

Canadian
Transportation
Agency



Office
des transports
du Canada

Guide to Certificates of Fitness



**Rail Infrastructure Directorate
Rail and Marine Branch**



INTRODUCTION

On July 1, 1996, the *Canada Transportation Act* (CTA) continued the National Transportation Agency as the Canadian Transportation Agency (the Agency). The CTA also included several rail transportation provisions that had been part of the now repealed *Railway Act*.

Sections 90 to 94 of the CTA require a person proposing to construct or operate a freight or passenger railway under federal jurisdiction to apply to the Agency for a certificate of fitness. The Agency issues such certificates if it is satisfied that there will be adequate third party liability insurance coverage for the proposed construction or operation.

This guide is designed to assist parties in obtaining and maintaining such a certificate and should be used in conjunction with sections 90 to 94 of the CTA and with the *Railway Third Party Liability Insurance Coverage Regulations* (Regulations). In the event of a conflict between this guide and the CTA or the Regulations, the CTA and the Regulations will prevail.

The guide applies only to federally regulated railways, which are those meeting one of the following criteria:

- ◆ operates across provincial/territorial or international boundaries;
- ◆ is owned, controlled, leased or operated by a federal railway;
- ◆ has been declared by Parliament to be for the general advantage of Canada; or
- ◆ is an integral part of an existing federal undertaking.

APPLICATION

An application for a certificate of fitness must include a completed certificate of insurance form (see Appendix I), and must indicate the termini and route of each operation. In addition, a railway company may apply to the Agency to vary an existing certificate of fitness, so that it reflects an additional route, a change in the termini or route, or a change in railway construction or operations. You may mail an application to:

Secretary
Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

You may also deliver an application by hand or by courier to:

Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor Mailroom
Gatineau, Quebec J8X 4B3

In addition, you may fax an application to (819) 953-8353.

The Agency will process each application as quickly as possible. It must process all applications within 120 days of receiving the originating documents, unless the applicant agrees to an extension.

Certificate of Insurance (Appendix I)

Sections 1 to 6 of the certificate of insurance form require your name, the name of your insurance broker or agent, the type of insurance, details of each insurance contract and a confirmation that the operating risks listed in section 7 of the form are known to the insurer. The authorized representative of the insurance company must endorse these sections.

Sections 7 and 8 of the certificate of insurance form require information related to the risks associated with the proposed construction or operation of the railway. It also asks you to confirm that you have fully disclosed these risks to the insurance company. As the applicant, you must endorse these sections.

Please note that, for reasons of authenticity, the Agency will accept only the original back-to-back certificate of insurance form provided in this guide.

Self-insurance

The Agency will assess your ability to hold a specific amount of self-insurance, either deductible or self-insured retention. If you file complete annual financial reports with the Minister of Transport or the Agency, there is no further requirement. Otherwise, you have to give the Agency audited financial statements for the three most recent complete fiscal years or provide other financial information that shows you are financially capable of carrying the proposed amount of self-insurance.

Insurance Company

If, for any reason, the Agency believes that the insurance company may not have the financial ability to pay its contractual level of insurance coverage, you may have to provide the Agency

with the last three years of the insurance company's audited financial statements and/or the insurance company's solvency rating, as determined by recognized rating agencies.

Temporary Railway Construction or Operation

You must have third party liability insurance coverage for any proposed temporary construction or operation of a railway as a result of exceptional or unforeseen circumstances.

NOTIFICATION OF CHANGES

You must notify the Agency in writing, without delay, whenever you renew, cancel or alter your liability insurance coverage, or whenever a change in construction or operation may mean that your liability insurance coverage is no longer adequate.

You also must notify the Agency in writing of any potential erosion that may cause your liability insurance coverage to be no longer adequate, or when there is any change in deductible or self-insured retention that would affect the level of insurance.

You must ensure that the insurance contract includes a provision that requires the insurer or its authorized representative to give the Agency at least 30 days' prior written notification of renewal, cancellation, expiration or material alteration of the insurance coverage.

