

Notice is hereby given, pursuant to subsection 50(1)^a of the *Railway Safety Act*^b, that the Governor in Council, pursuant to paragraphs 24(1)(f)^c and 37(a) of that Act, proposes to make the annexed *Railway Right of Way Access Control Regulations*.

Any interested person may make representations to the Minister of Transport concerning the proposed Regulations within 90 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be sent to the Safety Programs Branch, Railway Safety Directorate, Department of Transport, Place de Ville, Tower C, 10th Floor, 330 Sparks Street, Ottawa, Ontario K1A 0N5.

Ottawa,

Eileen Boyd
Assistant Clerk of the Privy Council

^a S.C. 1999, c.9, s. 36

^b R.S., c.32 (4th Supp.)

^c S.C. 1994, c.15, s. 1

Whereas, pursuant to subsection 50(1)^a of the *Railway Safety Act*^b, a copy of the proposed *Railway Right of Way Access Control Regulations*, substantially in the annexed form, was published in the *Canada Gazette*, Part I, on _____ and a reasonable opportunity was thereby given to interested persons to make representations to the Minister of Transport with respect to the proposed Regulations;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Transport, pursuant to paragraphs 24(1)(f)^c and 37(a) of that Act, hereby makes the annexed *Railway Right of Way Access Control Regulations*.

^a S.C. 1999, c.9, s. 36

^b R.S., c.32 (4th Supp.)

^c S.C. 1994, c. 15, s. 1

RAILWAY RIGHT OF WAY ACCESS CONTROL REGULATIONS

INTERPRETATION

1. The following definitions apply in these Regulations.

“**access control measure**” means any means of restricting or preventing access to a railway right of way by pedestrians, vehicles or livestock. (*mesure de limitation de l'accès*)

“**farmland**” means land that is used for crop production or a livestock operation. (*terres agricoles*)

“**farm owner**”, in respect of a railway right of way, means an owner of farmland adjoining the railway right of way and includes a lessee and an occupier of the land. (*propriétaire agricole*)

“**livestock**” means animals kept or raised for use, pleasure or profit, such as cattle, ratices, goats, horses, sheep and swine. (*bétail*)

“**occurrence**” means an accident that is the result of access by pedestrians, vehicles or livestock to a railway right of way or an incident of access to a railway right of way that constitutes a threat to safe railway operations. (*événement*)

“**owner**”, in respect of a railway right of way, means an owner of land adjoining the railway right of way, other than farm land, and includes a lessee and an occupier of the land. (*propriétaire*)

“**qualified person**” means, in respect of a specified duty, a person who, because of their knowledge, training and experience, is qualified to perform that duty safely and properly. (*personne qualifiée*)

“**railway authority**” means, in respect of a railway right of way, the principal operator of the railway line. (*autorité ferroviaire*)

“**railway right of way**” means any land on which a line of railway is situated and includes yard tracks, sidings, spurs and other track auxiliary to a railway line. (*emprise de chemin de fer*)

“**vehicle**” means a vehicle that is designed to be driven or drawn by any means, and includes industrial and farm equipment, but does not include a vehicle designed to run exclusively on rails. (*véhicule*)

2. Nothing in these Regulations shall be interpreted as determining liability for costs.

(This Information Note Is Not Part of the Regulations.)

Information Note: Section 16 of the *Railway Safety Act* states that the proponent of a railway work and each beneficiary of the work may refer the apportionment of liability for the construction, alteration, operational or maintenance costs of the work to the Canadian Transportation Agency for a determination if they cannot agree on the apportionment and if no recourse is available under Part III of the *Canada Transportation Act* or the *Railway Relocation and Crossing Act*. The referral may be made either before or after construction or alteration of the work begins.

APPLICATION

3. These Regulations apply to every railway right of way and the land adjoining the railway right of way.

SAFETY OF RAILWAY RIGHTS OF WAY

General

4. If it is determined under these Regulations that access control measures need to be put in place at a railway right of way, the owners, farm owners and railway authorities shall put the access control measures in place as soon as is reasonably practicable.

5. A railway **authority** shall ensure that appropriate access control measures in accordance with section 14 are put in place and maintained along the portions of the railway right of way where

- (a) trains travel at a speed of 200 km/h (125 mph) or more; or
- (b) the railway lines are electrified by third-rail power distribution facilities.

Farmland Adjoining a Railway Right of Way

6. (1) The farm owner and the railway authority shall jointly ensure that appropriate access control measures in accordance with section 14 are put in place and maintained along the portions of a railway right of way where access by pedestrians or vehicles constitutes or is likely to constitute a threat to safe railway operation.

(2) The farm owner shall notify, in writing, the railway authority of the need for access control measures along a railway right of way if livestock are likely to be in the vicinity of the railway right of way.

(3) After receiving the notification, the railway authority shall ensure that appropriate access control measures in accordance with section 14 are put in place and maintained.

