

**TRANSPORT CANADA  
SAFETY & SECURITY GROUP  
RAIL SAFETY**

**RAILWAY SAFETY  
COMPLIANCE POLICY  
January 2001**

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**1. Introduction**

The Government of Canada, through the *Railway Safety Act* (RSA), promotes and regulates safe railway operations.

In the context of the continuing, rapid change in the railway industry, Transport Canada (TC) is modernizing its regulatory approach to meet the needs of the industry and of Canadians generally. This policy is consistent with the Department's vision, mission, strategic objectives and values.

The purpose of the Compliance Policy is to guide Railway Safety Inspectors (RSIs) in the use of their statutory powers and in responding appropriately to instances of non-compliance and threats to safe rail operations.

The Policy outlines the Department's responsibilities and assures the Minister that there are consistent and appropriate compliance and enforcement tools applied by the Department to ensure that regulated parties are in compliance with the requirements established under the RSA.

This Policy applies to RSIs and all other officials of TC in the regions and Headquarters whose responsibilities include promoting and monitoring compliance, responding to non-compliance with the requirements established under the Act, or approving or supporting related policies. The Policy applies to RSI activity relative to all railways and persons to which the RSA applies. This Policy does not apply to activities under Part II of the Canada Labour Code (CLC) (reference: Human Resources Development Canada) or actions under the *Canadian Environmental Assessment Act* (reference: Environment Canada).

Activities of designated RSIs (Security) are covered under the TC Security and Emergency Preparedness Group *Inspection and Enforcement Manual*, Part IV.

A list of relevant definitions is provided in Appendix A.

For further assistance and/or clarification concerning the Policy, contact the nearest office of Transport Canada-Surface (listed in Appendix C)

## **2. Principles**

The principles of the Compliance Policy are to ensure - to the fullest extent possible - that TC's Railway Safety Program

- facilitates compliance;
- encourages effective communications with the regulated parties;
- applies regulatory instruments in a fair, impartial, predictable and nationally consistent manner;
- responds in a manner that is appropriate to the seriousness of the infraction;
- provides appropriate redress mechanisms to the regulated parties, giving them a reasonable opportunity to respond to regulatory actions;
- ensures inspection of all suspected violations;
- respects the confidentiality of information obtained through the administration of the legislation, and communicates the information only to those legally entitled to receive it; and
- promotes awareness, with the regulated parties, of the requirements of the RSA.

By following these principles, TC believes that consistent exercise of its promotional, monitoring and enforcement practices increases respect for its activities in this regard and thereby encourages those concerned to comply with the requirements established by the Act.

In support of these principles, it is the Department's policy to ensure that all staff designated as RSIs are provided with the appropriate training and resources to carry out their assigned mandate.

## **3. Purpose of the *Railway Safety Act***

The RSA came into force on January 1, 1989. It was substantially revised June 1, 1999.

The objectives of the Act are given in section 3, as follows:

The objectives of this Act 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.

#### **4. Railway Safety Inspectors' Statutory Powers**

All RSIs have statutory powers that permit them to

- a) enter places [paragraph 28(1)(a) of the Act]:

for the purpose of ensuring compliance with this Act and with the regulations, emergency directives, rules, and orders made under this Act, enter any place, other than a private dwelling-place, where activities are carried on that relate directly or indirectly to the operation of a railway, including railway equipment,

- b) inspect [paragraph 28(1)(a) of the Act]:

and carry out any inspection that the inspector considers necessary in relation to the matters designated by the Minister under section 27 in respect of which the inspector may exercise the powers of a railway safety inspector;

- c) take copies or extracts of documents [paragraph 28(1)(a.1) of the Act]:

require any person appearing to be in charge of the place to produce any document, regardless of physical form or characteristics, for inspection or for the purpose of making copies or taking extracts;

- d) seize property [paragraph 28(1)(b) of the Act]:

seize any property found in the course of that inspection on the railway work or in the railway equipment that the inspector believes, on reasonable grounds, will afford evidence with respect to an offence under this Act,

