

Recommendations from the review panel regarding the Railway Safety Act:

The Panel finds that the Railway Safety Act and its general principles are fundamentally sound, but it recommends that a number of improvements be implemented.

1. Transport Canada, Rail Safety Directorate should assert its existing responsibility to provide functional direction to regions to ensure:
 - clear and consistent guidance on matters of rail safety rules and regulations;
 - effective communication on rail safety objectives within a national framework; and
 - regional managers are held accountable for their actions within that framework.
2. The Railway Safety Act should clarify that railway safety inspectors exercise their powers under the authority of the Minister.
3. The Railway Safety Consultative Committee (RSC) should be revived as a smaller and more focused group. It should meet regularly for general information sharing and consensus building. It should serve as the key forum for discussion of:
 - future directions in rail safety, rule making and regulation;
 - policy issues of concern to the regulator and the regulated community; and
 - problems and issues of common concern, outside the formal rule-making process.

A permanent secretariat should be set up in Transport Canada, Rail Safety Directorate to support the ongoing activities of the RSC. The RSC may be supported by specific working groups and technical committees.

4. Transport Canada should institute the practice of regular consultation with concerned provinces on all matters to do with railway safety affecting provincially regulated railways. The Federal-Provincial Working Group on Railway Safety should be used more deliberately as an information sharing and consultative forum.
5. The Railway Safety Act should be amended to authorize the Minister to enter into agreements with provincial governments or foreign governments or any international organization with respect to all matters relating to railway safety and security.
6. Section 3(c) of the Railway Safety Act should be amended to read:

“The objectives of this Act are to ...

(c) recognize the responsibility of railway companies to demonstrate, through their safety management systems, that they continuously manage their safety risks to a level as low as reasonably practicable.”

7. Section 2(2) of the Railway Safety Act should be amended to provide that the Act applies in respect of all matters of railway safety and security under the legislative authority of Parliament.
8. A definition of “railway company” should be included in the Railway Safety Act.
9. A railway should be required to obtain a Rail Operating Certificate (ROC) as a precondition to obtaining a Certificate of Fitness (from the Canadian Transportation Agency) and to commencing or continuing operations. Transport Canada will issue the ROC when satisfied that the railway meets baseline safety requirements determined by regulation. Existing companies would automatically be issued the ROC. Transport Canada would have the power to suspend and/or cancel the ROC if the company fails to meet baseline safety requirements.
10. A process for the formulation and/or adoption of rules, standards and exemptions should be established by regulation. All stakeholders must have an opportunity to be involved in developing the process. This regulation should embody the following principles:
 - transparency and openness;
 - early and meaningful involvement of Transport Canada;
 - appropriate participation of stakeholders;
 - high quality legal drafting; and
 - consistency with section 3 of the Railway Safety Act to facilitate a modern, flexible and efficient regulatory scheme.
11. The Railway Safety Act should be amended to clarify that a railway company may delegate its power to develop and submit a rule to the Minister for approval.
12. The Minister of Transport should have the power, after appropriate consultation, to extend the application of an existing rule to a given railway company. There should also be a process in the Act for a railway company to adopt an existing rule.
13. An administrative monetary penalty (AMP) scheme should be included in the Railway Safety Act as an additional compliance tool. The scheme should include the following elements:
 - the decision to impose a penalty should be the Minister’s decision;
 - before a decision is made, due process should be followed;
 - the decision should be reviewable by the Transportation Appeal Tribunal of Canada;
 - the level of fines should be consistent with those imposed in the aviation and marine modes; and
 - an enforcement policy prescribing parameters for AMPs should be made public.