COMPLIANCE

Pursuant to subsection 94(2) of the CTA, the Agency may suspend or cancel a certificate of fitness if it determines that your insurance coverage is no longer adequate. You may have to send information to the Agency to assure it that your insurance is still adequate.

Also, section 174 of the CTA provides, in part, that anyone who contravenes a provision of the CTA, or a regulation or order made under the CTA, is guilty of an offence punishable on summary conviction and subject to fines as set out in the CTA.

CONFIDENTIALITY

All documents filed with the Agency become part of the public record and may be made available for public viewing. However, in accordance with the Agency's General Rules, a claim for confidentiality can be made.

RAILWAY SAFETY MANAGEMENT SYSTEM REGULATIONS

All railways holding a certificate of fitness are subject to the *Railway Safety Act* and all the requirements (such as regulations, rules, standards, etc.) pursuant to that Act.

The *Railway Safety Management System Regulations* require all federally regulated railways to have a safety management system. New railway companies must send specific information on their system to the Minister of Transport sixty (60) days before beginning their operation.

You can obtain information on the *Railway Safety Act* and the Transport Canada Rail Safety Directorate from the Transport Canada Web site at www.tc.gc.ca, or by contacting the Director, Safety Policy and Regulatory Affairs at (613) 990-8690.

DECISIONS AND APPEALS

Any Agency decision is subject to the following conditions:

- ◆ it is binding upon the parties and remains in effect until it is amended or rescinded;
- ◆ it may be reviewed by the Agency, if there has been a change in the facts or circumstances;
- ◆ it may be appealed to the Federal Court of Appeal on a question of law or jurisdiction, within one month after the date of the order or decision; and
- ◆ it may be appealed to the Governor in Council at any time.

OTHER AVAILABLE DOCUMENTS

- ◆ Agency General Rules
- ◆ *Determining Net Salvage Value*
- ◆ *Environmental Assessment Procedures*
- ◆ *Guidelines on Apportionment of Costs of Grade Separations*
- ◆ *Guide to Private (Farm) Crossings of Railways*
- ◆ *Guide to Railway Charges for the Maintenance and Construction of Road Crossings*
- ◆ *Guide to Railway Crossings of Other Railways*
- ◆ *Guide to Railway Line Construction*
- ◆ *Guide to Railway Operation Compensation*
- ◆ *Guide to Railway Works Cost Apportionment*
- ◆ *Guide to Relocation of Railway Lines in Urban Areas*
- ◆ *Guide to Road Crossings of Railways*
- ◆ *Guide to Utility Crossings of Railways*
- ◆ Railway Safety Management Systems Regulations

- ◆ Railway Third Party Liability Insurance Coverage Regulations
- ◆ *Resolving Disputes Through Mediation*
- ◆ *The Canada Transportation Act and the Rail and Marine Transportation Branch*
- ◆ *The Rail Infrastructure Directorate: A Guide*
- ◆ *Transfer and Discontinuance of Railway Line Operations and Railway Track Determinations*

The above are available in alternate formats.

FOR MORE INFORMATION

For more information or copies of the above documents, please contact one of the following staff members of the Rail Infrastructure Directorate:

Director
(819) 953-0327

Manager, Approvals and Determinations
(819) 953-0365

Manager, Engineering and Environmental Services
(819) 953-2117

Fax: (819) 953-8353
Toll-free telephone: 1-888-222-2592
TTY: 1-800-669-5575 or (819) 953-9705



For more information on the *Canada Transportation Act*, the Agency and its responsibilities, or Agency decisions and orders, you can access the Agency's Web site at www.cta.gc.ca

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RAILWAY THIRD PARTY LIABILITY INSURANCE COVERAGE REGULATIONS

The Canadian Transportation Agency, pursuant to subsection 92(3) of the *Canada Transportation Act*¹, hereby makes the annexed *Railway Third Party Liability Insurance Coverage Regulations*.

