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# Rail *Safety*

Oversight and Expertise

## **Guideline on Submitting a Proposed Rule or a Revision to a Rule under the *Railway Safety Act***

**December 14, 2011**



Canada

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### Note:

Users of this Guideline are reminded that it is not legally binding, however it has been prepared in the spirit of collaboration to outline the willingness of the parties to work in an open cooperative fashion with the intent to improve the rule-making process. The procedures and forms recommended in this document are provided solely as a guide and should not be quoted or considered as legal authority.

Transport Canada (TC) welcomes further comments and input into future revisions of this guidance document as part of the ongoing improvement process with this as well as other publications.

## **I. INTRODUCTION:**

TC is committed to protecting and advancing the public interest by working with its stakeholders to ensure that its regulatory activities result in the greatest overall benefit to all Canadians by:

- a. promoting and providing for the safety of the public and personnel, and the protection of property and the environment, in the operation of railways;
- b. encouraging the collaboration and participation of interested parties in improving railway safety;
- c. recognizing the responsibility of railway companies in ensuring the safety of their operations; and
- d. facilitating a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety

In application of the *Railway Safety Act (RSA)*, in the spirit of the *Cabinet Directive on Streamlining of Regulations (CDSR)*, TC will:

- protect and advance the public interest in health, safety and security, the quality of the environment, and the social and economic well-being of Canadians, as expressed by Parliament in legislation;
- promote a fair and competitive market economy that encourages entrepreneurship, investment, and innovation;
- make decisions based on evidence and the best available knowledge and science in Canada and worldwide, while recognizing that the application of precaution may be necessary when there is an absence of full scientific certainty and a risk of serious or irreversible harm;
- create accessible, understandable, and responsive rules through inclusiveness, transparency, accountability, and scrutiny;
- advance the efficiency and effectiveness of rule making by ascertaining that the benefits of rules justify the costs, by focusing human and financial resources where they can do the most good, and by demonstrating tangible results for Canadians; and
- require timeliness, policy coherence, and minimal duplication throughout the regulatory process by consulting, coordinating, and cooperating across the federal government, with other governments in Canada and abroad, and with businesses and Canadians.

## II. BACKGROUND:

The RSA provides the Minister with several regulatory instruments to address the safety and security of railway operations, including regulations, rules, standards, emergency directives and security measures. As noted in the CDSR, departments and agencies are responsible for assessing the effectiveness and appropriateness of regulatory and non-regulatory instruments for achieving policy objectives.

With respect to rules as a regulatory instrument, this will be accomplished by:

- identifying potential points for effective intervention;
- identifying and consulting with the stakeholders that should be involved in addressing the potential safety and security risk(s) ;
- identifying the appropriate instrument or mix of instruments, including regulatory and non-regulatory measures;
- demonstrating that the regulatory response is designed to address policy objectives;
- demonstrating that the regulatory response is proportional to the degree and type of risk;
- specifying, particularly for technical rules, to the extent possible, regulatory requirements in terms of their performance rather than their design or descriptive characteristics; and
- making use of all or parts of relevant national or international standards, guidelines, and recommendations as a basis for technical rules and for conformity assessment procedures when they fulfill intended policy objectives.

Subsection 20(1) of the RSA provides railway companies with the ability to propose to formulate or revise rules on any matter referred to in subsection 18(1) or (2.1) of the RSA on their own initiative.

Where a railway company does not submit rules under subsection 20(1) to address a safety issue of concern to TC, or where the rules filed by a railway company do not satisfactorily address the safety issue in the opinion of the Minister, the Minister may, by order, under subsection 19(1) of the RSA, require a railway company to formulate or revise rules respecting any matter referred to in subsection 18(1) or (2.1) of the RSA.

In both cases, the RSA sets out the fundamental elements of the processes to be followed when proposed rules are filed with the Minister for consideration and possible approval.

**Note:** Unless otherwise indicated, the term “rule” should be read as “rule or revision to a rule”, with such modifications as are required by the context in which it is used. The Minister may approve proposed rules if the Minister is satisfied that they are, in the Minister’s opinion, conducive to safe railway operations by the company. When a

railway company files proposed rules with the Minister under the RSA, the company should provide the information and documentation necessary to substantiate their proposal and to assist the Minister in determining whether the proposal would be conducive to safe railway operations by the company.