- e) submit property to reasonable tests [paragraph 28(1)(b) of the Act]:

and may submit that property to reasonable tests;

f) require attendance of persons [paragraph 28(1)(c) of the Act]:

require the attendance of persons whom the inspector deems relevant to the carrying out of the inspector's functions.

g) question those persons required to attend [paragraph 28(1)(c) of the Act]:

and may question those persons.

h) issue Notices and Orders [subsections 31(1), (2) and (3) of the Act]:

31.(1) Where a railway safety inspector is of the opinion that the standard of construction or maintenance of a line work or railway equipment of a particular railway company poses a threat to safe railway operations, the inspector

(a) shall, by notice sent to the company, inform the company of that opinion and of the reasons therefor; and

(b) may, in the notice, if the inspector is satisfied that the threat is immediate, order the company to ensure that the line work or railway equipment not be used, or not be used otherwise than under terms and conditions specified in the notice, until the threat is removed to the inspector's satisfaction.

(2) If a railway safety inspector is of the opinion that the standard of construction or maintenance of a crossing work threatens safe railway operations, the inspector, by notice sent to the person responsible for the maintenance of the crossing work and to the railway company concerned,

(a) shall inform them of that opinion and of the reasons for it ; and

(b) may, if the inspector is satisfied that the threat is immediate, order either of them to ensure that the crossing work not be used, or not be used otherwise than under terms and conditions specified in the notice, until the threat is removed to the inspector's satisfaction.

Subsection 31(4) of the RSA places certain restrictions on issuance of Notices/Orders. RSI will not determine that the standard of construction or maintenance poses a threat if the standards conform to all applicable regulations, rules and emergency directives. In order to ensure the highest level of

safety to the industry and the public, a RSI shall follow the application of 31(1) of the RSA, with any objections to be reviewed subsequent to the Notice/Order.

#### Unsafe use of road crossing

(2.1) If a railway safety inspector is of the opinion that the method of operating a vehicle over a road crossing threatens safe railway operations, the inspector, by notice sent to the driver or operator of the vehicle,

(a) shall inform them of that opinion and of the reasons for it; and

(b) may, if the inspector is satisfied that the threat is immediate, order them to stop using the road crossing or to use it only under terms and conditions specified in the notice, until the threat is removed to the inspector's satisfaction.

#### Inspector may forbid operation of certain works or equipment

(3) If a railway safety inspector is of the opinion that the operation of a line work or railway equipment of a particular railway company threatens the safety or security of railway operations, the inspector, by notice sent to the company or to any other person who owns or leases the equipment ,

(a) shall inform them of that opinion and of the reasons for it ; and

(b) may, if the inspector is satisfied that the threat is immediate, order either of them to ensure that the line work or railway equipment not be operated, or not be operated otherwise than under terms and conditions specified in the notice, unless the work or equipment is operated so as to remove the threat, to the inspector's satisfaction.

To ensure the highest level of safety, and where an immediate threat is not resolved in the instant, it is normal procedure for an RSI to issue a Notice and Order.

i) carry out an investigation of an offence [subsection 28(2) of the Act]:

Where a railway safety inspector believes, on reasonable grounds, that an offence under this Act is being or has been committed at or in any place other than a railway work or railway equipment and that evidence of that offence is likely to be found at that place, the inspector may, if the offence relates to a matter for which the inspector is designated, and subject to subsection (3),

Powers to enter, seize and test, similar to 4a), 4d) and 4e) above, are all included in this section as follows:

To enter such places, section 28(2)(a) states:

enter and search that place for evidence of that offence; and

To seize property, section 28(2)(b) states:

seize any property found in the course of the search that the inspector believes, on reasonable grounds, will afford evidence with respect to that offence,

To submit property to tests, section 28(2)(b) further states:

and submit that property to reasonable tests.

Powers 4a) to 4h), as previously noted, are the RSIs' powers only when inspecting for the purpose of compliance.

The powers under 4i) only apply when the RSI is exercising the functions of an investigator of an offence and, by the provisions of the Act, are more restricted.

An RSI should refer to the *Railway Safety Compliance Manual* for full clarification of these sections.

## **5. Minister's Statutory Powers/Delegation of Authority**

The Minister's statutory powers are referred to because they constitute an important set of regulatory tools that are available to increase railway safety.

