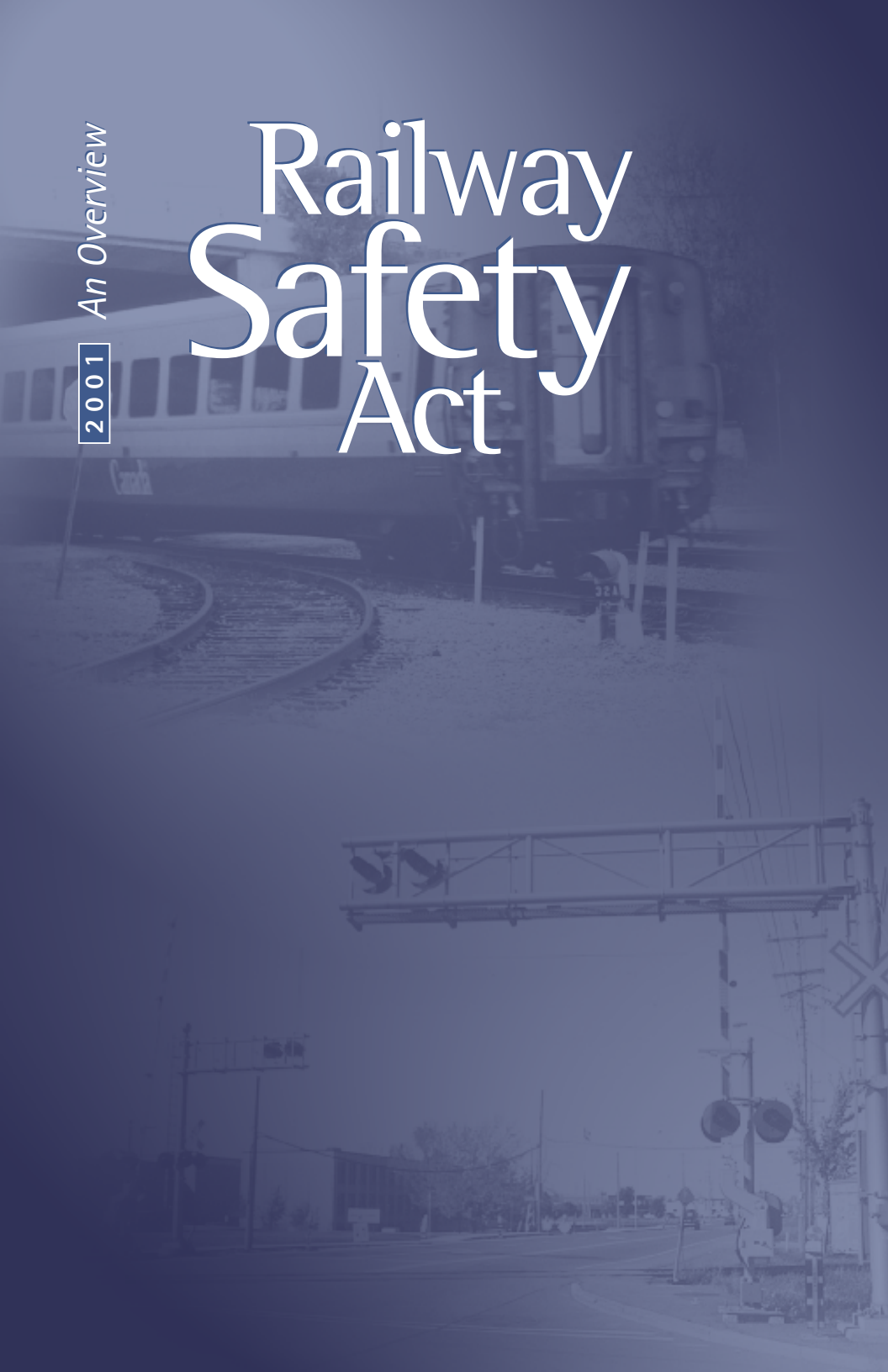


An Overview

2001

Railway Safety Act



This overview of the *RAILWAY SAFETY ACT* is intended to provide the transportation industry, provinces, municipalities and other interested groups with general guidelines on the implementation of this Act in the areas of railway safety, security and the environment. The information provided here is not a complete statement of the *RAILWAY SAFETY ACT*, neither does it waive or modify any legal obligation under the Act.

