

RAIL SAFETY PROGRAM GUIDELINE - ASRB 002

REQUEST TO DEPART FROM APPLICABLE ENGINEERING STANDARDS

Requests to the Minister under subsection 10(1) of the *Railway Safety Act* for approval of a proposed railway work.

I. BACKGROUND:

Subsection 10(1) of the *Railway Safety Act* (the *Act*) requires proponents to request approval from the Minister of Transport (the Minister) before undertaking any railway work where:

- a) the work departs from an applicable engineering standard¹ in effect under section 7 of the *Act*; or,
- b) there is an outstanding objection to any of the types of railway work specified in the *Notice of Railway Works Regulations*.

The proposed railway work is physically located on a line of railway under federal jurisdiction.

For such requests to be viable, there are minimum requirements that must first be satisfied to enable the Minister to determine whether the proposed railway work is consistent with safe railway operations.

II. PURPOSE:

This guideline is intended for the advice of **persons proposing to undertake railway work** as contemplated in subsection 10(1) of the *Act* for which Ministerial approval is required before undertaking any railway work.

III. SCOPE:

This guideline clarifies the information and documentation required for a proper application to the Minister so that it may be determined whether the proposed railway work is consistent with safe railway operations.

¹ The applicable engineering standards approved by TC are listed in Appendix I.

IV. AUTHORITY:

This guideline is issued under the authority of the Director General, Rail Safety.

V. DEFINITIONS:

For the purposes of this guideline, the following definitions will apply:

"*Act*" means *Railway Safety Act*.

"*Engineering standards*" means engineering standards in place pursuant to section 7 of the *Act*.

"*Minister*" means the Minister of Transport, and includes persons authorized in writing under section 45 of the *Act* to act on the Minister's behalf, as specified in the instrument of authorization.

"*Person*" includes a government of a municipality and a road authority.

"*Prescribed*" means prescribed by regulations. The regulations specifically referenced in this guideline are the *Notice of Railway Works Regulations*.

"*Project*" means

(a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work, or

(b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to the *Inclusion List Regulation*, a regulation made under subsection 59(b) of the *Canadian Environmental Assessment Act (CEAA)*.

"*Proponent*" means the person who proposes, or has proposed, the construction or alteration of the railway work, whether voluntarily or because of a requirement imposed by or under another piece of legislation.

"*Railway company*" or "*railway*" means a railway company operating in Canada under the legislative authority of Parliament, and subject to the provisions of the *Act*.

"*Railway work*" means a *line work* or any part thereof, a *crossing work* or any part thereof, or any combination of the foregoing.

"*Crossing work*" means a road crossing or a utility crossing.

"*Line work*" means:

- (a) a line of railway, including any structure supporting or protecting that line of railway or providing for drainage thereof;
- (b) a system of switches, signals or other like devices that facilitates railway operations; or
- (c) any other structure built across, beside, under or over a line of railway, that facilitates railway operations, but does not include a crossing work.

"Road" means any way or course, whether public or not, available for vehicular or pedestrian use.

"Road crossing" means that part of a road that passes across, over or under a line of railway, and includes any structure supporting or protecting that part of that road or facilitating the crossing.

"Utility crossing" means that part of a utility line that passes over or under a line of railway, and includes any structure supporting or protecting that part of that utility line or facilitating the crossing.

"Utility line" means any wire, cable, pipeline or other like means of enabling the transmission of goods or energy or the provision of services.

VI. ASSUMPTIONS:

This guideline has been developed based on the following assumptions:

- 1) The guideline is in no way intended to subordinate the *Act*, or regulations, standards, orders, directives, or rules made under the *Act*.
- 2) Conformity with the requirements identified in this guideline does not of itself guarantee Ministerial approval of the proposed railway work.
- 3) All parties to a request for approval of a proposed railway work will respect the timeframes specified in legislation.
- 4) A proponent making a request for Ministerial approval of a proposed railway work under subsection 10(1) of the *Act* will provide all information and documentation necessary to substantiate the request, at the time it is submitted to the Minister for consideration. (**Note:** Failure to do so may result in the application being denied, or processing of the application delayed.)

VII. REQUIRED INFORMATION:

Subsection 10(1) of the *Act* identifies two distinct circumstances under which proponents of railway works are required to request and obtain Ministerial approval before commencing those works:

10.(1)(a) The proposed railway work departs from applicable engineering standards in effect under section 7 of the *Act*.