The RSA permits the Minister of Transport, among other things

to order the removal or modification of any railway work; subsections 32(1) to (3) states:

32. (1) Where, in the opinion of the Minister,

(a) a railway work the construction of which began after the coming into force of this section has not been constructed in accordance with the requirements imposed by or under this Act,

(b) any railway work has not been altered in accordance with the requirements imposed by or under this Act, or

(c) any railway work is not being, or has not been, maintained in accordance with the requirements imposed by or under this Act, the Minister may

(d) by notice sent to the person responsible for the work, order the person to remove or modify the work, and

(e) where a person fails to comply with an order made under paragraph (d), remove and destroy the work concerned and sell, give away or otherwise dispose of the materials contained in that work.

to order that such action as is necessary be taken to remove a threat where a section 24 regulation (e.g., concerning buildings, structures, anything including trees or brush on adjacent lines) has been contravened, and the Minister believes an immediate threat exists to safe railway operations; section 32(3) reads:

(3) Where the Minister is of the opinion that a person has contravened a regulation made under section 24, the Minister

(a) by notice sent to the person,

(i) shall inform the person of that opinion and of the reasons therefor, and

(ii) may, if the Minister believes that, by reason of that contravention, there exists in respect of particular railway works an immediate threat to safe railway operations, order the person to take such action as is necessary to remove the threat; and

(b) by notice sent to the railway company concerned,

(i) shall inform the company of that opinion and of the reasons therefor, and

(ii) may, if the Minister believes that, by reason of that contravention, there exists an immediate threat to the safe railway operations of that company, order the company to ensure that specified railway works or specified railway equipment not be used, or not be used otherwise than under terms and conditions specified in the notice, until appropriate action to remove the threat has, to the Minister's satisfaction,

been taken by the person referred to in paragraph (a).

The exercise of the above powers have been delegated by the Minister of Transport to the Deputy Minister, the ADM Safety and Security, and the Director General Rail Safety.

to issue an emergency directive where the Minister believes that use of a particular railway work, equipment or practice poses an immediate threat to safety; subsection 33(1) states:

Minister may send emergency directives

33. (1) If the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of rail transportation , the Minister may, by emergency directive sent to a railway company, order it

(a) either absolutely or to the extent specified in the directive,

(i) to stop using the kind of railway works or railway equipment that poses the threat; or

(ii) to stop following the maintenance or operating practice that poses the threat; or

(b ) to follow a maintenance or operating practice specified in the directive if the threat is posed by the company's not following that practice.

Directive despite compliance with law

(1.1) The Minister may issue an emergency directive even though

(a) the construction of the railway work was undertaken in accordance with the law in force at the time; and

(b) using the railway equipment or following or not following the maintenance or operating practice is in accordance with this Act or any regulations or rules made under it.

The exercise of this power has been delegated by the Minister of Transport to the Deputy Minister, the ADM Safety and Security, and the Director General Rail Safety.

to order a railway to take the necessary corrective measures where a safety management system has deficiencies; section 32(3.1) reads:



32(3.1) If the Minister is of the opinion that the safety management system established by a railway company has deficiencies that risk compromising railway safety, the Minister may, by notice sent to the company, order the company to take the necessary corrective measures.

The exercise of this power has been delegated by the Minister of Transport to the Deputy Minister, the ADM Safety and Security, and the Director General Rail Safety.

under legislation outside of the RSA, to designate "Minister's Observer" under Section 23 of the *Canadian Transportation Accident Investigation and Safety Board Act* (CTAISBA). Section 23 of the CTAISBA reads in part:

23. (1) Where the Board is notified of a transportation occurrence, it shall

(a) forthwith provide particulars of the transportation occurrence to any minister responsible for a department having a direct interest in the occurrence; and

(b) forthwith after complying with paragraph (a), advise the Ministers referred to in paragraph (a) of any investigation that it plans to conduct and the scope of the investigation.