As the regulator, Transport Canada continues to play the lead role in overseeing safety in the rail transportation industry. To this end, our stated mission is to further advance the safety and security of an efficient, accessible and sustainable rail transportation system through:

- ▼ *awareness and education*
- ▼ *establishment and implementation of policies, legislation and standards*
- ▼ *monitoring and enforcement*

This overview is in keeping with Transport Canada's concerted effort to increase the use of "plain language" material in support of our policies and legislation.

A copy of the *RAILWAY SAFETY ACT* in its entirety can be found on Transport Canada's website at: <http://www.tc.gc.ca/actsregs/rsa-lsf/rsa.html>. If you have additional questions, please write or call one of the contacts listed at the end of this booklet.

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The objectives of this booklet are to describe the fundamental principles of railway safety in Canada; to explain the specific details of the *RAILWAY SAFETY ACT*¹(RSA); and to provide general guidance to the rail transportation industry and other interested groups.

For many years, the safety of Canada's federal railways was regulated under the *RAILWAY ACT*. This Act was designed for another era, having originated at the turn of the century when Canada's railway system was rapidly expanding. At that time, much of the system was under construction to open up new territory and to encourage settlement. Small companies without adequate financial reserves built railway lines, with uncertain revenue prospects. There was a strong temptation to cut corners on construction and operating costs, and legislation was needed to allow the government of the day to closely control these activities, for the protection of the public and railway employees.

The RSA came into force in 1989 to address the many changes that had taken place in the rail transportation industry in recent years. It was designed to achieve the objectives of the national transportation policy relating to the safety of railway operations. The RSA gave direct jurisdiction over safety matters to the Minister of Transport, to be administered by Transport Canada, where responsibility for other federally regulated modes resides (i.e., air, road and marine modes).

With the introduction of the new *CANADA TRANSPORTATION ACT* in 1996, the railway industry began to accelerate its significant re-structuring process. In focusing more on their core railway infrastructure, both national carriers have transferred thousands of kilometres of track to short line operators. Many of these transferred railways now fall under the jurisdiction of the provinces in which they exclusively operate. In some provinces, Transport Canada monitors the safety of these provincial railways under contract as a result of federal-provincial agreements.

The 1999 amendments to the RSA have been made to further improve the legislation and to make the railway system even safer. These amendments are designed to fully modernize the legislative and regulatory framework of

Canada's rail transportation system. Railways are more responsible for managing their operations safely, while the general public and interested parties have a greater say on issues of rail safety.

With the overhaul of rail transportation legislation over the last decade, legislation now exists for the following purposes:

- ▼ *to provide the railway industry with greater freedom to act in the area of economic regulation*
- ▼ *to simplify, update, and improve safety regulation*
- ▼ *to establish an independent accident investigation agency for all federally regulated modes*

The following is a brief summary of related Acts.

CANADA TRANSPORTATION ACT

This Act deals with market-entry, rate-making, and other economic regulation. It was introduced to consolidate and revise the *NATIONAL TRANSPORTATION ACT* and the *RAILWAY ACT*, and replaced the National Transportation Agency with the present-day Canadian Transportation Agency (CTA).

The CTA is a quasi-judicial body reporting to Parliament through the Minister of Transport. The CTA has regulatory powers over economic matters and issues of public convenience and necessity.

CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION AND SAFETY BOARD ACT

This Act, dealing with accident investigation, provides for a multimodal, independent board, known as the Transportation Safety Board, with the objective of advancing safety by:

- ▼ *conducting independent investigations, including, when necessary, public inquiries, into selected transportation occurrences in order to make findings as to their causes and contributing factors; identifying safety deficiencies as evidenced by transportation occurrences*
- ▼ *making recommendations designed to eliminate or reduce any such safety deficiencies*
- ▼ *reporting publicly on its investigations and related findings*

TRANSPORTATION OF DANGEROUS GOODS ACT

The purpose of this Act is to promote public safety in the transportation of dangerous goods by all modes of transport throughout Canada. It governs the means of containment, handling, offering for transport, and transporting of dangerous goods in Canada, and is administered by the Transportation of Dangerous Goods Directorate, Transport Canada.

NAVIGABLE WATERS PROTECTION ACT

The purpose of this Act is to protect the public rights of navigation on all the navigable waterways of Canada. The Act regulates the construction of works built or placed in, over, through, or across navigable waterways, and provides a legal framework to deal with obstacles and obstructions to navigation. The Act is administered by Fisheries and Oceans Canada.

RAILWAY RELOCATION AND CROSSING ACT

Part I of this Act, entitled “Joint Urban Development and Transportation Plans”, is intended to facilitate the relocation of railway lines or re-routing of railway traffic in urban areas. Parts II and III of this Act have been repealed.