Engineering standards in place under section 7 of the *Act* govern the construction or alteration of railway works. When a proposed railway work is to depart from such engineering standards, the proponent of the work must submit a written request to, and obtain the approval of the Minister before the proposed work can begin.

10.(1)(b) There is an outstanding objection to a proposed railway work for which notice has been given as required in the *Notice of Railway Works Regulations*.

Where the proposed railway work is of a type specified in the *Notice of Railway Works Regulations*, **and**, on expiration of the filing period given in the notice (which shall not be less than 60 days) there remains an outstanding objection to the work, the proponent of the work must submit a written request to, and obtain the approval of the Minister before the proposed work can begin.

In either case, the written request to the Minister **must** include supporting documentation as specified below:

Regulatory Provision

- Reference to the particular section of the *Act* under which the request is being made.
- In the case of a request under paragraph 10(1)(b), a copy of the notice that was given and the list of persons to whom it was sent.
- A plan of the work to which the request relates, including drawings, specifications, and other particulars².

² RSA paragraph 10(2)(a).

- A 'Project Description' as specified in section 1 of the *Federal Coordination Regulations*³ - regulations made pursuant to the *Canadian Environmental Assessment Act*⁴ (CEAA); and,
 - a) if determined to be necessary, an environmental assessment report to be completed in accordance with CEAA requirements and directions from Transport Canada; or,
 - b) if it is determined that an environmental assessment report is not required pursuant to the CEAA, there is a minimum requirement for a demonstration that the environmental implications of the proposed project have been considered.
- In the case of a request under paragraph 10(1)(a) of the *Act*, a statement setting out the manner in which the work departs from the applicable engineering standards and the reasons for the departure.

Risk Assessment

- In the case of a request under paragraph 10(1)(b) of the *Act*, the response of the proponent to the outstanding objection(s), based on description of safety issues and concerns, evaluation by means of a risk assessment and an indication of measures for risk mitigation and control.

(Note: It is recommended that the railway utilize the Canadian Standard Association (CSA) Standard *CAN/CSA-Q850-97 Risk Management Guideline for Decision-Makers*, as amended from time to time. The CSA guideline is intended to assist decision-makers in effectively managing all types of risk issues, including injury or damage to health, property, the environment, or something else of value.)

- Consistent with the requirements stated in section 11 of the *Act*, confirmation that 'all the engineering work relating to railway works, including design, construction, evaluation or alteration, shall be done in accordance with sound engineering principles; and a professional engineer is taking responsibility for the proposed work⁵.

³ *Regulations Respecting The Coordination By Federal Authorities Of Environmental Assessment Procedures And Requirements* available at the following web site <http://www.ceaa-acee.gc.ca/013/0004/SOR97-181.txt>

⁴ Available at the following web site <http://www.ceaa-acee.gc.ca/013/ceaa-2003.pdf>

⁵ Proponents are referred to Transport Canada's *Guideline - Engineering Work Relating To Railway Works (Section 11 - Railway Safety Act)* available at the following web site http://www.tc.gc.ca/railway/RSA/RSA_english.htm

VIII. CONSIDERATION OF THE REQUEST:

Upon receiving a request for approval of a proposed railway work under section 10 of the *Act*, the Minister considers whether the proposed railway work is consistent with safe railway operations. The *Act* allows the Minister a sixty-day assessment period⁶ in which to do so. The assessment period begins the day the request is received by the Minister. The decision of the Minister takes into consideration the information, analysis, and documentation provided by the railway (as specified above), and whether:

- 1) legislative requirements given by the *Act* have been met by the proponent, and accordingly, whether the compulsory supporting documentation accompanies the request;
- 2) Transport Canada has ensured that its legislative responsibilities under the *CEAA* have been met;
- 3) in the case of a request made under paragraph 10(1)(b) of the *Act*, proper notice of the proposed work was given⁷;
- 4) in the case of a departure from applicable standards, the proponent has ensured that the safety implications of, and/or risks associated with the exemption have been identified and assessed, and whether risk mitigation strategies would be adequate;
- 5) any public perception issues or questions remain outstanding, and whether follow-up action is required; and,
- 6) in the case of an objection from persons who received notice of the proposed work under paragraph 10(1)(b) of the *Act* have been adequately addressed by the proponent.

The proponent and any objecting party will be notified of the Minister's decision regarding the request before the assessment period expires. In the case of approval, the approval may be absolute or upon such terms as are specified in the notice. Terms so specified are binding.

