


TRANSPORT CANADA

**TRESPASSING PREVENTION POLICY**

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October 16th/2000

Canada 

# RAILWAY SAFETY ACT

## TRESPASSING PREVENTION POLICY

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### Table of Contents

- 1) Policy objective
  - 2) Policy background
  - 3) Authority
  - 4) Policy requirements
  - 5) Role and responsibilities
  - 6) Monitoring
  - 7) Inquiries
- 

### 1. Policy objective

The objective of the trespassing prevention policy is to clarify Transport Canada's (TC) role and responsibilities concerning railway trespass.

(**NOTE:** The railway right-of-way access control regulation will specify the roles of other parties concerned with railway trespass prevention.)

### 2. Policy background

Historically, federal government agencies have been predominantly involved with the control of livestock on railway property as opposed to trespassing. The basis for this was the program monitoring of right of way fence conditions, and in some instances, the requirement to issue fencing exemption orders where relief from fencing requirements was requested. In practice, the federal agencies usually took the lead in involving the railways, municipalities or in most cases adjacent land owners in discussions and decisions on fencing issues prior to issuance of an "Order". A Canadian Transport Commission (CTC) "Order" relating to fencing exemption was, in both origin and effect, a legal and binding record of a decision taken by consensus, or in the absence of consensus, by the CTC itself. During this time, trespassing issues involving the public were handled on an ad-hoc basis.

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The Railway Safety Act (RSA) of 1989 and the amendments which came into force on June 1<sup>st</sup> 1999 redefined roles by implicitly placing trespass prevention responsibilities on the railways, municipalities, adjacent landowners and the public.

This policy reflects the objectives of Section 3 of the RSA, which are to:

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

Transport Canada's national transportation strategy calls for a transportation system that is safe, smart, strategic, and sustainable — the top priority being safety. The Safety and Security Strategic Plan (see next page) defines how the Department intends to contribute to the safety and security of Canada's transportation system. The trespass prevention policy, through its requirements, will support and fulfill the mandate of the Strategic Plan.

## THE SAFETY & SECURITY STRATEGIC PLAN OVERVIEW

<b>Where we are headed- Our Vision</b>
<i>The safest transportation system in the world</i>
<b>The impact we want to have - Our intended Outcomes</b>
<i>Protection of life, health, environment and property</i> <i>Public confidence in the safety &amp; security of our transportation system</i>
<b>How we get there - Our Mission</b>
To further advance the safety and security of an efficient, accessible and sustainable transportation system through:
<i>Awareness &amp; Education</i> <i>Monitoring &amp; Enforcement</i> <i>Establishment and Implementation of Policies &amp; Rules</i>
<b>What we want to achieve</b>
<i>Safe Practices   Risk Reduction   Stakeholder Awareness</i> <i>Positive External and Internal Impact   Effective Intervention</i>
<b>How we do it</b>
<i>Continue to develop a new safety culture</i> <i>Build constructive relationships internally and with stakeholders</i> <i>Implement a systematic approach to risk management</i> <i>Improve our tools, practices &amp; techniques</i> <i>Adopt a systems approach to human resources management</i> <i>Broker international best practices</i>

### 3. Authority

Under subsection 2.(2) of the RSA, the federal government has jurisdiction in “respect of transport by railways to which Part III of the Canada Transportation Act applies”. In general, this means that TC has jurisdiction over companies which have a certificate of fitness issued by the Canadian Transportation Agency (CTA). This jurisdiction applies to all rail lines under federal jurisdiction.

It is now recognised through CTA rulings supported by the Federal Court of Appeal, that right-of-way fencing constitutes a railway work. Paragraph 4.1(c) of

the RSA defines a railway work to include a line work, and interprets a line work to include:

*“any other structure built across, beside, under or over a line of railway, that facilitates railway operations, but does not include a crossing work;”*

Under the RSA, it is illegal to trespass. Section 26.1 states that, quote:

*“No person shall, without lawful excuse, enter on land on which a line work is situated.”*

This means it is illegal to trespass on railway right-of-way, or on any other works that facilitate railway operations.

