



Canadian  
Transportation  
Agency

Office  
des transports  
du Canada

Canadian Transportation Agency

# Annual Report 2009-2010

Making transportation efficient and accessible for all



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Canada 

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May 2010

The Honourable John Baird, P.C., M.P.  
Minister of Transport  
Tower C – Place de Ville  
330 Sparks Street  
Ottawa, ON K1A 0N5

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour to present to you the Annual Report of the Canadian Transportation Agency for the period 2009-10, including the Agency's assessment of the operation of the Act and any difficulties observed in its administration.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Geoffrey Hare', with a stylized flourish at the end.

Geoffrey Hare  
Chair and Chief Executive Officer



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# Message from the Chair and Chief Executive Officer

The Canadian Transportation Agency is a leading federal government quasi-judicial administrative tribunal and economic regulator. The Agency is highly respected for its fairness and balance, and significantly contributes to making the country's transportation system more competitive, efficient and accessible. The Annual Report highlights our work during 2009-10, which saw the Agency issue more than 2,600 rulings.

As the Agency enters the final year of its first-ever multi-year strategic plan, it will continue to assess progress achieved to date, while remaining focused on its current priorities and defining those it will pursue in the future.

## In tune with the needs of our clients and stakeholders

The free flow of information between the Agency and parties outside the organization is of critical importance to enhancing its service to clients. This year, the Agency continued to modernize its external communications by implementing a more efficient and all-encompassing client-centred inquiry system.

Furthermore, we began surveying key stakeholder groups on a wide range of measures of satisfaction with Agency services. This year's benchmark surveys will be complemented by automated online survey tools targeted at an even wider range of stakeholder groups in 2010-11.

## Addressing complaints through dispute resolution

The Agency is keenly aware of the negative impact which disputes between parties can have on transportation services. In order to resolve these issues as efficiently as possible, the Agency has developed a diverse range of approaches for facilitated settlements and for making timely decisions.

A significant proportion of disputes brought before the Agency were resolved via informal mechanisms, especially in the passenger air travel sector.

There were also a significant number of decisions made by the Agency in such areas, among others, as rail noise and vibration, allergies, public passenger rail cost determinations, airline tariff clarity and railway level of service.

Monitoring and, where necessary, enforcement of compliance with licensing and permitting requirements as well as previous Agency decisions, continued to be a priority.

## Updating regulations in support of a more efficient government

With a view to modernizing and simplifying the regulatory environment, in 2009-10 the Agency pursued or undertook consultation-based reviews of numerous functions under its authority.





A review of the Railway Interswitching Regulations entered its final phase during the year, and consultations got underway on the cost of capital methodology used by the Agency for a number of economic regulatory purposes. Also under review were Agency guidelines for coasting trade licence applications for the use of foreign ships in Canadian waters.

The Agency has been working closely with air carriers on the use of plain language so that consumers can better understand the terms and conditions found in tariffs, the contracts between airlines and passengers.

### Improving accessibility for persons with disabilities

In 2009-10, the Agency continued to show leadership in accessible transportation. For example, it reissued *Take Charge of Your Travel*, a trip planning guide for persons with disabilities, via innovative electronic applications such as DAISY, and as an audio book.

Two implementation guides for air carriers were also published on the topics of tactile row markers and spaces for guide dogs.

As well, the year saw the Agency release two reports that found near-total industry compliance with its code of practice on communication barriers faced by travellers who have sensory impairments.

### Investing time and energy to ensure our legacy continues

In light of the increasing number of expected retirements, a targeted corporate recruitment strategy was implemented to ensure that the Agency can continue to deliver high quality, responsive services. The Agency has also been particularly active on the succession planning, mentoring and professional development fronts, all of which contribute to supporting the Agency's objective to be an employer of choice.

We have acted quickly to address any issues raised in employee surveys, and our staff and management worked collaboratively to address them and find solutions that work for everyone.

Finally, we continued with our examination of the Agency's business processes as we seek opportunities to do things better, and to make effective use of available information technology systems and process management techniques.

Looking forward, I am confident that we are continuing to build on the Agency's legacy as a leading tribunal and economic regulator by making important contributions to a competitive, efficient and accessible national transportation system.

Geoff Hare  
Chair and Chief Executive Officer

# Key Accomplishments

In 2009-10, the Agency issued 2,609 rulings, virtually all of which required the involvement of Members of the Agency.

These rulings included:

539	Orders;
511	Decisions;
1,417	Permits;
33	Final Letter Decisions; and
211	Interim Decisions.

In its 2008-11 Strategic Plan, the Agency identified five priorities for action. What follows is a brief summary of key accomplishments regarding each of these five priorities in 2009-10.

## Effective dispute resolution and industry regulation

- Met or continued to make progress in meeting the targets set out in the Agency's Performance Framework;
- Complied with Ministerial Directives related to a Canada-U.S. dispute involving professional sports team air charters, one of which called for an investigation into the carriage of passengers by U.S. carriers solely between Canadian cities;
- Supported the negotiation of important bilateral air transport treaties;
- Accepted tariff filings from Air Canada, Jazz, WestJet and Air Transat reflecting commitments made by these airlines as part of the Government of Canada's "Flight Rights" initiative;
- Encouraged Canadian air carriers to put their tariffs into plain language, helping Canadians make informed decisions about their travel arrangements;
- Made a determination stating that the rail link to Toronto's Lester B. Pearson Airport proposed by the Union-Pearson AirLink Group is not under federal jurisdiction;
- Launched initiatives to update a number of regulatory frameworks administered by the Agency, on matters such as marine coasting trade, railway interswitching, cost of capital methodology, and airline foreign ownership limits; and
- Announced that the revenues of the Canadian National Railway Company for the movement of Western grain had exceeded its revenue cap for crop year 2008-2009, while those of the Canadian Pacific Railway Company for the same period were below its cap.

## A more accessible transportation network

- Released guides to assist air carriers in implementing provisions of the *Code of Practice: Aircraft Accessibility for Persons with Disabilities* related to space for service dogs and tactile row markers;
- Made significant progress in resolving disputes related to the appropriate accommodation of air travellers disabled as a result of their allergies;

- Became one of the first federal government bodies to make publications available for download in DAISY format—a digital talking book that makes print publications accessible to persons who are blind or have a visual impairment; and
- Launched innovative accessible electronic formats of *Take Charge of Your Travel*, a popular Agency publication that helps persons with disabilities plan their trips from start to finish.

### Enhanced internal and external relations

- Published a number of publications to assist Canadians in resolving transportation-related disputes, such as *Rail Noise and Vibration Complaints: Working together towards solutions*;
- Began implementing a client satisfaction survey framework and collecting benchmarking data on client satisfaction; and
- Initiated a number of consultations with stakeholders and clients within the federal transportation network in order to better serve Canadian consumers and transportation providers.

### The Agency's people as its greatest asset

- Engaged in an extensive consultation process with staff and management on sustaining a respectful workplace and began developing action plans to ensure that the Agency remains a workplace of choice;
- Continued to implement knowledge transfer projects, student recruitment initiatives and developmental opportunities for staff; and
- Developed new competency profiles and learning roadmaps for each employee level.

### Organizational support and responsiveness

- Addressed a number of dispute case processing issues and implemented process improvements and new practices that promote increased productivity, efficiency and consistent quality; and
- Adopted a revised Case Management Policy that will support better tracking of the progress of case files, increasing work efficiency and promoting best practices.



The Agency supports the goal of a federal transportation system that is competitive, efficient and accessible. With the powers that have been entrusted to us through Parliament, we will continue to meet that goal.

**Geoff Hare**  
Chair and CEO

For more on the Agency, its role and its vision, go to [www.cta.gc.ca/eng/aboutus](http://www.cta.gc.ca/eng/aboutus) 

For more on how the Agency works, visit: [www.cta.gc.ca/eng/process](http://www.cta.gc.ca/eng/process) 

# About Us

## Who we are

The Canadian Transportation Agency is an independent administrative body of the Government of Canada. It performs two key functions within the federal transportation system:

- As a **quasi-judicial tribunal**, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.
- As an **economic regulator**, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.

## Measuring our performance

The Agency's results-focused Performance Measurement Framework establishes benchmarks and determines the level of service delivery it needs to achieve. These benchmarks are used to track how closely objectives, results and specific targets are being met and to support short- and long-term decision-making.

## Our Mandate

To administer the economic regulatory provisions of Acts of Parliament affecting all modes of transport under federal jurisdiction.

## Our Mission

To assist in achieving a competitive, efficient and accessible transportation system through dispute resolution, essential economic regulation and communication in a fair, transparent and timely manner.

## Our Vision

To be a respected, leading tribunal contributing to a competitive and accessible national transportation system efficiently meeting the needs of users and service providers and the Canadian economy.

“

I'm Tricia and transportation matters to me. The Agency's ultimate goal is to be a model of accountability and transparency. We're striving to do so through the Performance Measurement Framework we introduced in 2008. This framework accurately and comprehensively tells us how we're doing, what areas need greater focus, and what issues needing attention are on our horizon. This results-based approach is proving its worth as it influences virtually every aspect of our operations: financial management, human resource allocation and organizational planning.”

**Tricia Brown**  
Manager, Strategic Planning



The Agency is committed to meeting the accountability requirements of a federal government organization by setting results-based measures and striving to meet or exceed its performance targets.

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## Performance Target

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### **A tribunal respected for its fairness and balance**

The Agency prides itself on its status as a leading Canadian tribunal. In making rulings, the Agency's Members carefully consider all of the facts before them, ensure that our procedures are fair and uphold the highest standards of impartiality.

Target: 0% of discretionary rulings overturned by the Federal Court of Appeal or the Supreme Court of Canada on the basis of procedural fairness

Status as of March 31, 2010: 0%

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For a complete listing of Agency decisions currently before the Federal Court of Appeal or the Supreme Court of Canada, go to [www.cta.gc.ca/eng/courts](http://www.cta.gc.ca/eng/courts)

## Our Values

### Integrity.

We act with honesty, fairness and transparency.

### People.

We treat people with fairness, courtesy and respect, and foster a cooperative, rewarding working environment.

### Quality Service.

We provide the highest quality services through expertise, professionalism and responsiveness.

### Communications.

We promote the constructive and timely exchange of views and information.

### Innovation.

We commit to creative thinking as the driving force to achieve continuous improvement.

### Accountability.

We take full responsibility for our obligations and commitments.

# The Agency's 2008-11 Strategic Plan

The Agency's first-ever three-year Strategic Plan was developed and launched in 2008 and will continue to serve as the Agency's guide until 2011.

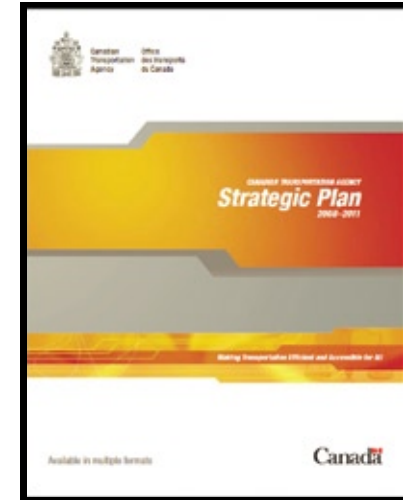
One overarching objective guides the implementation of the Strategic Plan – that of upholding the Agency's long-standing reputation as a leading Canadian tribunal.

This is being achieved by focussing on the following five priorities:

- 1 Effective dispute resolution and economic regulation.
- 2 Focussing on our people as our greatest asset.
- 3 Enhanced internal and external relations through clear and timely communications.
- 4 A more accessible transportation network without undue obstacles to the mobility of persons.
- 5 Organizational support and responsiveness through superior business management practices.