⁶ RSA paragraph 10(8)(b) allows the Minister to extend the assessment period by notice to the proponent and any objecting party.

⁷ Refer to RSA subsection 4(5) regarding the *manner* of filing or sending notices.

IX. ADMINISTRATIVE SUGGESTIONS :

The following suggestions are offered as a means of facilitating the administrative processes associated with a request for Ministerial approval of a proposed railway work under subsection 10(1) of the *Act*:

- 1) Before formal submission of their request, and at their earliest convenience, the proponent should contact Transport Canada - Rail Safety to initiate dialogue on the proposal. The first point of contact would most appropriately be the Rail Safety office for the Transport Canada region in which the proposed railway work is to take place.
- 2) Proponents should provide TC with a *project* description as early in the planning phase as possible, to facilitate the commencement of the processes required under the CEAA, and the *Federal Coordination Regulations*⁸.
- 3) Requests should be addressed to the Minister with a copy to the Director General, Rail Safety, Ottawa, and as appropriate, to the Regional Director - Surface for the Transport Canada region where the proposed railway work is to take place⁹.
- 4) In the case of a request under paragraph 10(1)(b), copies of all pertinent correspondence between the proponent and persons to whom notice of the proposed work has been given, should be included with the railway's application to the Minister.

X. CONTACT:

Questions, comments or suggestions on improving this guideline should be directed to the office of:

Mr. Don Pulciani
Director, Safety Policy & Regulatory Affairs
Transport Canada, Rail Safety
Enterprise Building, Minto Place
14th Floor, Suite 1410
427 Laurier Avenue West
Ottawa, Ontario
K1A 0N5
Telephone: 613-990-8690
Fax: 613-990-7767
Email: pulciad@tc.gc.ca

⁸ *Regulations Respecting The Coordination By Federal Authorities Of Environmental Assessment Procedures And Requirements available at the following web site*
<http://www.ceaa-acee.gc.ca/013/0004/SOR97-181.txt>

⁹ The list of Rail Safety offices is found in Appendix III

APPENDIX I

Presently the following are engineering standards made under subsection 7(2) or subsection 7(2.1) of the Act and approved under paragraph 19(4)(a) of the Act:

- TC E-05 - **Standard Respecting Railway Clearance** - Approved on May 14, 1992.
- TC E-07.01 - **Railway Signal and Traffic Control Systems Standards** - Approved on August 28, 1995 and revised on August 26, 1998.
- TC E-10 - **Standards Respecting Pipeline Crossings under Railways** - Approved on June 21, 2000.
- TC E-14 - **Transport Canada Standard for LED Signal Modules at Highway/Railway Grade Crossings** - Approved on October 10, 2003.

The following are regulations made before the coming into force of the Railway Safety Act in 1989 and some of their sections contain engineering standards:

- **Ammonium Nitrate Storage Facilities Regulations** (General Order O-36) (C.R.C., c. 1145).
- **Anhydrous Ammonia Bulk Storage Regulations** (General Order O-33) (C.R.C., c. 1146).
- **Chlorine Tank Car Unloading Facilities Regulations** (General Order O-35) (C.R.C., c. 1147).
- **Flammable Liquids Bulk Storage Regulations** (General Order O-32) (C.R.C., c. 1148).
- **Height of Wires of Telegraph and Telephone Lines Regulations** (General Order E-18) (C.R.C., c. 1182).
- **Highway Crossings Protective Devices Regulations** (General Order E-6) (C.R.C., c. 1183)
- **Joint Use of Poles Regulations** (General Order E-12) (C.R.C., c. 1185).
- **Liquefied Petroleum Gases Bulk Storage Regulations** (General Order O-31) (C.R.C., c. 1152).
- **Railway-Highway Crossing at Grade Regulations** (General Order E-4) (SOR/80-748).
- **Wire Crossings and Proximities Regulations** (General Order E-11) (C.R.C., c. 1195).

APPENDIX II

Environmental Assessment

Canadian Environmental Assessment Act

The *Canadian Environmental Assessment Act (CEAA)* is the legal basis for the federal environmental assessment process. Transport Canada (TC) must ensure that an environmental assessment is conducted in accordance with the requirements of the CEAA for all **projects**:

- a) for which it has a trigger under CEAA subsection 5(1); and
- b) that are not described in the *Exclusion List Regulations*ⁱ.

