

Manitoba Infrastructure
Submission
To the
Railway Safety Act Review Panel

Introduction

Manitoba Infrastructure (MI) would like to extend its appreciation to the Review Panel for the opportunity to share our comments regarding the Railway Safety Act (RSA). It will be our intention to speak to a few key matters relating to our Department's technical interaction with the RSA and a few broader policy issues with the federal rail safety framework in general.

The Lac Megantic disaster was a pivotal moment in Canadian rail safety history. Since the disaster, Transport Canada (TC) has issued a variety of measures dealing with train operating procedures; railway insurance requirements; accident compensation funding; information sharing requirements; risk assessment and response planning, equipment standards; and, oversight powers for the TC Minister and inspectors, to name a few.

In general, we view the federal initiatives as a positive step. At face value, they appear to directionally meet the request of the Council of the Federation in the aftermath of Lac Megantic for immediate federal remedial actions to prevent a similar such disaster from occurring. Nonetheless, continued vigilance and improvements are necessary as we experience continued high levels of crude-by-rail movements; longer, heavier and faster trains; and growing railway-community proximity risks and conflicts as neighbourhoods grow and rail and road traffic levels also expand.

Manitoba Infrastructure recommends the federal government continue to implement the recommendations of the Transportation Safety Board stemming from the Lac Megantic disaster, as well as recommendations from other recent framework rail safety reviews such as by the House Standing Committee on Transport, Infrastructure and Communities.

Railway Safety Act Regulation and Rule Making Framework

Manitoba enacted the *Provincial Railways Act* in 1994 to establish oversight for railways operating within Manitoba's jurisdiction. Today, there are five such shortline railways. Specific administrative and safety regulatory provisions are set out under regulation, which basically require our shortline railways to comply with existing federal railway safety standards.

Our Department has a Memorandum of Understanding (MOU) with TC that has worked well for Manitoba's safety oversight of shortline railways. Under the MOU, TC inspects

shortline railways to most of the federal standards. Any compliance and enforcement measures remain Manitoba's responsibility.

Notwithstanding MI's incorporation of the federal standards and our shortlines' willing adherence to them, in our experience the application of federal rules to certain types of shortline railway operations might impose an unnecessary regulatory burden. Put simply, most shortline railways have significantly differing operating conditions, organizational characteristics and resource levels than the Class 1 railways for whom federal regulations and rules are typically fashioned. For example, our experience is that the Safety Management System (SMS) requirements are cumbersome and administratively "heavy", particularly for smaller shortline operations with few staff and limited resources.

All told, we encourage the federal rule making process to pay closer attention to the shortline railway context, and, where appropriate, to look at ways to simplify or "tier" certain regulatory requirements without losing the safety control impact. SMS comes to mind as a process that could be assessed from a perspective of applying differing tiers appropriate to the nature of an operation.

As well, while our Department has no experience with the federal rule exemption process, perhaps this mechanism could also be assessed to better tailor the federal regime to specific shortline railway conditions. Certainly, we caution that any movement to establish a tiered rule structure or exemptions for shortlines need be principled on a complete safety risk assessment specific to that situation that assures no loss of safety management and control levels.

Manitoba Infrastructure recommends that the Railway Safety Act Review Panel assess the merits of the federal rule making process from the perspective of ensuring flexibility to support the unique characteristics of the shortline railway industry.

Sharing of Dangerous Goods Information with Emergency Preparedness and Response Agencies of the Provincial Government

Following the Lac Megantic disaster, the federal government ordered all national railways to share dangerous goods information with municipalities. The intent of the order—known as Protective Direction 32 (PD 32)—was to allow municipalities to plan and prepare for possible accidents with the best available risk information and contexts.

PD 32 was subsequently replaced by PD 36, which clarified in part that communities may share dangerous goods information received from a railway with emergency planners and emergency response officials within their jurisdiction, or one with whom they have a joint mutual aid agreement.

This amendment to PD 32 seemed to tacitly recognize that provincial agencies—in Manitoba, these being primarily the Emergency Measures Organization, Office of the Fire Commissioner, and the Ministry of Sustainable Development—have a key role to play in planning for and responding to emergencies, including rail disasters.