To read the Agency's Strategic Plan, go to [www.cta.gc.ca/eng/stratplan](http://www.cta.gc.ca/eng/stratplan)



## Performance Target



**TARGET  
ACHIEVED**

## Integrated Risk Management Framework developed

- Risk Management and Legal Risk Management Framework in place
- Updated Corporate Risk Profile approved by the Agency in 2009-10

# Our Greatest Asset: People

## Performance Target



### Recruitment strategy implemented

- Agency Student Employment Program in place
- Pools of qualified candidates created through selection processes in 2009-10 used to fill vacancies
- Targeted recruitment mechanisms developed for specific types of positions

## Performance Target



### Succession plan in place

- Gap analysis and identification of key positions and Agency vulnerabilities in place
- Ensured that recruitment strategy and knowledge management activities addressed vulnerabilities in 2009-10

## Employees

Any successful organization—in the public or private sector—well understands that its employees are its greatest asset.

The Agency employs more than 250 people with a variety of backgrounds and skill sets. Our workforce is made up of economists, engineers, lawyers, financial analysts, human resource and communications specialists, mediators, as well as case management, licensing and enforcement officers. Because the Agency is a relatively small entity within the public service, we work closely together—creating a tightly knit group that understands the far reaching effects of its work within and outside the Agency.

What's more, there is a strong sense of unity as diverse talents are often assembled into multi-disciplinary teams to tackle complex transportation matters. This unity greatly contributes to the Agency's effectiveness by establishing a collaborative and collegial atmosphere where each employee's contribution is sought and valued.

## Members

The Agency's five full-time Members are appointed by the Governor in Council. The Members are the quasi-judicial decision-makers within the Agency, and are responsible for rendering decisions and orders related to complaints or applications, as well as addressing other issues affecting Canada's federal transportation system.



“

I'm Alfred and transportation matters to me. I joined the Agency looking to become part of a team of dedicated professionals who care deeply about their work, who take responsibility for their actions and who understand how critically important their role is in the functioning of our transportation network. I found what I was looking for. I found a career, not just a job.

”

**Alfred Rugema Gibson**  
Human Resources Advisor



Because the Agency is a relatively small entity within the public service, we work closely together—creating a tightly knit group that understands the far reaching effects of its work within and outside the Agency.

In providing its services, the Agency is committed to clear and timely communications.

It is also committed to enhanced dialogue with its clients and stakeholders.

## Maintaining our Expertise

The Agency faces the same demographic challenge confronting all government departments: the retirement of a significant portion of its staff. To meet this challenge, the Agency is making greater efforts to attract, motivate, and retain highly skilled, talented individuals.

Through initiatives like our mentoring and succession planning programs, the Agency intends to remain and to continue to be seen as an employer of choice, known for offering a dynamic and positive work environment, challenging work and clear career development paths.

## Reaching Out

In providing its services, the Agency is committed to clear and timely communications. It is also committed to enhanced dialogue with its clients and stakeholders. The Agency strives to achieve this by:

- Effectively communicating the Agency's role, objectives, priorities and processes;
- Regularly engaging in dialogues with external clients and stakeholders; and
- Improving the Agency's ability to identify and respond to client and stakeholder issues and needs.

## Innovative ways of reaching out

Last year, the Agency launched *Take Charge of Your Travel*, a new guide for travellers with disabilities. It has proved so popular that, less than ten months later, a new print run was ordered to keep up with exceptionally high demand.

The Agency has taken an innovative step as part of its commitment to improving accessibility: *Take Charge* is now available in DAISY format on the Agency's Web site. A digital talking book format featuring easy navigation, DAISY makes print publications accessible to persons who are blind or have a visual impairment. The Agency is dedicated to using new technologies to make its content ever more accessible; as such, *Take Charge* should soon also be available for download as a podcast.

## Ensuring client satisfaction

In 2009-10, the Agency drastically revamped the way it responds to public inquiries by creating a more efficient and all-encompassing client-centred inquiry system.

Additionally, members of the public can now formally lodge their transportation complaint online and, with a confidential registration number, track the progress of the complaint online as it works its way towards a resolution.

The Agency is also now better equipped to deal with all written and electronic communications, while, at the same time, it is able to more thoroughly and quickly refer inquiries which fall outside the Agency's mandate to the appropriate private sector or government organization.

### Obtaining feedback from clients

The Agency has always been deeply committed to serving its consumer and industry clients. In 2009, the Agency developed a client-satisfaction survey framework in an effort to better understand its clients' needs and how Agency services could be improved.

In 2009-10, the Agency began surveying users of its dispute resolution and other services. The Agency is currently compiling the results in order to establish benchmarks for future performance measurement. This information will be used by the Agency in an effort to better understand and meet client and stakeholder needs, and to help it continuously improve its service delivery.

### Performance Target



### TARGET ACHIEVED

Measures of satisfaction with Agency services related to serving the needs of users, service providers and others affected by the national transportation system.

- ▮ Framework to measure client satisfaction in place
- ▮ Benchmark surveys conducted in 2009-10





How we work at  
**Resolving Disputes**

# The Agency's role in Dispute Resolution

The Agency resolved 425 disputes in 2009-10.

Of these,

366 were resolved through facilitation; and  
12 were resolved through mediation.

Additionally, of the 112 active cases in formal adjudication:

47 were resolved through decisions issued; and  
27 were withdrawn.

Each year, numerous people and organizations turn to the Agency looking for ways to resolve their disputes about transportation matters.

The Agency has a mandate and the expertise to resolve disputes about:

- ✦ transportation services;
- ✦ fares, rates and charges;
- ✦ terms and conditions of carriage; and
- ✦ accessibility.

Before filing a complaint with the Agency, a dissatisfied party is expected to first bring the complaint directly to the transportation service provider. If this approach does not resolve the complaint, the Agency can accept a request to investigate the complaint further.

## How we resolve disputes

Common sense and decades of experience have taught us that the most effective way to resolve disputes, as with virtually every other aspect of one's life, is by talking. It sounds simple and it often is. We encourage parties in a dispute to freely and rationally discuss an issue with a view to reaching a mutually acceptable solution.

Last year, over 88% of complaints brought by individual consumers were resolved informally, either through facilitation or mediation. Not only are acceptable solutions found relatively quickly, but both parties usually wind up saving considerable time and expense by resolving the issue without resorting to the Agency's formal adjudicated process – making this informal approach a true win-win situation.



For more on the Agency's dispute resolution processes, go to [www.cta.gc.ca/eng/disputes](http://www.cta.gc.ca/eng/disputes)



For detailed statistics on dispute resolution, go to [www.cta.gc.ca/eng/dr-stats](http://www.cta.gc.ca/eng/dr-stats)

## The Agency offers four distinct ways to resolve disputes:

### Facilitation

Facilitation involves an informal discussion with the parties to a dispute on how to resolve the issue at hand. Agency staff contribute their expert knowledge of the federal transportation system in order to aid in resolution.

### Mediation

Although more structured than facilitation, this form of dispute resolution also keeps the dialogue informal. The Agency may appoint a mediator, who works with the parties to keep talks focussed on a viable solution. There is a 30-day deadline for both parties to reach an agreement.

### Adjudication

In this formal process, the Members of the Agency—the quasi-judicial decision-makers—review the parties' submissions and evidence, then provide an analysis of the situation and a reasoned decision that has the weight of law.

### Arbitration

Final offer arbitration is triggered by a submission from a shipper, administered by the Agency and conducted by an independent arbitrator who will select either the final offer of the shipper or the carrier. Arbitration, another process where the arbitrator has more latitude in making a decision, can be requested by all parties to certain specific railway matters that are under dispute.

In 2009-10, the Agency received 26 requests for mediation.

Of these,

3	were declined by the respondent;
9	were withdrawn;
14	were mediated; and
12	were successfully resolved.

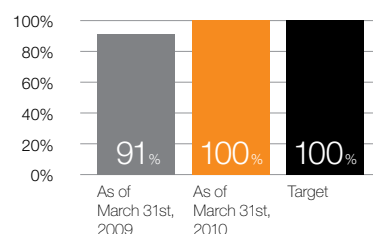
Of these 12 successful cases:

5	related to rail disputes;
6	related to accessibility disputes; and
1	related to a marine dispute.

## Performance Target

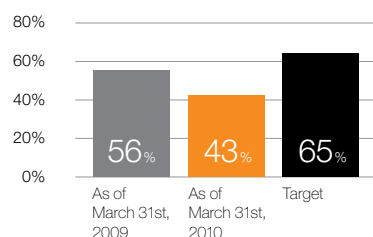


100% of mediation cases resolved within 30 days



## Performance Target

65% of disputes resolved formally within 120 days



## Striving for efficiency in dispute resolution

Although the Agency has addressed a number of dispute case processing issues, implemented process improvements and established new practices that promote increased productivity and efficiency, meeting the 120-day target for the resolution of certain complex cases through the formal adjudicative process continues to be a challenge.

Informal processes present an attractive alternative when resolving straightforward disputes. However, cases that are not resolved through informal methods tend to be more adversarial in nature, adding to the complexity of these cases. Certain formal cases may also be without precedent, or raise broad systemic or policy issues. Therefore, additional information and time may be required by the parties and extensions of time are not uncommon.

The Agency has and will continue to review its formal adjudicative process to improve the timeliness of its decisions. As part of its review, an extensive analysis was undertaken of all the steps of the adjudicative process. The analysis demonstrated that the 120-day deadline for issuing decisions leaves little leeway for many of the procedural issues that are invariably raised in adjudication and must be addressed to ensure natural justice is satisfied.

The Agency must be able to take the time it needs to carefully consider and weigh the evidence before it, with full due process provided to all parties. That responsibility, added to the increasing complexity of certain cases, makes it more difficult for the Agency to meet its 120-day performance target for such cases.

To address this challenge, the Agency will conduct a review of the Canadian Transportation Agency General Rules to identify alternative approaches that would better respond to the differing needs of the Agency and its clients in disputes and determinations, as well as provide more clearer guidance to self-represented parties appearing before the Agency.

Other initiatives will continue to be pursued to assist the Agency in addressing its workload and performance target challenges.

# Resolving Accessibility Disputes

In the federally-regulated transportation sector, it is the Canadian Transportation Agency's responsibility to ensure that all Canadians enjoy the same access to travel.

All disputes about accessibility must fall under the jurisdiction of the Agency, which includes any accessibility complaints dealing with federally-regulated air, rail, and extra-provincial ferry and bus transportation.

Essentially, the Agency has a responsibility—and the authority—to ensure that any undue obstacles to the mobility of persons with disabilities are removed from transportation services and facilities under its jurisdiction.

The Agency removes undue obstacles in two ways:

- on a case-by-case basis, by resolving individual complaints; and
- on a systemic basis, by developing regulations, codes of practice and standards to ensure accessibility.

## Implementation guides help canadian air carriers better serve travellers with visual impairments

In September 2009, the Agency released two implementation guides to assist air carriers in offering a better service to travellers who have a visual impairment.

The guides were produced following consultations with Canadian air carriers, professional service dog training institutions, national organizations of the blind and the Agency's own Accessibility Advisory Committee.

The new implementation guides were specifically designed to help air carriers address two provisions in the Agency's *Code of Practice: Aircraft Accessibility for Persons with Disabilities*. The provisions deal with tactile row markers and space for guide dogs in aircraft cabins.

The Agency is confident that this Air Code and new accompanying implementation guides will go a long way in helping carriers meet the needs of passengers with disabilities.

**Agency Accessibility Advisory Committee:**  
For advice on accessibility issues, the Agency consults its Accessibility Advisory Committee, made up of representatives from the community of persons with disabilities, the transportation industry and other interested parties.



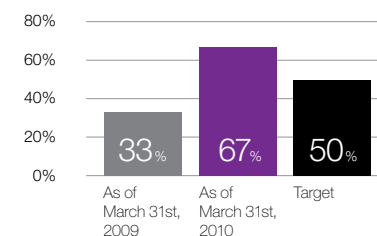
For a list of member organizations, go to [www.cta.gc.ca/eng/aac](http://www.cta.gc.ca/eng/aac)

## Performance Target



**TARGET ACHIEVED**

50% of accessible transportation disputes resolved through formal adjudication within 120 days





In the federally-regulated transportation sector, it is the Canadian Transportation Agency's responsibility to ensure that all Canadians enjoy the same access to travel.

