



**L. Ed Dowell**  
President

4239 West 150th Street  
Cleveland, Ohio 44135  
Phone: 216.251.7984  
Dowell@atda.org

**Comments of the  
American Train Dispatchers Association (ATDA)**

July 8, 2024

(Via online at [www.regulations.gov](http://www.regulations.gov))

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

Docket Operations Facility  
U.S. Department of Transportation  
1200 New Jersey Ave. SE, W12-140 (West  
Building)  
Washington, DC 20590

**Re: Docket No. FRA-2003-15012**

Dear Mr. Alexy:

These comments are respectfully submitted on behalf of the brothers and sisters of the American Train Dispatchers Association (“ATDA”), in response to the Notice of Petition for Waiver of Compliance published in the Federal Register on May 9, 2024. The Notice concerned the Canadian National Railway’s (“CN” or “the Petitioner”) petition to extend its waiver of compliance from certain provisions of the federal railroad safety regulations contained in 49 C.F.R. part 241, United States Locational Requirement for Dispatching of United States Rail Operations. Specifically, the petition states:

Canadian National Railway Company... is providing this letter to request an extension of the 49 C.F.R. 241.7 waiver that FRA has had in place since 2003 for two CN fringe border operations an approximately 2.8-mile segment of track through the Paul M. Tellier tunnel between Sarnia, Ontario, and Port Huron, Michigan (“Sarnia Port Huron Track”), and an approximately 43.8-mile segment of track on CN’s Sprague Subdivision between Baudette and International Boundary, Minnesota (“Sprague Track”).

The ATDA is an AFL-CIO-affiliated craft union which has been the collective bargaining representative for rail industry employees engaged in the safe and efficient dispatching and operation of trains on passenger and freight railroads throughout the United States for over 100

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years. Accordingly, the ATDA and its members have a direct interest in the safety and security of the United States rail network and appreciate the opportunity to comment.

For the reasons as outlined herein, we collectively urge the Federal Railroad Administration (FRA) to deny this waiver petition.

In 2003, the FRA solidified the importance of safety and security of the United States rail network through 49 C.F.R. Part 241 (“Part 241”),<sup>1</sup> which ensured that all rail operations conducted in the United States were controlled by train dispatchers located in the United States. In short, Part 241 mandated that the railroads, facilities, and individuals responsible for the dispatching of trains operating within the United States will be held to the stringent safety, security, and operational standards that have been instituted by the United States Government and its agencies that make the nation’s rail network the safest in the world.

The requirement under Part 241 that the dispatching of U.S. rail operations is managed from within the country is in place in order to maintain a high level of safety and security for the transportation of goods and passengers. The continued allowance of CN to dispatch these operations from locations outside of the United States would undermine the safety and security of US rail operations. For the reasons outlined herein, ATDA strongly urges FRA to reject CN’s request for relief as such relief would not be in the public’s interest. Accordingly, CN must be compelled to meet the obligations contained within 49 C.F.R. Part 241 – United States Locational Requirement for Dispatching of United States Rail Operations.

### **1. Neither the American Train Dispatchers Association or its President Support CN’s Waiver Request, Nor Worked in Consultation with Petitioner in its Request**

In its February 28, 2024 letter to the FRA, CN purported to have “consulted with the president of the American Train Dispatchers Association, the union that represents CN’s U.S. Rail Traffic Controllers,<sup>2</sup> prior to submitting this extension request.” ATDA finds this statement wholly misleading. While CN Labor Relations personnel provided documentation to past ATDA President F. L. McCann during its 2023 waiver application process, and again in January of 2024 to current ATDA President L. E. Dowell, neither President McCann nor President Dowell provided assistance to the petitioner with regard to its application or in anyway endorsed the relief sought by petitioner.

### **2. Canadian Train Dispatching Operations Lack Necessary Regulatory Oversight**

While CN notes in its February 28, 2024 filing that its drug and alcohol policies and testing procedures, along with Canadian law, “satisfy the core requirements of US regulations,” its testimonial notably lacks any reference to the type of random drug and alcohol testing U.S. based

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<sup>1</sup> 67 FR 75937, final rule published on December 10, 2002.

<sup>2</sup> Train dispatchers on Canadian National are more commonly referred to as Rail Traffic Controllers or RTCs. For the sake of consistency and ease of understanding, the term “train dispatcher” will be used herein in reference to both U.S. and Canadian dispatchers.

