

The Regulations currently state that the Agency will examine the risks associated with the proposed construction or operation of a railway based on these ten factors:

- 1. passenger ridership,**
- 2. passenger and freight train miles,**
- 3. volume of railway traffic,**
- 4. class and volume of dangerous goods transported by rail,**
- 5. types of population areas served,**
- 6. number of level crossings,**
- 7. speed of trains,**
- 8. train crew training,**
- 9. method of train control, and**
- 10. overall safety record of the applicant.**

Q1. Are those factors sufficient or should the Agency expand the list to better assess the risks and why?

A1. We feel the additional factors should be included: state of rail infrastructure, track, crossings, mechanical state of trains & maintenance records and the proximity to environmentally sensitive areas.

Q2. What factors, if any, should be removed and why?

A2. Consideration should be given to all factors.

Q3. Should there be additional and/or different third party liability insurance requirements related to the transportation of certain commodities, such as dangerous goods? If so, why?

A3. Yes. Dangerous Goods should carry a minimum amount of insurance to ensure factors such as environmental impact, damage to infrastructure and personal injury or loss of life is covered.

Q4. Should there be additional and/or different third party liability insurance requirements related to the transportation of passengers? If so, why?

A4. Yes. There needs to be a minimum to ensure injury and loss of life is covered

Railway operations can vary a great deal in terms of the volume of traffic, commodity mix, scope of operations, whether in rural or urban areas, number of crossings, etc. Because of this, the current federal Regulations do not set definite amounts, neither minimum nor maximum.

Q5A. Should the Regulations be revised to establish minimum requirements? If so, why?

A5A. Yes. There should be a minimum amount established to provide industry and regulators with a base amount. The minimum amount of insurance should be determined through establishing risk factors, and determining the appropriate level of insurance for the different levels of risk. An established amount gives the provincial authorities a baseline and allows for consistency across Canada.

Q5B. If so, should there be a distinction made between general commodities and dangerous goods? Please provide your reasons.

A5B. Yes. Dangerous goods are classified as such because their properties can cause serious damage to the environment and loss of life. The handling and transportation of dangerous goods should require a higher level of insurance than general commodities. This is evident in the railway incidents involving dangerous goods and the costs due to loss of life, injury, damage to assets and impacts on the environment.

Q6. Should there be separate minimum requirements for Class I railway companies and for shortline railway companies? Please provide your reasons.

A6. Class 1 railways typically operate longer trains with more types of products including dangerous goods, passenger traffic, higher rates of speed, and over larger territories. Considering increased level of risk added when operating a Class 1 railway, there should be a higher amount of insurance required. Short line railway companies may be limited in the products they carry, distance traveled and speed operated at, so a higher amount of insurance may not be required. Amount of insurance would better be determined based on items identified in section 1.

Q7. If you think minimum requirements should apply, what should they be and what approach should the Agency use to establish a minimum requirement?

A7. This should be looked at on a National level and discussed with the insurance experts.

Legislation places the onus on the railway company to notify the Agency in writing, without delay, whenever it cancels or alters its third party liability insurance coverage, or whenever a change in construction or operation may mean that its coverage is no longer adequate.

Q8. What mechanisms should be established in the Regulations to ensure that railway companies notify the Agency of all substantive changes on a timely basis?

A8. A penalty section should be enacted, levying large monetary fines for failing to report and regulation regarding notification when there is a change in the insurance, also define substantive change.

Q9. In the case of non-compliance, would administrative monetary penalties be an appropriate mechanism? Are there better ones? Please provide your reasons.

A9. Yes, Admin Penalties are appropriate. They can be combined with suspensions/cancellations of operating approvals, with or without conditions.

Q10. What, if any, mechanisms should be established in the Regulations to ensure that railway companies notify their insurer of all substantive changes on a timely basis?

A10. Same as above.

The Regulations state that the Agency will assess the financial capability of the applicant to sustain any level of self-insurance, whether it is a deductible or self-insured amount. For this purpose, the Agency examines the railway company's audited financial statements for the three most recent complete fiscal years.

Q11. Should the Agency continue with this practice, or should the Agency establish additional requirements?

A11. Continue to allow railways to self-insure assuring they are financially stable to cover possible expenses of an accident claim and be financially viable to continue to operate if a claim is made.

If, for any reason, the Agency believes that the insurance company may not have the financial ability to pay its contractual level of insurance coverage, the railway company may be required to provide the Agency with the last three years of the insurance company's audited financial statements and/or the insurance company's solvency rating, as determined by recognized rating agencies.

Q12. Should the Agency continue to assess the financial strength of the insurance company to pay its contractual level of insurance coverage?

A12. Yes, absolutely.

Currently, all documents filed with the Agency become part of the public record and may be made available for public viewing. However, in accordance with the Agency's General Rules, a claim for confidentiality can be made. In practice, railway companies tend to claim as commercially confidential all its financial information, including information related to the amounts of insurance coverage.

Q13. What information submitted in an application for, or a variance to, a certificate of fitness should be made public and what should remain confidential? Please provide your reasons.

A13. Given the current state of the rail industry and recent rail incidents, information should be made public. The public has a right to know if they are a company able to cover insurance costs.

Q14. Should the amount of third party liability insurance and the self-insured retention amount be made public? Please provide your reasons.

A14. Yes, CTA should ensure the railway companies are open and accountable.