A **project** is defined as either:

- a) an undertaking in relation to a physical work; or
- b) an undertaking not related to a physical work that is described in the *Inclusion List Regulations*ⁱⁱ.

Subsection 10(1) Railway Safety Act – CEAA Trigger

Pursuant to paragraph 5(1)(d) of the CEAA, a request for Ministerial approval of a proposed railway work under subsection 10(1) of the *Railway Safety Act (RSA)* is a trigger for an environmental assessment (EA). Therefore, pursuant to subsection 11(2) of the CEAA, TC is not permitted to grant an approval under subsection 10(1) of the RSA unless it first takes a course of action pursuant to paragraph 20(1)(a) of the CEAA for Screenings, or 37(1)(a) for Comprehensive Studies. Notwithstanding the proposed project is described in the *Exclusion List Regulations*.

Paragraph 20(1)(a) of the CEAA requires TC to make an independent determination regarding the likelihood and significance of any adverse environmental effects that may be caused by the a proposed project being carried out, after taking into account the implementation of any mitigation measures that it considers appropriate.

The majority of railway projects submitted for approval under subsection 10(1) of the RSA are expected to trigger the need for an EA Screening to be conducted.

ⁱ *Regulations prescribing those projects and classes of projects for which an environmental assessment is not required.*

ⁱⁱ *Regulations prescribing physical activities and classes of physical activities not relating to physical works that may require an environmental assessment.*

Environmental Assessment Screening Process

The following is the general process undertaken for projects that are determined to require an EA Screening under *CEAA*, and do not necessarily reflect the processes that will occur for a proposal that requires a Comprehensive Study or is referred to a mediator or a panel review:

1. The proponent of the project is required to submit a 'Project Description', which must contain the information defined in section 1 of the *Federal Coordination Regulations*ⁱⁱⁱ. For further guidance regarding the information that should be contained within a 'Project Description', it is recommended that proponents refer to the Canadian Environmental Assessment Agency's Operational Policy Statement on "*Preparing Project Descriptions under the Canadian Environmental Assessment Act*". This document is located on the Agency's website http://www.ceaa-acee.gc.ca/013/0002/ops_ppd_e.htm

It is recommended that the proponent file a project description with TC as early as possible, to facilitate the commencement of the EA process that is required under the CEAA.

2. Once TC receives the proponent's project description, it must first determine whether or not: it has a likely trigger under *CEAA*; the proposal is a 'Project' pursuant to *CEAA*; the project is excluded under *CEAA*; and the project will require an Environmental Assessment Screening, a Comprehensive Study, or the project should be referred to a mediator or a panel review.

The majority of railway projects submitted for approval under subsection 10(1) of the RSA are expected to trigger the need for an EA Screening to be conducted.

3. If TC determines that there is a requirement for an EA Screening to be conducted, it must then fulfill its legislative obligations pursuant to the *Federal Coordination Regulations*. The regulations require TC to notify federal authorities that are also likely to have an EA trigger pursuant to subsection 5(1) of the *CEAA*, and appropriate expert federal departments when it is determined their assistance in the EA Screening may be necessary.
4. TC is required to then determine the 'Terms of Reference' (TOR) for the EA that is to be conducted, specifically the Scope of the Project, the Factors to be considered, and the Scope of those Factors. The TOR are generally incorporated into a 'Scoping Document', which is prepared by TC and then forwarded to the proponent of the project. This will be done in coordination with other Responsible Authorities (RAs) and expert federal departments, when determined necessary.

ⁱⁱⁱ *Regulations respecting the coordination by federal authorities of environmental assessment procedures and requirements available at the following web site*
<http://www.ceaa-acee.gc.ca/013/0004/SOR97-181.txt>

The proponent should use the 'Scoping Document' as a guide for what TC requires to be covered in the environmental assessment report. Notwithstanding, TC may identify further factors or issues during the EA process, which the proponent will be required to assess.

5. The proponent conducts the EA and submits an EA report to TC for review and comments. TC will review it in coordination with other RA(s) and expert federal departments when determined necessary.

Depending on the nature of the proposal, and the issues surrounding its implementation, TC may require the proponent provide the public an opportunity to review and comment on the proponent's EA report.