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train dispatchers are subject to under 49 C.F.R. Part 219. This is presumably due to the fact that Canadian Law generally prohibits random drug and alcohol testing of train dispatchers.<sup>3</sup>

The glaring deficiency in Canadian train dispatcher regulatory oversight was tragically demonstrated on September 2, 2021, when, according to the March 13, 2024 findings by Canada's Transportation Safety Board,<sup>4</sup> the effects of alcohol impaired a CN train dispatcher's performance, directly contributing to a head-on collision between two freight trains near Prescott, Ontario. The collision resulted in three injured employees (one of which sustained serious injuries), four locomotives (two from each train) being heavily damaged resulting in the release of diesel fuel, 16 derailed freight cars, and the destruction of 1,000 feet of track. Thankfully, there was no loss of life. Based on a breath alcohol test conducted two hours after the incident, it was estimated that the dispatcher's blood alcohol content was **between .064 and .109** at the start of his shift, and **between .044 and .069** at the time of accident; all readings which would have resulted in the employee's immediate removal from service under an FRA random alcohol test conducted under 49 C.F.R. Parts 40 and 219.<sup>5</sup>

This event cannot simply be classified as an isolated incident, but rather, must be viewed as indicative of the underlying problem that persists as a result to the lack of proper regulatory oversight. Given this demonstrated effect of the impairment of an individual under the influence of alcohol, and the general prohibition of random testing of train dispatchers under Canadian law, FRA should deny the requested waiver in the interest of public safety.

Furthermore, Canadian regulations do not restrict the number of hours a Train Dispatcher may work in a given 24-hour period, unlike in the United States where they are limited to no more than nine (9) hours in any continuous twenty-four (24) hour period (See Title 49 U.S.C. §21105(b)). As the FRA itself has 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).

### **3. Canadian Train Dispatchers Will Not Be Subject to Certification Requirements of Part 245**

On May 21, 2024, the FRA published its final rule establishing requirements for the Certification of Train Dispatchers.<sup>6</sup> Under the rule, railroads will be required to institute a formal process for the training of prospective train dispatchers, verify that each certified employee possesses has the necessary knowledge, skills and safety record to perform the duties of a train dispatcher, and a formal process for revoking certification of train dispatchers who violate specified minimum requirements, including violations of 49 C.F.R. 219.101. As stated in its Executive Summary of

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<sup>3</sup> See Transportation Safety Board of Canada Rail transportation safety investigation report R20H0130 summary, <https://www.tsb.gc.ca/eng/rappports-reports/rail/2020/r20h0130/r20h0130.html>

<sup>4</sup> See Transportation Safety Board of Canada's Rail transportation safety investigation report R21H0114, <https://www.tsb.gc.ca/eng/rappports-reports/rail/2021/r21h0114/r21h0114.html>

<sup>5</sup> See Federal Railroad Administration's "What You Need to Know About Federal Drug and Alcohol Testing," [https://railroads.dot.gov/sites/fra.dot.gov/files/fra\\_net/17624/Drug%20Alcohol%20Employee%20Handout%20Effective%20January%201%2C%202018.pdf](https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/17624/Drug%20Alcohol%20Employee%20Handout%20Effective%20January%201%2C%202018.pdf)

<sup>6</sup> Federal Register, Vol. 89, No. 99, p. 44766 - 44827

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the rule, such certification standards and the enforcement of these requirements would not apply to dispatchers located outside of the United States as “[i]t is a longstanding principle of American law ‘that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.’”<sup>7</sup> As such, it would be counterintuitive for FRA to enact such a rule designed to increase the safety nation’s rail network by ensuring the proper training, continuing education, and safety standards of those in the complex, safety-sensitive positions, only to allow carriers such as CN to circumvent this requirement by being permitted to dispatch trackage located within the United States from a location in which such regulations would be unenforceable.

While CN cites Part 241.7(c) in support of its petition noting that it has been granted waivers for both lines since the adoption of Part 241, these provisions simply did not contemplate the potential impact that train dispatcher certification would 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. Accordingly, CN’s request cannot be approved on the basis that it simply meets the minimum criteria under Part 241.7(c), but rather, due consideration must be given to the potential implications of permitting petitioner to evade the requirements of Part 245 as well. Again, based on these ramifications, we find that the requested waiver must be denied.

### CONCLUSION

49 C.F.R. Part 241 (67 FR 75937) was promulgated for the purpose of establishing a U.S. locational requirement for the dispatching of all U.S. Rail Operations. The position of the American Train Dispatchers Association is that the requirements of these regulations must not be waived as such waivers will only serve to erode the safety and security of the operations that the regulations were established to protect following the September 11 attacks that shook this country to its core. CN’s request for a waiver from these requirements would, if granted, only amount to a substantial step backwards for rail safety in United States in the wake of the significant strides forward the administration has made in recent years. Therefore, we hereby formally oppose the relief sought by CN in its request for a waiver of compliance with the provisions of 49 C.F.R. part 241. The petition should be denied by FRA.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "KSD", followed by a long horizontal line extending to the right.

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<sup>7</sup> *E.E.O.C. v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991) (quoting *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 284-85 (1949)).