

**FMA Rail Committee Video Conference #1
Tuesday, January 26, 2021**

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Summary of Discussions

1. Welcome and call to Order

John Corey acted as chair, welcomed the members attending the video conference.

2. Transport Canada Proposed Railway Data Regulations

Mr. Corey gave an overview and summary of the proposed data regulations that will require the Class 1 railways to provide more detailed, and current service performance data than in the past, which will be available publicly. He noted that waybill data will also be collected for use by Transport Canada and the Canadian Transportation Agency, but will not be made available to the public.

Mr. Corey noted two issues that the railways may address with Transport Canada regarding the new regulations, first: the cost burden to produce the data and second: confidentiality concerns. It was noted that, depending on the level of detail on service, that confidentiality may be of concern to some shippers.

In the discussion, it was noted that railway capacity information is not being requested and that there is no provision for any third-party audit of the information that the railways will be providing. The view was expressed that both issues should be addressed in the regulations.

In the discussion, the issues of car order fulfillment and switching service were raised as not being included in the proposed regulations. Also, as the government considers stakeholder feedback, it was recommended that the strong railway lobby will need to be countered and that shipper emphasis on rail freight being essentially a monopoly business should be emphasized.

It was noted that the deadline for input to the draft regulations is February 26 and Mr. Corey indicated that FMA will be drafting a submission to meet that deadline, based on FMA member feedback.

3. CN Tariff 9000 – Ancillary Charges

a) Section 13000 – Intra-Plant Switching

Monique Evans of DLA Piper Law Firm led this discussion.

CN has changed the language of section 13000, Intra-plant Switching. CN now appears to be charging if it is asked to deliver cars to specific railcar spots within a facility, whereas it used to only charge the intra-plant switching fee if it was moving railcars that had been placed on a previous delivery. This could be very costly for facilities that handle multiple commodities that require different loading and unloading infrastructure. The question was raised have FMA members experienced these additional charges and are shippers exploring other options, e.g.,

purchasing and using a track mobile or hiring a third-party switcher? No members on the call were able to provide any specific answers to these questions.

Ms. Evans commented that this is an indication of the railways attempting to avoid providing in-plant switching service. She noted that it is likely that an increasing number of shippers are likely doing their own in-plant switching, or are having this work done by private contractors. It would be useful to know how many FMA shippers are now doing their own in-plant switching. Follow-up on this question will be considered.

b) sections 13800 and 13850 – Safe Operating Practices on Shipper Property

John Corey provided a briefing on this issue. He noted that safety is a paramount consideration for all supply chain stakeholders. However, in these two sections of tariff 9000, CN is giving themselves the right to issue a “fine” against shippers for safety violations on shippers’ property, at CN’s sole discretion. There is no reciprocal provision for danger or damage to shipper equipment or products for safety violations on CN property.

Section 13800 addresses what CN calls *Life Critical Safety Violations*. The “fines” start at \$2,000 per incident and can rise to \$10,000 per incident for repetitive offences and also service to the facility will be immediately suspended.

Section 13850 addresses track maintenance issues on shippers’ private trackage. The “fines” start at \$500 per incident and can rise to \$10,000 per incident for repetitive offences.

While it is reasonable for CN to refuse to service unsafe shipper facilities, issuing of arbitrary charges for CN determined violations on shipper property is a questionable action. Mr. Corey reported that to have the Canadian Transportation Agency (CTA) consider the validity of these tariff items would require a formal complaint to the Agency by one or more shippers.

It was noted by members that, while CP does not have a comparable tariff, that some shippers are reporting problems with CP switching on private trackage. Forrest Hume commented that the railway companies would like to end their requirement for last-mile switching.

Mr. Corey recommended that these items be brought to the attention of the Transport Canada Rail Policy officials at an upcoming meeting with those officials.

4. Container Congestion – Rail Terminals

Bob Ballantyne provided a briefing on this topic. He reported on the recent letter from container line MSC reporting on container congestion in rail yards in the Greater Toronto area. A link to the MSC letter was sent to members with the agenda to the January 26 meeting. The MSC letter noted the “ripple effect” that this was having on other terminals and on returning empty containers to ports in a timely manner.

One member whose company has facilities in the Toronto area reported that it had not experienced any significant delays in receiving loaded containers and having empty containers picked up.

Another FMA member reported that his company had been experiencing delays with import containers at the Port of Vancouver.

Mr. Ballantyne reported on the media coverage of chronic problems with Trans-Pacific service. He noted the resulting delays to imports, “rolled” shipments (i.e., scheduled container shipments “rolled” to a later sailing), steep price increases experienced by importers, and the refusal of shipping lines to accept backhaul loads from western Canada exporters, primarily agricultural specialty crops and forest products.

He reported that Mr. Corey had arranged a meeting with the Transport Canada Marine Policy officials to discuss the Trans-Pacific problems and the options that might be open to shippers under the governing law: The *Shipping Conferences Exemption Act (SCEA)*. Mr. Corey reported that, following the meeting with the Transport Canada officials, a meeting of the FMA Marine Committee would be scheduled.

5. Recent Rail Service Experience of FMA Members

As service was discussed under the previous agenda items, there were no additional comments on service under this agenda item.

6. Other Business

Mr. Corey reported that he is recommending regular communications with the appropriate government agencies, primarily Transport Canada and the Canadian Transportation Agency. The members expressed support for this initiative.

Kleo Landucci, Vice-Chair of FMA, and Forrest Hume, FMA legal advisor, commented on the value of scheduled meetings of the Rail Committee, possibly as frequently as monthly. Given that rail freight is not a normally functioning competitive market, and of importance to so many Canadian industries, regular discussions on rail are vital to FMA members.

It was agreed that the next Rail Committee meeting will be scheduled in approximately one-months time.

7. Adjournment

The meeting was adjourned at approximately 1200 hours, EST.

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**Ottawa, ON.
February 5, 2021**