The fundamental principles on which the regulation of railway safety in Canada is based, as stated in section 3 of the RSA, are as follows:

- ▼ *to promote and provide for the safety of the public and personnel, and the protection of property and the environment, in the operation of railways*
- ▼ *to encourage the collaboration and participation of interested parties in improving railway safety*
- ▼ *to recognize the responsibility of railway companies in ensuring the safety of their operations*
- ▼ *to facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety*

The 1999 amendments to the RSA aim to help achieve these objectives by:

- ▼ *promoting and providing for the safety of the public and personnel, and the protection of property and the environment, in the operation of railways*
- ▼ *providing authority to require railways to implement Safety Management Systems*
- ▼ *providing greater involvement for interested organizations in rule-making*
- ▼ *providing a safety framework for minimizing disruption caused by train whistles in communities*
- ▼ *strengthening and clarifying federal powers at road-rail (grade) crossings*
- ▼ *clarifying and strengthening the powers of Railway Safety Inspectors*
- ▼ *streamlining the administrative process*
- ▼ *providing environmental protection authority to regulate railway emissions*
- ▼ *improving other miscellaneous items*

The RSA and subsequent amendments were prepared in extensive consultation with interested parties and received broad support.

The RSA is divided into six major parts:

Part I: Construction or Alteration of Railway Works

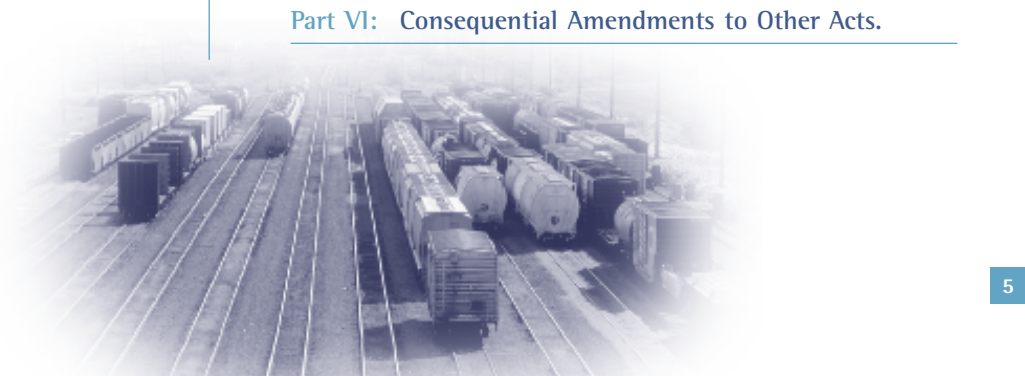
Part II: Operation and Maintenance of Railway Works and Equipment

Part III: Non-Railway Operations Affecting Rail Safety

Part IV: Administration and Enforcement

Part V: Miscellaneous Provisions

Part VI: Consequential Amendments to Other Acts.



A blue-tinted photograph of a freight train. The top half shows a long line of boxcars on tracks, with a locomotive visible in the distance. The bottom half shows a locomotive with the number 8424 and the number 8 on its front, moving through a city street with tall buildings in the background. A teal box in the top right corner contains the text "Part 1".

Part 1

Part I covers the construction and reconstruction of railway works. The Minister of Transport has the authority to ensure the safety of railway structures, with sufficient flexibility for railway companies to carry out routine items with a minimum of delay. This part also provides the Minister with the authority to make grants for crossings, grade separations and special safety projects.

REGULATIONS AND ENGINEERING STANDARDS

SECTION 7 AND SECTION 7.1

The government may make safety regulations governing the construction or alteration of railway works, such as railway signaling systems. Such engineering standards may embrace both physical specifications and performance standards. As well, regulations can be made regulating or prohibiting the construction of road crossings under specified conditions.

Alternatively, railway companies may choose to file standards for approval by the Minister whether or not they are covered by existing regulations. Such standards, when approved by the Minister, have the same force as regulations.

The procedures established in this and following sections provide freedom to build structures that meet standards without Transport Canada approval. The approval process is required only when there is a need for the Minister to make a decision, either in the public interest or because the proposal does not comply with standards.

NOTICE OF CERTAIN PROPOSED RAILWAY WORKS

SECTION 8

This section ensures that persons whose safety may be affected are made aware of proposed works and are given the opportunity to register objections with the proposing party and with the Minister. Such objections should only be made based on a threat to the safety of persons or property.

A person proposing to carry out certain railway works is required to give notice of this intention. The required work may proceed if no safety objections from concerned parties are received. Details of the type of work, the notice to be filed, the recipients of notice, etc., are established in the *NOTICE OF RAILWAY WORKS REGULATIONS*.

