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

July 8, 2024

(Via online at 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-2003-15010

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 Pacific Kansas City’s (“CPKC” 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:

... CPKC requests an extension of relief pursuant to 49 CFR 241.7(c), Fringe border dispatching, to allow the continuation of Canadian dispatching of three locations in the United States: (1) 1.8 miles of the Windsor Subdivision between Windsor, Ontario, Canada, and Detroit, Michigan, United States; and (2) two track segments totaling 23.44 miles on the Newport Subdivision between Richford, Vermont, and East Richford, Vermont, United States, and between North Troy, Vermont, and Newport, Vermont, United States.

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”),¹ 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 CPKC 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 CPKC’s request for relief as such relief would not be in the public’s interest. Accordingly, CPKC 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. Canadian Train Dispatching Operations Lack Necessary Regulatory Oversight

The Canadian regulatory and safety oversight systems are inferior to those in place for train dispatchers working in United States.²

While CPKC 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 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.³ However, due to CPKC’s position that its drug and alcohol testing policies are “confidential,” we cannot provide further comment. It is inconceivable how the disclosure of drug and alcohol testing policies and procedures could somehow jeopardize rail security or contain any type of trade or business personnel secrets. As such, these documents should be made available for public inspection given the safety sensitive nature of both the program and the petitioner’s request.

¹ 67 FR 75937, final rule published on December 10, 2002.

² Train dispatchers in Canada 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.

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

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Alternatively, at an absolute minimum, they should be made available for review under the terms of a confidentiality agreement.

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,⁴ the effects of alcohol impaired a 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 219.⁵

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).

The significance of this regulation cannot be understated here when considering this petitioner's recent history of 49 U.S.C. §21105 violations at its U.S. based Minneapolis Operations Center where, in a period of just ninety (90) days (August – October 2022), the FRA documented **130 occurrences of excessive service.**⁶

2. Petitioner Has Failed to Demonstrate Any Need for the Requested Relief or How Such Relief Would be in the Public Interest

While the 1.8-mile portion of the Windsor Subdivision was dispatched from Canada prior to the implementation of Part 241, at no point prior to the July 2020 waiver modification, was the Newport Subdivision ever dispatched from outside the United States. In fact, the third-party

⁴ 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>

⁵ 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

⁶ See attached November 18, 2022 letter from FRA to CPKC EVP Operations, Mark Redd

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contractor hired to dispatch the territory prior to CPKC's acquisition, RailTerm, dispatched the entire Newport Subdivision, both the portions in the United States and Canada, from its U.S. based office in Rutland, Vermont. However, upon transfer of control from Central Maine and Quebec Railway (CMQR) and RailTerm, CPKC chose to split control of the Newport Subdivision between the U.S. and Canada. It then argued in its May 19, 2020 filing that having the line under the control of one operations center would allow for consistent operations over the entire line. Essentially, CPKC created a problem by transferring a portion of CMQR dispatching from the U.S. to Canada, only to petition the FRA to allow CPKC to transfer the balance of the territory to Canada so not have the territory dispatched by two separate dispatchers. If the Petitioner truly believed that having the line controlled from a single location would be in the public interest, it was and is free to transfer control of the entire Newport Subdivision to its U.S. Operations Center in Kansas City, Missouri. No restrictions exist under Canadian law that would prevent Train Dispatchers located in the United States from controlling lines in Canada. This is currently done on both BNSF and CSXT in their respective Fort Worth, Texas, and Jacksonville, Florida, network operations centers. This would satisfy CPKC's desire to have a single Train Dispatcher control the entire line while ensuring that the relevant Train Dispatcher is held to the higher standards of safe operating practices demanded by the rules and regulations of the FRA.

3. Canadian Train Dispatchers Would 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.⁷ 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 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 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.’”⁸ As such, it would be counterintuitive for FRA to enact such a rule designed to increase the safety of the 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 CPKC 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 CPKC offers that such requested relief should be granted in accordance with Part 241.7(c), it is important to note that these provisions did not contemplate the potential impact that train dispatcher certification would have on fringe boarder operations. CPKC offers no explanation for how Canadian train dispatchers will be held to the same level of standards as U.S. train dispatchers

⁷ Federal Register, Vol. 89, No. 99, p. 44766 - 44827

⁸ *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)).

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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. CPKC's request for a waiver from these requirements for an unspecified period of time, if granted, would 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 CPKC 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 'XSD' followed by a long horizontal flourish.