The authority to make regulations respecting construction or alteration of railway works including fencing on the rail line is provided in Section 7 of the RSA. The authority to make regulations restricting or preventing, by means of fences, signs or any other means, access to railway lands, is provided under Section 24. This authority is not limited to the presence of persons, vehicles or animals that would constitute a threat to safe railway operations, but also extends under [paragraph 24.\(1\)\(g\)](#) to the control or prohibition of any other activity, on land adjoining railway lands, where that activity could constitute a threat to safe railway operations.

The jurisdiction of the federal government is intended only to extend to those aspects which have a direct relationship to the safety of railway lands, respecting the jurisdiction of municipalities and rights of adjacent landowners in development or enjoyment of their lands.

#### **4. Policy requirements**

To maximize the Department’s impact on transportation safety, the focus of this policy is to ensure a positive approach to prevention of trespassing through awareness of regulatory requirements, education through guidance, counselling and advice, and compliance monitoring of regulated parties. Our strategy is to require through regulation and policy that there are no new locations of trespass caused by changes in land use, while at the same time ensuring that where trespass is now occurring, there is clear responsibility to mitigate the threat. Departmental activities to fulfil this policy will be accommodated in the Rail Safety Business Plan, in accordance with approved resources.

The policy of Transport Canada is to:

- 1) Maintain and enhance public safety by requiring through regulation or other means permitted under the RSA, restriction of unauthorized access to railway lands. The regulation will establish responsibilities requiring railways, municipalities and adjacent landowners to work together to prevent death and injury due to trespassing.
- 2) Promote awareness of regulatory requirements and education through guidance, counselling and advice to railways, municipalities, adjacent landowners, police departments, consultants and other interested and affected parties concerning trespass prevention.
- 3) Collaborate and participate with interested parties to identify high trespass locations and institute mitigating measures.
- 4) Maintain a compliance monitoring program including surveillance, site inspections and audits to assess regulatory compliance and ensure effective intervention.
- 5) Support, initiate and conduct access control research to identify emerging technologies and best practices and to encourage railways, municipalities and adjacent landowners to adopt those best practices which are not regulatory requirements.
- 6) Obtain data through research, accident/incident investigation, and in partnership with railways, municipalities, police and other government departments.
- 7) Analyse data to identify safety concerns, trends and emerging risks for use directly at individual trespass locations or systemically in the orientation of our regulatory, research or program activities.
- 8) Support and carry out safety promotional activities with respect to trespass prevention through continued support of Direction [2006](#), Operation Lifesaver as well as TC programs.

## **5. Role and responsibilities**

The Rail Safety Directorate, is responsible to ensure that the regulatory instruments (i.e. regulations) are enacted and enforced and to develop the national programs, policies, guidelines, data analysis requirements and methodologies for consistent application throughout the Regions. A key role is to establish constructive and beneficial relationships with partners through comprehensive consultation.

The Surface Regions are responsible to ensure the regulated parties meet the regulatory requirements and that regional activities are implemented and carried out consistently and in accordance with the national programs, policies, guidelines, data collection requirements and methodologies. A key role is to contribute and participate with headquarters during formulation of national policy and programs.

Railway Safety Inspectors (RSI's) will encounter trespassing situations when in the field. The role of RSI's is of a compliance monitoring nature as opposed to a peace officer role. Accordingly RSIs are, as a general rule, not to confront trespassers directly, but rather alert the railway personnel or management of the violations. In accordance with Section 31 of the RSA, RSI's shall take action where a threat or immediate threat is identified. In cases where their immediate intervention is essential to prevent imminent injury or death to others, RSI's are to take appropriate/prudent action.

## **6. Monitoring**

The implementation and effectiveness of this policy will be assessed by the Director General Rail Safety through periodic internal audits, program reviews and input from interested and affected parties.

## **7. Inquiries**

Inquiries about this policy should be directed to

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