



REGULATORY SURVEILLANCE

Regulatory surveillance has not always proven effective at verifying whether operators are, or have become, compliant with regulations and able to manage the safety of their operations. Furthermore, Transport Canada (TC) hasn't always intervened on a timely basis to ensure transportation operators in the air, marine and rail sectors take appropriate corrective actions.

The situation

Note: In 2018, the TSB included "safety management and oversight" as a single issue on the Watchlist. For Watchlist 2020, these two issues have been separated into the issues of **Safety management and **Regulatory surveillance** to allow a greater focus on their individual elements.*

All transportation operators are responsible for managing the safety risks within their organizations and operations. Regulations help by providing operators a guiding framework and stipulating certain minimum requirements and levels of safety. However, it is up to operators to meet those requirements; it is TC's responsibility to inspect and audit operators to confirm that they are compliant with these regulations and that minimum levels of safety are met.

However, inspections and audits, whether conducted by TC or by others on its behalf (in the marine industry), have not consistently proven effective, and the TSB has noted various deficiencies and concerns over the years in each sector of transportation—specifically:

AIR – TC is not always effective at identifying gaps in a company's safety management processes and intervening in a timely manner. Moreover, at times, there has been an imbalance between the use of traditional inspections to verify compliance with regulations and auditing company safety processes to assess if they are working.

MARINE – TC's surveillance program is not always effective, nor does it address all commercial vessels. For example, small vessels¹ go largely uninspected and TC places responsibility for safety on authorized representatives (AR).² However, many owners or ARs of small vessels have limited awareness of [key sections of the Canada Shipping Act, 2001](#), or of the broader regulatory framework. Meanwhile, for larger vessels,³ TC delegates most statutory inspections to third-party recognized organizations⁴, and then monitors the regulatory compliance of these vessels through compliance inspections. The monitoring of these organizations

¹ Small vessels are Canadian vessels not more than 15 gross tonnage (GT) and carrying 12 passengers or fewer.

² Under the *Canada Shipping Act, 2001*, an authorized representative is responsible "for acting with respect to all matters relating to the vessel that are not otherwise assigned by this Act to any other person."

³ Larger vessels are vessels over 24 metres long.

⁴ Recognized organizations (ROs) are third party service providers that have been delegated authority to carry out statutory inspections on behalf of Transport Canada. There are currently 7 ROs in Canada, all of which are international classification societies carrying out similar duties for multiple Flag states.





and the vessels being inspected is not consistent, resulting in situations where regulatory compliance on board these vessels goes unverified.

RAIL – Some transportation companies are not managing their safety risks effectively, as evidenced by increases in the main-track train accident rate, the number of uncontrolled movements and the recent number of employee fatalities.⁵ Furthermore, TC's follow-up and intervention is not always effective at changing unsafe operating practices.

The risks to people, property, and the environment

There is an expectation by Canadians travelling on and using services provided by TC-inspected and -approved transportation companies that these operations are safe and that they meet the basic regulatory requirements — and if not, that TC will take proactive steps so that operators are returned to compliance in a timely manner.

However, when this does not happen and surveillance measures are not sufficient to identify safety deficiencies—or if TC is unable to intervene to ensure that operators take appropriate corrective actions—then unsafe or non-compliant operating practices may continue. As a result, minimum levels of safety may not be met, putting in jeopardy the safety of people, property, and the environment.

TSB recommendations

The TSB has issued recommendations addressing the issue of regulatory surveillance in the air, marine, and rail sectors. None of the responses, from any sector, have yet been assessed by the Board as “Fully Satisfactory.”⁶

In the **air** sector, [Recommendation A16-14](#) calls for TC to “enhance its oversight policies, procedures and training to ensure the frequency and focus of surveillance, as well as post-surveillance oversight activities, including enforcement, are commensurate with the capability of the operator to effectively manage risk.” Although it has been four years since the recommendation was issued, in March 2020 the TSB assessed TC's response as only **Satisfactory in part**.