That being said, MI still considers this arrangement sub-standard from the perspective of the province's role in providing umbrella tools and programming to many rural communities to plan for and respond to rail accidents. If the intent of PD 36 is to allow all critical parties to have information to better plan and prepare for accidents, then it should explicitly permit for all such parties to access information from the railways directly.

From a process perspective, PD 36 currently erects a barrier to provincial agency access to information insofar that it relies on the generosity and forethought of communities to share any information. This leaves the overall framework open to gaps and lapses. There is no logical reason we can see for why relevant provincial agencies involved in emergency management should not be able to access this information directly.

Manitoba Infrastructure recommends that Protective Direction 36 or subsequent similar requirements be amended to allow provincial agencies involved in emergency planning, preparedness and response to have direct access from the railways to relevant dangerous goods information—akin to the registration process by which municipalities are currently able to avail themselves of the information.

Rail Accident Compensation Fund

Following the Lac Megantic disaster and a subsequent series of other derailments involving crude oil, the Council of the Federation called for a range of improved rail safety measures by the federal government. One key recommendation of the Council was for the federal government to ensure that railways maintain sufficient liability insurance to cover all of the costs associated with the damage for which they are responsible. The principle underlying the Council assertion was that communities and taxpayers should not have to bear the costs of crude-by-rail accidents.

The federal response to this matter was to implement a new insurance liability and accident compensation regime for railways—based on higher minimum insurance requirements and an accident compensation fund financed by levies on crude oil shippers. Federal railway companies like CN and CPR must obtain and maintain legislated minimum levels of insurance based on the type and volume of crude oil and other dangerous goods they carry. Shippers of crude oil are required to pay a levy based on the quantity of crude oil that is shipped. The levy is to build up a supplementary fund to pay for damages exceeding a railway's minimum insurance level if an accident involving crude oil occurs. The railways collect the levy.

Crucially, the federal compensation fund requirements do not cover accidents on provincially regulated shortlines. We consider this an oversight in the original federal design and implementation of the fund that need be rectified. The Canadian railway system operates as an integrated network industry, and it stands to reason that a well-rounded policy and program approach in any facet to the industry be grounded to this context.

Shortline railways originate over 20% of goods on the network, and should—as a sound planning principle—be included within the overall compensation fund regime. It is noteworthy that the levy is issued on shippers, not individual railways. The implication here is that the whole of the shippers' rail-based supply chain—whether occurring over provincial or federal railways, or both—should be legitimately and logically covered.

The federal government chose the *Canada Transportation Act* as the legislative vehicle to achieve its compensation fund action, which only applies to federal railways. The Review Panel should assess whether a differing institutional and legislative set up—for example, under *Transportation of Dangerous Goods* (TDG) legislation—is more germane and flexible to ensuring coverage for the whole of the rail system. Canadian citizens and communities should not be excluded from accident compensation protection because of the artificial barrier of a railway's regulatory jurisdiction.

Manitoba Infrastructure recommends that the Railway Safety Act Review Panel assess the best legislative and institutional set up to ensure that the whole of the rail system—including shortlines—is covered by the rail accident compensation fund.

Crossings

An area that continues to be of concern is that of grade crossings. With over 2,100 crossings in Manitoba, railways, road authorities and communities need to be vigilant to enhance crossing safety. Since 2004, there have been over 20 deaths out of over 240 accidents/incidents at grade crossings.

MI, as a traffic authority, is actively working with the new federal Grade Crossing Regulations (GCR). While we support the GCR and agree that it has helped improve crossing safety, the Department has a few observations to relay to the Review Panel.

a. Blocked Crossings

Blocked crossings are raised by citizens and communities as an especially problematic side effect of the increase in proximity concerns.

Most parties have a good understanding of the “5 minute” rule, which requires that a train not occupy the crossing for more than five minutes. The rule was transitioned from an internal railway operating rule to the GCR, and now includes railway

switching/shunting operations. We consider these positive developments from both a public transparency and completeness perspective.

Nonetheless, we are aware from our communities of transgressions to this rule still occurring, and there appear to be few process avenues to properly remedy any wrongdoings. Our Department's experience is that the steps required to raise concerns related to blocked crossings to the railway and TC remain too onerous. For example, traffic authorities are required to submit a complicated series of evidence and data, often much of which is beyond their capacity and financial resources to develop.

