

General Operating Instructions (GOI)

Section 3

Regulatory Requirements

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Regulatory Requirements

RAILWAY SAFETY ACT (RSA),
TRANSPORTATION SAFETY BOARD (TSB) ACT,
AND CRIMINAL CODE

1.0 Railway Safety Act (RSA)

Note: Railway Equipment as used in the Railway Safety Act includes “Equipment” and “Track Units” as defined in the CROR.

- 1.1 Under Sections 27 and 28, of the Railway Safety Act, Transport Canada has appointed a number of “Railway Safety Inspectors.” Each inspector has an identification certificate, which will also state the inspector’s area(s) of competence.

Upon presentation of this certificate, Railway Safety Inspectors may (within the inspector’s area of competence) enter any “railway work or railway equipment”, whether or not in operation, to inspect such railway work or railway equipment.

An Inspector may forbid or restrict the use of a line of railway or rolling stock or an operating practice if he considers that such use or practice poses an immediate threat to safe railway operations.

Employees must give the Inspector all reasonable assistance in the course of the inspection and must comply with all reasonable requests; it is an offence not to.

- 1.2 The Railway Safety Act provides that a contravention of the Act or any Regulations, Emergency Directives, Orders or Rules made or approved under the Act, is an offence.

Where there is a contravention of the Act, an individual is liable to a fine of up to \$10,000 or imprisonment for a term not exceeding one year, or both.

In the case of contravention of a Regulation, Emergency Directive, Order of the Minister, Order of a Railway Safety Inspector, or Rule approved by the Minister, an individual is liable to a fine of up to \$5,000 or imprisonment for up to six months, or both.

In certain circumstances, where a contravention occurs on more than one day, or is continued for more than one day, a person will be deemed to have committed a separate offence for each day on which the contravention occurs or is continued.

1.3 Criminal Code as amended by Railway Safety Act

The criminal code has been amended to make it an offence for anyone to;

- operate railway equipment in a manner which is dangerous to the public;
- knowingly send for operation or operate railway equipment which is not fit and safe for operation;
- operate or assist in the operation of railway equipment while impaired by alcohol or drugs;
- operate or assist in the operation of railway equipment with a blood/alcohol level exceeding 80 milligrams of alcohol per 100 milliliters of blood.

The breathalyzer sections of the Criminal Code apply to persons operating or assisting in the operation of railway equipment. The Court which sentences an offender for impaired operation may, and in certain circumstances must, make an order prohibiting the offender from operating railway equipment for a period of up to three years.

A police officer, or other peace officer, may require a person to provide a breath sample or to accompany him for the purpose of enabling a breath sample to be taken where the police officer reasonably suspects that a person operating or assisting in the operation of railway equipment has alcohol in his body. Every one commits an offence who, without reasonable excuse, fails or refuses to comply with the police officer’s demand in this regard. The penalties for such an offence range from a \$300 fine to 5 years imprisonment, depending on the situation.

Notes:

- a) The above does not relieve the employee of his obligation under CROR General Rule G and any related Special Instruction as required in connection with the use of alcohol or drugs
- b) When an employee is required to leave his train or railway equipment to provide a breath sample, the appropriate Company authority must first be notified, so that adequate protection, or movement, of the train or railway equipment may be arranged.

2.0 Medical Requirements

2.1 Safety Critical Positions

Under the Railway Safety Act employees who occupy Safety Critical Positions must receive a medical assessment at least every 5 years up to the age of 40 and at least every 3 years thereafter.

These medical assessments include a medical report to be completed by the employee's physician and include hearing and vision tests.

CP's Occupational Health Services will send letters to employees occupying Safety Critical Positions advising them when medical assessments are required.

Safety Critical employees are required to advise treating physicians and optometrists that they hold such a position prior to any examination.

2.2 Safety Sensitive Positions

Occupational Health Services Fitness to Work Medical Policy identifies Safety Sensitive Positions for whom hearing and vision tests are required.

Employees occupying Safety Sensitive Positions will be advised when hearing and vision tests are required.

2.3 Medical Records

All related medical records will remain confidential between you, your physician and Occupational Health Services. Supervisors will not have access to medical records. They will only receive a notification from Occupational Health Services that you are fit, fit with restrictions or conditions, or unfit for service.

Please refer to the following lists to determine whether you may be working in a Safety Critical or Safety Sensitive position.

Copies of the Fitness to Work Policy and detailed lists of Safety Critical and Safety Sensitive positions are available on RailCity under: Teams > Human Resources > Occupational Health Services > Policies & Procedures.

Any medical questions should be directed to Occupational Health Services at 1-866-876-0879.

SAFETY CRITICAL POSITIONS

Any employee or contractor, union or non-union, who is required to perform any of the following functions, will be considered to occupy a Safety Critical Position.

1. Locomotive Engineer
2. Conductor
3. Brakeperson
4. Yard Foreman
5. Yard Helper
6. Yard Service Employee
7. Yard Service Helper
8. Utility Yard Employee
9. Rail Traffic Controller
10. Interlocking Rail Traffic Controller

SAFETY SENSITIVE POSITIONS

Any employee, union or non-union, who is required to perform any of the following functions, will be considered to occupy a Safety Sensitive Position.