### **III. PURPOSE:**

The purpose of this Guideline is:

- To promote the spirit of collaboration and to confirm the willingness of the parties to work in an open cooperative fashion with the intent to improve the rule-making process.
- To outline the processes that the various parties have agreed to follow when requesting or formulating rules.
- To clarify the process to be followed when a railway company formulates and files proposed rules with the Minister, whether in response to an Order from the Minister or on its own initiative, for the Minister's consideration and possible approval; and,
- To clarify the information and documentation that a railway company should provide to substantiate their proposal and assist the Minister in determining whether the proposal would be conducive to safe railway operations by the railway company.

### **IV. SCOPE:**

This guideline is intended for use by all **railway companies** operating in Canada under the legislative authority of Parliament regarding the formulation and filing of a proposed rule under Subsection 19(1) or 20(1) of the RSA.

### **V. AUTHORITY:**

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

### **VI. DEFINITIONS:**

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

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

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

**"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.

**"Rule"** means a rule under sections 19 or 20 of the RSA.

**"RSA"** means *Railway Safety Act*, R.S.C. 1985, c.32 (4th Supp.).

## **VII. ASSUMPTIONS:**

This guideline has been developed based on the following assumptions:

1. This guideline is in no way intended to subordinate the RSA, or regulations, standards, orders, directives, or rules made under the RSA.
2. Conformity with the requirements identified in this guideline does not of itself guarantee ministerial approval of a proposed rule or revision to a rule.
3. All parties to the filing of a proposed rule will respect the timeframes specified in legislation.
4. A railway company filing a proposed rule will provide information and documentation necessary to substantiate their proposal and facilitate the Minister's assessment of it at the time it is submitted to the Minister for consideration – such as the "required and recommended information" listed below. The time limit begins when the Minister has received all of the information and documentation required by the RSA.
5. Views expressed by TC representatives during discussions with a railway company on a proposed rule do not necessarily reflect those of the Minister. Such discussions in no way bind the Minister or fetter the powers of the Minister or any authorized delegate under the RSA.
6. A representative from TC will be identified, as required, by the Director, Operations Management, and/or the Director, Regulatory Affairs to provide expert functional advice.

**Note:** Failure to provide all necessary information and documentation could result in the application being refused or its processing delayed.

## **VIII. REQUIRED AND RECOMMENDED INFORMATION:**

When a railway company files a proposed rule, there is particular information and documentation that it is required to provide by the RSA, as well as additional information and documentation that TC recommends that it provide, to substantiate its proposal and facilitate the Minister's assessment of it.

### **REQUIRED INFORMATION:**

With respect to required information, in accordance with the RSA a railway company must provide the Minister with the following information and documentation:

- Identification of:
  - the specific subsection of the RSA under which the proposed rule is being filed; and,
  - in the case of revisions, the rule and the specific provision(s) of that rule that the railway is seeking to revise.
- A copy of the proposed rule or revision to a rule;
- For rules filed under subsection 19(1):
  - a notice identifying each relevant association or organization that objects, on the grounds of safety, to the implementation of the rule; and,
  - a copy of each notice of objection;
- For rules filed under subsection 20(1), a notice both:
  - setting out the **reasons** why the railway company proposes to formulate or revise the rules; and,
  - identifying each relevant association or organization that objects, on the grounds of safety, to the implementation of the rule, attaching a copy of the notice of objection.

### **RECOMMENDED INFORMATION:**

With respect to recommended information, to facilitate the Minister's assessment of whether a proposal would be conducive to safe railway operations by that company, it is **strongly recommended** that the railway company also provide the Minister, at the time of filing, with relevant information and documentation:

#### **Description of the Proposal**

- A description of the proposed rule or revision, including how, when, and where the proposed rule would apply;

## Implementation Details

- A description of how the railway intends to implement the rule, including:
  - timeline, including phase-in, and expected duration;
  - scope and technical parameters;
  - the role of other interested parties in implementing the rule (e.g. road authorities);
  - supervision, training, and/or education and awareness considerations for employees, contractors, other railways, municipalities, private road owners, and/or the public; and,
  - expected short, medium and long-term impact of the proposed rule on rail safety.

## Risk Assessment

- A description of safety issues and concerns, an evaluation of those issues and concerns by means of a risk assessment and an indication of measures for risk mitigation and control.
- An analysis of the implications for other interested parties (e.g. where coproduction, or shared running rights exist).
- As applicable, a description of how potential environmental implications of the proposed rule would be addressed.

**Note:** It is recommended that the Canadian Standard Association (CSA) Standard *CAN/CSA-Q850-97 Risk Management Guideline for Decision-Makers*, be used, 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. Other risk assessment methodologies may also be used.