## Agency powers

In accessibility cases, the Agency has broad powers to order that corrective measures be taken—such as purchasing or modifying equipment, changing or developing a policy or procedure, and enhancing a training program. Additionally, the Agency has the legislated authority to fine service providers for failing to take the prescribed corrective measures.

## OC Transpo fined

OC Transpo is the urban mass transit system which serves Ottawa, but also provides interprovincial bus service to and from Gatineau, Quebec—thereby placing it under federal jurisdiction.

In response to a 2007 complaint filed by a bus rider, the Agency found that OC Transpo's failure to call out stops was an undue obstacle to persons with disabilities, in this case persons with visual impairments. The Agency ordered OC Transpo to comply with its own policy of calling out stops.

Late in 2008, the Agency's Enforcement Division warned OC Transpo that it was not in compliance with the 2007 Decision. A second Decision in March 2009 gave OC Transpo 20 days to ensure that all necessary stops were called out. OC Transpo did not comply with the order and was issued a first time penalty of \$5,000 in July 2009.

In March 2010, after Agency enforcement officers found that compliance had still not been achieved, a second penalty of \$12,500 was issued.

See **How We Work at Ensuring Compliance** for more information on the Agency's enforcement activities.

## Undue obstacle:

Anything that impedes the mobility of a person within the federal transportation network where reasonable accommodations can be made to remove that obstacle.

In 2009-10, the Agency was involved in 53 accessibility cases, including:

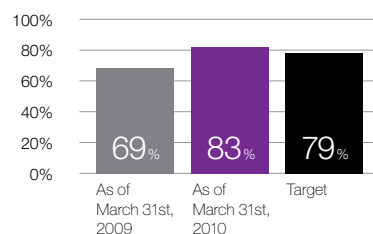
16	cases carried forward from previous years and 37 new applications received.
Of these,	
12	were resolved through facilitation;
6	were resolved through mediation;
3	were resolved through adjudication;
15	were withdrawn or closed due to lack of response from applicants; and
17	were still in progress at year end.


## Performance Target




**TARGET  
ACHIEVED**

79% of accessible transportation disputes resolved informally within 30 days



 For updates on the Agency's work on allergies, go to [www.cta.gc.ca/eng/allergy-cases](http://www.cta.gc.ca/eng/allergy-cases)

 For statistics on dispute involving the mobility of persons with disabilities, go to [www.cta.gc.ca/eng/access-statistics](http://www.cta.gc.ca/eng/access-statistics)

## Allergies

An allergy is not automatically considered to be a disability for the purposes of the Canada Transportation Act. However, the Agency has determined that a person with an allergy may be found to be a person with a disability if the allergy sufficiently limits the person's access to the federal transportation network.

When it receives an accessibility complaint, the Agency must determine on a case-by-case basis whether an individual is a person with a disability in the context of the federal transportation network. In doing so, the Agency applies the World Health Organization's International Classification of Functioning, Disability and Health, as well as its own framework for disability analysis. To establish their disability, complainants must prove that they have an impairment, as well as provide fact-based evidence of the presence of an activity limitation and a participation restriction in accessing the federal transportation network.

## Peanuts and nuts in aircraft cabins

In January 2010, the Agency issued a decision on two cases involving allergies to peanuts and nuts when travelling by air, in which it found that the applicants in both cases were persons with disabilities for the purposes of the Act. The Agency also found that the applicants did not encounter obstacles to their mobility with regard to the specific incidents that resulted in their complaints, as Air Canada accommodated the travellers' needs, although on an ad hoc basis.

However, the Agency noted that the lack of a formal policy to accommodate the needs of persons with allergies to peanuts or nuts can constitute an obstacle to the mobility of those whose allergy to peanuts or nuts results in a disability and that, when advance notice is provided, establishing a buffer zone is the appropriate accommodation for these persons. Based on these findings, as requested by the Agency, Air Canada provided a submission on:

- what constitutes adequate advance notification of a person's need for accommodation in the form of a buffer zone; and,
- the size of buffer zone for each of its aircraft types.

The Agency is now reviewing these submissions.

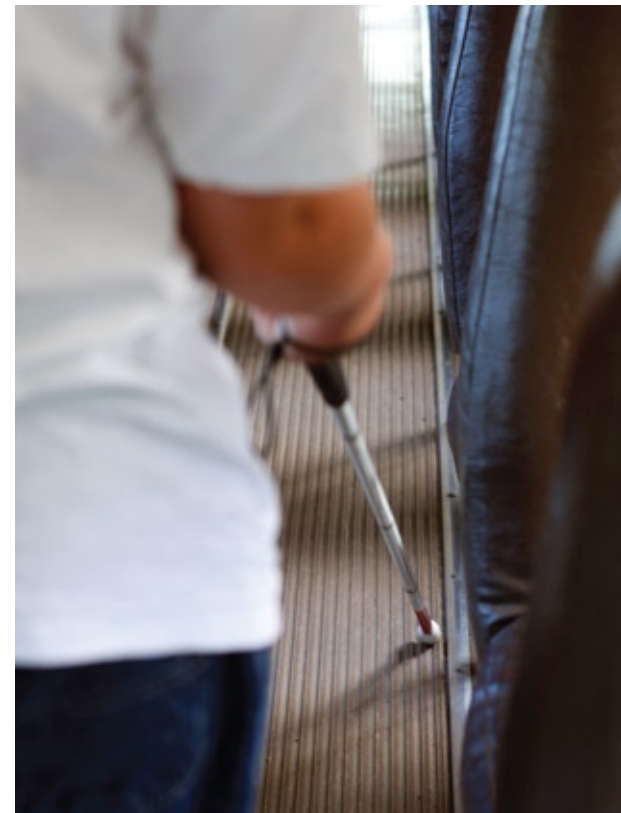
## Pets in aircraft cabins

Following Air Canada's reintroduction in June 2009 of a policy to accept pets – such as cats and dogs – for carriage in aircraft cabins, the Agency received several cat allergy complaints.

After examining evidence received from the complainants as well as Air Canada, Air Canada Jazz and WestJet, the Agency found that three complainants were in effect persons with disabilities, to the extent that the air carriers' policies on the carriage of cats in aircraft cabins impact their ability to travel by air. This means that the Agency will now examine whether these carriers' policies of accepting cats in the aircraft cabin constitute an obstacle to the mobility of the complainants in this case – i.e., that they prevent or impede the complainants from travelling by air.

The Agency's jurisdiction is limited to investigating only those issues which have been raised by the complainants – i.e., their allergy to cats. However, for reasons of efficiency and in the public interest of gathering the most relevant information possible as it relates to the air carriers' pet policies, the Agency has requested comments from the parties on expanding the scope of the Agency's investigation to include a thorough review of the carriers' policies on the carriage of other pets in aircraft cabins.

The Agency has also indicated to the parties that it would be gathering further evidence from them and would invite participation by organizations and individuals who have demonstrated a particular interest in the issue.



For more on resolving accessibility disputes, go to [www.cta.gc.ca/eng/access-disputes](http://www.cta.gc.ca/eng/access-disputes)

Air Carrier's Tariff:  
the published terms  
and conditions of  
services including fares,  
rates and charges.

## Resolving Air Travel Complaints

Last year was a difficult one for the Canadian and international air travel industries. Challenges such as the global economic crisis were partly responsible for the demise of Conquest Vacations, one of Canada's leading travel retailers, as well as the cessation of the operations of carriers such as Globespan and Skyservice. Travel was also affected by the H1N1 influenza pandemic, natural disasters in many parts of the world and additional tightening of security measures for travel to and from the United States. As a result, the number of consumers willing, or able, to travel during the period declined significantly.

On the positive side, despite recent economic challenges, passenger demand is forecasted to rise steadily for the foreseeable future. However, this projected increase in volume of traffic comes at a time of heightened security measures and mounting economic pressure on domestic and international air carriers to be as efficient and cost-conscious as possible.

The Agency has a mandate to address a broad range of consumer protection issues related to air travel including:

- Baggage (e.g. damaged, delayed, excess, liability, lost, size limits, theft);
- Flight disruptions (e.g. cancellation, missed connection, revised schedules);
- Tickets and reservations (e.g. lost, refunds, restrictions, availability of seats, cancellation);
- Denial to board (e.g. inability to fly as a result of carrier overbooking);
- Refusal to transport (e.g. late check-in, reconfirmation, adequate travel documents);
- Passenger fares and charges;
- Cargo (e.g. transportation of animals, and delayed, damaged or lost cargo); and
- Carrier-operated loyalty programs (e.g. Advantage, World Perk or Skymiles, but excluding loyalty and frequent shopper programs such as Aeroplan and Air Miles).

All valid complaints are assessed against the air carrier's tariff as well as Canadian transportation law and applicable international conventions.

Where it appears a carrier has not met its obligations, Agency staff will approach the carrier and informally attempt to facilitate a resolution of the complaint. The vast majority of complaints are resolved in this manner.

The Agency does not have jurisdiction over issues related to safety, and generally refers these complaints to Transport Canada. The Agency also does not have the mandate to deal with complaints involving the quality of air carrier services, such as the attitude of airline staff: such issues are the sole responsibility of airline management.

The Agency is, however, required by law to report on the number and nature of all air travel complaints received.

In 2009-10, the Agency received a total of 642 air travel complaints for processing through its dispute resolution processes, 599 for informal facilitation and 43 for formal adjudication. It also began the year with a caseload of 184 complaints which had not been resolved in the previous year, bringing the Agency's total active caseload to 826 air travel complaints.

**379** of these cases were resolved through the Agency's informal resolution process.

Of these,

**1** was determined to be outside the Agency's mandate;

**6** were determined to be about carriers which had ceased operations;

**33** were withdrawn;

**329** were settled through facilitation;

**10** were referred to the Agency's formal adjudication process; and

**123** cases were still undergoing facilitation at year end.

In addition, 268 complaints submitted to Agency staff without first being brought up with the carrier were referred for resolution between the complainant and the carrier.

Of these,

**203** cases were resolved between the complainant and carrier;

**40** cases were not resolved between complainant and carrier; and

**25** cases referred to the carriers by Agency staff were still being reviewed by the carrier at year end.

**16** air travel disputes were resolved through formal adjudication.

Of these,

**7** related to allegations that a carrier had failed to respect its tariff; and

**9** related to allegations that the provisions of a carrier's tariff were unreasonable.

In addition,

**21** air travel disputes were withdrawn from the Agency's formal adjudication process; and

**19** cases were still in formal adjudication at year end.

By way of its formal adjudication process, the Agency investigates complaints when persons or shippers believe that a carrier has failed to apply its tariff, or the provisions of a carrier's tariff are unreasonable or unduly discriminatory.



For statistics on air travel complaints, go to [www.cta.gc.ca/eng/atc-statistics](http://www.cta.gc.ca/eng/atc-statistics)



## Air travel complaint trends monitored through the Agency's facilitation process

In light of the challenges faced by the Canadian and international air travel industries, the recent decline in passenger volume was expected to translate into fewer complaints filed. However, the decline in the number of complaints reported may also be partly attributable to efforts made by air carriers, who are continuously implementing operational changes to improve their processing of passengers and baggage.

### Categories of complaints

Flight disruptions continue to be a concern for air travellers. However, this category no longer represents the most common type of issue cited in complaints submitted for investigation in 2009-10, having moved down to second place.

Even though it is outside the Agency's mandate to investigate complaints about such matters, quality of service was the most common issue raised in complaints brought to the Agency's attention in 2009-10, having been cited 224 times. Issues concerning baggage-related concerns such as delayed, lost or damaged baggage were reported 163 times in complaints. Issues concerning refusal to transport and difficulties related to ticketing remained among the top five most common issues cited in complaints, having been raised in 53 and 75 cases, respectively.