14. Sections 31.1(4) and 31.2(3) of the Railway Safety Act should be amended so as to authorize the Transportation Appeal Tribunal of Canada, in the case of a review of an order of a railway safety inspector, to confirm, revoke or alter the order.
15. Similar amendments should be made in relation to the review of a ministerial order under sections 32.1(5) and 32.2(3) of the RSA.
16. All orders, regulations and rules related to safety should be reviewed and those that are obsolete should be amended or repealed.
17. The Panel supports the safety management system approach and recommends that both the railway companies and Transport Canada focus their efforts to improve its implementation.
18. Transport Canada, Rail Safety Directorate and the railway industry must take specific measures to attain an effective safety culture.
19. The industry must take every appropriate measure to ensure the effectiveness of local occupational health and safety committees. Specifically, they should involve employees in identifying hazards, and assessing and mitigating risks as part of safety management.
20. Transport Canada, Rail Safety Directorate should be organized so as to better integrate safety management systems as the key focus of its oversight activities.
21. In order to better reflect the fact that the current railway safety inspector (RSI) performs both inspections and audits, the title should be changed to Railway Safety Officer.
22. Transport Canada should focus its safety management systems audits to emphasize the assessment of the safety performance of railway companies.
23. Transport Canada, Rail Safety Directorate should ensure that audits of railway companies' safety management systems meet the professional standards of public sector audits.
24. Transport Canada and industry should work together to develop the tools to assist railway companies in improving their safety management systems, including:
 - proactive safety performance measures;
 - identification of the company data needed to support these measures;
 - measurement of safety culture;
 - guidance on company safety-risk profiles and risk assessments of ongoing activities;
 - user-friendly safety management system tools for small railway companies;
 - evaluation techniques to supplement existing audits and inspections; and
 - a means of involving railway employees at all levels and, where possible, through health and safety committees and representatives.

25. Transport Canada should be responsible for railway safety data collection and ensure that the needs of government agencies are met and that there is no duplication or confusion for reporting entities and stakeholders. There should be a regular timetable for reporting, and ad hoc demands for information or requests must be accompanied by valid reasons and should be kept to a minimum,
26. Transport Canada should give the highest priority to putting in place a robust program of data collection and analysis in order to measure railway safety performance, and should be provided with the necessary resources to do so.
27. A secure electronic database should be established to enable electronic filing of railway safety data by railway companies.
28. Transport Canada, in consultation with other departments and agencies, should create a one-stop reporting system for immediate reporting of accidents and for disseminating that information throughout all levels of government and agencies.
29. Transport Canada should work with the provinces to develop a comprehensive database, including both provincial and federal railway safety data.
30. Section 28 of the Railway Safety Act should be amended to clearly state that:
 - a railway safety inspector, for the purposes of exercising an audit or inspection function, may require any person to provide information or copies of any existing documents in any format (electronic or hard copy) specified by the railway safety inspector;
 - the request may be made from any location for documents stored at any location; and
 - the regulated party must provide the requested information or document in a timely manner.
31. Transport Canada should take a more active role in trend analysis and benchmarking of railway performance. This should involve a collaborative approach with government and industry stakeholders to develop appropriate and meaningful measures of risk and safety performance. To this end, Transport Canada must work with stakeholders to:
 - define data requirements;
 - develop reporting and data sharing mechanisms;
 - develop regulations requiring the industry to report data and performance measures; and
 - publish safety performance results.
32. To ensure that the public is informed on rail safety issues, the Government should make public:

- purely factual information on a significant rail accident as soon as possible after the occurrence;
 - railway safety performance data (including information by company); and
 - information on enforcement actions.
33. Transport Canada, in consultation with industry, should determine whether, and to what extent, information provided by a railway company under the Railway Safety Act should be privileged information.
34. The Railway Safety Act should be amended to require the developer and municipalities to engage in a process of consultation with railway companies prior to any decision respecting land use that may affect railway safety.
35. Transport Canada, with the railways and other relevant stakeholders, should develop a program to:
- identify where crossings can be closed;
 - limit the number of new crossings; and
 - improve safety at existing crossings.

A five-year action plan should be developed and should include a provision for shared funding, including shared funding for improvement of private crossings. The Panel recommends increased funding for grade crossing improvements.