23. (2) Observers

(2) Subject to any conditions that the Board may impose, a person may attend as an observer at an investigation of a transportation occurrence conducted by the Board if the person

(a) [Repealed, 1998, c. 20, s. 14]

(b) is designated as an observer by the Minister responsible for a department having a direct interest in the subject-matter of the investigation;

(c) has observer status or is an accredited representative or an adviser to an accredited representative, pursuant to an international agreement or convention relating to transportation to which Canada is a party; or

(d) is invited by the Board to attend as an observer because, in the opinion of the Board, the person has a direct interest in the subject-matter of the investigation and will contribute to achieving the Board's object.

The exercise of this power has been delegated by the Minister of Transport to the Deputy Minister, the ADM Safety and Security, the Director General Rail Safety, and the Regional Directors' Surface.

## 6. Activities to Contribute to Regulatory Compliance

Activities in this category contribute to regulatory compliance by determining/defining the conditions, exceptions and consultations surrounding participation in a regulated activity.

**Publishing of Compliance Policy** – The Compliance Policy is published so that the regulated parties will know how the RSA is administered and what to expect with respect to compliance from RSIs and other TC authorities responsible for administering the Act.

**Consulting on Legislation and Policy** – The Department is committed to consultation as being fundamental to good governance. Interested parties are consulted whenever new legislation or regulations are being planned or important policies are being developed. To this end, a Railway Safety Consultative Committee (RSCC) has been formed. The RSCC enables interested parties, including railway companies, railway labour unions, other government bodies and representatives of the public, to provide input to government decision making in the interest of improving railway safety in Canada.

**Implementing Rules** – These are developed under sections 19 and 20 of the RSA by the railway companies, in consultation with relevant associations and organizations and subject to approval by the Minister of Transport or his/her delegated authority.

**Providing Exemptions** – The Act's provisions on exemptions allow flexibility in the application of regulations, rules and standards provided that the applicants' requests for exemptions are in the public interest. This also includes section 10 of the RSA, which allows the Minister to approve proposed railway works that depart from applicable engineering standards.

## 7. RSI Activities

Compliance with the RSA is encouraged through information, education, monitoring and enforcement. RSIs plan their compliance activities using risk management concepts. These activities will be adequately supported by TC and conducted by qualified RSIs who are fully conversant with the Act and associated regulations, rules, standards, policies and procedures.

In the application of the activities listed below – promotion, monitoring and enforcement – the frequency and nature of interventions by RSIs will be determined according to the stage of development of the company, road authority or third party as well as its type of operation.

As well, the following additional factors should be considered when deciding what enforcement response to take:

- the nature of the non-compliance; this includes consideration of the seriousness of the non-compliance or harm or potential harm to life, health, property and the environment;
- whether there are attempts to conceal information or otherwise subvert the objectives and requirements of the Act;
- the attitude and attempts to comply with or the intent to contravene the requirements of the Act;
- whether the non-compliance is correctable on-site;
- the previous compliance record;

- whether the non-compliance is of a continuing nature and is likely to recur;
- indications of repetitive non-compliance with the requirements of the Act;
- the resources available and the cost involved relative to the threat;
- what punitive action may be necessary to achieve continuing compliance by the regulated party – this includes the regulated party’s willingness to co-operate with RSIs, evidence of corrective action already taken, etc.;
- whether failure to comply with the requirements of the Act contributed to an occurrence;
- how similar situations have been handled in the past; and
- federal/provincial administrative agreements.

### 7.1 Activities for Promoting Compliance and Safety

The following activities can be undertaken by RSIs to promote compliance and safety.

- **Providing Information and Education** - RSIs inform interested parties about the content and application of the Act and its regulations, rules, standards and orders. Information is made available in a written format at different venues, including conferences of road authorities or other provincial or municipal officials, or directly to individual railways and provincial, municipal or police organizations. Furthermore, RSIs advise on safety issues and explain the requirements of the legislation.
- **Providing Counselling** - This very effective tool is used by RSIs, often during the course of routine inspections or meetings with clients, to discuss general or specific concerns. Counselling is a tool used prior to observance/detection of non-compliance. It is an upfront information/education tool. The RSI provides regulated parties with information on possible infractions, the rationale for the requirement, possible alternative corrective actions used by other parties and the potential consequences of non-compliance. Advisory information given in counsel should be on record to indicate the RSI’s progressive use of all tools.
- **Defining Safety Management Systems** - This provision in the Act allows the railways the opportunity to define the safety plan and regime against which their safety and compliance performance will be assessed.