His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, pursuant to subsection 36(1) of the *Canada Transportation Act*², hereby approves the annexed *Railway Third Party Liability Insurance Coverage Regulations*, made by the Canadian Transportation Agency.

Interpretation

1. The definitions in this section apply in these Regulations.

“**Act**” means the *Canada Transportation Act*. (*Loi*)

“**applicant**” means a person who makes an application to the Agency for a certificate of fitness or for the variation of a certificate. (*demandeur*)

“**deductible**” means the amount of risk for which an applicant retains financial responsibility under an insurance contract. (*franchise*)

“**insurer**” means an insurance company that provides third party liability insurance coverage to an applicant and includes an insurance company that is wholly owned by the parties it insures. (*assureur*)

“**named perils pollution**” means risks that are set out in an insurance contract that are associated with seepage or pollution or contamination resulting from but not limited to collision, overturning, derailment, upset, hostile fire, lightning or explosion or other railway related accidents. (*risques de pollution désignés*)

“**self-insurance**” means self-insured retention and deductible. (*autoassurance*)

“**self-insured retention**” means the amount of risk for which an applicant takes financial responsibility, outside of an insurance contract. (*affectation pour autoassurance*)

“**third party liability insurance coverage**” means financial compensation provided for in a contract entered into between an applicant and an insurer, or in the case of self-insurance, financial compensation provided by the applicant, in respect of the following matters arising out of an applicant's proposed construction or operation of a railway, including a

proposed temporary construction or operation of a railway resulting from unforeseen or exceptional circumstances:

- a) third party bodily injury or death, including injury or death to passengers,
- b) third party property damage, excluding damage to cargo, and
- c) named perils pollution.
(*assurance responsabilité civile*)

Application

2. These Regulations apply to any person proposing to

- (a) construct a railway; or
- (b) operate a railway either over and on their own railway or over and on the railway of another railway company, including operating over and on a portion of the railway of another railway company.

Determination of adequate third party liability insurance coverage

3. Third party liability insurance coverage is adequate if there is

- (a) sufficient insurance, including self-insurance, to compensate for the following matters that may arise out of an applicant's proposed construction or operation of a railway, including a proposed temporary construction or operation of a railway resulting from unforeseen or exceptional circumstances :
 - (i) third party bodily injury or death, including injury or death to passengers,
 - (ii) third party property damage, excluding damage to cargo, and
 - (iii) named perils pollution;
- (b) a written confirmation provided to the Agency by the applicant that the applicant has fully disclosed to the insurer the nature and extent of the proposed construction or operation of the railway and any associated third party liability risks; and
- (c) full disclosure to the Agency by the applicant of the amount of self-insured retention and of the third party liability risks that may arise from the proposed construction or operation of the railway.

4. In determining whether third party liability insurance coverage is adequate, the Agency shall

- (a) examine the risks associated with the proposed construction or operation of the railway by considering information that is provided by the applicant, including
 - (i) passenger ridership,
 - (ii) passenger and freight train miles,
 - (iii) volume of railway traffic,
 - (iv) class and volume of dangerous goods transported by rail,
 - (v) types of population areas served,
 - (vi) number of level crossings,
 - (vii) speed of trains,
 - (viii) train crew training,
 - (ix) method of train control, and
 - (x) overall safety record of the applicant; and
- (b) in the case of self-insurance, assess the financial capability of the applicant to sustain the level of self-insurance, on the basis of the following information provided by the applicant:
 - (i) the three most recent annual financial reports that have been filed with the Agency pursuant to section 344 of the Railway Act, as that section read immediately before the coming into force of the Act, or with the Minister of Transport in accordance with any applicable regulations made pursuant to section 50 of the Act,
 - (ii) where the applicant does not file the reports referred to in subparagraph (i), audited financial statements for the three most recent complete fiscal years, or
 - (iii) where the applicant does not have the information referred to in subparagraph (i) or (ii), other financial information that establishes the applicant's financial capability to sustain the self-insurance.

1 S.C. 1996, c. 10

2 S.C. 1996, c. 10