In the **marine** sector, [Recommendation M17-02](#) calls for TC to “require commercial passenger vessel operators to adopt explicit risk management processes, and develop comprehensive guidelines to be used by vessel operators and Transport Canada inspectors to assist them in the implementation and oversight of those processes.” TC has consulted with industry on the content of the regulatory proposal. In early 2020, TC was in the process of pre-publication and had not yet consulted with industry on its updated regulatory proposal; therefore, the Board was unable to determine the proposal's practicality or effectiveness, and so was **unable to assess** TC's response.

In the **rail** sector, [Recommendation R14-05](#), issued in the wake of the 2013 disaster at Lac-Mégantic, Quebec, calls for TC to “audit the safety management systems of railways in sufficient depth and frequency to confirm that the required processes are effective and that corrective actions are implemented to improve safety.” While

⁵ Transportation Safety Board of Canada (TSB), “Rail transportation occurrences in 2019” at <https://www.tsb.gc.ca/eng/stats/rail/2019/sser-ssro-2019.html> (last accessed 04 August 2020).

⁶ Refer to the TSB's website for a full description of the TSB's [assessment rating system](#).





TC has conducted a cycle of audits to verify operator compliance with the revised SMS Regulations, it has just begun to verify operators SMS for effectiveness. The TSB's most recent assessment of TC's response (dated February 2020) is **Satisfactory intent**.

Actions taken

Issues on the Watchlist are complex and difficult to solve, requiring action from many stakeholders including operators and the regulator. Even when more needs to be done, some initial steps have often been taken. These are listed here.

AIR — In 2019, TC developed and implemented guidance, tools, and training to improve the quality of findings produced during surveillance activities, as well as the decisions made related to the oversight of commercial aviation, and its risk-based planning methodology.

MARINE — TC has updated its Concentrated Inspection Campaign checklist to be used during statutory and risk-based inspections on passenger vessels that are more than 15 GT or carry more than 12 passengers. TC says it will use the information collected during these inspections to assess the level of regulatory compliance and to determine if further action is needed. TC has also recently proposed a tiered system that would expand the applicability of SMS regulations to more vessels.⁷

RAIL — Since 2018, TC has made significant progress in its SMS oversight program, including:

- Piloting new audit-management software and providing employees with updated training on the audit manual, auditing principles, and audit processes.
- Mapping railway risk profiles to the SMS regulations, and conducting analysis to identify gaps in the audit process
- Developing a new five-year plan for 2020–2025 that will audit all railways on the effectiveness of their SMS at least every 3 to 5 years. This plan includes a continued commitment to host industry workshops, combined with awareness outreach to those railways unable to participate in the workshops.
- Committing to targeted follow-up audits based on previously identified issues.

TC has also completed a comprehensive audit program to ensure that Class 1 railways have deployed an SMS framework that is compliant with regulatory requirements.

⁷ Under this proposal, vessels less than 24 m length, those of less than 500 gross tonnage, and those carrying fewer than 50 passengers would require an SMS. However, these systems would not receive external reviews or audits, and their effectiveness would therefore remain unverified. The proposed regulations are expected to be pre-published in the *Canada Gazette*, Part I in late winter 2021.





Actions required

This issue will remain on the Watchlist until the following measures have been taken:

- In the **Air** sector, TC demonstrates, through surveillance activity assessments, that the new surveillance procedures are identifying and rectifying non-compliances, and that TC is ensuring that a company returns to compliance in a timely fashion and is able to manage the safety of its operations.
- In the **Marine** sector, TC provides more oversight of the commercial vessel inspection process by demonstrating that its surveillance and monitoring are effective in ensuring that authorized representatives and recognized organizations are ensuring compliance with regulatory requirements.
- In the **Rail** sector, TC oversight validates whether operator safety management systems are *effective*—i.e., that operators are identifying hazards and assessing risks, that effective risk-mitigation measures are being implemented, and that operators are validating the effectiveness of implemented safety actions. Moreover, when operators are unable to manage safety effectively, TC must intervene in a way that changes unsafe operating practices.