### Canadian air carriers

Two hundred and thirty-five complaints about eleven different Canadian carriers were submitted to the Agency for investigation, compared with 448 complaints reported about eight carriers in 2008-09 and 412 complaints reported about eleven carriers in 2007-08. Most of the complaints submitted for investigation were about Canada's major carriers, with smaller carriers accounting for 3% of all complaints.

Overall, there were fewer complaints about major air carriers investigated in 2009-10 than in the previous year. CanJet, Sunwing and WestJet had increases in the number of complaints reported over the previous year. Fewer complaints were received about Air Canada and its regional partner Jazz, as well as Air Transat and Skyservice. Notably, the number of complaints reported about Air Canada and Jazz fell from 356 to 161 last year, while the number of complaints reported about Skyservice fell from 17 to 5.

“

I'm Michèle and transportation matters to me. It's a good day when I can help an airline representative and a passenger with a complaint work things out. Establishing facts, getting both sides of the story and then helping parties find a solution that everyone can live with tells me the system is working. And I had a part to play in making that happen.

”

**Michèle Kowlessar**  
Complaints Officer



Where it appears a carrier has not met its obligations, Agency staff will approach the carrier and informally attempt to facilitate a resolution of the complaint. The vast majority of complaints are resolved in this manner.



In addition, the number of complaints reported about Air Transat decreased from 41 in 2008-09 to 25 in 2009-10.

### **Foreign air carriers**

The number of complaints submitted for investigation about U.S. carriers fell from 48 in 2008-09 to 21 in 2009-10. This was in part attributable to the decrease in the number of complaints reported about United Airlines, which fell from 17 to 4, and about Delta Airlines, about which 4 complaints were received as compared to 8 last year. While not as drastic a decline, the number of complaints submitted for investigation related to European Union air carriers dropped from 69 in 2008-09 to 41 in 2009-10. This is in part attributable to the decrease in the number of complaints reported about foreign carriers such as Alitalia, British Airways and Lufthansa.

The number of complaints submitted for investigation about all other foreign carriers also fell from 84 to 67 last year. This was due in part to a reduction in the number of complaints reported about Swiss International, which fell from 12 to two in 2009-10, as well as about Cubana, about which two complaints were received compared to 6 in 2008-09.

# Resolving Rail Disputes

Part of the Agency's mandate is to help resolve disputes between railway companies and other parties, or between railway companies.

The Agency investigates complaints and applications on the following topics:

- ✓ rail noise and vibration;
- ✓ railway crossings;
- ✓ transfer and discontinuance of railway lines;
- ✓ interswitching;
- ✓ running rights and joint track usage;
- ✓ level of service;
- ✓ public passenger service; and
- ✓ incidental charges, such as demurrage.

In most cases, railway companies and other parties can and usually do resolve disputes by negotiating agreements themselves. When negotiations break down, the Agency can be asked by one or both parties to intervene with a number of dispute resolution options, ranging from facilitation to formal adjudication.

## Rail Noise and Vibrations: Working together towards solutions

Building upon the guidelines developed in 2008-09 to help communities and railways resolve issues related to railway noise and vibration, the Agency has released a brochure called *Rail Noise and Vibration Complaints: Working together towards solutions*. Designed to provide a very brief overview of the process used to resolve disputes related to rail noise or vibration, the publication leads the reader through the main steps of the Agency's complaint process. *Working together towards solutions* is a useful tool to inform readers of collaborative measures available and to direct them towards the more comprehensive guidelines.

In 2009-10, the Agency received one new rail noise and vibration complaints, and resolved one other. Two complaints carried over from previous years were resolved through mediation.

In 2009-2010, the Agency resolved 38 rail dispute cases.

Of these,

25 were resolved through facilitation;

5 were resolved through mediation; and

8 were resolved through formal adjudication.

In addition,

2 disputes were determined to be eligible for referral to final offer arbitration.

## Interswitching:

The method by which traffic is transferred from the lines of one railway company to another.



For more information on resolving rail-related disputes, go to [www.cta.gc.ca/eng/rail-disputes](http://www.cta.gc.ca/eng/rail-disputes)



*Rail Noise and Vibrations: Working together towards solutions* is a useful tool to inform readers of collaborative measures available and to direct them towards the more comprehensive guidelines.

## GO Transit construction to go more quietly

In October 2009, after investigating a complaint filed by a community group, the Agency found GO Transit in breach of its obligation under section 95.1 of the *Canada Transportation Act* to cause only such noise and vibration as is reasonable during construction of the West Toronto Diamond grade separation. This was in relation to GO Transit's pile-driving activities at the construction site. The Agency found that, given the circumstances, local residents' prolonged exposure to the noise and vibration generated at that location was unreasonable.

Before making a final determination and ordering any changes to the project, the Agency provided GO Transit with the opportunity to comment on the Agency's proposed measures related to the noise and vibration. After an assessment of GO Transit's comments, as well as comments by the West Toronto Diamond Community Group and the City of Toronto, the Agency issued a final decision ordering GO Transit to implement corrective measures for its project.

## Construction of rail lines

Laying new track of any length has the potential to affect the environment through which it is to run. The Agency is empowered by the *Canadian Environmental Assessment Act* to gauge the impact of new construction on the environment, and either issue or withhold permission to proceed based on the results of that assessment.

In 2009-10, the Agency was involved in nine ongoing environmental assessment processes for proposed rail line construction projects, and issued three decisions giving authority to construct railway lines.

Another 47 environmental assessment processes for projects such as road and utility crossings required Agency involvement.

## Crossings

In 2009-10, the Agency processed 111 agreements filed by parties who had successfully conducted their own negotiations related to crossings. These agreements became orders of the Agency. Where no agreement could be reached, the Agency was called upon by the parties involved to assist them in reaching a fair and equitable resolution.

### Performance Target

100% compliance with prescribed mitigation conditions to reduce environmental, economic and social impacts of railway construction projects



Status as of March 31, 2010: no applications for projects requiring mitigation conditions received in 2009-10

The Agency issued decisions on three crossings through its formal adjudication process, and resolved a further 24 cases through facilitation and 3 through mediation. In addition, two cases were closed internally or withdrawn.

Of these,

25	concerned private or road crossings; and
7	concerned utility crossings.



For detailed statistics on railway infrastructure and construction, go to [www.cta.gc.ca/eng/rail-stats](http://www.cta.gc.ca/eng/rail-stats)

## Applications dealing with recent legislative changes

### Public passenger service providers

When a public passenger service provider is unable to reach an agreement with a railway company concerning the use of its railway, land, equipment, facilities or services, the service provider may apply to the Agency to decide the matter.

The Agency issued its first decision under subsection 152.2(1) of the *Canada Transportation Act*, determining the amount to be paid by VIA Rail Canada Inc. for the use of certain of the Hudson Bay Railway Company's railway, land, equipment, facilities and services. The amount determined by the Agency reflected the cost associated with the public passenger provider's use of the railway's infrastructure and services and took into account a number of factors.

### Level of service

The Agency issued three decisions regarding complaints about railways' level of service.

Central Alberta Transloading Terminal Limited (CATT), a transload operator, filed a complaint asserting that CPR failed to meet its level of service obligations and that it charged unreasonable demurrage for the late return of rail cars. The Agency did not find any evidence that CPR had breached its level of service obligations and dismissed this aspect of the complaint. As the demurrage component was based entirely on the level of service complaint which the Agency dismissed, the application regarding demurrage charges was also dismissed.

While it was argued by the railway company that the transload operator did not have standing to bring an application under section 120.1 of the *Canada Transportation Act*, as it is a mechanism only available to shippers, the Agency found that the term "shipper" does not prevent a party from bringing a complaint to the Agency under this section of the Act when it is subject to demurrage charges related to a contract or other agreement.

Northgate Terminals filed a complaint against CN, seeking a determination that the reduction of the number of deliveries by CN was a breach of the railway company's

level of service obligations to it. The Agency found that CN had breached its level of service obligation to provide adequate and suitable accommodation for the receiving of traffic and ordered that a second switch be provided, subject to certain conditions.

In another level of service complaint against CN, filed by Western Grain Trade, the Agency found that CN had not breached its level of service obligations.

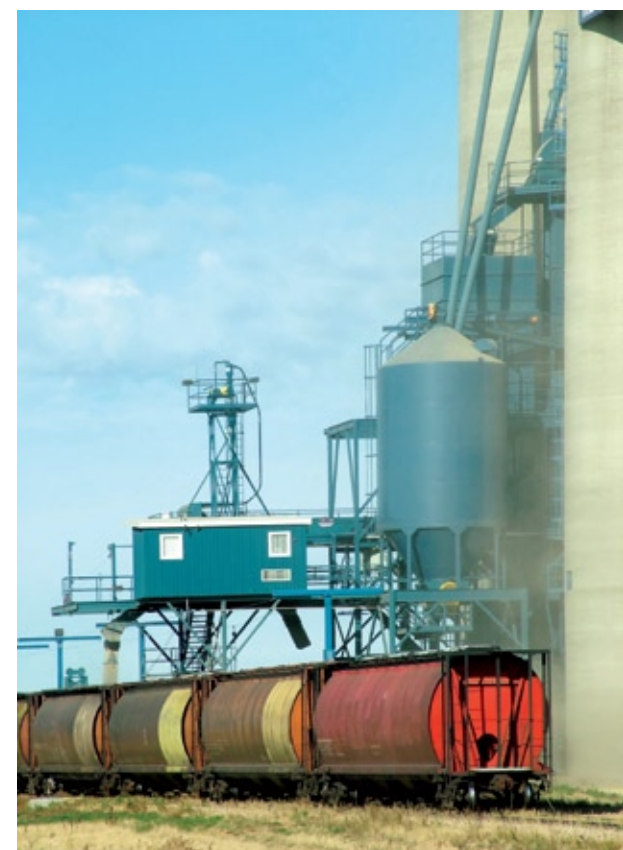
### **Producer car loading sites**

Railway companies are required under the Act to keep current, and publish on their Internet site, a list of available sidings in the Western Division where railway cars allocated by the Canadian Grain Commission can be loaded by individual producers. A railway company may only remove a siding from its list sixty days after giving notice of its intention to do so.

In September 2009, the Agency received a number of letters from parties concerned about CN's plans to delist 53 producer car loading sites and asking the Agency to stop this action. However, as CN was following the process provided for in the Act, the Agency did not have the authority to prevent CN from delisting its sidings. CN delayed delisting these 53 available sidings until January 1, 2010.

In December of 2009, the Agency received two level of service complaints with respect to CN's delisting of its producer car loading sites, in which the complainants stated that their future ability to access local rail service would be harmed if the sites are closed, resulting in unacceptable and inadequate level of rail service. The complainants requested that the Agency put a moratorium on the further delisting of any sites and on the removal of infrastructure from already delisted sites to allow time for the matter to be examined, including by the Rail Service Review Panel. The request for a moratorium was dismissed as the complainants had failed to satisfy the Agency that the test established by the Supreme Court of Canada for interim injunctive relief had been met.

At the end of the fiscal year, the level of service complaints were still being heard.





Marine disputes can involve user fees at ports, charges for pilotage services, or coasting trade applications for foreign or non-duty paid ships to work in Canadian waters.

# Resolving Marine Disputes

Marine disputes can involve user fees at ports, charges for pilotage services, or coasting trade applications for foreign or non-duty paid ships to work in Canadian waters.

The Agency examines marine complaints on the following topics:

- disputes related to coasting trade applications;
- tariffs proposed by pilotage authorities;
- fees fixed by port authorities;
- final offer arbitration of northern resupply carrier disputes; and
- unreasonable price increases or reductions of service by a shipping conference.