Land, Other Than Farmland, Adjoining a Railway Right of Way

7. In respect of a railway right of way, the owner and the railway authority shall jointly ensure that appropriate access control measures in accordance with section 14 are put in place and maintained along the portions of the railway right of way where it has been determined under section 8 or 9 that access by pedestrians or vehicles constitutes or is likely to constitute a threat to safe railway operation.

Safety Assessments

8. (1) Railway companies shall identify those portions of every railway right of way over which they operate, other than rights of way adjoining farmland, where access by pedestrians or vehicles constitutes or is likely to constitute a threat to safe railway operations.

(2) A safety assessment shall be conducted for those portions identified by the railway companies by a qualified person designated by the railway authority.

(3) The qualified person shall conduct the safety assessment by

(a) requesting information from every owner and railway company that needs to be consulted in order for the safety assessment to be carried out;

(b) taking into account the information available from the government of the municipality where the railway right of way is located;

(c) reviewing safety issues in respect of the railway right of way with the owners and railway companies that are consulted; and

(d) determining jointly with the owners and railway companies that are consulted what access control measures need to be put in place.

(4) A safety assessment shall take into account

(a) the number, volume, class, speed and traffic pattern of trains that pass over the portion of the railway right of way and a forecast of those elements for the following five years;

(b) the volume, source, class and pattern of the traffic pattern of pedestrians and vehicles that are likely to be in the vicinity of the railway right of way and a forecast of those elements for the following five years;

(c) the current use of the land adjoining and in the vicinity of the railway right of way and the use forecast for it for the following five years; and

(d) the causes of any access problem or any anticipated problem.

(5) Owners and railway companies that are asked for information by the qualified person shall provide the information.

(6) The railway authority shall keep the most recent safety assessment and make it readily available for inspection at the request of a railway safety inspector.

Removal of Threats

9. If a threat to safe railway operations is identified by a safety assessment or by any other means, the owner and the railway authority shall, in addition to meeting the requirements of section 4, put in place the access control measures necessary to remove the threat.

Occurrences

10. (1) Railway companies that operate over a railway right of way and have knowledge of an occurrence shall

(a) determine jointly with the railway authority and every owner and farm owner that needs to be consulted, whether access control measures are needed or the existing measures must be changed; and

(b) keep an action plan that sets out the access control measures that will be put in place and make it readily available for inspection at the request of a railway safety inspector.

(2) The railway companies shall keep a record for at least five years of all occurrences of which they have knowledge and of the access control measures put in place to prevent further occurrences.

Farmland Adjoining a Railway Right of Way – Change in Use and Conversion to Farmland

11. (1) In respect of a railway right of way, the farm owner shall notify, in writing, the railway authority of any significant farming change, other than a rotation between crop production and the raising of livestock, that requires a change in the access control measures in place.

(2) Examples of significant farming changes include but are not limited to

(a) the introduction of livestock farming; and

(b) the introduction of livestock that require more stringent means of confinement than do average livestock (for example, deer require a higher fence than cattle).

(3) After receiving the notification, the railway authority and the farm owner shall jointly determine whether the proposed change is likely to constitute a threat to safe railway operations and whether access control measures are needed or existing measures need to be changed.

(4) If it is determined that access control measures are needed or existing measures need to be changed, the farm owner shall ensure that appropriate access control measures in accordance with section 14 are put in place and maintained.

Change in Use of Land, Other Than Farmland, Adjoining a Railway Right of Way

12. (1) An owner who becomes aware of proposed activities that might significantly affect the use of their land adjoining a railway right of way, such as changes in land use and new construction, shall notify, in writing, the railway authority.

(2) After receiving the notification, the railway authority and the owner shall jointly determine whether the proposed activity or change would be likely to constitute a threat to safe railway operations and whether access control measures are needed or existing measures need to be changed.

(3) If it is determined that access control measures are needed or existing measures need to be changed, the owner shall ensure that appropriate access control measures in accordance with section 14 are put in place and maintained.

Changes in Railway Operations

13. Railway companies that proposes to undertake a significant change in their operations over a railway right of way, such as a significant increase in traffic volume or speed or significant changes in traffic patterns on the line of railway, shall

(a) conduct a safety assessment in accordance with section 8;

(b) notify the affected railway authority, owners, farm owners and municipalities in writing; and

(c) if it is determined that access control measures are needed or existing measures need to be changed, ensure that appropriate access control measures in accordance with section 14 are put in place and maintained.