### 7.2 Activities for Monitoring Compliance and Safety

It is the Department’s policy to monitor overall compliance through data collection and subsequent analysis. Data is mainly collected by audits, inspections and the receipt/review of complaints. Information/data sharing between the regions and Headquarters is carried out in a manner respecting the confidentiality of information and ensuring communication only to those legally entitled to receive it.

- **Inspections** - Inspections are a key component of a compliance system and will be used on their own or as part of the audit process.
- **Safety Audits** - Audits are one of the means used by RSIs to verify compliance with the Act. Auditing will relate to safety performance pursuant to the Safety Management Systems, rules, regulations and standards.
- **Complaints** - Upon receipt of a complaint regarding safety, an RSI will take the appropriate action in accordance with section 6 in the *Railway Safety Compliance Manual*.

- **Accident/Incident Investigations** - Investigating incidents and accidents affords information that is of significant value in advancing safety in the transportation modes. RSIs investigate and/or analyze incidents and accidents that are not investigated by the Transportation Safety Board (TSB). However, under the CTAISBA (subsections 14(3) and 14(4)), even if the TSB is investigating/will investigate an occurrence, the Department is not prevented from investigating, as long as it is not for causes and contributing factors but rather to facilitate prevention, monitoring and compliance. Through the appointment of Minister's Observers, the Department has the ability to follow the progress of TSB investigations closely, with a view to providing advice to the Minister. For further information, refer to the Transport Canada Surface Group *Policy on Accident/Incident Attendance* dated 96/9/27 as well as the *Railway Safety Compliance Manual*.

### 7.3 Activities for Enforcing Compliance and Safety

RSIs have a range of tools to enable them to respond effectively to non-compliance or unsafe conditions. These include a Letter of Non-Compliance, Notice/Notice and Order, and prosecution. This permits RSIs to react appropriately and proportionately to violations of the Act and threats to safe railway operations.

**Letter of Non-Compliance** - This tool is viewed as both a technique to promote compliance and to respond to non-compliance. A letter of non-compliance shall be issued by the RSI on a standardized form that specifies what the non-compliance is and includes a time frame for the regulated party(ies) to detail their corrective action. Failure to correct the non-compliance will result in either progression towards prosecution or the issuance of a Notice/Notice and Order. RSIs carry out follow-up inspections to verify corrective actions undertaken by the regulated party.

**Notice/Notice and Order** - A Notice is a formal registered warning. Pursuant to section 31, a Notice must be issued when an RSI believes that a threat to safety exists. A Notice and Order, which restricts the use of the line work or railway equipment to remove the threat, may be issued if the threat is perceived as immediate. Failure by the regulated party to carry out the obligations included in the Notice and Order leads to immediate civil and/or criminal enforcement. As noted earlier, subsection 31(4) of the RSA places certain restrictions on issuance of a Notice and Order.

**Review, Alteration and Revocation of Orders** - The Act provides a mechanism for the review of an Order. The Minister, if requested to do so by the person or railway concerned, must review the order "forthwith" (subsection 31(9)). This review is normally carried out by, though it is not restricted to, an RSI delegated by the Minister. The Minister is also empowered to alter or revoke Orders, either after the review or on his/her own initiative. A TC official will be delegated to conduct all such reviews. The Act does not stipulate the delay within which a review may be requested, and a regulated party(ies) would be free to make the request at any time. A request for review does not constitute a stay in the application of the Order.

*Refer to Appendix B for a flow chart that depicts these compliance activities.*

### 8. Consequences of Continued Non-Compliance

The following details the consequences of continued non-compliance on the part of a railway authority

**Prosecution** - It is TC policy to investigate for the purpose of prosecuting serious or uncorrected non-compliance or the failure to obey Orders issued by RSIs or the Minister of Transport. Authorization to proceed with prosecution rests with the Regional Director Surface. Detailed instructions are provided in the *Railway Safety Compliance Manual*. Failure to obey an Order or Emergency Directive of the Minister may result in the Order or directive being made an Order of the Federal Court or a Superior Court (section 34). Recourse to the courts by TC is taken only with the concurrence of the Department of Justice.