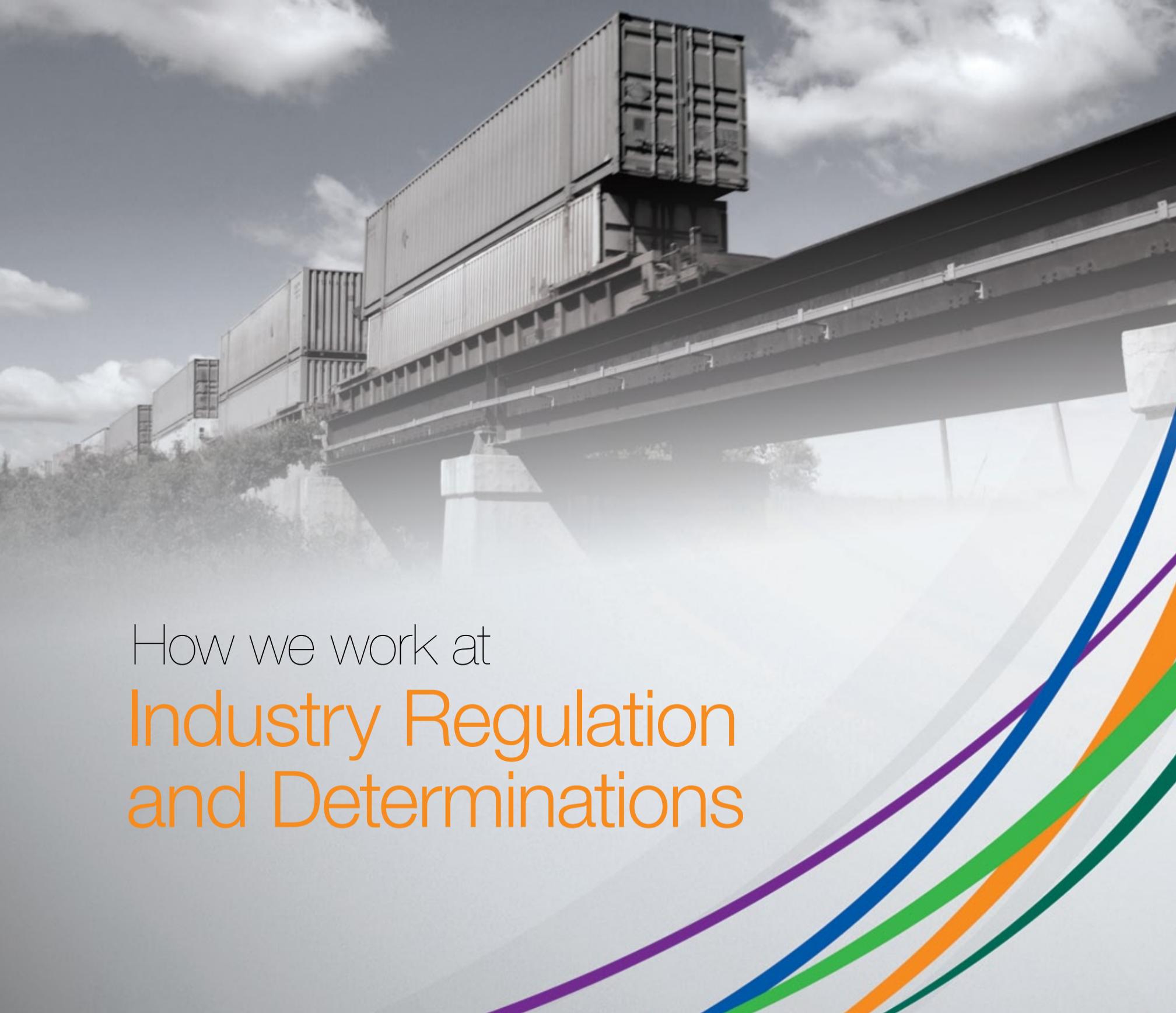
In 2009-10, the Agency worked on 25 marine disputes:

20	coasting trade disputes were resolved;
1	pilotage fee dispute was mediated; and
4	are currently in progress.
Of these 4,	
1	concerns port authority user fees; and
3	are coasting trade disputes.



For more information on resolving marine disputes, go to [www.cta.gc.ca/eng/marine-disputes](http://www.cta.gc.ca/eng/marine-disputes)





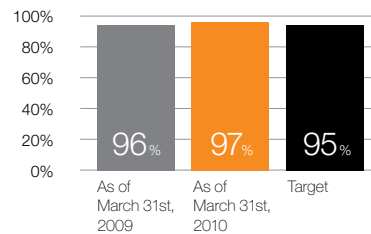
How we work at  
**Industry Regulation  
and Determinations**

# Essential Regulation for the Transportation Industry

## Performance Target



95% of determinations issued within 120 days



For more on industry regulation and the issuance of determinations, go to [www.cta.gc.ca/eng/industry](http://www.cta.gc.ca/eng/industry)

Within the specific powers assigned to it by legislation, the Agency participates in the economic regulation of modes of transportation under federal jurisdiction, including:

- licensing air and rail carriers and acting as one of Canada's aeronautical authorities;
- determining whether terms and conditions of air travel are just and reasonable;
- approving the adequacy of the protection of advance payments made by charter companies contracting with air carriers;
- setting railway revenue caps for moving Western grain;
- setting financial and costing frameworks for certain federally-regulated railways;
- issuing certificates of fitness for federally-regulated railways;
- setting interswitching rates and establishing the net salvage value of railway lines to facilitate their orderly transfer; and
- determining if Canadian ships are available and suitable to perform services that a resident of Canada has requested be provided by foreign ships in Canadian waters.

The Government of Canada's national transportation policy permits the domestic market to self-regulate. However, it also acknowledges that regulation can be required to meet public objectives or in cases where parties are not served by effective competition.

# Essential Regulation for Canada's Air Carriers

When it comes to regulating air transportation, the Agency is responsible for:

- issuing licences, authorities and charter permits to Canadian and foreign air carriers offering services to the public;
- enforcing all applicable licensing requirements;
- participating in the negotiation and implementation of international air transport agreements as part of the Government of Canada negotiating team; and
- regulating international air tariffs according to bilateral air transport agreements and Canada's Air Transportation Regulations.

The Agency also ensures consistency with Canadian legislation and regulations, including with respect to:

- air fares;
- rates and charges;
- terms and conditions of carriage; and
- code-sharing, wet leasing and charters.

## Plainly speaking: Making air tariffs easier to understand

A transportation provider's tariff is, in effect, the contract between the provider and the traveller, the published terms and conditions which fully state the responsibilities of each party. Unfortunately, too few Canadians are aware that, when they travel by air, their rights and obligations are governed by this contract.

By better understanding the terms of an air carrier's tariffs, Canadians will be able to make informed decisions about their travel arrangements. With this in mind, the Agency has launched initiatives aimed at making tariffs easier to access and to understand – which in turn ensures that consumers are increasingly aware of their rights. These include:

- ensuring that domestic carriers that sell services electronically post terms and conditions of carriage on their website, and initiating a similar action with respect to international air carriers;



For more information on the regulation of Canada's air transportation sector, go to [www.cta.gc.ca/eng/air-industry](http://www.cta.gc.ca/eng/air-industry)

Of the 148 applications for new licences processed in 2009-10:

1 was denied;  
4 were withdrawn; and  
7 resulted in a licence being issued.

Of these,

10 were issued to 3 Canadian applicants for the operation of a scheduled international air service using large aircraft between Canada and a foreign country:

Canadian Airline	New licences issued for services between Canada and...
Air Canada	Lebanon, Iran, Syrian Arab Republic and Belize
WestJet	Cuba, Trinidad and Tobago, Bermuda, Turks and Caicos Islands and St. Maarten
Enerjet	United States of America

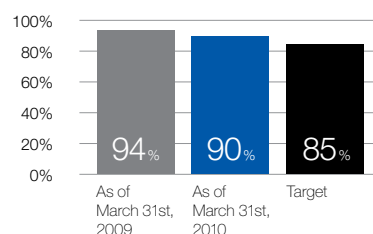


For more information on tariffs, go to [www.cta.gc.ca/eng/tariffs](http://www.cta.gc.ca/eng/tariffs)

## Performance Target



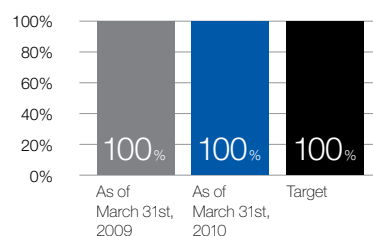
85% of licences issued within 14 days of receipt of completed application



## Performance Target



100% of air carriers' insurance certificate renewals reviewed



For detailed statistics on the issuance of licenses, go to [www.cta.gc.ca/eng/licensing-stats](http://www.cta.gc.ca/eng/licensing-stats)

- educating carriers on their obligation to make their terms and conditions available to the public at their business offices and post signage to this effect; and
- helping air carriers of all sizes to simplify their terms and conditions by developing a sample tariff in plain language.

## Licensing

The Agency licenses Canadian applicants to operate air services within Canada, and licenses Canadian and foreign applicants to operate scheduled and non-scheduled international air services to and from Canada.

The Agency processed 1,029 air licensing activities over the course of 2009-10, including applications for new licences, cancellations, suspensions, and reinstatements.

The Agency continues to maintain a licensing regime that ensures that publicly-available air services:

- meet the applicable Canadian air ownership and control requirements;
- have appropriate liability insurance;
- meet certain financial requirements when they start operations, if they are Canadian; and
- hold a Canadian aviation document issued by Transport Canada.

## Financial fitness

In 2009-10, the Agency completed two reviews of the financial fitness of Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats.

The purpose was to ensure they had a reasonable chance of success, which minimizes disruptions in service and protects consumers. Both were approved by the Agency.

## Canadian ownership and control

The Agency reviewed 54 Canadian applicants already operating or proposing to operate domestic or international air services in 2009-10.

Five reviews involved major investigations because the companies had complex ownership structures or there were non-Canadian minority shareholders or business associates who might have exercised control over the applicant.

After verifying that the companies were incorporated in Canada, that at least 75% of their voting interests were owned and controlled by Canadians, and that they were controlled in fact by Canadians, the Agency approved 53 applications. One was denied on the basis that the applicant would in fact no longer be controlled by Canadians.

## Foreign ownership limits for licensed Canadian air carriers

In March 2009, a legislative amendment was introduced to allow for an increase in foreign ownership in Canadian air carriers by non-Canadians. The amendment allows for an increase in the amount of voting interests owned and controlled by specified categories of non-Canadians to percentages that are to be specified in regulations, which in total may not exceed 49 percent.

The Agency is in the process of creating new regulations to provide the means through which the changes to the *Canada Transportation Act* may be adopted. The Agency held formal consultations on the proposed regulations and received submissions from nine different stakeholders.

## Charters

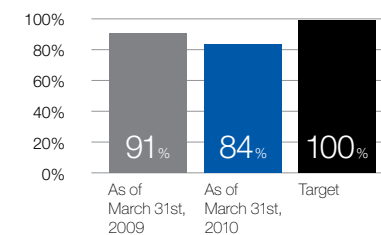
One or more tour operators may contract with an air carrier for the passenger seating capacity of an airplane. This activity is called chartering. The tour operator then sells these seats to the public, usually through a travel agent.

The Agency's permit system for international charter operations ensures the protection of advance payments received by air carriers for the chartering of the aircraft and crew in respect of international passenger charter flights originating in Canada. A letter of credit – or other agreement – serves as a guarantee that advance payments by the chartering tour operator are reimbursed rapidly should the air carrier not fulfill its obligation to operate the flight.

Sometimes, carriers are asked to provide a charter flight on short notice between Canada and another country. Because Agency authorization is needed before flight

## Performance Target

100% of air licence suspension orders issued within 48 hours upon notification of Air Operator Certificate suspension or cancellation, or of invalid insurance



For more on the Agency's air licensing activities, including an air carrier licence search tool, go to [www.cta.gc.ca/eng/licensing](http://www.cta.gc.ca/eng/licensing)



By better understanding the terms of an air carrier's tariffs, Canadians will be able to make informed decisions about their travel arrangements.

departure, the Agency offers a 24-hour telephone service to deal with urgent cases outside its normal business hours.

## Charter flights: Honouring an international agreement

Between August and December 2009, the Agency complied with four Ministerial Directives related to a dispute with the United States of America involving professional sports team air charters.

