Railway Right of Way Access Control Policy

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RAILWAY SAFETY ACT
RAILWAY RIGHT OF WAY ACCESS CONTROL POLICY

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1. Policy objective
The objective of the Railway Right of Way Access Control Policy is to clarify Transport Canada's (TC) role and responsibilities concerning unauthorized access to railway right of ways.

This policy replaces the Trespass Prevention Policy dated October 16, 2000.

2. Policy background
Historically, the federal government has been involved with the control of unauthorized access by pedestrians, vehicles and livestock on the railway right of way. Railway right of way access control requirements were set out in the Railway Act of 1868, which has since been repealed. The Act and subsequent amendments required railway companies to erect and maintain fences on each side of the railway. Specifically, it required fencing to prevent cattle and other animals from entering the railway right of way and restricted train speed to 10 m.p.h. in densely populated urban areas unless fencing was in place or an exemption to this requirement was granted. While there continues to be a need for access control measures to be put into place to prevent livestock from entering onto the railway right of way, the major problem today is associated with unauthorized access by pedestrians and vehicles. This is of particular concern considering the likelihood of continued growth in population near lines of railway in urban areas.
The *Railway Safety Act* (RSA) of 1989 and subsequent amendments thereto replaced in part the *Railway Act* of 1868. This Policy reflects the objectives of section 3 of the RSA, which are to:

a) promote and provide for the safety of the public and personnel, and the protection of property and the environment, in the operation of railways;

b) encourage the collaboration and participation of interested parties in improving railway safety;

c) recognize the responsibility of railway companies in ensuring the safety of their operations; and

d) facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety.

Transport Canada’s national transportation strategy calls for a transportation system that is safe, smart, strategic and sustainable - the top priority being safety. The *Railway Right of Way Access Control Policy*, through its requirements, will contribute to the safety and security of Canada’s transportation system.

### 3. Authority

Under subsection 2(2) of the RSA, the federal government has jurisdiction in "respect of transport by railways to which Part III of the *Canada Transportation Act* applies". In general, this means that TC has jurisdiction over railway companies which have a certificate of fitness issued by the Canadian Transportation Agency (CTA).

Section 26.1 of the RSA states that:

"*No person shall, without lawful excuse, enter on land on which a line work is situated.*"

This means it is illegal to unlawfully access a railway right of way, or any works that facilitate railway operations.

The enabling authority to make regulations concerning the control of unauthorized access by pedestrians, vehicles and livestock on the railway right of way is provided under the following provisions of the RSA:
Railway Works
- Subsection 7(1) provides the authority to make regulations respecting the construction or alteration of "railway work", including fencing;
- Paragraph 18(1)(a) provides the authority to make regulations respecting the operation or maintenance of line works; and

Non Railway Operations Affecting Railway Safety
- Paragraph 24(1)(f) provides the authority to make regulations restricting or preventing, by means of fences, signs or any other means, access to a railway right of way;
- Paragraph 24(1)(g) provides the authority to make regulations respecting the control or prohibition of any other activity, on land adjoining railway lands, where that activity could constitute a threat to safe railway operations.

The jurisdiction of the federal government is intended only to extend to those aspects which have a direct relationship to the safety of a railway right of way, respecting the rights of adjacent landowners and the involvement of municipalities in development or enjoyment of their lands.

4. Policy requirements

To maximize the Department’s impact on transportation safety, the focus of this policy is to promote and provide for safe railway operations by ensuring a positive approach to access control through awareness of regulatory requirements, education through guidance, counseling and advice, and compliance monitoring and enforcement of legislative requirements. TC's strategy is to require through regulation and policy that there are no new locations of unauthorized access caused by changes in land use, while at the same time ensuring that where unauthorized access to a railway right of way occurs, there is clear responsibility to mitigate the threat. Departmental activities to fulfill this policy will be accommodated in the Rail Safety Business Plan, in accordance with approved resources.

The policy of Transport Canada is to:

1. Maintain and enhance public safety by requiring through regulation or other means permitted under the RSA, the restriction of unauthorized access to a railway right of way.
2. Clarify roles and responsibilities of railway companies, municipalities, adjacent landowners and the public regarding railway right of way access control.
3. Promote education and awareness of regulatory requirements regarding railway right of way access control through guidance,
counseling and advice to: railway companies, adjacent landowners, municipalities, police departments, consultants and other interested and affected parties

4. Establish, implement and maintain a program to monitor regulatory compliance and the safety of railway operations with respect to unauthorized access to the railway right of way, and ensure effective intervention.

5. Support, initiate and conduct research to identify emerging technologies and best practices and to prevent unauthorized access to the railway right of way. Encourage railway companies, adjacent landowners and municipalities to adopt those best practices, which are not regulatory requirements.

6. Obtain and analyze data to identify safety concerns, trends and emerging risks through our regulatory, research and program activities.

7. Support and carry out safety promotional activities with respect to access control.

5. Role and responsibilities

The Rail Safety Directorate is responsible to ensure that the regulatory instruments (i.e. regulations) are made and enforced and to develop the national programs, policies, guidelines, data analysis requirements and methodologies for consistent application throughout Transport Canada. A key role is to establish constructive and beneficial relationships with partners through comprehensive consultation.

Transport Canada is responsible to ensure the regulated parties meet the regulatory requirements and that regional activities are implemented and carried out consistently and in accordance with the national programs, policies, guidelines, data collection requirements and methodologies. A key role for regions is to contribute and participate with headquarters during formulation of national policy and programs.

The role of a Railway Safety Inspector (RSI) is to monitor compliance and the safety of railway operations, and to promote safety in partnership with pertinent parties. The RSI shall take appropriate action for non-compliance and wherever a threat or immediate threat is identified.

6. Monitoring

The Director General Rail Safety will assess the implementation and effectiveness of this policy through periodic internal audits, program reviews and input from interested and affected parties.
7. Inquiries

Inquiries about this policy should be directed to:

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