

RAIL SAFETY PROGRAM GUIDELINE - ASRB 001.1

RAILWAY APPLICATION FOR AN EXEMPTION OR FILING OF A NOTICE OF EXEMPTION

Applying for exemption under subsection 22(4) of the *Railway Safety Act*

Filing notice of exemption under subsection 22.1(1) of the *Railway Safety Act*

I. BACKGROUND:

Subsection 22(4) of the *Railway Safety Act* (the *Act*) provides railway companies with a mechanism whereby they may apply to the Minister of Transport (the Minister) for an exemption from a specified provision of regulations or rules in force under sections 18, 19, or 20 of the *Act*.

Subsection 22.1(1) of the *Act* makes provision for railway companies to file a notice of exemption for the purpose of conducting testing related to rail transportation or for an immediate exemption of short duration, in order to be exempted from the application of any provision of standards, regulations, or rules in force under sections 7, 18, 19, 20, or 24 of the *Act*.

When a railway company seeks an exemption under subsection 22(4) of the *Act* or files a notice of exemption under subsection 22.1(1) of the *Act*, there are minimum safety and information requirements that must first be satisfied to enable the Minister to determine whether the exemption would be in the public interest and not likely to threaten safe railway operations.

II. PURPOSE:

This guideline is intended for ***railway companies***.

The purpose is to clarify the safety and information requirements that must be satisfied in order for the Minister to determine whether an exemption is in the public interest and not likely to threaten safe railway operations.

III. SCOPE:

This guideline applies to all railway companies operating in Canada under the legislative authority of Parliament regarding any application for an exemption filed under subsection 22(4) of the *Act*, or a notice of exemption filed under subsection 22.1(1) of the *Act*.

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*

"*Exemption*" means an exemption under sections 22 or 22.1 of the *Act*.

"*Minister*" means the Minister of Transport, and includes persons designated in writing under section 45 of the *Act* to act on the Minister's behalf, as specified in the Transport Canada Designation Schedule document.

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

"*Relevant associations and organizations*" means an association or organization that has been formed to represent the interests of

- 1) persons employed by that railway company, or
 - 2) persons owning or leasing railway equipment that is used on lines of railway operated by that railway company
- and that is declared by order of the Minister to be a relevant association or organization in relation to that railway company.

VI. ASSUMPTIONS:

This guideline has been developed based on the following assumptions:

- 1) This 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 an exemption.
- 3) All parties to an exemption application or filing will respect the timeframes specified in legislation.

- 4) A railway company seeking an exemption will provide all information and documentation necessary to substantiate their application or filing at the time it is submitted to the Minister for consideration. The time limit begins when the Minister has received all the necessary information and documentation.

(**Note:** Failure to do so may result in the application processing being delayed or approval refused, or the Minister objecting to the filing and returning it to the railway company.)

VII. REQUIRED INFORMATION:

In order for a railway company to adequately inform the Minister regarding an exemption or a notice of exemption, it is expected that the following type of information, analysis, and documentation (as appropriate) will be provided to the Minister:

Regulatory Provision

- Identification of the specific provision of standard, regulation, or rule from which the railway is seeking an exemption, and the section of the *Act* under which the exemption is being sought.

Description of the Proposal

- A description of the specific provision of standard, regulation, or rule from which the railway is seeking an exemption, including how, when, and where the provision from which the railway is seeking an exemption applies.
- A clear description of why the exemption is being sought.

Implementation Details

- A description of how the railway intends to implement the exemption, including (but not limited to):
 - a) timeline, including phase-in, and expected duration;
 - b) scope and technical parameters;
 - c) the role of other stakeholders in implementing the exemption (e.g. road authorities);
 - d) supervision, training, and/or education and awareness considerations for employees, contractors, other railways, municipalities, private road owners, and/or the public; and,
 - e) short, mid, and/or long term objectives concerning the exemption (e.g. in the case of a testing exemption which may result in a future rule modification).

Risk Assessment

- A 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.)

- Implications for other stakeholders (e.g. where co-production, or shared running rights exist).
- As appropriate, an indication that potential environmental implications of the exemption have been addressed.

Engineering Work

- Verification that a professional engineer has taken responsibility for any part of the engineering work related to an exemption for a railway work.¹

(**Note:** Section 11 of the *Act* requires the following: “All the engineering work relating to railway works, including design, construction, evaluation or alteration, shall be done in accordance with sound engineering principles. A professional engineer shall take responsibility for the engineering work.”)

Railway 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.)

Consultation

- In the case of an exemption under subsection 22 (4) of the *Act*, a demonstration that the railway company has afforded each relevant association or organization that is likely to be affected by the exemption a reasonable opportunity during a period of sixty days to consult with it, as required by subsection 22(5) of the *Act* and the railway company must ensure that the relevant association or organization has received the submission.

¹ Refer to the Guideline - Engineering Work Related to Railway Works (Section 11- Railway Safety Act) available at the following web site
http://www.tc.gc.ca/railway/RSA/RSA_english.htm

- The railway company ensure that all comments received during consultation with relevant associations and organizations are copied to the Minister and, where the comments received include safety questions, concerns, or objections, an indication of how the railway is responding to those questions, concerns, or objections (e.g. letter from railway company to relevant association or organization, addressing their concerns).
- In the case of an exemption under subsection 22.1(1) of the *Act*, a demonstration that the railway company has filed a notice of the exemption with each relevant association or organization that is likely to be affected by the exemption.
- Applications should be made from a railway official authorized to act on behalf of the railway company and it should ensure communication internally with its employees that are likely to be affected by the exemption.
- As appropriate, a demonstration that the railway company has communicated with other interested parties or stakeholders that could reasonably be expected to be affected by the exemption (e.g., other railways with running rights on the trackage of the applicant railway, municipalities, road authorities, private road owners, etc.).

