

# TRANSPORT CANADA FINALIZES AMENDMENTS TO THE TRANSPORTATION INFORMATION REGULATIONS

Posted on January 16, 2023

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On January 9, 2023, Transport Canada [announced](#) that it has finalized and published the long-awaited amendments to the Transportation Information Regulations (the “**Amendments**”). The Amendments follow shortly after the publication of the National Supply Chain Task Force’s final [report](#) late last year to which stakeholders await the federal government’s response.

The *Transportation Modernization Act* of 2018 introduced transitional provisions in respect of railway service and performance data modelled on requirements in the United States. In spring of 2019, Transport Canada launched a stakeholder consultation with a view to creating replacement regulations tailored to the Canadian context. The finalization of the Amendments concludes that process.

## Railways Harming Shippers

The Regulatory Impact Analysis Statement published in the Canada [Gazette](#), Part II alongside the Amendments rightly observes that the absence of competitive market forces on railways has limited the degree of railway disclosure regarding service levels:

“Many Canadian shippers are heavily reliant on rail, with limited cost-effective alternative modes of transportation, and many shippers have direct access to only one rail carrier. Strong concentration in the rail sector does not always create the kind of competitive market pressure that would typically drive efficient outcomes in terms of service volume, quality, pricing, and information sharing. A shortage of competitive market pressures also limits the amount of data shared by carriers on a voluntary basis...”

## Fixing Information Asymmetry

The Amendments become effective in April 2023 and will increase the availability of basic rail freight service and performance data, primarily by Canadian National Railway (“**CN**”) and Canadian Pacific Railway (“**CP**”).

The Amendments improve the extent and granularity of the service and performance data CN and CP are required to disclose, including certain first mile, last mile, *en route* and contextual metrics. The Amendments also require CN and CP to report on a weekly basis the number of railway operating employees (locomotive

engineers and conductors) available to move traffic, albeit only at a provincial level.

The Amendments prescribe the methodology the railways must use to report certain data, which was previously left to the discretion of each railway, a stakeholder complaint in respect of the transitional provisions.

### **Recommendations**

The Amendments fall short of requiring disclosure of the specific service measurements stakeholders seek and need to overcome a well-recognized anticompetitive impact of information asymmetry between railways and shippers. We recommend amendments to require CN and CP to report

- at a subdivision-by-subdivision level (if not station by station), rather than merely provincial level reporting,
- railway capacity metrics station-by-station, and
- data regarding unit train and solid train types.

These recommendations simply require railways to collect and disclose information within their control to allow shippers to make better operating and infrastructure investment decisions, and policymakers to better assess when regulatory intervention is necessary to address the shortfalls identified by the National Supply Chain Task Force.

Additionally, the federal government must conduct regular reviews and ongoing reviews of the service and performance reporting requirements to assess the utility of the data, address shortcomings and identify areas of improvement and redundancy.

On balance, despite the failure to address significant shortcomings identified by stakeholders, the Amendments are a positive step towards necessary disclosure of basic rail service and performance data and the transparency necessary to support the efficient functioning of Canada's rail freight supply chain.

by [Ryan Gallagher](#), [François Tougas](#) and [Lucia Stuhldreier](#)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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