6. The proponent will be required to appropriately respond to comments received from TC, and other interested groups and parties (the public). Further information requests may be issued to the proponent if TC determines that the EA report that has been filed is not adequate or certain issues require clarification. The proponent will be required to respond appropriately.
7. TC will take into consideration the EA report submitted by the proponent and any comments filed by the public pursuant to subsection 18(3) of the *CEAA*, as the basis for making its determination pursuant to paragraph 20(1)(a) of the *CEAA*. This will be done in coordination with other RA(s) and expert federal departments, when determined necessary.
8. TC renders its decision under Section 20 of *CEAA*. If there are other RA(s) involved, they too will be required to make their own independent section 20 determinations.

Assessment Period

The ability of the Minister of Transport (Minister) to grant an approval under subsection 10(1) of the *RSA* is suspended by subsection 11(2) of the *CEAA*, until such a time that TC makes a determination under paragraph 20(1)(a) of the *CEAA*. Therefore, it should be noted that the "assessment period", in relation to a request that the Minister approve a proposed railway work, could be extended for a period specified by the Minister, pursuant to paragraph 10(8)(b) of the *RSA*, for projects that require an EA to be conducted.

Note: For more detailed guidance on conducting an EA in compliance with *CEAA*, it is recommended the proponent refer to the Canadian Environmental Assessment Agency's '*Responsible Authority's Guide*'. The guide is located on the Agency's website http://www.ceaa-acee.gc.ca/013/0001/0008/intro_e.htm

APPENDIX III

Rail Safety – Contact Information

Regional Offices:

Atlantic

Regional Director
Heritage Place
95 Foundry Street, Suite 418
Moncton NB E1C 5H7

Phone: 506-851-7040
Fax: 506-851-7042

Québec

Regional Director
800 René-Lévesque West
6th Floor, Suite 638
Montréal QC H3B 1X9

Phone: 514-283-5722
Fax: 514-283-8234

Ontario

Regional Director
4900 Yonge Street, 3rd Floor
North York ON M2N 6A5

Phone: 416-973-9820
Fax: 416-973-9907

Prairie & Northern

Regional Director
344 Edmonton Street, 4th Floor
P.O. Box 8550
Winnipeg MN R3C 0P6

Phone: 204-983-4214
Fax: 204-983-8992

Pacific

Regional Director
225-625 Agnes Street
New Westminster BC V3M 5Y4

Phone: 604-666-0011
Fax: 604-666-7747

Headquarters:

Director, Safety Policy &
Regulatory Affairs
Enterprise Building, Minto Place
427 Laurier Avenue West, 14th Floor
Ottawa ON K1A 0N5

Phone: 613-990-8690
Fax: 613-990-7767

APPENDIX IV

Quick Guide to Subsection 10(1) Requirements

Railway Works for which Ministerial Approval is Required		
RSA	Definitions/clarification	Request to include:
<p>Paragraph 10(1)(a)</p> <p>The proposed railway work departs from applicable engineering standards.</p>	<p>"Railway work" means a line work or any part thereof, a crossing work or any part thereof, or any combination of the foregoing.</p> <p>"Engineering standards" means engineering standards established pursuant to section 7.</p> <p>Section 7: . . . governing the construction or alteration of railway works.</p>	<p>Per Paragraphs 10(2)(a) & (b):</p> <ul style="list-style-type: none"> - a plan of the work, including drawings, specifications, & other particulars - a statement re: the manner in which the work departs from applicable engineering standards & the reasons for the departure <p><i>AND</i></p> <ul style="list-style-type: none"> - environmental assessment information - confirmation re: P. Eng. - other information, analysis, & documentation specified in this guideline
<p>Paragraph 10(1)(b)</p> <p>The proposed railway work is one in respect of which notice has been given under subsection 8(1) & there is an outstanding objection.</p>	<p>Subsection 8(1): If a proposed railway work is of a prescribed kind, the proponent shall not undertake the work unless it has first given notice of the work in accordance with the regulations.</p> <p>Notice of Railway Works Regulations – Section 3: The following are railway works of a kind for which notice shall be given:</p> <ul style="list-style-type: none"> a) involving land in addition to land on which existing line of railway is located; b) in a municipality bridges, & culverts over 6 metres & railway tunnels; c) structures above or below a line of railway; d) road crossings for public use; & e) affecting drainage on adjoining land. 	<p>Per Paragraphs 10(2)(a) & (c):</p> <ul style="list-style-type: none"> - a plan of the work, including drawings, specifications, & other particulars - the response of the proponent to the outstanding objections <p><i>AND</i></p> <ul style="list-style-type: none"> - environmental assessment information - confirmation re: P. Eng. - other information, analysis, & documentation specified in this guideline