VIII. CONSIDERATION OF THE REQUEST:

Upon receiving an application for an exemption or a notice of exemption, the Minister will consider whether the exemption would be in the public interest and not likely to threaten safe railway operations. The Minister takes into consideration the information, analysis, and documentation provided by the railway (as specified above), and whether:

- 1) the requirements of the *Act* have been met regarding consultation or filing of notice²;
- 2) the requirements of Section 11 of the *Act* have been met regarding engineering work related to railway works and, for this purpose, Transport Canada may request that the railway company provide verification that professional engineers have taken responsibility for any part of the engineering work relating to the exemption³;
- 3) the railway 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;

² Failure of a railway company to demonstrate consultation, or filing of notice with relevant associations or organizations as required by the *Act* is sufficient to preclude the Minister from considering the application/filing of notice for exemption.

³ Refer to the Guideline - Engineering Work Related to Railway Works (Section 11- Railway Safety Act) available at the following web site
http://www.tc.gc.ca/railway/RSA/RSA_english.htm

- 4) any safety-related, or public perception issues or questions remain outstanding, and whether follow-up action is required;
- 5) objections from parties consulted or notified have been addressed by the railway company; and,
- 6) an exemption is the optimum instrument for achieving the desired result.

In the case of an application for an exemption under subsection 22(1) of the *Act*, the Minister's decision will be conveyed to the applicant railway company in the form of a notice, which may specify terms or conditions upon which the exemption application is being approved.

Transport Canada's letter accompanying the notice may address outstanding objections from the relevant associations or organizations, as deemed necessary. Before making its final decision, the Minister may inform the railway company and the relevant associations or organizations beforehand of these intended conditions. Terms and conditions so-specified are binding on the railway company in the implementation of the particular exemption.

In the case of a notice of exemption under subsection 22.1(1), the exemption is effective only if, after filing notice of the exemption with the Minister and each relevant association or organization, the company either receives a response from the Minister and each of those associations and organizations indicating that they do not object to the exemption; or no objections are confirmed or made by the Minister.

IX. ADMINISTRATIVE SUGGESTIONS

The following suggestions are offered as a means of facilitating the administrative aspects of processing an application or filing of notice for exemption:

- 1) Before formal submission of their exemption application or filing, and at their earliest convenience, the railway should contact TC Rail Safety to initiate dialogue on the exemption. In the case of a region or location-specific exemption, the first point of contact would most appropriately be the TC regional office involved.
- 2) An application for an exemption or for a notice of exemption should be addressed to the Minister with a copy to the Director General, Rail Safety. When an exemption is to be region or location-specific, it should also be copied to the Regional Director - Surface for the Transport Canada (TC) region involved⁴.
- 3) It should be clear in the railway's application or filing that the exemption or the notice of exemption is made from a railway official authorized to act on behalf of the railway company.

⁴ The list of Rail Safety offices is found in Appendix I.

- 4) Copies of correspondence between the applicant railway and relevant associations and organizations, or other interested parties or stakeholders (that could reasonably be expected to be affected by the exemption) concerning an exemption application or filing, should be included with the documentation submitted 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

APPENDIX I
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 II

Guide to Exemptions

RSA Reference	Actioned how:	Exempt who/what:	From what:
Section 22: Exemptions			
22(1)(a)	Governor in Council (GIC) may exempt	- specified railway company; - specified railway equipment; or - specified railway work	- regulations per 18(1) or 18(2.1) - rules per 19 or 20
22(1)(b)	GIC may exempt	- specified person	- regulations per 18(2)
22(2)(a)	Minister may exempt	- specified railway company; - specified railway equipment; or - specified railway work	- regulations per 18(1) or 18(2.1) - rules per 19 or 20
22(2)(b)	Minister may exempt	- specified person	- regulations per 18(2)
22(4)	<i>Railway</i> may apply to Minister for exemption	-	- regulations per 18(1), (2), or (2.1) - rules per 19 or 20
Section 22.1: Exemptions for testing purposes, or immediate exemptions of short duration			
22.1(1)	<i>Railway</i> proposes exemption for testing, or short duration & files notice with Minister & relevant associations & organizations	-	- standards per 7 - regulations per 18(1) or (2) - regulations per 24(1) - rules per 19 or 20
Section 24: Exemptions from regulations respecting non-railway operations			
24(1.1)	Minister may exempt	- any railway company; or - other person	- regulations per 24(1)

Notes:

1. RSA **7**: respecting engineering standards governing the construction or alteration of railway works
2. RSA **18(1)**: regulations respecting operation or maintenance of line works; and design, construction, alteration, operation and maintenance of railway equipment; and . . .
3. RSA **18(2)**: regulations respecting crossing works
4. RSA **18(2.1)**: regulations respecting security
5. RSA **19 & 20**: rules respecting any matter referenced in 18(1) or (2.1)
6. RSA **24(1)**: regulations respecting "non-railway operations affecting railway safety"
7. **Railway work**: includes line work and/or crossing work