36. The railway companies should expand their outreach programs to encourage better communication with the entire community.
37. Public education programs, such as Operation Lifesaver and Direction 2006, to reduce trespassing and accidents at crossings, have been successful and should be renewed where necessary, and enhanced.
38. Transport Canada, in conjunction with all stakeholders, should develop a protocol for emergency response to spills of environmentally hazardous goods that are not designated as “dangerous goods” under the Transportation of Dangerous Goods Act.
39. Transport Canada, in conjunction with the industry, should establish a Canadian standard of emergency response for the railway industry (for dangerous goods, environmentally hazardous goods and other goods).
40. Railway companies should file annual environmental management plans and regular compliance audits with Transport Canada. These plans should address, among other issues, pollution of railway property (i.e., yards and railway rights-of-way).
41. The Rules for the Control and Prevention of Fires on Railway Rights-of-Way are neither effective nor enforced, nor do they provide for an adequate process for compensation.

Since these rules involve third parties, they should be replaced by regulations.

42. Transport Canada should develop sufficient capacity and expertise to ensure appropriate oversight of the railway industry with regard to all aspects of environmental protection.
43. Fatigue management is dealt with in complementary ways, such as work/rest rules, fatigue management plans, and terms and conditions of employment.

The current Work/Rest Rules do not provide a satisfactory baseline framework for managing the risks associated with fatigue in rail operations. The rules should be amended to better reflect current science on fatigue management.

- A robust system of fatigue management plans is needed. Transport Canada should audit them as it does for safety management system plans.
 - Fatigue management is also an issue that railways and employees should address in the establishment of terms and conditions of employment.
44. Transport Canada should require the application of voice recorders on all new and existing locomotives, with survivability provisions similar to those for locomotive event recorders.
 45. The Government of Canada should ensure that rail traffic control in respect of operations in Canada be physically located in Canada in order to ensure appropriate regulatory oversight.
 46. The reference to “sound engineering principles” in section 11 of the Railway Safety Act should be maintained and, where appropriate, specific standards or rules for construction, alteration and maintenance of a railway work should be developed.
 47. A general duty of maintenance of a railway work, in accordance with “sound engineering principles,” should be included in the Railway Safety Act. The railway company’s SMS plan should demonstrate how that company ensures that its maintenance conforms with “sound engineering principles.”
 48. Transport Canada should take a leadership role in any and all technological and scientific advances that would improve public safety.
 49. In view of the importance of railways to the Canadian economy, the Government should strengthen its contribution to innovation and technological advancements in railway safety.
 50. Transport Canada should increase its capacity to assess new technologies, and facilitate their implementation.
 51. Transport Canada and industry should jointly fund scientific and technological innovation to address rail safety issues that are specific to the Canadian operating environment.
 52. New locomotives should be designed to conform with acceptable standards of human factors engineering. Corrective strategies should also be developed to minimize any negative impact on safety resulting from poor design of existing locomotives.

53. Transport Canada should:

- develop a multi-year human resources plan for the renewal of staff and expertise in the Rail Safety Directorate with particular emphasis on recruiting and developing the skills required for a modern performance-based safety management system;
- develop a related plan to ensure adequate provision of inspection and other services in the regions, and to the provinces, pursuant to their harmonization arrangements with the federal government;
- make a commitment to re-think its approach to inspection and audit so that the skills and time of the inspectors and other professional personnel in Transport Canada are appropriately allocated to meet the safety needs of the industry and the public under a performance-based safety regime; and
- give high priority to recruiting and developing within the Transport Canada, Rail Safety Directorate or regions, the analytical and management skills necessary for a modern risk-based safety management system.

54. The Government should provide the necessary resources to renew and expand railway safety capacity in Transport Canada.

55. The industry and Transport Canada must work at restoring mutual trust and respect. In particular:

Transport Canada and the industry must be more open and transparent in their dealings with each other; and

Transport Canada must recognize the railway's responsibility for safe railway operations and conduct itself accordingly, while the industry must fully recognize and respect the regulator's ultimate responsibility for a safe national railway system.

56. A review of the Railway Safety Act should occur before the expiration of a period of five years after the coming into force of the amendments that follow from the present review.