

April 28, 2023

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

**RE: Petition for Extension of Waiver of Compliance; Norfolk Southern R-3 Gang  
Docket No. FRA-2017-0084**

Associate Administrator Alexy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice of a recent petition for extension of a waiver of compliance from Norfolk Southern (NS) regarding its R-3 Dual Rail Gang. TTD consists of 37 affiliated unions representing the totality of rail labor, including both passenger and freight rail workers and maintenance of way workers who work with this equipment.<sup>1</sup> We ask FRA to deny this petition for the reasons discussed below. Additionally, we endorse the comments filed by our affiliated union, the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED).

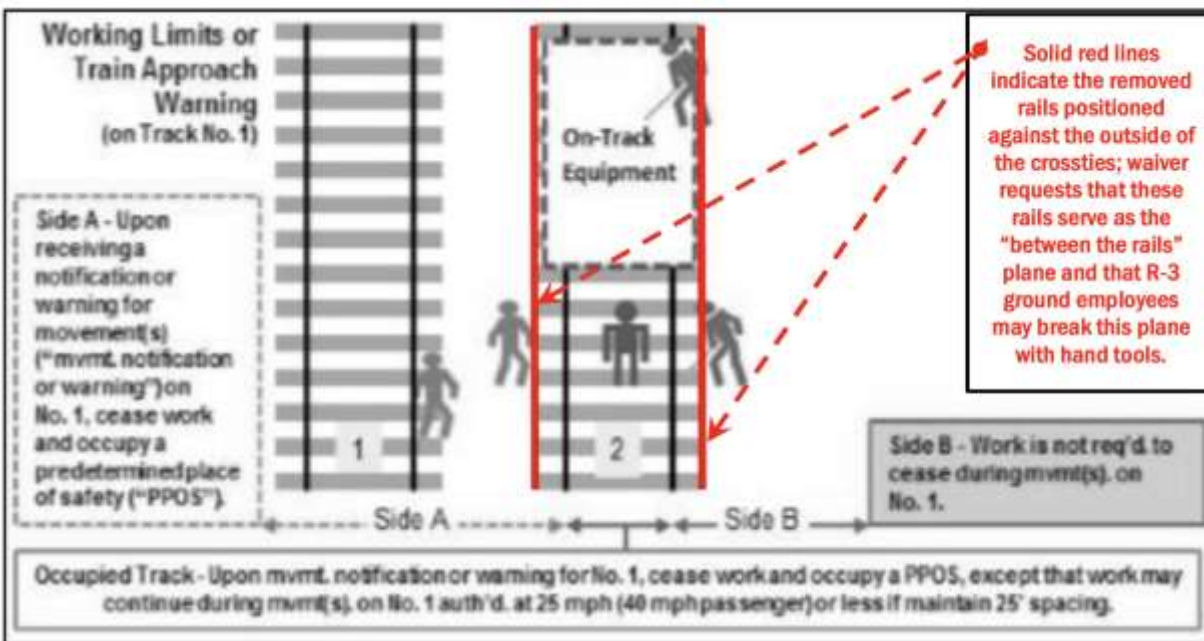
The R-3 Gang is a system-level production gang of 78 employees and 40 roadway maintenance machines with the capability to remove both rails while simultaneously installing both new rails. During dual rail replacement, both rails are removed from the track structure and positioned on the ballast against the outside of the cross ties on the occupied track. In this position, the removed rail is nearly 16.75 inches closer to the adjacent controlled track than its normal gauge position on the crosstie. In this waiver, NS requests to continue using the removed rails of the occupied track as an envelope for on-ground work performed exclusively between these rails for the employees working on the R-3 Dual Rail Gang. Additionally, NS requests to allow up to four on-ground employees (when working with one adjacent controlled track) and up to eight on-ground employees (when working with two adjacent controlled tracks) of the R-3 Dual Rail Gang to break the plane of the outside rail to perform minor work.

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<sup>1</sup> Attached is a list of TTD's affiliated unions



An image included below illustrates the increased area that would be considered “within the rails” for the purpose of complying with 49 CFR 214.336(c), which requires workers to remain entirely within the rails of track if trains are going to continue running on adjacent tracks. NS has stated that complying with the regulations without a waiver would decrease productivity.



