Guideline on Submitting Proposed Engineering Standards or Revisions to Engineering Standards

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Note: Users of this guide are reminded that it has been prepared for the convenience of reference only and, as such, is not legally binding. The procedures and forms recommended in this guide are provided solely as a guide and should not be quoted or considered as legal authority. Transport Canada 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. BACKGROUND:

Under subsection 7(2) of the Railway Safety Act\textsuperscript{1} (RSA), the Minister of Transport (the Minister) may, by order, require a railway company to formulate or revise and file with the Minister for consideration and possible approval engineering standards (both physical specifications and performance standards) governing the construction or alteration of railway works. In addition, subsection 7(2.1) of the RSA provides railway companies with the ability to propose to formulate or revise engineering standards on their own initiative. In both cases, the RSA sets out the fundamental elements of the processes to be followed when proposed engineering standards are filed with the Minister for consideration and possible approval.

Note: Unless otherwise indicated, the term “standard” should be read as “standard or revision to a standard”, with such modifications as are required by the context in which it is used.

The Minister may approve proposed engineering standards if satisfied that they are, in the Minister’s opinion, conducive to safe railway operations by the company. When a railway company files proposed engineering standards with the Minister under the RSA, the company should provide all of the information and documentation necessary to substantiate their proposal and help the Minister determine whether the proposal would be conducive to safe railway operations by the company.

II. PURPOSE:

The purpose of this Guideline is to clarify:

- the process to be followed when a railway company files engineering standards with the Minister, whether of its own initiative or in response to an Order from the Minister, for the Minister’s consideration and possible approval; and,
- what information and documentation a railway company should provide to substantiate their proposal and help the Minister determine whether the proposal would be conducive to safe railway operations by the railway company.

III. SCOPE:

This guideline is intended for all railway companies operating in Canada under the legislative authority of Parliament regarding the filing of a proposed standard under subsections 7(2) or 7(2.1) of the RSA.

\textsuperscript{1} More information on the RSA can be found at: http://laws.justice.gc.ca/en/R-4.2/index.html
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:

“Engineering Standards” or “Standards” means engineering standards established pursuant to Section 7 of the RSA.

"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.

“Railway work” means a line work or any part thereof, a crossing work or any part thereof, or any combination of the foregoing..


VI. 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 standards made under the RSA.
2. Conformity with the requirements identified in this guideline does not of itself guarantee Ministerial approval of a proposed standard.
3. All parties to a proposed standard will respect the timeframes specified in legislation.
4. A railway company filing a proposed standard will provide all 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 standard 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.

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

2 Definitions of “crossing work” and “line work” can be found at: http://laws.justice.gc.ca/en/R-4.2/index.html
VII. REQUIRED AND RECOMMENDED INFORMATION:

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

**REQUIRE 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 standard is being filed; and,
  - in the case of revisions, the standard and the specific provision(s) of that standard that the railway is seeking to revise.
- A copy of the proposed standard or revision to a standard;
- As applicable, confirmation that a professional engineer has taken responsibility for any part of the engineering work related to a proposed standard concerning an applicable railway work.

**Note:** Section 11 of the RSA states: “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.”

**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 the following information and documentation:

**Explanation of the Proposal**

- An explanation of the proposed standard, including how, when, and where the proposed standard applies; and
- A clear explanation of why the standard is being proposed.
Implementation Details

- A description of how the railway intends to implement the standard, including:
  - timeline, including phase-in, and expected duration;
  - scope and technical parameters;
  - the role of other interested parties in implementing the standard (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 new standard 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 co-production, or shared running rights exist).
- As applicable, a description of how potential environmental implications of the proposed engineering standard would be addressed.

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. Other risk assessment methodologies may also be used.

Consultation

Note: it is recommended that the railway company contact interested parties whose safety could reasonably be affected by the implementation of the proposed standard early in the drafting process to initiate dialogue on the proposed standard.

VIII: CONSIDERATION OF THE PROPOSAL:

Where a proposed standard is filed with the Minister, the Minister considers whether, in the Minister’s opinion, and after having regard to current railway practice, the views of the railway company and any other factor that the Minister considers relevant, the proposed standard 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 factors the Minister considers relevant, such as whether:

1. the requirements of Section 11 of the RSA have been met regarding engineering work related to railway works;\(^3\)
2. the railway company has ensured that the safety implications of, and/or risks associated with the standard 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. a new or revised standard is the optimum regulatory instrument for achieving the desired result;
5. the railway company discussed the proposed standard with interested parties whose safety could reasonably be expected to be affected by it and how the company responded to any concerns raised by those interested parties (e.g., responding to their concerns by letter); and,
6. the proposed standard is drafted such that it is clear, understandable and capable of being interpreted in only one way.

Under the RSA, the Minister has an **assessment period** of 60 days to consider the proposed engineering standards and notify the railway company that filed them of the Minister’s decision. This assessment period begins when the Minister has received all of 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 seeks to 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 seek to complete such discussions at least ten (10) working days before the end of the statutory assessment period; after which time, additional information might not be accepted.

If, before the end of the sixty-day **assessment period**, the Minister determines that, by reason of the complexity of the standard, the number of standards 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 sixty days that is specified in the notice.

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3 Refer to Guideline entitled *Engineering Work Related to Railway Works* (Section 11- RSA), available at the following web site [http://www.tc.gc.ca/RailSafety/Guideline/TP13626.htm](http://www.tc.gc.ca/RailSafety/Guideline/TP13626.htm)
The Minister’s decision on whether to approve or refuse the proposal will be conveyed to the filing railway company in the form of a notice.