## Consultation

- A demonstration that the railway company has afforded each relevant association or organization that is likely to be affected by the proposal a reasonable opportunity during a period of sixty days to consult with it, as required by subsections 19(2) and 20(2) of the RSA;
- Copies of all comments received during consultation with relevant associations and organizations 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. a letter from the railway company to the relevant association or organization, addressing their concerns).



**Notes:**

- The railway company will contact relevant associations and organizations early in the drafting process to initiate dialogue on the proposed rule.
- A railway company may deliver consultation documents to a relevant association or organization by e-mail, as long as proof of receipt is provided. The relevant association or organization will acknowledge receipt of the e-mail in writing.
- Although the RSA does not require railway companies to provide the Minister with comments received from relevant associations and organizations after the end of the sixty-day period, in the interest of promoting railway safety they may wish to do so in some circumstances (e.g., when new safety information is provided).

**IX: CONSIDERATION OF THE PROPOSAL:**

Where a proposed rule is filed with the Minister, the Minister considers whether, in the Minister's opinion, and after having regard to current railway practice, to the views of the railway company and the views of any relevant association or organization for which a notice of objection has been filed and to any other factor that the Minister considers relevant, the rule is conducive to safe railway operations.

In making this determination, the Minister may take into consideration the information provided by the railway (see above), and any other factor the Ministers considers relevant, such as whether:

1. the requirements of the RSA have been met regarding consultation or filing of notice (failure of a railway company to demonstrate consultation with, or to file notices of objection by, relevant associations or organizations as required by the RSA is sufficient to preclude the Minister from considering the proposed rule);
2. the railway company has ensured that the safety implications of, and/or risks associated with the rule have been identified and assessed, and whether risk mitigation strategies would be adequate;
3. any safety-related issues or questions remain outstanding, and whether follow-up action is required;
4. objections from parties consulted or notified have been addressed by the railway company (e.g., responding to their concerns by letter);
5. a new or revised rule is the optimum regulatory instrument for achieving the desired result; and,
6. the proposed rule is drafted in such a way that it is clear, understandable and capable of being applied consistently by all parties.

Under the RSA, the Minister has an assessment period of 60 days to consider the proposed rules and notify the railway company that filed them of the Minister's decision.

This assessment period begins when the Minister has received the information and documentation required by the RSA.

TC Rail Safety may contact the filing railway company to discuss its proposal after it has been filed (e.g., to request further information or clarification with respect to the proposal or its supporting documentation). If TC Rail Safety determines that it requires further information to evaluate such a proposal, it shall request that information in a timely manner. A railway company may likewise contact TC Rail Safety officials to discuss its proposal after filing it. However, if a railway company chooses to contact TC regarding its proposal, it is advised to complete such discussions at least ten (10) working days before the end of the assessment period; after which time, additional information might not be accepted.

If, before the end of the 60-day assessment period, the Minister determines that, by reason of the complexity of the rules, the number of rules filed or any other reason (e.g., to provide a railway company additional time to provide further information requested by TC Rail Safety), it will not be feasible to consider the proposal before the expiration of that period, the Minister may, by notice, extend the assessment period to any time in excess of 60 days that is specified in the notice.

The Minister's decision on whether to approve or refuse the proposal will be conveyed to the filing railway company and each association or organization that objected to the implementation of the proposed rule during the consultation process, in the form of a notice. TC's letter accompanying the notice may address outstanding objections from the relevant associations or organizations, as deemed necessary.

The Minister may impose terms and conditions when approving the rule. Where the imposed terms and conditions modify the text of the rule, they will be reproduced in a consolidated version of the rule attached to the notice.

Terms and conditions so specified are binding on the railway company in the implementation of the particular rule. Before recommending that the Minister approve a proposed rule on certain terms and conditions, TC Rail Safety shall contact the railway company to inform it of those possible terms and conditions and rationale therefore. It is not the intent to impose terms and conditions that will materially change the rule.

Under subsection 19(4.1) of the RSA, a railway company may request that the Minister amend any terms or conditions the Minister has specified. When making the request, the railway company must send a copy of it to each relevant association or organization. After receiving such a request, the Minister may, on the basis of new information about the safety of the railway operations, amend any terms or conditions specified previously. If the Minister amends any such terms or conditions, the Minister must provide each relevant association or organization with a copy of the amendments.

If the Minister decides to refuse the proposal, the notice will include the reasons why the Minister is not satisfied that the proposed rule would be conducive to safe railway operations by that company.

Where the Minister notifies a railway company that the Minister refuses to approve proposed rules submitted in response to an order issued under subsection 19(1), the railway company may formulate and file with the Minister for approval further rules in respect of the subject of the original order, as if the order had been made on the date of receipt of the notice of refusal. However, the railway company may not file such further rules if the Minister indicates an intention in the notice of refusal to establish rules in respect of that matter under subsection 19(7).