## **Appendix A - Definitions**

**Act** - the *Railway Safety Act* or RSA.

**Audit** - an objective and systematic assessment of policies, processes and/or procedures and the related risks to monitor compliance.

**Complaint** - a verbal or written request to a Railway Safety Inspector to inquire into an alleged contravention of the requirements of the Act or an alleged violation with respect to safe railway operations.

**Compliance** - conforming to legislative provisions including regulations, rules, standards, orders and emergency directives established under the RSA.

**Condition** - an existing circumstance, situation, state, predicament or case.

**Emergency Directive** - under subsection 33(1) of the RSA means a directive to a railway, with a period not exceeding six months, where the Minister believes that use of a particular railway work, equipment or practice poses an immediate threat to safety, even if the use of the railway work, equipment or practice is in accordance with the law.

**Enforcement** - the measures that are taken to bring about compliance.

**Hazard** - a condition with the potential for causing an undesirable consequence.

**Inspection** - an examination to monitor compliance with legislated requirements by directly measuring a product, process or activity.

**Letter of Non-Compliance** - a standardized letter issued to a regulated party that specifies the details of the non-compliance with a time frame for the regulated party to detail their corrective action.

**Minister** - the Minister of Transport and all persons with delegated authority to act on his/her behalf in railway safety matters.

**Minister's Observer** - a person designated under section 23(2) of the *Canadian Transportation Accident Investigation and Safety Board Act* (CTAISBA) as an observer at a CTAISBA investigation of a transportation occurrence.

**Notice** - a formal written document, issued under section 31 of the RSA, informing a regulated party that a threat to safe railway operations exists.

**Notice and Order** - a formal written document, issued under Section 31 of the RSA, informing a regulated party that an immediate threat to safe railway operations exists and prescribing specific action to remove the immediate threat.

**Person** - an individual or incorporated group having certain legal rights and responsibilities, as defined in subsection 4.1 of the RSA, which "includes a government of a municipality and a road authority."

**Railway Safety Inspector** - any person designated by the Minister as such under section 27.1 of the RSA.

**Requirements** - all provisions contained in the RSA as well as all regulations, rules, standards, orders, emergency directives, etc. established under the RSA.