If Minister decides to approve the proposal, the notice may specify terms and conditions upon which the standard is being approved. Terms and conditions so specified are binding on the railway company in the implementation of the particular standard. Before recommending that the Minister approve a proposed engineering standard on terms and conditions, TC Rail Safety may, when practicable and appropriate, endeavor to contact the railway company in a timely manner to inform it of those possible terms and conditions.

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

Where the Minister notifies a railway company that the Minister refuses to approve a proposed standard submitted in response to an order issued under 7(2), the railway company may formulate and file with the Minister for approval further standards 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 standards if the Minister indicated in the notice of refusal an intention to establish standards in respect of that matter in accordance with subsection 19(7).

IX. ADMINISTRATIVE SUGGESTIONS

The following suggestions are offered as a means of facilitating the administrative aspects of processing a proposed standard filed with the Minister:

1. Before filing a proposed standard, and at its earliest convenience, the railway company should contact TC Rail Safety to initiate dialogue on the proposed standard. Similarly, prior to recommending that the Minister issue an order under subsection 7(2), TC Rail Safety: considers whether, in its opinion, regulatory action is required and whether such an order is the appropriate instrument for addressing the identified issue; and, seeks

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4 Similarly, before ordering a railway company to formulate or revise a standard under s. 7(2) of the RSA, TC Rail Safety may, when practicable and appropriate, endeavor to contact the railway company, in a timely manner, to initiate dialogue on the proposed standard/revision to a standard.
to, when practicable and appropriate, advise the relevant railway company of the issue the order is intended to address.

2. A railway company may send a copy of the proposal, before filing it, to TC Rail Safety, Safety Policy and Regulatory Affairs, which may consult internally and provide comments to the railway company, as appropriate.

3. Railway companies should communicate with interested parties whose safety could be reasonably expected to be affected by the proposed standard (e.g., employees, other railways with running rights on the trackage of the applicant railway, municipalities, road authorities, private road owners, etc).

4. When being filed, a proposed standard should be addressed to the Minister with a copy to the Director General, Rail Safety.\(^5\)

5. 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, 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, if appropriate).

6. Railway companies are encouraged to file proposed standards with the Minister in both official languages (i.e., French and English).

7. For a proposed revision to a standard, the filing should clearly indicate the text the railway company proposes to add or delete (e.g., using a “track changes” function).

8. Copies of correspondence between the filing railway company and interested parties whose safety could be reasonably expected to be affected by the proposal, concerning a proposed standard, should be included with the documentation submitted to the Minister.

9. The railway company should ensure that it communicates internally with employees that are likely to be affected by the proposed standard.

10. When filing its proposal, the railway company should identify an official who TC Rail Safety employees may contact to discuss the proposal – in particular its technical aspects. Likewise, upon receipt of a proposed standard, TC seeks to identify a railway safety official who railway companies can contact to discuss the proposal – in particular its technical aspects.

**X. REVIEW:**

- **Guideline:** TC Rail Safety will review this guideline periodically to assess and ensure its accuracy, relevancy and effectiveness as a tool for facilitating the standard-making process.
- **Standards:** TC Rail Safety and railway companies may review standards made under the RSA and the implementation of such standards periodically, to assess and ensure their clarity, relevancy and effectiveness as instruments

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\(^5\) When a proposed standard/revision to a standard is region-specific (e.g., one submitted by a railway company operating in only one region), it should also be copied to the Regional Director - Surface for the Transport Canada (TC) region involved (The list of Rail Safety offices is found in Appendix I).
for promoting safe railway operations. Such reviews may be carried out independently or collaboratively.

**XI. CONTACT:**

Questions or comments concerning, or suggestions on improving, this guideline should be directed to the office indicated below. Railway companies seeking to initiate dialogue on a proposed standard, provide an advance copy of a proposed standard, etc., should likewise contact this office.

Susan Archer  
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: 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

**Ontario**
Regional Director
4900 Yonge Street, 3rd Floor
North York ON M2N 6A5
Phone: 416-973-9820
Fax: 416-973-9907

**Québec**
Regional Director
800 René-Lévesque West
6th Floor, Suite 638
Montréal QC H3B 1X9
Phone: 514-283-5722
Fax: 514-283-8234

**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

**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: Summary of Relevant RSA Provisions

<table>
<thead>
<tr>
<th>RSA Reference</th>
<th>Subject:</th>
<th>Applies to who/what:</th>
<th>Regarding what:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 7(2): Standards formulated or revised upon order from Minister</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7(1)</td>
<td>Regulations</td>
<td>- Governor in Council</td>
<td>- respecting engineering standards governing the construction or alteration of railway works, including physical specifications and performance standards.</td>
</tr>
<tr>
<td>7(2)</td>
<td>Railway company required by order to formulate or revise standards</td>
<td>- railway company</td>
<td>- any matters referred to in 7(1)</td>
</tr>
<tr>
<td>7(3)</td>
<td>Application of certain standards</td>
<td>- railway company - Minister</td>
<td>- aspects of section 19 process applies to standards section 7, excluding those respecting consultations</td>
</tr>
<tr>
<td>Section 7(2.1): Standards formulated or revised upon the initiative of a railway company</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7(2.1)</td>
<td>Formulation or revision of standards</td>
<td>- railway company</td>
<td>- any matters referred to in 7(1)</td>
</tr>
</tbody>
</table>

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