be a certified translation.

This order is effective on October 30, 2021. This Order remains in effect until it is revoked by the Minister of Transport.

Pursuant to subsection 32.1(1) of the RSA, a person to whom an order is sent under section 32.01 of the RSA may, on the date specified in the order, file a request for a review with the Transportation Appeal Tribunal of Canada (Tribunal).

If you intend to request a review of this Order, you must file a request in writing with the Tribunal, which must be postmarked no later than November 29, 2021.

Pursuant to section 32.3 of the RSA an order issued under section 32.01 of the RSA shall not be stayed pending a review requested under section 32.1, an appeal under section 32.2 or a reconsideration by the Minister of Transport under subsection 32.1(5) or 32.2.(3) of the RSA.

Director General, Rail Safety

Date

APPENDIX A

9961526 Canada Limited
Canadian National Railway Company
Canadian Pacific Railway Company
Chemin de fer Québec North Shore & Labrador
City of Ottawa carrying on business as Capital Railway
Eastern Maine Railway Company
Goderich-Exeter Railway Company Limited
Great Canadian Railtour Company Ltd.
Hudson Bay Railway Company
Kettle Falls International Railway Company
Knob Lake and Timmins Railway Company Inc.
Nipissing Central Railway
Pacific & Arctic Railway Navigation, British Columbia & Yukon Railway, British Yukon
Railway doing business as White Pass & Yukon Route Railroad (WP&YR)
RaiLink Canada Ltd.
St. Lawrence & Atlantic Railroad (Québec) Inc.
St. Paul & Pacific Northwest Railroad Company, LLC
The Essex Terminal Railway Company
The Toronto Terminals Railway Company Limited
Transport Ferroviaire Tshiuetin Inc.
VIA Rail Canada Inc