## **X. ADMINISTRATIVE PROCEDURAL COMMITMENTS**

In addition to the TC commitments identified in Section I –Introduction and Section II – Background, the following commitments have also been agreed to by TC, railway companies, the Railway Association of Canada (RAC) and relevant associations to facilitate the administrative aspects of formulating and filing a proposed rule with the Minister:

### **Section 20**

1. When railway companies determine that rules should be formulated or revised, the railway companies<sup>1</sup> will form a working group made up of representatives for each railway company to draft the proposed rule.<sup>2</sup> This does not preclude individual railway companies from formulating or revising rules on their own.
2. The company working group will send a copy of the first draft of the proposed rule to TC and relevant associations and organizations for review and comments.
3. The company working group will meet with TC representatives to discuss the first draft of the proposed rule.
4. TC will, as appropriate, meet with relevant associations and organizations to discuss the first draft of the proposed rule submitted by the company working group.
5. Once a final draft of the proposed rule has been developed, railway companies will send it to relevant associations and organizations for consultation, as set out in s.19.(2) of the RSA.
6. In addition to consulting with relevant associations and organizations, Railway companies will communicate with other interested parties that could reasonably be expected to be affected by the proposed rule (e.g. other railways with running rights on the trackage of the applicant railway, municipalities, road authorities,

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<sup>1</sup> The railway companies may be represented by the Railway Association of Canada in these proceedings

<sup>2</sup> This does not preclude a single railway company from formulating or revising rules on its own.

- private road owners, etc.). The company working group will review comments from relevant associations and organizations and will address them in writing.
7. For complex rules, relevant associations and organizations may request a meeting with the company working group to review the proposed rules.
  8. Upon completion of the consultation process the railway company(ies) , or RAC on behalf of its members<sup>3</sup>, will file the proposed rule with the Minister for approval. By notice filed with those rules, the railway company will identify the associations or organizations, which objected on the grounds of safety, and attach a copy of the notice of objection.
  9. When being filed, a proposed rule should be addressed to the Minister with a copy to the Director General, Rail Safety.

## **Section 19**

1. The Minister may issue an order to a railway company to formulate a rule under section 19 of the Railway Safety Act. When the Minister issues an order to more than one railway company, the railway companies<sup>4</sup> will form a working group made up of company representatives to draft the proposed rule.
2. The railway company(ies) will promptly request the input of relevant associations and organizations. Such input is to be provided within a specified timeline.
3. The company working group will develop a first draft of the proposed rule and send a copy of the draft to Transport Canada (TC) and relevant associations and organizations for review and comment.
4. The company working group will meet with TC representatives to review first draft of the proposed rule.
5. TC will, as appropriate, meet with relevant associations and organizations to discuss the first draft of the proposed rule submitted by the company working group.
6. Once a final draft of the proposed rule has been developed, railway companies will send it to relevant associations and organizations for consultation, as set out in subsection 19.(2) of the RSA.
7. The company working group will review comments from relevant associations and organizations and will address them in writing.
8. For complex rules, relevant associations and organizations may request a meeting with the company working group to review the proposed rules.
9. Upon completion of the consultation process, the railway company, or the RAC on behalf of its members<sup>5</sup>, will file the proposed rule with Minister for approval. By notice filed with those rules, the railway company will identify the associations or organizations, which objected on the grounds of safety, and attach a copy of the notice of objection.

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<sup>3</sup> A railway company must provide a power of attorney to the RAC to allow RAC to file on behalf of the railway company.

<sup>4</sup> The railway companies may be represented by the Railway Association of Canada in these proceedings

<sup>5</sup> A railway company must provide a power of attorney to the RAC to allow RAC to file on behalf of the railway company.

10. When being filed, a proposed rule should be addressed to the Minister with a copy to the Director General, Rail Safety.

