



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) has not always intervened on a timely basis to ensure transportation operators in the air, marine, and rail sectors take appropriate corrective actions.

The situation

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

Inspections and audits, whether conducted by or on behalf¹ of TC have not consistently proven effective, and the Transportation Safety Board of Canada (TSB) has noted deficiencies and concerns over the years in each sector of transportation.

Air

TC is not always effective at identifying gaps in an air operator's safety management processes and intervening in a timely manner.² At times, there has been an imbalance between the use of traditional inspections to verify compliance with regulations and the auditing of company safety processes to assess if these processes are working.

Investigations have also illustrated that TC's surveillance of airports has not always identified safety issues. In TSB Air Transportation Safety Issue Investigation [A18Q0140](#) into occurrences in Quebec and Nunavut on runways undergoing construction that are reduced in width, the Board issued a safety concern stating that if TC Civil Aviation does not provide adequate surveillance of airports in Canada, the risk of an accident related to flight operations at airports increases, particularly when the airports are undergoing construction.

¹ In the marine industry, other qualified entities may be empowered by regulation to conduct inspections and audits on behalf of TC.

² TSB air transportation safety investigation reports A20Q0013, A19C0145, and A19P0112.





Finally, industry feedback has identified absent or insufficient regulatory surveillance to be an issue: some air operators feel they are losing out to competitors that do not make the same level of effort and investment to meet regulations and operate safely.

Marine

TC's surveillance program is not always effective, nor does it address all commercial vessels. For example, the TSB continues to see that Canadian vessels not more than 15 gross tonnage (GT) as well as those carrying 12 passengers or less go largely uninspected, and TC places responsibility for safety on authorized representatives (ARs).³ 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. TSB Marine Transportation Safety Investigation [M20A0160](#) into the fatal sinking of the small commercial fishing vessel *Sarah Anne* demonstrates one of the gaps in surveillance: to obtain a fishing licence, vessels are required to be registered with the Department of Fisheries and Oceans, but not with TC.

Meanwhile, for larger vessels (those more than 24 m long), TC delegates most statutory inspections to third-party recognized organizations,⁴ and then monitors the regulatory compliance of these vessels through compliance inspections. The monitoring of these organizations and of the vessels being inspected is not consistent, resulting in situations where regulatory compliance on board these vessels goes unverified.

Rail

TC conducts both a risk-based inspection program to verify a railway company's compliance with rules and regulations and an audit program to assess the operator's safety management system (SMS). Prior to 2020, TC's SMS audit activities were focused on evaluating the completeness of a railway operator's SMS. From 2015 to 2021, operators broadly demonstrated regulatory compliance, but the 2021 main-track accident rate⁵ was 2.8 accidents per million main-track train-miles (MMTTM), which is above the previous 5-year accident rate of 2.5 accidents per MMTM, indicating that compliance with regulations does not always equal effective safety management.

TSB investigations continue to identify issues with railways' SMS, in particular with the implementation, documentation, and validation of operational risk-control measures.⁶ The TSB investigation ([R19C0015](#)) into a fatal derailment during winter operations in mountainous territory in 2019 demonstrated that TC's regulatory surveillance was not sufficient to identify gaps in the operator's hazard identification program, which allowed hazards to recur year over year without prompting a formal SMS risk assessment or effective risk control plan.

³ Under the *Canada Shipping Act, 2001*, an AR 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."

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

⁵ Excluding right-of-way fires.

⁶ TSB rail transportation safety investigation reports R19C0002 and R19T0147.



Since 2020, TC has enhanced its audit program and commenced a 5-year cycle to look at the effectiveness of each railway operator's SMS. These audits are designed to identify potential gaps in an SMS, and to confirm that a company's processes are effective at managing the safety risk in its operations.

The risks to people, property, and the environment

Canadians travelling on and using services provided by TC-inspected and -approved transportation companies expect these operations to be safe and that these companies meet the basic regulatory requirements—and if they do 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, compromising the safety of people, property, and the environment.

Active TSB recommendations

The TSB has issued recommendations addressing the issue of regulatory surveillance in the air, marine, and rail sectors. None of the responses to these recommendations have yet been assessed by the Board as Fully Satisfactory.⁷

Air

Following a fatal air ambulance helicopter accident near Moosonee, Ontario, in 2013 ([A13H0001](#)), **TSB Recommendation A16-14** called 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.”