On behalf of the Minister of Transport, the Agency conducted an inquiry into the carriage of passengers by U.S. air carriers solely between Canadian cities—a practice called cabotage. Following a Ministerial Directive in response to actions by the United States Department of Transportation against the operation of sports team charters by Canadian carriers, the Agency prohibited charter flights carried out by U.S. carriers under season-long contracts with professional sports teams that included multiple stops in Canada.

Following the issuance of a new directive on the basis of reciprocity with the U.S., the Agency allowed such charter flights carried out by U.S. carriers under season-long contracts with National Hockey League organizations to take place for the 2009-2010 season, subject to revised filing requirements regarding the processing of applications. The Agency maintained the prohibition on other professional sports team charters.

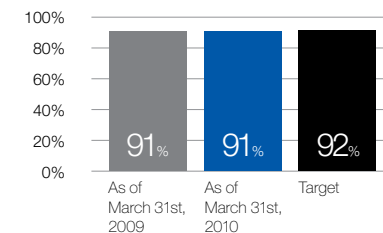
Following continued discussions between the Canadian and U.S. Governments on this issue, each side confirmed that, going forward, Canadian and U.S. carriers would be permitted to operate season-long charter flights on behalf of professional sports teams. As a result, the Minister directed the Agency to allow these operations for all professional sports teams, subject to certain monitoring and reporting requirements, as imposed by the U.S. on Canadian carriers. This new regime is now being applied by the Agency, pending a review and further discussions between Canadian and U.S. authorities.

## Bilateral air transportation agreements

The Agency participates in the negotiation of bilateral air agreements and has a responsibility to ensure all international air transportation agreements are being honoured.

### Performance Target

92 percent of Charter Permits issued within 30 days



To learn more about permits and the Agency, go to [www.cta.gc.ca/eng/charter-permits](http://www.cta.gc.ca/eng/charter-permits)



For more information on the Agency's role in bilateral relations, go to [www.cta.gc.ca/eng/bilateral](http://www.cta.gc.ca/eng/bilateral)

**Flight Rights Canada:**  
 Announced by the  
 Government of Canada  
 in 2008, Flight Rights  
 Canada describes  
 how Canadian  
 air carriers should  
 treat passengers  
 should a flight be  
 delayed, overbooked  
 or cancelled, as  
 well as other related  
 passenger rights.

This year, the Agency participated in seven successful negotiations, namely with Cuba, El Salvador, Ethiopia, Japan, Morocco, South Africa and Tunisia.

### Comprehensive Air Transport Agreement with EU member states

On December 18, 2009, Canada's Minister of Transport signed an air transport agreement with the European Union, allowing Canadian and EU airlines to fly between any points in the 27 EU member states and Canada.

The Agency, as the licensing authority, is responsible for implementing and administering provisions of the Canada-EU agreement falling under its jurisdiction, as well as ensuring that airlines operate within the terms of the agreement.

The Agency anticipates a rise in the number of applications by Canadian and EU-based carriers over the next several years.

### Acceptance of Flight Rights provisions into air carriers' tariffs

The Agency continued to administer international air tariffs in order to ensure that bilateral agreements are respected and that tariffs are clearly expressed. In particular, the Agency reviewed and accepted tariffs filed by Air Canada, Air Canada Jazz, WestJet and Air Transat to incorporate the "Flight Rights" provisions into their international and transborder tariffs.

# Essential Regulation for Canada's Rail Carriers

The Agency determines the railway revenue caps for the movement of Western grain and the regulated railway interswitching rates. It also processes applications for certificates of fitness for the proposed construction and operation of railways, and approvals for railway line construction.

## Western grain

Under the *Canada Transportation Act*, the Agency determines a grain transportation revenue cap for the Canadian Pacific Railway (CPR) and the Canadian National Railway (CN). These caps are a form of economic regulation that enables CN and CPR to set their own rates for services, provided the total amount collected remains below the ceiling set by the Agency.

In setting the annual caps, the Agency uses an inflation factor specifically developed for the railway industry that reflects forecasted price changes for railway labour, fuel, material and capital purchases by CN and CPR.

It is necessarily a complex process which sees the Agency annually consulting with grain producers, the Canadian Wheat Board, shipper organizations, railway companies, grain companies, other federal departments, and provincial and municipal governments to set revenue caps. At the end of a year, the Agency must then determine whether or not each cap has been exceeded by the railway company and assess financial penalties based on the amount if a railway goes over the cap.

## Revenue Cap determination

On December 31, 2009, the Agency announced that CN's revenues for the movement of Western grain had exceeded its revenue cap for crop year 2008-09. The Agency also ruled that CPR's revenues from grain transportation for the same period were below its cap. CN's grain revenue of \$479,788,412 was \$683,269 above its revenue cap of \$479,105,143. CPR's grain revenue of \$484,806,288 was \$1,149,665 below its cap of \$485,955,953.

An appeal by CN on the issue of performance penalties regarding its revenue cap for the 2007-08 crop year was allowed in part by the Federal Court of Appeal. As a result, part of the decision of the Agency relating to the performance penalty was set





Certificates of fitness are issued when the Agency is satisfied that a company proposing to construct or operate a railway within its legislative authority has adequate third-party liability insurance.

aside and referred back to the Agency for it to make an adjustment to CN's 2007-08 revenue cap.

## Certificates of fitness

In 2009, the Agency was asked by Union-Pearson AirLink Group Inc. and related SNC-Lavalin entities to determine the jurisdictional status of the proposed construction and operation of the passenger rail link project which would link Toronto's downtown Union Station to Lester B. Pearson International Airport. On July 8, 2009, the Agency determined that this undertaking would not fall within federal jurisdiction, and that it therefore did not need a certificate of fitness.

The Agency also varied one certificate of fitness for BNSF Railway following the sale of a portion of track located on the Burrard Inlet rail barge slip in Vancouver to the Southern Railway of Vancouver Island.

As well, following the acquisition by Logistec Corporation of Sydney Coal Railway Inc., the Agency found that the third party liability insurance coverage remained adequate and that no variance to Sydney Coal Railway Inc.'s certificate of fitness was required.

## Net salvage value

There are various points during the discontinuance of a railway line when the Agency can be called upon to assist in the process by determining the net salvage value of the railway assets.

In 2009-10, the Agency had one active case involving the Municipality of Chatham-Kent and CSX Corporation. At the end of the year, the two parties were still completing a study of the environmental remediation costs of the railway line. In addition, at the request of the parties involved, Agency staff developed informal estimates of the net salvage value of the track assets for three railway subdivisions, representing approximately 285 miles of railway line. These staff estimates were conducted under contract between the Agency and the parties on a cost-recovery basis, using the Agency's established methodology.





## Review of Railway Cost of Capital Methodology

Last year saw the Agency launch a review of its cost of capital methodology. The review is being conducted in two phases: a study phase and a hearing phase. An independent consultant is currently examining existing cost of capital methodologies and principles, the Agency's current cost of capital methodology, as well as those used by other economic regulatory bodies. The next step is the hearing phase, during which a panel of Agency Members will consider the consultant's report and gather evidence from railway companies, shippers and other interested parties to determine if there is a potentially superior methodology or methodologies, or improvements that should be made, to the Agency's current "benchmark" methodology.

## Interswitching rates

By year end the Agency had decided to initiate further consultations with stakeholders before finalizing the interswitching rates and proceeding to amend the current regulations, given the significant proposed changes to the methodology the Agency uses to determine interswitching costs incurred by the railways.



For a list of federally-regulated railway companies, go to [www.cta.gc.ca/eng/rail-industry](http://www.cta.gc.ca/eng/rail-industry)

# Essential Regulation for Canada's Marine Industry

The Agency administers aspects of the *Coasting Trade Act*, which is designed to protect the interests of Canadian vessel operators while allowing the use of foreign or non-duty paid ships in Canada when no Canadian ship is suitable and available for a given proposed service.

## Coasting trade applications

The Agency is responsible for determining if Canadian ships are suitable and available to operate commercial services in Canadian waters, which may otherwise be provided by foreign or non duty-paid ships upon request by a resident of Canada.

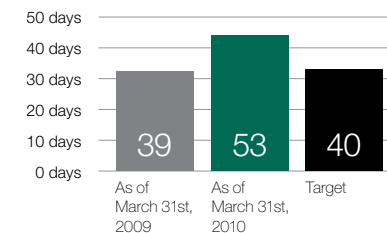
Once the Agency has determined that no Canadian ship is suitable and available to provide the service or perform the activities required, it is the responsibility of the Minister of Public Safety and Emergency Preparedness to issue the licence.

## Agency consultation on coasting trade guidelines

In late 2009, the Agency initiated consultations as part of a review of its Guidelines Respecting Coasting Trade Licence Applications. The objective was to gather comments from interested parties regarding the proposed guidelines, a revised notification process involving e-mail or Internet, and any other matters related to the Agency coasting trade process. The Agency is currently reviewing the many submissions received during the consultation, and will issue revised guidelines in 2010-11.

### Performance Target

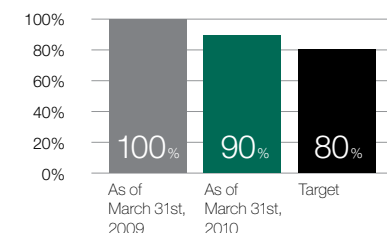
Average of 40 days to complete rulings on coasting trade applications (with offer)



### Performance Target



80% of coasting trade applications processed within 90 days (when an offer is made)



For detailed statistics regarding coasting trade applications, go to [www.cta.gc.ca/eng/marine-statistics](http://www.cta.gc.ca/eng/marine-statistics)



The Agency administers aspects of the *Coasting Trade Act*, which is designed to protect the interests of Canadian vessel operators, while allowing the use of foreign or non-duty paid ships in Canada.



How we work at  
**Ensuring Compliance**

# Enforcement

In 2009-10, Agency enforcement staff undertook 159 inspections, and initiated 54 investigations.

Of these,

33	resulted in informal warnings;
12	resulted in formal warnings; and
12	notices of violation were issued.

The decisions and orders issued by the Agency would be powerless without the ability to monitor performance and impose penalties for non-compliance.

The Agency's enforcement officers ensure compliance among transportation providers subject to the *Canada Transportation Act*, the Air Transportation Regulations and the Personnel Training for the Assistance of Persons with Disabilities.

The Agency has generally found Canadian companies extremely co-operative and constructive in finding ways to ensure compliance.

Agency enforcement officers may also use their powers to levy fines until compliance is achieved. In very rare cases, the Agency has turned to law enforcement agencies to prosecute offenders when transportation laws have been violated.

## Performance Target



### TARGET ACHIEVED

Compliance with the Canada Transportation Act and its attendant regulations by air licensees and persons subject to the Personnel Training for the Assistance of Persons with Disabilities Regulations, as determined by inspections:

- 100% compliance with the requirements to hold a valid licence, insurance and Air Operator's Certificate



For more on the Agency's enforcement activities, go to [www.cta.gc.ca/eng/enforcement](http://www.cta.gc.ca/eng/enforcement)



“

I'm Michael and transportation matters to me. In my capacity as Manager of Enforcement for the Agency, I have the opportunity to travel extensively, working with airports and carriers to ensure compliance – either to a specific ruling or with legislation and regulations. I am struck by the fact that, with very, very few exceptions, transport companies want to do the right thing; they understand that we're all working towards the same goal – an effective, efficient, accessible transportation system.”

**Michael Pearson**  
Manager, Enforcement



The decisions and orders issued by the Agency would be powerless without the ability to monitor performance and impose penalties for non-compliance.