Source: Norfolk Southern; FRA-2017-0084-0007

As can be seen from the image, under this waiver, workers would be permitted to perform work much closer to oncoming trains on adjacent tracks. These trains could be moving at speeds of up to 25 mph for freight trains and 40 mph for passenger trains. The BMWED has noted that employees have sustained severe permanent injuries relating to NS’s R-3 Gang operations and inability to establish a safe workplace environment.<sup>2</sup> BMWED also noted in its opposition to the original petition for this waiver that “Approximately 25% of Roadway Worker fatalities since the 1997 promulgation of 49 CFR Part 214(C) Roadway Worker Protection (RWP) occurred on adjacent tracks with track centers of 19 feet or less from the occupied track. The high percentage of roadway worker fatalities which historically occurred on adjacent tracks is exactly the reason why FRA promulgated the adjacent track rule, §214.336, in 2014.”<sup>3</sup>

<sup>2</sup> FRA-2017-0084-0005, p. 2

<sup>3</sup> Ibid

The National Transportation Safety Board (NTSB) has also highlighted the need for improved safety protections for maintenance of way and track employees following many incidents where workers were tragically killed or severely injured.<sup>4</sup> FRA should be focused on ways to improve the safety of workers doing maintenance of way and track employees work, not reducing existing protections.

It is emblematic of NS's disregard for employee safety that a very slight increase in productivity is worth introducing significant risks to workers' lives and livelihoods. NS made the decision over the last several years to significantly cut the number of maintenance of way workers it has. No one forced NS to make those cuts. Complaining about the productivity of workers after eliminating many of those same workers negates NS's rationale for this petition. Additionally, if NS were truly concerned about the productivity of the R-3 Gang, there are multiple options that could be used to increase the productivity, including:

- Operating the R-3 Gang longer
- Utilizing Train Approach Warning provided by an appropriate number of properly equipped watchmen/lookouts to provide on-ground workers with advance warning to allow them to occupy a predetermined place of safety (i.e., within the footprint of the running rails and not breaking the plane) 15 seconds before the passage of a train on the adjacent track
- Withholding traffic on adjacent tracks while the R-3 Gang is working
- Hire more maintenance of way workers

Possibly most concerning is the fact that this waiver creates inconsistencies in work rules for work gangs. There are many reasons why one worker may work in multiple gangs or transfer due to job bids, displacements, reductions/increases in forces, and operational needs. This creates an environment where procedures that are permitted in the R-3 Gang would not be permitted in other work gangs and could result in routine activities putting workers in extreme danger. Because it is common for workers to move between work gangs, a high level of standardization is necessary. For this reason, it is TTD's position that the regulations should apply to each work gang without waivers or exemptions.

In 2020, NS published a video spotlighting the R-3 Gang and their indispensable work that maintains the fundamental operations of the railroad. Members of the R-3 gang are committed to helping each other on and off the job site, speaking to the dedication and brotherhood between them. As stated by workers in the video, the R-3 Gang performs vital track maintenance that provides a safer work environment for engineers and conductors "...because at the end of the day, we want to go home to our families, and we want them to get home to their families."<sup>5</sup>

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<sup>4</sup> <https://www.nts.gov/news/press-releases/pages/nr20220119.aspx>

<sup>5</sup> <https://youtu.be/V0tS2oIPies>

The workers here understand the stakes of safety on the job, but the waiver that NS requested would directly increase the risk of workplace injury or death. Those who work tirelessly to keep our railroads safe deserve to return home safely to their families. NS should not be allowed to undermine key safety protections in an attempt to make up for their mistake in eliminating maintenance of way employees. FRA's primary responsibility is to ensure the safe operation of our rail system, including the safety of rail workers. FRA is not responsible for increasing the productivity of workers. For these reasons, we ask the FRA to deny this petition and direct NS to provide adequate protections to workers who are performing vital work for our country's economy and vital work that protects other workers.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Regan", written over a circular stamp or seal.

Greg Regan  
President