



A bold voice for transportation workers

March 20, 2023

John Karl Alexy
Associate Administrator for Railroad Safety
Federal Railroad Administration
1200 New Jersey Avenue SE
Washington, DC 20590

**RE: Petition for Extension of Waiver of Compliance, CN Extraterritorial
Dispatching
Docket No. FRA-2003-15012**

Dear Mr. Alexy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice regarding Canadian National Railway's (CN) petition to extend its waiver allowing Canadian dispatching of two locations in the United States: the portion of the Sprague Subdivision extending approximately 43.8 miles between Baudette and International Boundary, Minnesota, and the portion of the Strathroy Subdivision extending approximately 3.1 miles between Sarnia, Ontario, Canada, through the St. Clair River Tunnel, to Port Huron, Michigan. TTD consists of 37 affiliated unions representing the totality of rail labor, including rail workers who operate on these lines.¹ For the reasons outlined below, we ask that FRA deny CN's petition to extend its waiver.

Extraterritorial dispatching has long been a priority issue for TTD and our affiliated rail unions. In addition to depriving work from highly-skilled American workers, stationing dispatchers in other countries exposes the rail system to the uneven safety standards present in those countries. In the case of this waiver, CN is proposing to continue operating lengthy rail lines in the United States with train dispatching duties held by Canadian workers.

The regulatory and safety oversight systems in the United States and Canada differ in a number of ways. For example, Canadian Train Dispatchers are not subject to the same critical drug and alcohol testing mandate as their U.S. counterparts. Most notably, Canadian Train Dispatchers are not subject to random testing under Canadian Law. Given the potential impairment of cognitive function of an

¹ Attached is a list of TTD's 37 affiliated unions.

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individual under the influence of drugs or alcohol, testing is an essential element in ensuring that railroads operate as safely as possible. As such, all U.S. railroad employees in safety sensitive positions, including Train Dispatchers, are subject to mandatory random drug and alcohol testing, as well as reasonable suspicion, reasonable cause, post-accident, and pre-employment testing under 49 C.F.R. part 219.

Another significant deficiency in Canadian regulation concerns the number of hours a Train Dispatcher may work in a given 24-hour period. Transport Canada currently has no restrictions on the number of hours a Train Dispatcher may work. This constitutes a serious and unacceptable safety risk that is forbidden under U.S. regulation. In the United States, Title 49 U.S.C. §21105(b) limits the total number of hours an employee in train dispatching service may work to no more than nine (9) hours in any continuous twenty-four (24) hour period. The purpose of these limitations is well established and necessary to the safe operation of a railroad. As the FRA itself stated in its reasoning for 49 C.F.R. part 241, fatigue can cause dispatchers to make mistakes which may lead to catastrophic railroad accidents, much the same as alcohol or drug impairment (67 Fed. Reg. 75948). While the Canada Labour Code places a limit on the number of hours worked in weekly (48) and biweekly (80) periods, there are no protections in place ensuring that Canadian Train Dispatchers are not subject to excessively long hours and/or multiple contiguous tours of duty. Much as it was in 2002, the FRA should continue to be concerned by the lack of a periodic limit on the number of hours worked by Canadian Train Dispatchers.

Given this environment, it is incumbent upon CN to provide continued justification for the necessity of this waiver. The justification should include extensive documentation that there have been no safety problems under the granted waiver and that the current operation provides a greater level of safety than the underlying, applicable regulation. Railroads may view this as an onerous requirement, but there **should** be a rigorous process to justify and review requests to deprive American dispatchers of work that comes from rail operations in the United States, as the underlying FRA regulations otherwise require. In its extension application, CN has not provided any justification like that at all. This differs significantly from what would be required if CN were proposing a new waiver in this case. The terms of the existing waiver would not meet requirements for a new waiver, and CN has not provided any description of steps that it is taking to ensure that operations are safe outside of these established parameters.

To begin with, if CN were applying for a new extraterritorial dispatching waiver under Part 241.7 of Title 49, Code of Federal Regulations, a waiver would not be granted for a line longer than five miles given the language in the current regulation limiting new waivers to less than five miles. At nearly 44 miles, the line on the Sprague subdivision would greatly exceed this limit. TTD is sensitive to the needs of rail operations near the border where rail lines can cross the border frequently in short distances. However, 44 miles is not a short distance, and there is no reason that an American dispatcher could not perform this work. In absence of CN providing any reasoning regarding why they are unable to assign this work to American dispatchers beyond the five-mile standard for new waivers, this waiver extension should be denied.

Further, new extraterritorial dispatching waiver requests would be required to provide certain reporting to ensure that any potential waivers would be used safely and be granted in the public interest. These requirements, under Part 241.7 of Title 49, Code of Federal Regulations, include copies of the railroad's hours of service limitations, and the railroad's program for testing the dispatchers in accordance with these operating rules and for ensuring that the dispatchers do not work in excess of the hours of service restrictions. The railroad would also need to provide a copy of its drug and alcohol abuse prevention program that applies to the fringe border dispatchers to include provisions for pre-employment testing, reasonable suspicion testing, post-accident testing, and random drug testing. While CN submitted these materials more than 20 years ago when the waiver was initially requested, many aspects of drug testing have changed in that time. It is clear from CN's filing that changes are not proactively communicated to the FRA and the public because this filing indicates that CN's Macmillian Yard has been idled, and there is no mention in the docket of this change prior to it occurring. This lack of communication is particularly troubling because the waiver does not have conditions and reporting requirements in the same fashion that many other waivers do. It is clear that CN feels free to make operational modifications, such as closing an operating location, without providing public notice. We have concerns that other changes could be made that would pose significant concerns without a chance for the public to review and comment on such proposed changes.

In the waiver decision letters, FRA reserves the right to inspect dispatching facilities in Canada, but it is unclear whether FRA has ever exercised this right, leaving many questions unanswered regarding safety and adherence to policies. As was discussed extensively when this and other similar waivers were initially sought twenty years ago, allowing extraterritorial dispatching poses often unknown risks that cannot be controlled or enforced through safety oversight by the FRA and other U.S.-based personnel. These were among the concerns that led to the creation of the limits on new waivers finalized by the FRA in 2002.²

For these reasons, CN's justification for the continued need for and safety of this waiver is inadequate, and FRA should reject the waiver extension request until CN provides additional documentation that can be examined to understand the scope of safety rules **currently** used as part of its Canadian dispatching operations and support for the continued necessity of the waiver.

Thank you for your consideration.

Sincerely,



Greg Regan
President

² <https://www.federalregister.gov/documents/2002/12/10/02-30527/us-locational-requirement-for-dispatching-of-us-rail-operations>