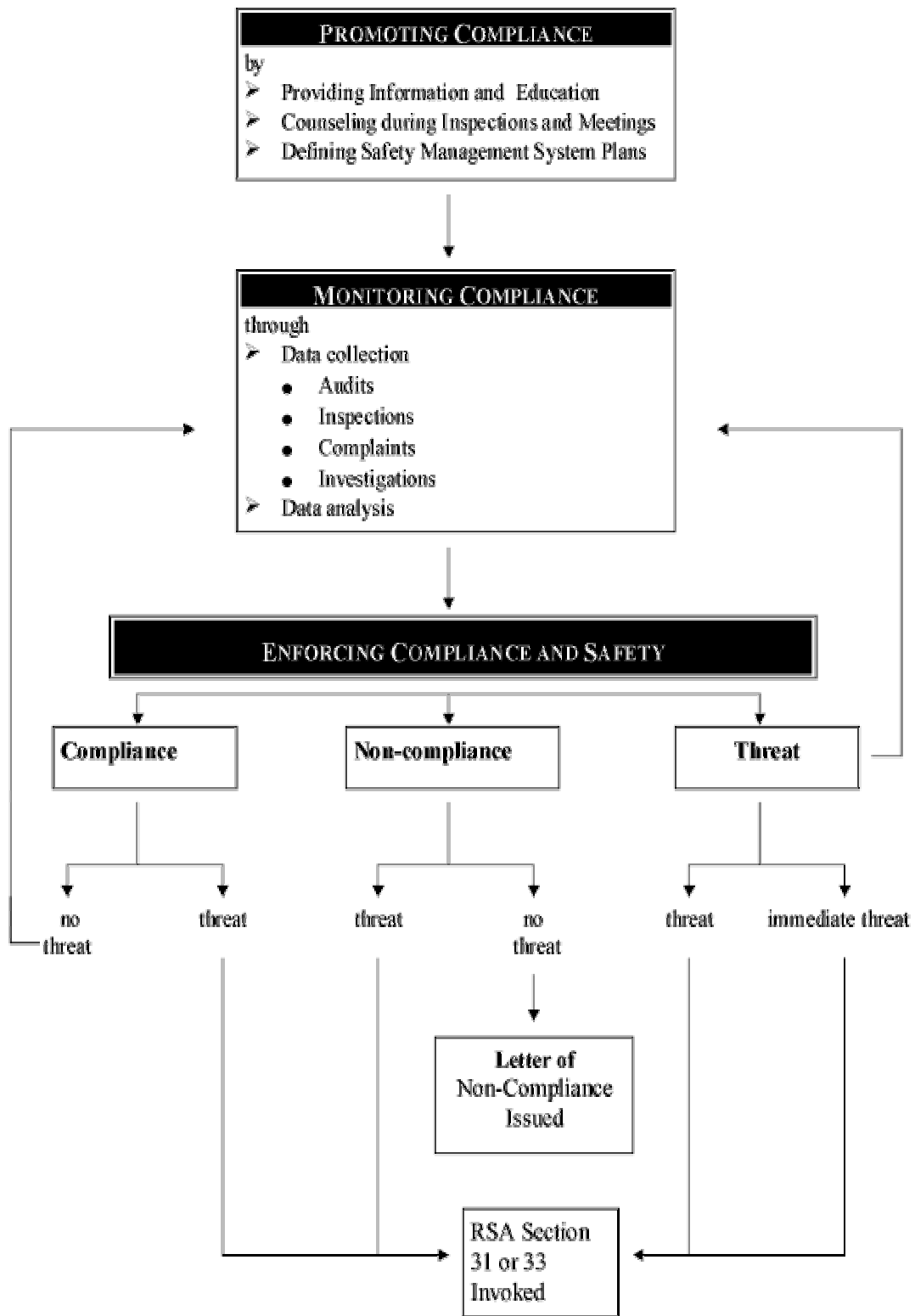
**Road Authority** - a public authority having legal authority to open and maintain roads (subsection 4.1 of the RSA).

**Safety Management System** - a formal framework for integrating safety into day-to-day railway operations, which includes safety goals and performance targets, risk assessments, responsibilities and authorities, rules and procedures, and monitoring and evaluation processes (subsection 4.1 of the RSA).

**Threat** - a hazard or condition that could reasonably be expected to develop into a situation in which a person could be injured or made to be ill or damage could be caused to the environment or property (subsection 4(4.1) of the RSA).

**Immediate Threat** – a hazard or condition that already exists such that a person could be injured or made to be ill or damage could be caused to the environment or property (subsection 4(4.1) of the RSA).

## Appendix B - Compliance Flowchart



## Appendix C - Related Information

### List of Transport Canada - Surface Offices

National Capital Region	Quebec Region	Pacific Region
Rail Safety Place de Ville, Tower C 330 Sparks Street, 10th Floor Ottawa, Ontario K1A ON5 Tel: (613) 991- 6777 Fax: (613) 990- 7767	800 René- Levesque Blvd. West Suite 638 Montreal, Quebec H3B 1X9 Tel: (514) 283- 1774 Fax: (514) 283- 8234	225-625 Agnes Street New Westminster, B.C. V3M 5Y4 Tel: (604) 666-0012 Fax: (604) 666-7747

### Related Documents and Internet Sites

- Transport Canada *Railway Safety Compliance Manual*
- Transport Canada Web Site at [www.tc.gc.ca](http://www.tc.gc.ca)
- Transport Canada - Minister's Observer Policies and Procedures Manual TP 11766
- Department of Justice at [http://canada.justice.gc.ca/cgi-bin/folioisa.dll/stdobject/level1.gif/CRIMLITE.NFO/query=\\*/toc/{@1}?34,12](http://canada.justice.gc.ca/cgi-bin/folioisa.dll/stdobject/level1.gif/CRIMLITE.NFO/query=*/toc/{@1}?34,12)