There is a continued requirement for authority from the CTA to construct and reconstruct certain works, on terms and conditions relating to public convenience and necessity. The CTA also has power to resolve disputes over the apportionment of costs.

RAILWAY WORKS REQUIRING MINISTERIAL APPROVAL

SECTION 10

In cases where a proposed railway work departs from standards established under the RSA, or where an objection to carrying out the work (section 8) remains unresolved, approval must be obtained from the Minister before the work is undertaken.

SUBSECTION 10(1.1)

A person can apply to the Minister as soon as he or she receives responses from all parties to whom a notice was sent, without having to wait until the notice period expires.

SUBSECTION 10(1.2)

A person can proceed with a railway work if all objections are subsequently withdrawn.

This provision gives the Minister all necessary powers to control the safety of railway construction and reconstruction activities. At the same time, it gives the railways freedom to carry out routine work without the direct involvement of the regulator. Where projects meet engineering standards and have no negative safety implications for other parties, the proponents will be able to proceed without approval. Where these criteria are not satisfied, the party proposing the work must convince the Minister that the projects are safe, taking into consideration any objections raised by affected parties.

The RSA specifies procedures, including time frames, under section 10, subsections (2) to (9).

ENGINEERING WORK

SECTION 11

The involvement of licensed professional engineers is required in the design, construction, evaluation and alteration of all engineering work relating to railway works. Professional engineers are obligated to protect the public health, safety and welfare where engineering work is involved.

Such works include utility crossings (such as power lines and pipelines), road approaches to rail lines (which are the responsibility of the road authority), and railway infrastructure, such as tracks, signals and bridges.

Transport Canada, in consultation with the rail industry and the Canadian engineering community, has published guidelines to this effect.

GRANTS RELATING TO ROAD CROSSINGS AT GRADE

SECTION 12

The Minister has the power to make financial contributions toward railway works that will increase safety by improving,

SECTION 12.1

relocating, or eliminating existing grade crossings. Such contributions cannot exceed 80 per cent of eligible costs, and only apply to railways under federal jurisdiction.

The Minister can make a grant to a person (which may include a road authority) to agree to the closure of a public or private crossing. Once the grant has been made, the person's rights to the crossing cease. The intent of this section is to encourage a reduction in the number of grade crossings, thereby improving railway safety.

A Transport Canada Guideline on Financial Assistance is available to assist parties who wish to apply for a grant and/or contribution for grade crossings.

GRANTS FOR CONSTRUCTION OR ALTERATION OF GRADE SEPARATIONS

SECTION 13

Contributions can be made toward the construction or alteration of grade separations. The powers are similar to those for grade crossings under section 12. This provision, however, has not been used for many years.

GRANTS FOR PROGRAMS, STUDIES, PROJECTS, AND WORKS

SECTION 14

The Minister is authorized to make grants toward a wide range of initiatives likely to promote, or contribute to, safe railway operations. Terms and conditions may also be attached to these grants.

Eligible projects could take such forms as basic scientific and technical research, field tests, demonstration, and educational programs.

REFERENCE TO THE CTA

SECTION 16

In cases where more than one party benefits from a railway work and no agreement can be reached on sharing the cost of the work, any, or all, of the parties can apply to the CTA for arbitration. In this section, a railway work includes crossing works and line works such as fencing. It also includes instances where a contribution is being made under section 12 or 13, and extends to the relocation of any portion of a public road.

The CTA will determine the cost-apportionment for railway works that have or have not yet commenced. In making this determination, the CTA will consider such factors as any contributions made under section 12 or 13 and the relative benefits that each person stands to gain from the work.

Part II



SECTION 18

This part provides for the establishment of regulations and rules for railway operation and maintenance. It also includes provisions regarding the cessation of whistling at crossings.

REGULATIONS

The government may make safety regulations covering the operation or maintenance of railways in general, such as tracks, bridges, culverts, signal systems and crossing works. Also included are the design, operation, and maintenance of railway equipment.

The government may also establish regulations with respect to employment of persons in designated positions critical to safe railway operations and to the security of railway transportation. The regulations established under this section apply to all railways, as opposed to rules established under sections 19 and 20, which apply to specific railway companies. **Where inconsistencies exist between regulations and rules, regulations prevail.**

The government may make regulations requiring railway companies or road authorities to conduct safety reviews at road crossings under specified circumstances, such as where multiple fatalities have occurred. The review would determine whether changes or alterations to the crossing are necessary to improve its safety.