**General** (applies to both S.19 and S.20)

1. The filing should make clear that individuals, such as railway company employees or third parties, acting on behalf of a railway company (e.g., to file the proposal, conduct required consultations, etc), have the appropriate corporate or legal authority, as applicable, to do so (e.g., by providing a power of attorney document with the information they submit, as appropriate).
2. Railway companies are encouraged to file proposed rules with the Minister in both official languages (i.e., French and English).
3. If the filing is done electronically, acknowledgement of receipt must be provided. “Acknowledgement of receipt” means a response, in writing, from the addressee confirming that the e-mail was received.
4. For a proposed revision to a rule, the filing should clearly indicate the text the railway company proposes to add or delete (e.g., using a “track changes” function).
5. Copies of correspondence between the filing railway company and relevant associations and organizations, or other interested parties that could reasonably be expected to be affected by the proposal, concerning a proposed rule, should be included with the documentation submitted to the Minister.
6. The railway company should ensure that it communicates internally with employees that are likely to be affected by the proposed rule.
7. When filing its proposal, the railway company will identify an official who TC Rail Safety employees may contact to discuss the proposal – in particular its technical aspects.
8. Likewise, upon receipt of a proposed rule, TC will identify a representative from Rail Safety who railway companies can contact to discuss the proposal – in particular its technical aspects.

**XI. REVIEW:**

- **Guideline:** TC Rail Safety, railway companies and relevant associations and organizations will collaboratively review this guideline periodically to assess and ensure its accuracy, relevancy and effectiveness as a tool for facilitating the rulemaking process.
- **Rules:** TC Rail Safety and railway companies may review rules made under the RSA and the implementation of such rules periodically, to assess and ensure their clarity, relevancy and effectiveness as instruments for promoting safe railway operations. Such reviews may be carried out independently or collaboratively.

## **XII. CONTACT:**

Questions or comments concerning, or suggestions on improving or amending, this guideline should be directed to the office indicated below. Any issues of non-consensus are also to be directed to the same office for discussion and resolution. Any changes to the guideline will be referred to the Advisory Council on Rail Safety.

Railway companies seeking to initiate dialogue on a proposed rule or provide an advance copy of a proposed rule should also contact this office.

Susan Archer  
Director, 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: [Susan.Archer@tc.gc.ca](mailto:Susan.Archer@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

#### Pacific

Regional Director  
225-625 Agnes Street  
New Westminster BC V3M 5Y4  
Phone: 604-666-0011  
Fax: 604-666-7747

#### 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 MB R3C 0P6  
Phone: 204-983-4214  
Fax: 204-983-8992

### Headquarters:

#### Director, 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: Summary of Relevant Railway Safety Act Provisions<sup>6</sup>

| RSA Reference   | Subject:   | Applies to who/what:            | Regarding what:  |
|---|--|---------------------------------|--|
| <b>Section 19: Rules formulated or revised upon order from Minister</b>                 |  |                                 |  |
| 19(1)(a)  | Formulation or revision of rules pursuant to ministerial order | - railway company               | - any matter referred to in subsections 18(1) or (2.1)   |
| 19(2)   | Railway company to consult                                     | - railway company               | - proposed rules   |
| 19(3)   | Notice to accompany rules                                      | - railway company               | - objections to proposed rules as a result of consultations  |
| 19(4)   | Consideration of rules   | - Minister                      | - decision whether to approve proposed rules and, if so, on what terms and conditions                                      |
| 19(4.1)   | Request for amendment to terms and conditions                  | - railway company               |  |
| 19(4.2)   | Amendments   | - Minister                      | - decision whether to amend terms and conditions   |
| 19(5)   | Minister may seek advice                                       | - Minister                      | - decision whether to approve proposed rules   |
| 19(6)   | Further rules  | - railway company               | - submitting new proposal where original proposal refused  |
| 19(7)   | Establishing rules   | - Minister                      | - Minister's ability to establish rules if a railway company fails to file rules, or if Minister refused original proposal |
| 19(8)   | Consultation   | - Minister                      | - rules to be established by Minister  |
| 19(9)   | Rules established by Minister                                  | - rules                         | - rules have same effect as if they were formulated by railway company   |
| 19(10)  | Definition of "assessment period"                              | - assessment period             | - period Minister has to consider proposed rules filed by a railway company  |
| 19(11)  | Period of inquiry not part of assessment period                | - assessment period             | - inquiries directed by Minister of proposed rules   |
| <b>Section 20: Rules formulated or revised upon the initiative of a railway company</b> |  |                                 |  |
| 20(1)   | Formulation or revision of rules                               | - railway company               | - any matter referred to in subsections 18(1) or (2.1)   |
| 20(2)   | Consultation before filing                                     | - railway company               | - proposed rules or revisions to rules   |
| 20(3)   | Rules to be accompanied by notice                              | - railway company               | - reasons by railway company proposes to formulate or revise rules;<br>- objections of those consulted                     |
| 20(4)   | Application of certain provisions                              | - railway company<br>- Minister | - aspects of section 19 process applies to rules filed under section 20  |

<sup>6</sup> For more detailed information see: <http://laws-lois.justice.gc.ca/eng/acts/R-4.2/index.html>