In addition, in terms of remedial actions, ultimately the requirement as set out under the GCR is impractical as it is often impossible for a train crew to break a train when they are thousands of metres long and the crew must walk to the crossing, often in inclement weather.

b. Whistling Cessation at Crossings

Cessation of whistling at a crossing can only occur after a series of procedural review steps are undertaken and a bylaw passed by a municipal authority. This has proven problematic in our experience as the process overlooks the input of the traffic authority, who often times may not be the same as the municipality. The whistling cessation process for crossing would be more effective if a traffic authority's input was formalized as part of the consultation/resolution process.

c. Federal Communication and Coordination

As referenced, Manitoba supports the GCR. Nonetheless, we consider the federal roll-out of the GCR to have been less than optimal from a communications and coordination perspective. Through the regulation's development cycle, many stakeholders cited gaps in clarity on the GCR's implementation requirements—for example, difficulty in reconciling the legalistic language of the regulation with the more technically-oriented grade crossing standards guide.

At the time, it was suggested by TC that an implementation handbook or manual would be provided to aid in-the-field practitioners in interpreting and applying the regulation and its accompanying standards. It is noteworthy that the handbook was only issued two years after the regulation came into practise—and it was issued with very little outreach and interpretation explanation by TC to those who might benefit by it.

Our experience is that irregularities between the GCR, its referenced standards and the handbook still exist that hamper implementation of optimal crossing safety efforts—a situation exacerbated by an absence of federal coordination leadership.

d. Program Support

Our municipalities consider additional federal resourcing through the Grade Crossing Program would improve their ability to implement the new crossing regulatory requirements in a timely fashion.

Manitoba Infrastructure recommends Transport Canada review its communication frameworks, consultative process and programming to better resolve ongoing concerns relating to blocked crossings, whistle cessation, and the level of federal coordination support being made available to the responsible parties in implementing the Grade Crossing Regulations.

Monitoring the Social Impacts of Railway Operations

The province values the contribution to the economy and the transportation system that railways provide, and believes railways have every right as private entities to make business and operational decisions to support efficiency within a market framework. However, railways are unlike most other industrial entities—their operations cover a wide geographic swath of land, and often impact in very real, tangible and immediate ways the course of everyday life of citizens and communities. Increasingly, the issue of the general social impact of railway operations on citizens and communities—for example, noise pollution, community planning, and the aforementioned blocked crossings—is one that governments cannot escape.

As a general observation, so-called “proximity” concerns have grown in recent years in Manitoba. In Winnipeg, for example, the first two new grade separations in a generation are being implemented at a cost of over \$200 million, largely to mitigate against the traffic congestion and other social impacts when a train is occupying a crossing.

We recognize that part of the problem is growing community development near rail lines. On this basis, we applaud the work of the Railway Association of Canada (RAC) and the Federation of Canadian Municipalities to develop guidelines for new development in proximity to railway operations. In its broad planning advisory frameworks—for example, in approvals of municipal development plans—Manitoba utilizes these guidelines as a key review tool.

As a corollary, we also laud the work of the RAC to counter the devastating impacts of railway trespassing, which has needlessly claimed dozens of lives in Manitoba over the past 15 years. Certainly, in the context of growing proximity issues, trespassing will likely remain an endemic issue for some time for which the RAC’s Operation Lifesaver campaign for people to “look, listen and live” in proximity to rail lines and yards is critical, and need continue be supported financially by the federal government.

Still, the railways have been free to take operational business decisions—for example, longer, faster, heavier trains—without a robust publicly-oriented understanding of social costs and risk considerations. Again, to be clear, Manitoba is supportive of the efficiency efforts of railways, as this enhances our trade access for several of our key economic sectors. Nonetheless, a better understanding of the externalized impacts of railway operational / business decisions could be reflected in the overall federal process that legitimizes such decisions. This would enable a broader, well-informed public policy discussion around railway-community proximity issues.

Manitoba Infrastructure recommends that the federal government develop a framework to assess the social impact costs of evolving changes in railway regulations, rules and key operational decisions.

In conclusion, Manitoba Infrastructure wishes the Review Panel a successful review of the RSA, and we look forward to the Panel's conclusions and recommendations.