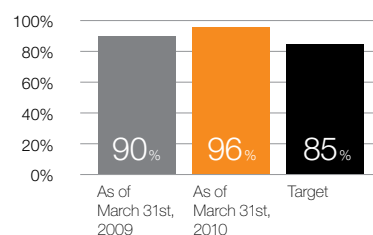
For detailed statistics on enforcement, go to [www.cta.gc.ca/eng/enforcement-statistics](http://www.cta.gc.ca/eng/enforcement-statistics)

## Performance Target



**TARGET  
ACHIEVED**

85% of air transportation compliance determinations issued under the Periodic Inspection Program within 120 days



To learn more about the Codes of Practice for Transportation Service Providers, visit [www.cta.gc.ca/eng/codes-of-practice](http://www.cta.gc.ca/eng/codes-of-practice)

# Monitoring

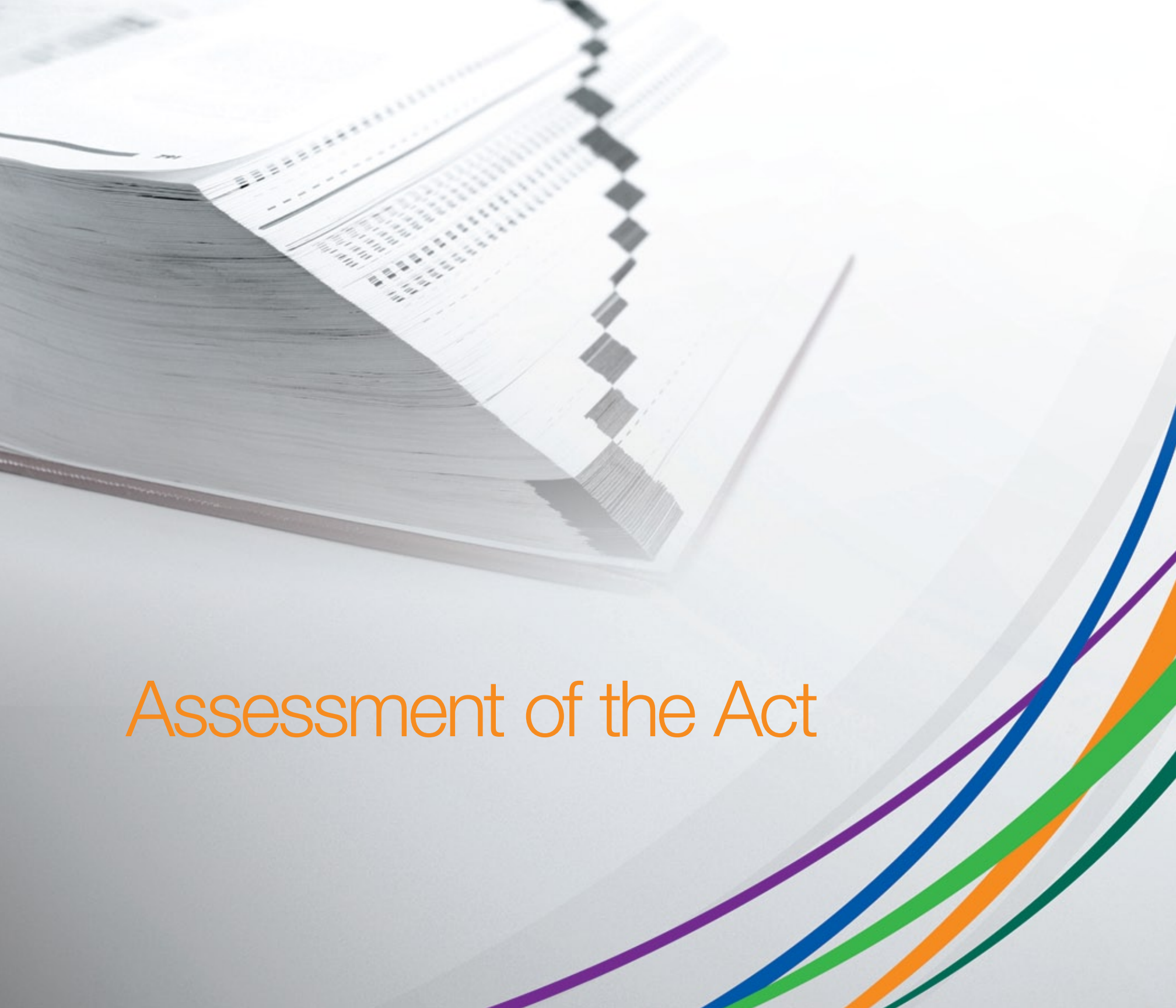
## Compliance reports track removal of communication barriers

On April 1, 2009, the Agency released two reports regarding the *Code of Practice: Removing Communication Barriers for Travellers with Disabilities*.

The Agency has developed a monitoring and compliance framework which works towards achieving the Agency's goal of removing any undue obstacles to accessibility for those passengers with disabilities.

The two reports—*The Multiple Format Policy Compliance Report* and *The Alternative Communications System Compliance Report*—show how the Code of Practice is being adopted by service providers. With one exception, the reports revealed that Canada's key transportation service providers were compliant. They had developed a multiple format policy, allowing travellers to request documents in accessible formats such as large print. Also, every major airport was found to be compliant with the Code's provision that car rental companies have alternative means of communication for customers to obtain information or make reservations.

In keeping with its collaborative approach, the Agency developed its five Codes of Practice in consultation with the community of persons with disabilities and transportation service providers.



# Assessment of the Act

Ongoing monitoring is also undertaken to ensure that industry regulations are up to date and reflect the realities of the operating environment.

The *Canada Transportation Act* is the Agency's enabling statute to implement the federal government's transportation policy.

In order to ensure effective administration of its enabling legislation, the Agency monitors all aspects of the operation of this Act on an ongoing basis. The Act requires the Agency to assess the operation of, and any difficulties observed in, the administration of this Act and to report its findings to Parliament through its Annual Report.

Ongoing monitoring is also undertaken to ensure that industry regulations are up to date and reflect the realities of the operating environment. Within the context of the existing legislative and policy frameworks, the Agency plans to review and update, where appropriate, existing regulations, codes of practice and guidelines to ensure they are current, relevant, clear and in line with smart regulation practices.

### Ongoing monitoring of the operation of the *Canada Transportation Act*

The following table provides the Agency's assessment of the operation of this Act based on activities of the Agency, including applications before it and its findings on them. Specifically, it highlights the difficulties observed by the Agency in the administration of this Act and provides its views on possible approaches to address these issues for consideration of Parliament. For the sake of completeness, the table includes new issues observed by Members in 2009-10, as well as those previously raised in the Agency's 2008-09 Annual Report.

# Issues Observed in 2009-10

## Rail Transportation

Topic	Description	Assessment
Railway line transfers and discontinuances	<p>The Agency and the Federal Court of Appeal have rendered significant decisions concerning the determination of the net salvage value (NSV) of rail lines.</p> <p>In a judgment of the Federal Court of Appeal regarding a decision of the Agency (Decision No. 383-R-2007) under subsection 144 (3.1), the Court clarified jurisprudence on NSV determinations by ruling that Division V of the Act is a complete code and operates according to definite timelines that cannot be modified by the Agency.</p>	<p>The Agency therefore has no discretion to modify the timelines established for the completion of a NSV. Accordingly, it is likely that the Agency will encounter difficulties completing the NSV of rail lines under this subsection within the timelines prescribed in the Act when there are difficult issues to be resolved, such as the assessment of environmental remediation costs.</p> <p>Parliament may wish to consider whether there are circumstances under which the Agency should be allowed to extend the timelines set in Division V of the Act to meet the intent of legislation and ensure the application of procedural fairness.</p>
Power to order parties to produce reports at their cost	<p>Sections 144 (3.1) to 146.3 of the Act require the Agency to provide a service to determine net salvage value. However, there is no legislative requirement for parties involved to undertake studies in order to provide necessary information for the Agency to make an informed and full determination.</p> <p>Such studies may involve evaluations, environmental assessments or technical reports. While the Agency may request such information, the costs associated can be substantial and there is no clear obligation on the part of the parties to provide it.</p> <p>The Agency, however, is still expected to make a determination with or without this information. In a recent case, as a result of having to request a study deemed necessary to make decisions and to facilitate agreement to provide such costly studies, the Agency created new procedures to allocate costs for studies among parties. While successful in that particular situation, there is still no clear obligation on the part of the parties to provide the information required by the Agency, nor to cover the costs.</p>	<p>A modification to the Act could serve as a means to clarify that the Agency can order a party or parties to produce such studies at their cost (and to determine the apportionment of costs between the parties where appropriate), or to reimburse costs incurred by the Agency to obtain the necessary studies.</p>

# Air Transportation

Topic	Description	Assessment
Authority to investigate and suspend unreasonable domestic tariff provisions	<p>Sections 67.1 and 67.2 limit the Agency’s authority to cases where a complaint has been received, thereby limiting the Agency’s ability to conduct investigations concerning a carrier’s adherence to its domestic tariff and the reasonableness of a carrier’s terms and conditions of domestic carriage.</p> <p>There are no similar complaint-driven constraints in respect of international tariffs.</p> <p>This means that a decision requiring a carrier to change its international tariff because it has been determined to be unreasonable cannot be extended to the equivalent domestic tariff unless there has been a specific complaint about the domestic tariff. However, the reverse is true.</p> <p>Subsection 67.2(1) of the Act allows the Agency to suspend a domestic tariff against which a complaint has been filed, but only after the Agency has first determined that the tariff is unreasonable. This differs from the international regime where the Agency has the ability to suspend an international tariff pending the results of its investigation and decision on the matter.</p> <p>The Agency has received several complaints that relate concurrently to both domestic and international carriage, and has suspended the international condition at issue pending investigation, while the domestic condition remains in effect. This situation tends to create confusion for consumers.</p>	<p>The inability of the Agency to take certain action regarding domestic tariffs can result in unequal treatment between domestic and international air travellers and increases the complexity of compliance for industry. In addition, it can create confusion for passengers when dealing with the same air carrier, since different rules may apply for domestic and international legs of a flight.</p> <p>A potential solution to avoid such confusion would be to allow the Agency to broaden its review to include the domestic tariff when investigating an international tariff provision, whether the investigation is of its own initiative or as a result of a consumer complaint. This could provide consistency in approach and eliminate situations where the Agency has found an international tariff to be unreasonable, but can take no action against the same provision domestically with the same carrier.</p> <p>Allowing the Agency to also suspend a potentially unreasonable domestic tariff provision pending its determination, in cases when it has taken similar action for the same international tariff provision, could also potentially eliminate an inconsistency that can confuse consumers.</p>

# General

Topic	Description	Assessment
Clarification of the Agency's two main business functions	<p>The Canadian Transportation Agency is an independent body of the Government of Canada which currently performs two key functions within the federal transportation system.</p> <ul style="list-style-type: none"> <li>As a quasi-judicial tribunal, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.</li> <li>As an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.</li> </ul> <p>In its role as an economic regulator, some of the Agency's decisions – including many pertaining to charter permits or licensing activities – have effectively become routine and involve little or no discretion. The delivery of such routine, non-discretionary regulatory services could be dealt with more effectively by staff.</p> <p>However, there are no provisions for the delegation of authority to staff in the <i>Canada Transportation Act</i>.</p> <p>Currently, the Act:</p> <ul style="list-style-type: none"> <li>requires Members to make all Agency decisions; and</li> <li>makes no distinction between the adjudicative and regulatory provisions administered by the Agency.</li> </ul>	<p>In the Agency's opinion, it may be worthwhile to consider clarifying:</p> <ul style="list-style-type: none"> <li>The authority of the Chair and Chief Executive Officer over the administration of economic regulations involving non-discretionary or routine decisions and powers of delegation in that respect; and</li> <li>The two distinct functions of the Agency.</li> </ul> <p>These changes would:</p> <ul style="list-style-type: none"> <li>Allow Members to concentrate on their core role as adjudicators; and</li> <li>Provide for the efficient, effective and timely administration of the more routine matters within the purview of the Agency.</li> </ul>

