



Transportation Trades Department, AFL-CIO

July 8, 2024

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**

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 respectfully request that the FRA deny CN's petition to extend its waiver.

In the case of this waiver, CN is proposing continued operation of lengthy rail lines in the United States with train dispatching duties held by Canadian workers. This practice of extraterritorial dispatching has long been a priority issue for TTD and our affiliated rail unions given that it poses significant safety concerns and deprives highly-skilled American train dispatchers of needed work. The regulatory and safety oversight systems in the United States and Canada differ in a number of notable ways, exposing the domestic rail transportation system to unnecessary risk. These differences are even more pronounced following the promulgation of certification standards for train dispatchers in the United States. Certification programs will include a number of provisions intended to ensure that American train dispatchers are trained, qualified, and do not have a record of drug or alcohol violations, among other requirements. Train dispatcher certification programs

¹ Attached is a complete list of unions affiliated with TTD.

will fundamentally improve rail safety in the United States, and unfortunately, these same standards cannot be applied to train dispatchers located in Canada.

CN cites Part 241.7(c) in support of its petition, noting that the carrier has been granted waivers for both lines since the adoption of Part 241. However, Part 241 does not take into account the potential impact that train dispatcher certification could have on fringe boarder operations. CN offers no explanation for how Canadian train dispatchers will be held to the same level of standards as U.S. train dispatchers under Part 245. The FRA must consider the potential implications of allowing CN to evade the requirements of Part 245 as well as those of Part 241.

Canadian train dispatchers are not subject to the same critical drug and alcohol testing mandate as their U.S. counterparts, including random testing. Given the potential impairment of cognitive function of an 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.

A 2021 collision on CN's track in Canada highlighted the potentially disastrous effects of train dispatchers working under the influence of alcohol. As a result of the collision, two crew members sustained minor injuries, and one crew member was admitted to hospital with serious injuries. The Transportation Safety Board of Canada, the Canadian equivalent of the National Transportation Safety Board (NTSB), released a report detailing the specifics of the incident, stating, "The RTC's [Rail Traffic Controller] performance and level of attention were likely affected by the persistent effects of alcohol consumption."² The United States' strict drug and alcohol testing requirements for safety-critical personnel, including train dispatchers, exist precisely to prevent incidents like this one. The FRA must not continue to allow Canadian dispatchers, who are not subject to the same or similar drug and alcohol standards as their U.S. counterparts, to dispatch trains operating in the United States.

Of additional concern is 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 prohibited in the United States under Title 49 U.S.C. §21105(b). This regulation 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. 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

² <https://www.tsb.gc.ca/eng/rapports-reports/rail/2021/r21h0114/r21h0114.pdf>

alcohol or drug impairment.³ 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.

Finally, in its letter granting CN's one year extension of this relief, the FRA stated it would "conduct a comprehensive review of the subject dispatching operations." The FRA also stipulated that CN must allow the FRA unrestricted access to the Canadian dispatch offices so that it may "ensure the same level of regulatory oversight exists that occurs in the U.S. with respect to the overall safety and integrity of dispatching functions directly affecting rail operations conducted in the U.S. and to confirm compliance with Federal standards."⁴ It is unclear if the FRA has visited any of these facilities to confirm such compliance.

Given the safety concerns inherent in extraterritorial dispatching operations, we respectfully request that the FRA deny CN's petition to extend its waiver. We appreciate the opportunity to comment on this waiver request and look forward to working with the FRA in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Regan", enclosed within a hand-drawn circle.

Greg Regan
President

³ 67 Fed. Reg. 75948

⁴ https://downloads.regulations.gov/FRA-2003-15012-0020/attachment_1.pdf