RULES: FORMULATION OR REVISION PURSUANT TO MINISTERIAL ORDER

SECTION 19

The Minister may order a railway company to file safety or security rules for approval. The order will specify a time period for the railway to do so, and during that period the railway company must first consult with each relevant association or organization that is likely to be affected. Each relevant group must be given a 60-day period to consult with the railway company on the proposed rules before they are filed with the Minister for approval. When filing, the railway company must make known the views of the relevant associations to the Minister.

The Minister has 60 days from the time of filing to consider the rules and to make a determination as to whether or not the rules are conducive to safe railway operations. The Minister may extend the time period for consideration of the matter at any time before this 60-day assessment period expires. Before it expires, the Minister may engage any person or organization having expertise in matters relating to safe railway operations to provide advice in relation to the matter.

If the Minister is satisfied with the rules as filed or approves them subject to terms and conditions, the company and each association or organization identified will be notified of the approval. If the Minister is not satisfied, those same parties will be notified of the Minister's refusal to approve the rules and of the reasons for refusal.

A railway company can request that the Minister amend the terms and conditions on which a rule was approved if new information is presented about the safety of the railway operations. Copies of the railway company's request, and any subsequent amendments made by the Minister, must be sent to each relevant association or organization.

The Minister also has the power to formulate rules on behalf of a railway company. This power enables the Minister to intervene in the event that a company is unwilling, or unable, to formulate rules in an acceptable manner. The Minister must provide an opportunity for the company and relevant associations or organizations to comment before such rules can come into effect. Rules established by the Minister will have the same effect as if they had been formulated by the company and approved by the Minister.

RULES: FORMULATION OR REVISION AT INITIATIVE OF RAILWAY COMPANY

SECTION 20

A railway company is permitted, on its own initiative, to propose new rules or changes to rules that already exist. The company must apply to the Minister for approval, giving details of and reasons for the proposal. The treatment of the proposal is similar to that outlined under section 19, with the identical time frames and requirements for consultations and review of rules.

UNIFORMITY OF RULES

SECTION 21

The Minister shall ensure that rules applying to a particular railway company are as consistent as possible with other rules dealing with a like matter and applying to other railway companies. The intent of this section is to promote uniformity where it is in the interest of safety, and is not intended to prevent a company from innovating to improve safety.

EXEMPTIONS: BY ORDER IN COUNCIL OR BY THE MINISTER

SECTION 22

A railway company can apply to the Minister for an exemption from the provisions of a regulation or a rule established under section 18, 19 or 20 of the RSA. The

Minister and the government may grant these exemptions within a 60-day time frame. Such exemptions require the same procedures for consultation with relevant associations as sections 19 and 20 and must be in the public interest and not likely to threaten safe railway operations.

SECTION 22.1

The railway company is provided with a shorter procedure for exemptions of limited duration or for an exemption required to conduct testing of new or experimental equipment. The exemption is only effective if the railway company has filed a notice with the Minister and all relevant parties and no objections are received from these relevant parties within 14 days after filing the notice. Any objection by the Minister to the exemption request must be made within 21 days; otherwise, the railway company may carry out the requested testing.

RAILWAY WORKS TO ACCORD WITH REGULATIONS AND RULES

SECTION 23

It is an offence for a railway company to operate or maintain a railway, or for any person to maintain a crossing, that does not comply with the regulations and rules established under section 18, 19, or 20. This does not apply to operations carried out under exemptions granted under sections 22 and 22.1.

CESSATION OF TRAIN WHISTLING

SECTION 23.1

This section prohibits the use of the whistle on any railway equipment in an area within a municipality, but only if the area meets the safety standards prescribed in regulation and the municipality has passed a resolution indicating its agreement with eliminating the whistling. Before passing such a resolution, the railway company involved must be consulted and notice given to relevant organizations and the general public. If required, the Minister may determine whether an area meets the prescribed requirements.

A Railway Safety Inspector and the Minister have the power to initiate whistling if an immediate threat to safe railway operations is perceived to exist. Furthermore, this provision does not prohibit the use of the whistle in cases of emergencies or other requirements, such as when specific work crews are located on railway property.

Part III



This part provides the powers to ensure that railway operations are not endangered by operations on land adjacent to a right-of-way. Also included are provisions regarding trespassing and the right-of-way of trains at crossings.