# General

Topic	Description	Assessment
120 day deadline	<p>Subsection 29. (1) of the Act states that the Agency will make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received, unless the parties involved agree otherwise.</p> <p>As part of its strategic priority to continue to be a leading Canadian administrative body of the Government of Canada, the Agency has set in place high performance standards. With a view to ensuring transparent, fair and efficient regulation of Canada’s transportation system, the Agency implemented a new Performance Measurement Framework in 2007.</p> <p>Performance indicators specific to, and based on benchmarks for, different areas of its service delivery have since been implemented and reported on in its Annual Report. For example, the Agency strives to issue 85% of all air licences within 14 days and to issue 82% of all charter permits within 30 days. On the other hand, the resolution of complex dispute cases can require, and in certain cases has required, more time than is currently allowed for by the 120-day deadline.</p>	<p>The adoption of a series of performance measures, most of which are based on providing services within a specific time frame, has replaced the need for a single maximum 120-day legislated time frame for all proceedings before the Agency. Adopted for most of its business activities, they establish meaningful turnaround times and performance measurement indicators based on each of the Agency’s service areas.</p> <p>These performance measures and processes have been designed to ensure that the Agency’s services are provided in an efficient, transparent and client service-oriented manner. Performance results are published in the Agency’s Annual Report to Parliament and on its Web site for clients and stakeholders.</p> <p>Such results-focused performance indicators establish benchmarks and determine the level of service delivery the Agency needs to achieve in order to help maintain an efficient federal transportation system. They allow the Agency to track how closely its objectives are being met and to implement continuous improvements to enable it to meet the accountability expectations of Parliament and Canadians.</p>

# General

Topic	Description	Assessment
Mediation	<p>Section 36.1 of the Act provides that parties to a dispute concerning a matter within the Agency's jurisdiction may make a request to the Agency for mediation. This request may only be made if both parties are in agreement.</p> <p>Recent amendments to the Act have acknowledged the advantages of Alternative Dispute Resolution (ADR) and enshrined its mandatory use under sections 95.2, for rail noise and vibration complaints, and 152.1, for rail public passenger service providers.</p> <p>Although the Agency finds that the present voluntary process is successful, it has faced situations where, based on its experience, mediation might have been the best approach to bring about a solution to a dispute, but one party had refused to engage in this process. This results in more time and resources being expended by the Agency and the parties to a dispute to resolve the matter through formal adjudication.</p>	<p>The Agency has seen tangible benefits from the increased use of ADR and foresees an opportunity to further promote these methods as more effective, collaborative dispute resolution mechanisms.</p> <p>For example, it may be desirable to allow the Agency the discretion to make facilitation and/or mediation mandatory as a precondition of its investigation of a matter, where it deems that further collaborative efforts by the parties to resolve the issue are warranted.</p> <p>This would be in line with the approach followed by courts across the country. Further, even if the success rate for mandatory facilitations or mediations might be lower than for consensual ones, mandatory mediation often results in a reduction and clarification of the issues to be resolved through adjudication.</p>

# Issues previously raised in 2008-09

## Rail Transportation

Topic	Description	Assessment
Shipper Complaints	Upon a shipper’s complaint, pursuant to section 120.1 of the Act, the Agency can investigate unreasonable charges or terms and conditions for the movement of traffic or provision of incidental services contained in a tariff that is applicable to more than one shipper. If found to be unreasonable, the Agency can order changes to certain charges and conditions for the movement of traffic or provision of incidental services.	<p>The Agency has only had three complaints to date under this new provision.</p> <p>One related to fuel surcharges and was dismissed by the Agency in 2008-09 on the basis that the carriage of traffic in question was covered by the terms and conditions of a confidential contract between the parties, which included fuel surcharges contained in a tariff that was incorporated by reference into the contract. The Agency found that parties are bound by the contracts which they enter into and agree to for their mutual benefit and as such, that the Agency had no jurisdiction to change the terms of a contract between parties on application under this section of the Act.</p> <p>Concerns by certain shipper groups were subsequently expressed to the Agency that this ruling has severely limited the recourse Parliament intended to be available to shippers against unreasonable charges and associated terms and conditions, as confidential contracts include a term which, by reference, incorporates all of the railway’s tariffs.</p>

# Air Transportation

Topic	Description	Assessment
Authority to address systemic issues related to international tariffs	<p>The Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention) amended important provisions of the Warsaw Convention relating to compensation for losses during the international carriage of persons, baggage and cargo. It came into force in 2003, and has been incorporated into domestic law by the Carriage by Air Act.</p> <p>A number of actions have been taken by the Agency to encourage air carriers to incorporate the terms and conditions of the Montreal Convention into their tariffs. Nonetheless, a significant number of carriers have still not done so.</p> <p>In exercising its jurisdiction to address the issue of non-compliance with the Montreal Convention, the Agency can act on its own motion as it deals with an international tariff. However, such matters must currently be addressed on a carrier-by-carrier basis.</p> <p>To obtain consistency, based on existing legislation, the Agency would have to start a process with each and every carrier individually. The Agency regulates hundreds of carriers operating international air services and tariffs typically contain many pages of legal text addressing liability matters.</p> <p>This process would involve elaborate, resource-intensive and time-consuming procedures with each carrier to disallow the tariffs and approve or incorporate new tariffs, in order to ensure that each such individual carrier complies with Canadian law.</p>	<p>The legal framework governing the Agency's activities in respect of air transportation requires that tariffs be just and reasonable, and to be such, tariffs must comply with Canadian law, both domestically and internationally.</p> <p>Approaching this matter one carrier at a time would not lead to timely compliance. Rather, systemic issues of non-compliance with international conventions and Canadian law could be more efficiently and effectively addressed by allowing the Agency to issue an order applying to all non-compliant carriers.</p> <p>One approach to dealing with this issue is to provide the Agency with the power to substitute or suspend terms and conditions of air carriage for all, or a group of, carriers would allow the Agency to order air carriers to implement tariffs consistent with Canadian law and international conventions signed by Canada. Such an order, if disregarded by those carriers not in compliance with Canadian law, could be enforced by administrative monetary penalties.</p> <p>It is the Agency's view that such an approach could enable more efficient and effective enforcement of Canadian law.</p>

# Accessible Transportation

Topic	Description	Assessment
Investigation of systemic accessible transportation matters	<p>Sections 170. (1) to 172. (3) of the Act allow the Agency to investigate accessible transportation matters which are brought before it only upon complaint. The Agency's investigation is limited to the issues raised by the applicant against a particular carrier or terminal operator.</p> <p>While individual issues are effectively resolved through the complaint adjudication process, the following systemic issues are problematic:</p> <ul style="list-style-type: none"><li>Undue obstacles related to industry-wide policies or practices may only be resolved with the service provider named in the complaint. Persons with disabilities may continue to encounter the same undue obstacles with other service providers.</li><li>Decisions placing requirements to remove undue obstacles to accessibility on only one or some service providers can create significant competitive cost and/or operational disadvantages among providers.</li><li>Individual parties to complaints often do not fully and effectively represent the interests of other affected parties. This cannot be effectively addressed unless other affected parties intervene. However, their participation and the extent of involvement are at their discretion. Therefore, complaints that may have ramifications for an entire industry may not have the benefit of a broader investigation that brings forward all the issues and interests.</li></ul> <p>Examples of systemic issues brought forward on complaint include the one-person-one-fare policy and the provision of oxygen on board aircraft.</p> <p>As well, a complaint may be filed against a carrier's policies which may have a broad public interest component, but due to the nature of the complaint, the Agency is limited as to what it can investigate.</p>	<p>Parliament may wish to consider a legislative amendment giving the Agency the power to undertake an investigation without having received a formal complaint. This could enable the Agency to more effectively review issues that have broad implications for stakeholders. It would also allow the Agency to stay an application that has ramifications for an entire sector while it completes a thorough investigation.</p> <p>To preserve the integrity of accessibility review, including undue hardship analysis, any orders issued by the Agency would be applied on an individual service provider basis. This would only be done after ensuring interests are fully considered and weighed and after taking into consideration the operational and economic circumstances of each of the individual service providers.</p> <p>Having the flexibility to investigate known broader issues at the beginning of a process rather than having to wait for further complaints would allow for greater efficiency.</p> <p>The current jurisdiction of the Agency limits its ability to expand the scope of its investigation into accessibility issues when it makes sense to do so, thereby placing limits on the Agency's ability to act effectively and consistently.</p>

# Accessible Transportation

Topic	Description	Assessment
Jurisdictional overlap with the Canadian Human Rights Act	<p>The Canadian Transportation Agency, the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT) have the power under their respective legislation to address complaints by persons with disabilities regarding the accessibility of the federal transportation system.</p> <p>Section 172 of the Act explicitly sets out the mandate of the Agency to ensure that undue obstacles to the mobility of persons, including persons with disabilities, are removed from federally-regulated transportation services and facilities.</p> <p>In 2007, the Supreme Court of Canada confirmed that Part V of this Act is human rights legislation and that the principles of the <i>Canadian Human Rights Act</i> must be applied by the Agency when it identifies and remedies undue obstacles. The Supreme Court also acknowledged that the Agency uniquely has the specialized expertise to balance the requirements of persons with disabilities with the practical realities – financial, structural and logistic – of the federal transportation system.</p> <p>Section 171 of the Act requires the Agency and the CHRC to coordinate their activities in order to avoid jurisdictional conflict, and a memorandum of understanding designed to achieve this was entered into between the Agency and the CHRC. Despite this, the CHRT issued a decision which dealt with the same parties and identical issues while arriving at a different decision from one previously made by the Agency. The CHRT decision could have significant jurisdictional implications for future transportation-related accessibility complaint applications.</p>	<p>This jurisdictional overlap can lead to the following problems:</p> <ul style="list-style-type: none"> <li>Complainants face uncertainty as to which body should address their complaints, particularly given the different remedies available under the <i>Canada Transportation Act</i> and the <i>Canadian Human Rights Act</i>. Although the Agency has the mandate to remove undue obstacles from the federal transportation network, it does not have the power to award compensation for pain and suffering, unlike the CHRT.</li> <li>Respondents (e.g., carriers, terminal operators) face the possibility that they will have to defend the same issues under two different legislative regimes.</li> <li>To the extent that both the Agency and the CHRC/CHRT deal with the same complaint, there is uncertainty and added costs for the respondent and the Government of Canada.</li> </ul> <p>At the request of the Agency, the Federal Court undertook a judicial review on these jurisdictional issues at the end of March. The Agency will report further on this issue once the Federal Court's decision has been issued.</p>

# General

Topic	Description	Assessment
Improving annual reporting to Parliament	<p>Subsection 42(1) of the Act requires the Agency's Annual Report to be submitted to the Governor in Council by the end of May.</p> <p>However, the Agency's Departmental Performance Report (DPR) is only required to be filed by the end of July, four months following the close of the fiscal year ending March 31.</p>	<p>Revising the date to allow the Agency to submit its Annual Report by the end of July would:</p> <ul style="list-style-type: none"><li>provide the Agency with a more reasonable time frame to finalize March 31 year-end data;</li><li>strengthen the linkages between the Report and the Agency's Departmental Performance Report (DPR) and Report on Plans and Priorities (RPP); and</li><li>create greater efficiency for the Agency to meet all of its reporting requirements to Parliament within its resource allocation.</li></ul>

# Appendix

## Annual Report 2009-10: List of statistical tables available on Agency Web site



To access the full list of statistical tables, go to [www.cta.gc.ca/eng/statistics](http://www.cta.gc.ca/eng/statistics)

### **I. Agency rulings**

1. Total rulings by Members

### **II. Dispute resolution**

1. Disputes resolved by the Agency in 2009-2010

### **III. Air travel complaints**

1. Air travel complaints received by the Agency
2. Air travel complaints investigated about Canadian carriers
3. Air travel complaints investigated about foreign carriers
4. Air travel complaints investigated about U.S. and EU carriers
5. Categories of complaints – all carriers
6. Categories of complaints – major Canadian carriers

### **IV. Air licensing and Charters**

1. Air carriers by nationality
2. Air licences held by nationality
3. Air licensing activities
4. Charter permits issued
5. Charter flight notifications

### **V. Rail transportation**

1. Railway infrastructure and construction

### **VI. Marine transportation**

1. Coasting trade applications

### **VII. Enforcement**

1. Enforcement activities