In March 2022, six years after the recommendation was issued, the Board assessed TC's response as only **Satisfactory in Part**. Despite ongoing efforts by TC, its response to date does not provide a clear framework for how it plans to meet the requirements of the recommendation.

Marine

The TSB's report into the sinking of the *Sarah Anne* ([M20A0160](#)) included **TSB Recommendation M22-01**, which calls for the Department of Fisheries and Oceans to “require that any Canadian vessel that is used to commercially harvest marine resources have a current and accurate Transport Canada registration.”

The *Sarah Anne*, which sank with all hands, had not been inspected once during its 40 years of service and had been inaccurately registered with TC. Accurate registration is the necessary first step in safety oversight.

⁷ Refer to the [assessment rating guide](#) on the TSB website.



Rail

TSB Recommendation [R14-05](#), issued in the wake of the fatal 2013 derailment 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.”

In March 2022, the Board assessed TC’s response as showing **Satisfactory Intent**. The Board recognizes significant progress in the development of an audit program to assess the effectiveness of various SMS processes and looks forward to receiving information on the findings related to the effectiveness of federally regulated railways’ SMS.

TSB Recommendation [R22-03](#), issued following the fatal 2019 derailment near Field, British Columbia, called on TC to “require Canadian Pacific Railway Company [CP] to demonstrate that its safety management system [SMS] can effectively identify hazards arising from operations using all available information, including employee hazard reports and data trends; assess the associated risks; and implement mitigation measures and validate that they are effective.”

In its June 2022 response, TC agreed with the recommendation and indicated that it would implement a combination of oversight and regulatory measures aimed at improving the overall safety of railway employees. Specifically, in August 2022, TC planned to begin with a targeted audit of CP, assessing the effectiveness of its SMS and training regime.

Action taken

Issues on the Watchlist are complex and difficult to solve, requiring action from many stakeholders, including operators and the regulator. Although some steps may have been taken, more needs to be done. These are some of the steps that have been taken to date.

Air

In the last two years, TC has continued to refine and implement guidance, tools, and training to improve the quality of findings produced during surveillance activities, the decisions made related to the oversight of commercial aviation, and its risk-based planning methodology. TC has also adapted its processes to a remote surveillance regime in order to continue inspections during the COVID-19 pandemic. TC has indicated that remote surveillance will be used in coordination with in-person inspections to create a hybrid surveillance model that will allow for a better use of TC’s resources.

Marine

In 2021, TC launched a new tool as part of its Small Vessel Compliance Program (SVCP)⁸ to help ARs with the legal requirements that apply to small tugs. TC has also issued multiple Ship Safety Bulletins

⁸ Canadian commercial vessels not more than 15 GT as well as those carrying 12 passengers or less are eligible to enroll in the SVCP.



on the subjects of required lifesaving equipment, and the dangers of girding while engaged in towing operations. However, many owners and/or operators of small vessels are not aware of these bulletins.

Rail

Since 2020, TC has continued to make progress in its SMS oversight program. During the 2020–21 fiscal year, 14 targeted SMS audits were completed. These audits looked specifically at how railway companies are managing the identification of safety concerns, ensuring compliance with the *Rules Respecting Track Safety*, and managing knowledge of track employees. Companies involved in the audits submitted corrective action plans, and TC is following up with the companies to monitor progress.

Action required

Regulatory surveillance will remain on the Watchlist until,

- in the **Air** transportation sector, TC demonstrates, through surveillance activity assessments, that the new surveillance procedures are identifying and rectifying non-compliances, and ensures that a company returns to compliance in a timely fashion and is able to manage the safety of its operations. Successfully addressing **TSB Recommendation A16-14** will go a long way to meeting these objectives;
- in the **Marine** transportation sector, TC provides more oversight of the commercial vessel inspection process by demonstrating that its surveillance and monitoring are effective in ensuring that ARs and recognized organizations are ensuring vessel compliance with regulatory requirements. Additionally, TC demonstrates an increase in proactive surveillance; and
- in the **Rail** transportation sector, TC oversight assesses and validates that operators' SMSs are effective—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. When operators are unable to manage safety effectively, TC must demonstrate that it can and does intervene in a way that changes unsafe operating practices.