REGULATIONS

The government may make regulations for controlling activities on lands adjoining railway rights-of-way to avoid a threat to safe railway operations. Such regulations may deal with:

- ▼ *construction of structures*
- ▼ *mining operations*
- ▼ *drainage systems*
- ▼ *storage of flammable materials*
- ▼ *removal of trees and bush obstructing the field of view*
- ▼ *removal of weeds and the use of alternatives to chemical pesticides*
- ▼ *restricting or preventing, by means of fences, signs or any other means, access to the land on which a railway line is situated by people, vehicles, or animals*
- ▼ *construction, alteration and maintenance of roads*
- ▼ *control of vehicular and pedestrian traffic on road approaches to road crossings*
- ▼ *any other activity that could constitute a threat to safe railway operations*



Any private landowner who suffers loss as a result of the above-mentioned activities is entitled to compensation by the railway company. Disputes over compensation may be referred to the CTA.

POWER OF RAILWAY COMPANIES AND ROAD AUTHORITIES ON ADJOINING LANDS

SECTION 25

Railway companies are allowed to enter onto land adjoining railway lines to carry out activities essential for the safe operation of the railway, where no other access is reasonably available. This includes dealing with fires, installing or maintaining a snow fence, removing obstructions to railway works, removal of trees, or carrying out alterations to railway works, such as drainage structures.

Road authorities may enter onto land in the vicinity of a rail crossing, including land adjacent to either a road or railway right-of-way, to cut down trees and brush that has been permitted to grow in contravention of section 24 regulations. Written notice of the intention to do so must first be given to the landowner.

POWERS OF THE CTA

SECTION 26

Where agreement cannot be reached on compensation to be paid by a railway company or a road authority to any person claiming losses as a result of action taken under section 24 or 25, and where no other recourse is available under Part III of the *CANADA TRANSPORTATION ACT*, any affected party can refer disagreements to the CTA for arbitration.

TRESPASSING

SECTION 26.1

It is a contravention of the RSA for any person to enter land on which a railway line is situated, without a lawful excuse. The enforcement of this section of the RSA is generally carried out by police forces under the *CONTRAVENTIONS ACT* through agreement with the respective province. It may also be enforced directly under the RSA pursuant to section 41.

RIGHT-OF-WAY

SECTION 26.2

Users of a road are required to give way to railway equipment at a road crossing when adequate warning of its approach is given. Adequate warning is generally accepted to mean compliance with all applicable rules, regulations, standards and orders.

The purpose of this provision is to:

- ▼ *encourage railways, municipalities or road authorities to resolve individual site problems*
- ▼ *sharpen public awareness about safe driving and risks to pedestrians and other road users of the crossing*
- ▼ *recognize that crossings are the site of most railway-related deaths and injuries*
- ▼ *recognize that trains can not stop quickly due to their size and weight*
- ▼ *clarify that such right-of-way exists only if adequate warning of the train's approach is given*





Part IV covers those items that are necessary to enforce the provisions of the RSA. It covers the appointment and authority of Railway Safety Inspectors and Screening Officers, removal of works, emergency directives, rules of court, medical reporting, inquiries, security measures and offences.

RAILWAY SAFETY INSPECTORS AND SCREENING OFFICERS

The Minister has the power to appoint Railway Safety Inspectors and Screening Officers. Inspectors are required to be certified for one or more specific areas of responsibility, such as: railway works, railway equipment, railway operations or security matters. A Railway Safety Inspector is exempt from being required to give evidence in a civil suit, except with the written permission of the Minister. A Railway Safety Inspector or a Screening Officer is not personally liable for anything that he or she has done in good faith while discharging his or her duties under the RSA.

Railway Safety Inspectors monitor compliance with safety and security regulations, emergency directives, rules, and orders made under the RSA.

A Screening Officer is someone designated by the Minister to perform authorized screening, i.e. control, observation, inspection and search of persons or goods to prevent the unauthorized possession or carriage of weapons, explosives and incendiaries on railway works and railway equipment.

A Transport Canada Guideline on the Roles of Railway Safety Inspectors and Screening Officers is also available.

INSPECTORS' POWERS TO INSPECT RAILWAY PREMISES

Railway Safety Inspectors are empowered to enter and inspect railway property, to seize any property that may afford evidence and to question persons to determine whether there has been an offence under the RSA.

This includes rail traffic control offices and other railway facilities that may be located elsewhere than on the railway line. Inspectors may also require any person appearing to be in charge of such a place to produce any document for inspection or for the purpose of making copies or taking extracts.

The powers granted ensure that Inspectors have the authority to inspect railway works and equipment on a

SECTION 27

SECTION 28

regular basis and to carry out an investigation where there is reason to believe that an offence has been committed under the RSA.

