



Steve Suppan, Senior Policy Analyst  
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Minnesota House of Representatives  
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Good morning, Chairman Hornstein, Vice Chairman Tabke and committee members. I am Steve Suppan, a senior policy analyst at the Institute for Agriculture and Trade Policy, where I have worked since 1994. IATP is a non-profit non-governmental organization headquartered in Minneapolis, with offices in Washington, DC, Berlin, Germany and in Maine.

I will speak in support of House Files 286 and 895.

I am not an expert in railway safety and so will not testify further about the evident merits of the House Files. Instead, I will speak about how laws based on the House Files could be preempted or circumvented by the U.S.-Canadian Regulatory Cooperation Council (RCC). The remainder of this testimony either quotes or paraphrases the work of Sharon Treat, IATP's staff attorney and a former member of the Maine House of Representatives. She has researched the RCC, which was created by executive agreement in 2011 and renewed by President Donald Trump and Prime Minister Justin Trudeau in 2017.<sup>1</sup>

The purpose of the RCC is "reducing, eliminating or preventing unnecessary regulatory differences" between the U.S. and Canada. From its beginning, the RCC has carried out that purpose regarding the regulations governing rail safety and the transport of dangerous goods. The relevant regulatory agencies, Transport Canada and the U.S. Department of Transportation, have created technical committees, including on railroad safety.<sup>2</sup>

The U.S. request for comment about the RCC states that regulatory cooperation initiatives "may serve deregulatory functions and help agencies achieve the objectives of Executive Order 13771."<sup>3</sup> The Executive Order requires federal agencies to repeal two regulations for every one that is issued. The Trump administration intends for the RCC to serve the 2 for 1 Executive Order.

Several non-governmental organizations have challenged the legality of EO 13771.<sup>4</sup> But while this litigation continues, the Trump administration eliminates, eviscerates or refuses to enforce U.S. regulations.

For example, the USDOT Pipeline and Hazardous Materials Safety Administration in 2018 rescinded a mandate on installing electronically controlled pneumatic (ECP) brakes, based on cost-benefit

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<sup>1</sup> <https://www.whitehouse.gov/wp-content/uploads/2018/06/US-CanadaMOU.pdf>

<sup>2</sup> <https://www.tc.gc.ca/eng/acts-regulations/tc-usdot-859.html>

<sup>3</sup> <https://www.regulations.gov/document?D=OMB-2018-0006-0001>

<sup>4</sup> <http://yalejreg.com/nc/update-litigation-challenging-trumps-regulatory-two-for-one-eo/>

calculations, according to which “the expected costs of requiring ECP brakes would be significantly higher than the expected benefits of the requirement.” The Associated Press found the Trump administration underestimated the benefits of deploying these brakes, by omitting up to \$117 million in estimated future damages from train derailments that could be avoided by using ECP brakes.<sup>5</sup>

According to Bruce Campbell’s *The Lac Mégantic Rail Disaster*, the Trump administration is delaying or completely stopping the following regulatory activities:

- Measures to require more than one crew member on dangerous goods transporting trains;
- Positive train control, the remote-control, satellite-based protection system that helps prevent derailments;
- A rule requiring certain trains carrying high-hazard liquids to be operated with an ECP braking system by 2021;
- Prospective regulations to address track deterioration;
- Requiring locomotive engineers to be screened for sleep apnea.<sup>6</sup>

If the more powerful of the two countries seeking to harmonize regulations across the border is hell-bent on rescinding or gutting regulations, harmonization will lower railway safety standards.

While the RCC process is supposed to be transparent and inclusive, in practice it is not. The most recent (2016) transport of dangerous goods workplan is posted online.<sup>7</sup> However, the workplan doesn’t link to the technical documents being discussed by RCC working group members, nor does the web page for the workplan list the discussants and the companies they represent. According to that workplan, regulators are seeking greater alignment of U.S. and Canadian tank car standards. The rail safety workplan lists updating track safety and worker fatigue rules as priorities.<sup>8</sup> Notwithstanding the soothing euphemisms of regulatory cooperation, the Trump administration’s deregulatory and anti-regulatory activities contradict these plans.

IATP hopes that the RCC will be fully and promptly responsive to requests for information from state legislators about industry working group activities and documents that may be used to preempt Minnesota laws and regulations. The RCC has posted the contact information of the U.S. and Canadian government leads,<sup>9</sup> but in 2018 our emails to these officials for rail safety and transport of dangerous goods were met with automatic replies indicating the emails were either bad addresses or the

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<sup>5</sup> Matthew Brown, “US miscalculated benefits of better train brakes,” Associated Press, December 20, 2018. <https://www.apnews.com/2e91c7211b4947de8837ebeda53080b9>

<sup>6</sup> Bruce Campbell, *The Lac Mégantic Rail Disaster: Public Betrayal, Justice Denied* (Toronto, CA: James Lorimer and Company, 2018), 172-173.

<sup>7</sup>

<https://www.trade.gov/rcc/documents/2016%20RCC%20Transport%20of%20Dangerous%20Goods%20Work%20Plan.pdf>

<sup>8</sup> <https://www.tc.gc.ca/eng/acts-regulations/tc-usdot-873.html>

<sup>9</sup> <https://www.trade.gov/rcc/documents/RCC-working-group-contact-information.pdf>

regulators no longer work for government. Accountability and public engagement with non-industry stakeholders is a very low RCC priority.

Thank you for this opportunity to testify today. I have put literature about the RCC and the role of regulatory cooperation in the revised North American Free Trade Agreement on the literature table. I am pleased to answer any questions you may have about this testimony.