ACCESS CONTROL MEASURES

14. (1) Every access control measure for the control of access by pedestrians and vehicles shall, at a minimum, incorporate a danger sign substantially in the form set out in the schedule except that

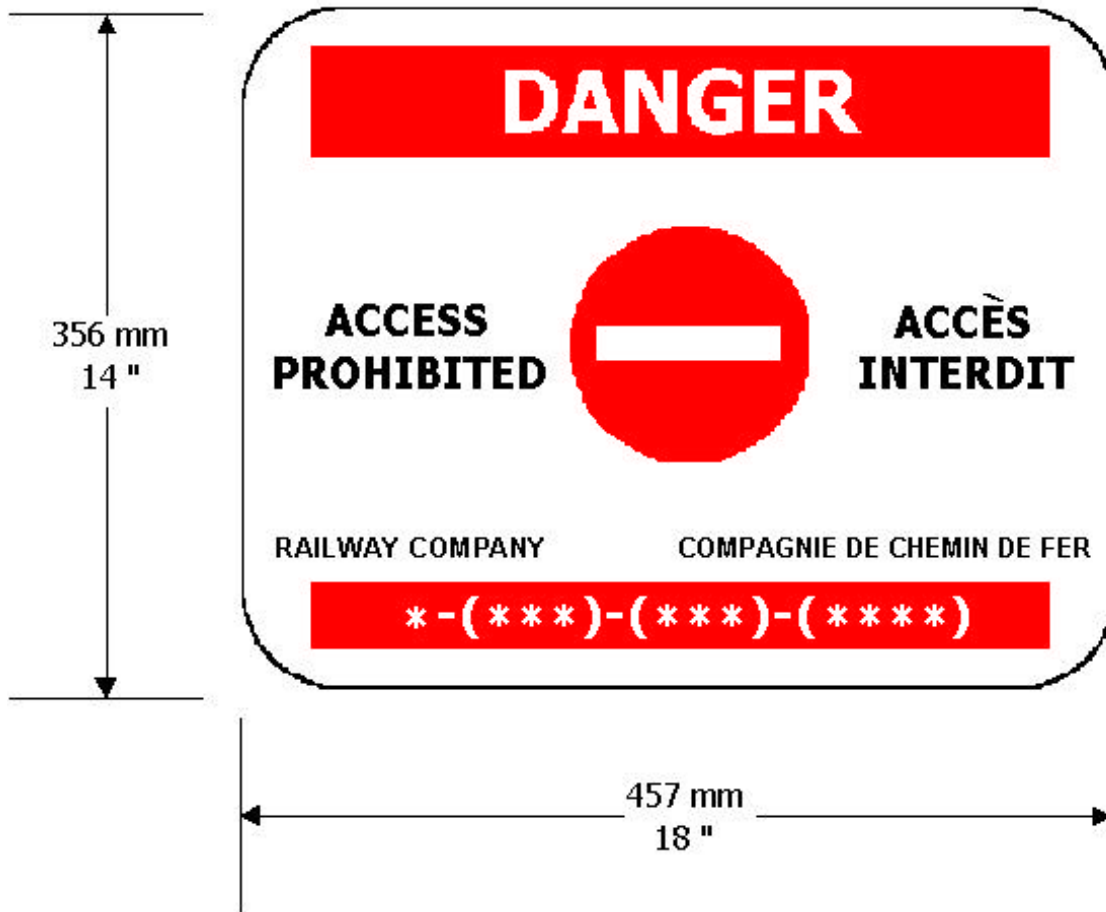
- (a) the size of the sign may be reduced to enable the sign to fit in a confined space if
 - (i) the size of the sign is at least 305 mm x 356 mm (12 in. x 14 in.), and
 - (ii) the size of the words, numbers and symbols are reduced in proportion to the reduction in size of the sign; and
 - (b) the sign may contain other words, numbers or symbols designed to give the message that access to the railway right of way is restricted, if their inclusion would improve the clarity of the message or assist in the understanding or enforcement of the restriction.
- (2) An access control measure may consist of
- (a) a chain-link fence of at least 1.83 m (6 ft.) in height for the control of access by pedestrians and vehicles;
 - (b) a standard smooth-wire woven fence of at least 1.3716 m (4 ft. 6 in.) in height for the control of access by livestock;
 - (c) any other physical means that provides a level of control equivalent to that provided by the means referred to in paragraphs (a) and (b), such as a grade crossing;
 - (d) education programs; or
 - (e) surveillance activities.

COMING INTO FORCE

15. These Regulations come into force on the day on which they are registered.

SCHEDULE / ANNEXE

(Paragraph 14(2)(a) / *alinéa* 14(2)a))



LEGEND	LÉGENDE
Sign, 356 mm x 457 mm (14 in. x 18 in.)	Panneau, 356 mm x 457 mm (14 po x 18 po)
white background	fond blanc
the word “DANGER” top centred in white upper case letters on red background	le mot « DANGER » centré en haut en lettres majuscules blanches sur fond rouge
red circle with a white rectangular bar in the middle	cercle rouge comportant dans le milieu une bande blanche
“ACCESS PROHIBITED” and “ACCÈS INTERDIT” in black upper case letters at the side of the red circle	« ACCÈS INTERDIT » et « ACCESS PROHIBITED » en lettres majuscules noires à côté du cercle rouge
name of railway company in English and French	nom de la compagnie de chemin de fer en français et en anglais
*-(***)-(***)-(****) contact telephone number of the railway company in white digits on a red background	*-(***)-(***)-(****) numéro de téléphone de la personne-ressource de la compagnie de chemin de fer en chiffres blancs sur fond rouge