ASSISTANCE TO INSPECTORS

SECTION 30

Under the RSA, owners and persons having charge of facilities that are being inspected must offer all reasonable assistance to Inspectors. These persons must:

- ▼ *comply with reasonable requests*
- ▼ *not make any false or misleading statements*
- ▼ *not remove, alter or interfere with evidence*
- ▼ *not otherwise obstruct or hinder an Inspector while carrying out his or her duties*

This section supports the power of the Inspector and creates an offence in the event that anyone obstructs an Inspector working under the RSA.

INSPECTOR MAY FORBID OR RESTRICT USE OF UNSAFE WORKS OR EQUIPMENT

SECTION 31

Railway Safety Inspectors have the power to prevent, or restrict, the use of railway works, or to restrict railway operations, if they perceive an immediate threat to the



safety or security of railway operations. As a result, Inspectors can take direct action to intervene in railway company operations if the company, or any of its employees, fails to respond to the threat in a manner satisfactory to the Inspector.

Threat is defined as a hazard or condition that could reasonably be expected to develop into a situation in which a person could be injured or made to be ill or damage could be caused to the environment or property, and an **immediate threat** is when such a situation already exists.

This section further provides as follows:

- ▼ *it requires an Inspector to notify a railway company or any person who owns or leases railway equipment, in writing, of any perceived threat to safe railway operations. If the threat is immediate, the Inspector may order that the works or equipment not be used, or may impose restrictions on its use, until satisfied that the threat has been removed*
- ▼ *it establishes a similar process for crossings, but extends the notification to persons responsible for the maintenance of the crossing. The Inspector may restrict the use of the crossing by the road traffic, by the utility, or by the railway*
- ▼ *it establishes a similar process to issue a notice or order to the operator of a motor vehicle using a crossing*
- ▼ *it gives the Inspector similar powers in relation to railway operations*

SUBSECTION 31(8)

A Railway Safety Inspector has the authority to revise or revoke orders issued by another Inspector if the Inspector making the original order is unable to act.

UNAUTHORIZED OR IMPROPERLY MAINTAINED WORKS

SECTION 32

The Minister can order the removal or modification of any works that have not been constructed, altered, or maintained in accordance with the RSA. In addition, the Minister may sell, give away or otherwise dispose of the materials contained in such works.

The Minister can order corrections to deficiencies found in a railway's Safety Management System. This provision authorizes the Minister to order a railway company to take corrective measures if it is felt that the Safety Management System established by the company has deficiencies that risk compromising railway safety.

EMERGENCY DIRECTIVES

The Minister can take action in the event of an immediate threat to safe railway operations or the security of rail transportation. Wide-ranging embargoes can be imposed on railway operations in cases where the Minister believes that continued operation of certain equipment or the use of works or operating or maintenance practices would be unsafe. The Minister also has the power to issue such directives for security purposes with respect to rail transportation.

Emergency directives can be used to override regulations and rules where experience shows that these have unsafe implications. Emergency directives can remain in effect for a maximum of six months and may be renewed once for a further period of six months.



ENFORCEMENT THROUGH COURT

The provisions of the RSA can be enforced, if necessary, through the courts.

This section provides as follows:

- ▼ *it allows any order or emergency directive by the Minister to be made an order enforceable by the federal or any superior court*
- ▼ *it allows the Minister to extend this power of enforcement to orders issued by a Railway Safety Inspector*
- ▼ *it establishes the process to be followed in implementing court enforcement of orders and emergency directives*
- ▼ *it allows the Minister to cancel and replace an order or emergency directive that has been made an order of the court*
- ▼ *it gives the Minister the option, at any time, to enforce a decision or order by his own action*

MEDICAL INFORMATION

Medical examinations are required for all persons occupying positions declared by rule or regulation to be critical to railway safety operations (referred to as designated positions), whether or not they are railway employees. The intervals for such testing are to be established through rule or regulation as well.

This section also provides as follows:

- ▼ *it requires physicians and optometrists to notify the railway company's medical adviser if an employee has a medical condition that could be a threat to safe railway operations*
- ▼ *it places the responsibility on the patient to inform the physician that he or she holds a designated position*
- ▼ *it allows the company to use information provided by a physician or optometrist in the interest of safe railway operations*
- ▼ *it prohibits any legal, disciplinary or other proceedings against a physician or optometrist for such information given in good faith*
- ▼ *it prohibits further disclosure, or use as evidence, of such medical information, except with the permission of the patient*

The overall purpose of this section is to ensure that persons in positions critical to safe rail operations are fit for duty.