1. Track foreman, track supervisor and any other person who takes a track occupancy authorization.
2. S&C Maintainer, S&C Technician and any other person who maintains, repairs or installs signal systems.
3. Snow plow operator
4. Engine attendant and engine attendant helper
5. Trackmobile operator and trackmobile helper
6. Intermodal toplift operator
7. Auxiliary, mobile & shop crane operator (if rated over 60 tons)
8. Dangerous goods emergency responder
9. Railway police officer
10. Yardmaster

2.4 Glasses and Contact Lenses

Any employee who is required by their physician or by Occupational Health Services to wear glasses or contact lenses shall wear them while on duty and shall carry a second pair or replacement while on duty.

3.0 Work/Rest Rules for Railway Operating Employees

Copies of Work/Rest Rule(s) will be available locally on bulletin boards and hardcopy. In addition, these rules will be available on RailCity under: Teams > Operations > Safety & Environmental Services, and on Transport Canada's website.

4.0 Transportation Safety Board (TSB) Act

4.1 TSB Investigators may;

- limit access to the site or location relevant to their investigation, but should minimize any disruption to transportation services;
- enter and search any place relevant to the investigation with the consent of the person in charge. (The TSB investigator does not need such consent if he has a warrant. However, in exceptional circumstances where delay to obtain a warrant would threaten human life or safety or destruction of evidence, the investigator may exercise these powers without a warrant.)
- seize and test evidence, but must take reasonable steps to allow the owner of the evidence to be present during the testing.
Such evidence must be returned to the owner as soon as possible, e.g. following the test.
- by written notice: demand documents, the release of medical records or the performance of an autopsy, or compel a person to give evidence or take a medical examination.

4.2 Role of Railway Officers

- a) Railway officers must cooperate with TSB Investigators, but they still have a duty to respond to an occurrence to protect the safety of the public, employees and property and to determine the cause of the occurrence and start clean up operations

- b) When contacted or approached by a TSB Investigator, railway officers should
 - ask what equipment or information the TSB Investigator is examining;
 - when statements are required, arrange a convenient time, to minimize disruption to service;
 - when company documents are required, ensure their confidentiality before release. Maintain copies of documents if necessary to release the originals to TSB.

4.3 Observer Status Required

- a) Railway officers with a direct interest in a TSB investigation must request observer status from the TSB. (Railway officers do not automatically enjoy observer status and therefore must request it at the beginning of an investigation.)
- b) Observers may attend the scene of an accident or incident, examine documents, etc. However, unless specifically authorized by the TSB, they can not attend an interview of a witness during an investigation

5.0 Connivance in Illegal Transportation By Railway Employees

5.1 Section 401 of The Criminal Code RSC 1985, c. C-46 reads:

“(1) Everyone who, by means of a false or misleading representation, knowingly obtains or attempts to obtain the carriage of anything by any person into a country, province, district or other place, whether or not within Canada, where the importation or transportation of it is, in the circumstances of the case, unlawful is guilty of an offence punishable on summary conviction.

(2) Where a person is convicted of an offence under subsection (1), anything by means of or in relation to which the offence was committed, upon such conviction, in addition to any punishment that is imposed, is forfeited to Her Majesty and shall be disposed of as the Court may direct.”

5.2 Your attention is also directed to Sections 159 and 160 of the Customs Act of Canada, reading as follows:

a) Section 159 reads;

“Every person commits an offence who smuggles or attempts to smuggle into Canada, whether clandestinely or not, any goods subject to duties, or any goods the importation of which is prohibited, controlled or regulated by or pursuant to this or any other Act of Parliament”

b) Section 160 reads in part;

“Every person who contravenes or commits an offence under section 159.

- is guilty of an offence punishable on summary conviction and is liable to a fine of not more than two thousand dollars and not less than two hundred dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment; OR
- is guilty of an indictable offence and is liable to a fine of not more than twenty-five thousand dollars and not less than two hundred dollars or to imprisonment for a term not exceeding five years or to both fine and imprisonment.”

5.3 This is submitted for your information and guidance and you will note that the consent, connivance, aid or assistance of any railway employee in illegal transportation constitutes an offence for which a prison term is a

penalty. All employees must use their best efforts to prevent violation of the law and every facility should be given officers of the Government in their investigations.

5.4 If an employee has reason to believe that a shipment is falsely billed and contains contraband, although classified as some other commodity, he must immediately inform CP Police and the Service Area Manager - Field Operations, giving full particulars, including car number.

Note: CP Police # 1 800 716-9132

6.0 Laws Governing Wildlife

6.1 Under various Provincial laws and those governing National Parks, all wildlife are the property of the Crown. It is illegal for any person to remove or to be in the possession of wildlife or wildlife parts without proper authorization documents.

Do not remove any animal carcass from the right-of-way. However, if it is necessary for safety reasons, an animal carcass may be moved up to 15 feet off the grade.

Refer to Section 2, Item 5.2, for the reporting procedures when wildlife are injured or killed as a result of coming in contact with railway equipment.

Refer to Section 2, Item 5.1, for reporting leaking grain cars or grain spills observed on the right of way.

7.0 General Legal Requirements

7.1 Employees are required, at all times, to comply with all laws of the nation in which they are required to travel, including, but not limited to, laws pertaining to customs and excise duties, immigration, the control of illegal substances and all criminal laws.

7.2 Employees must not bring any goods that are subject to any form of import duty across international borders.

7.3 The Criminal Code of Canada prohibits the impaired operation of railway equipment. If convicted, in addition to other fines and/or prison sentences, a person can be prohibited from operating railway equipment for a period of up to 5 years.