OTHER INFORMATION REQUIREMENTS

SECTION 37

The government has the authority to make regulations requiring railway companies to provide any information relating to safe railway operations that is requested by the Minister, such as data regarding safety performance trends.

The government may also make regulations requiring railway companies to report data required to support the auditing of Safety Management Systems. Relevant safety information must be gathered, investigated and evaluated to determine whether Safety Management Systems are in place, are adequate and are functioning well.

SECURITY SCREENING AND MEASURES

SECTION 39

A framework is established for the notification and conduct of screening operations for railway transportation and ensures that screening operations address all of the situations that could pose a threat to security, and for which security screening is an appropriate response.

This section also empowers the Minister to formulate railway security measures and to require or authorize railway companies to implement such measures.

Under this section:

- ▼ *it is an offence for a person to knowingly make a false or misleading statement to a Screening Officer*
- ▼ *the conditions are established under which security rules, emergency directives and measures may be disclosed*

INQUIRIES

SECTION 40

The Minister can carry out a public inquiry into any issue of public interest affecting the safe operation of railways. A person conducting an inquiry under the RSA will have the same powers as a commissioner appointed under the *INQUIRIES ACT*.

OFFENCES AND PENALTIES

Contraventions of the provisions of the RSA or of regulations, emergency directives, orders, rules, or requirements made pursuant to the RSA are an offence and penalties may be applied.

In the case of a conviction on indictment, a corporation is liable to a maximum fine of \$200,000, and an individual is liable to a maximum fine of \$10,000 and/or imprisonment for up to one year. For a summary conviction, the maximum fine for a corporation is \$100,000, and for an individual the maximum fine is \$5,000 and/or imprisonment for up to six months.

Violations can be prosecuted in the jurisdiction where the accused lives or carries on business even when the offence occurred in some other jurisdiction. This would allow, for example, for more than one violation of a rule to be grouped under the same proceeding, even though the offences occurred in various jurisdictions.



Part V



This part provides for delegation of powers, the authority to implement Safety Management Systems, the authority to regulate the release of pollutants and a number of miscellaneous provisions.

DELEGATION OF POWERS

Ministerial powers or duties under the RSA may be delegated, in writing, to any person designated by the Minister. Most of these powers have been delegated to the Deputy Minister, the Assistant Deputy Minister of Safety and Security, the Director General of Railway Safety, and the Director General of Security and Emergency Preparedness.

SECTION 45

STATUTORY INSTRUMENTS ACT

Numerous provisions made under the RSA, such as orders, rules, directives and notices, are not statutory instruments, and therefore are not subject to federal regulatory policy. For example, rules submitted pursuant to section 19 or 20 are not statutory instruments and are not published in the *CANADA GAZETTE*. On the other hand, regulations made pursuant to section 18 are statutory instruments.

SECTION 46

SAFETY MANAGEMENT SYSTEMS

SUBSECTION 47.1(1)

The government has the authority to make regulations respecting the development and implementation of Safety Management Systems by railway companies.

Safety Management System is defined as a formal framework for integrating safety into day-to-day railway operations and includes safety goals and performance targets, risk assessment, responsibilities and authorities, rules and procedures, and monitoring and evaluation processes.

The requirement for Safety Management Systems was one of the key amendments to the RSA. These systems are expected to improve railway safety by reducing: public and employee fatalities and injuries; property damage resulting from railway accidents; and the impact of accidents on the environment. The program is to be monitored by a formalized auditing program and analysis of safety performance indicators.

Given the results in other industries, Safety Management Systems are intended to promote a safety culture within railways, to enable railways to demonstrate their commitment to safety, and to show that they are in compliance with regulatory requirements.

ENVIRONMENTAL PROTECTION

SUBSECTION 47.1(2)

The government has the authority to regulate the release of pollutants into the environment from the operation of railway equipment. The specific intent of this provision is to contribute to the environmental sustainability of the rail industry.

PUBLICATION OF REGULATIONS

SECTION 50

Regulations made under the RSA must be published in the *CANADA GAZETTE* at least 90 days before coming into effect. This is intended to provide widespread public notification of railway safety, security and environmental regulations and provide ample opportunity for interested parties to file comments, questions, and objections with the Minister.

Part VI

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

AMENDMENTS TO OTHER ACTS

In order to eliminate conflict with the RSA and to further enhance railway safety, amendments have been made to other Acts such as the *ACCESS TO INFORMATION ACT*, the *CRIMINAL CODE* and the *RAILWAY RELOCATION AND CROSSING ACT*.

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