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Preliminary Submission to the Railway Safety Act Review

**Federation of Canadian Municipalities
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The devastating derailment and fire in Lac-Mégantic, Québec in July 2013 was a heartbreaking reminder of the importance of a strong regulatory framework for rail safety and the transportation of dangerous goods. Since the tragedy, FCM has led the call for concrete action to improve the regulatory regimes governing rail safety and the transportation of dangerous goods. Our position remains that Transport Canada must fully implement any safety recommendations identified by the Transportation Safety Board of Canada as part of its investigation into the Lac-Mégantic tragedy and other rail incidents.

Led by our National Municipal Rail Safety Working Group, FCM has worked with the federal government to address critical safety issues. This has resulted in a series of new measures that respond directly to FCM's call for urgent and concrete action by the federal government. This was a critical step forward in improving the safety of moving dangerous goods by rail. In particular, the federal government's recent measures and additional investments through the Rail Safety Improvement Program will enhance the ability of local governments to prioritize crossing upgrades and better plan for rail incidents involving dangerous goods.

FCM is pleased to participate in the initial round of consultations that will inform the statutory review of the *Railway Safety Act*, due to be completed by May 2018. FCM and our member municipalities look forward to contributing to the panel's work over the coming year. The topics detailed in this preliminary submission will provide a starting point for the conversation and we look forward to further discussions with the Chair, Vice-Chairs and Secretariat over the coming months.

Priority 1: Ensure the timely implementation of the Transportation Safety Board's recommendations

In its 2016 Watchlist, the Transportation Safety Board (TSB) highlighted the slow progress on addressing its recommendations and called on the federal government to accelerate its response to the outstanding recommendations. FCM and the National Municipal Rail Safety Working Group's rail safety advocacy is guided by the work undertaken by the TSB. The TSB serves a critical function in terms of making safety recommendations to the federal government, and at FCM we believe the standard for progress is full implementation of TSB safety recommendations.

Therefore, FCM is recommending that the RSA Review:

- *Call on Transport Canada to quickly implement any outstanding safety recommendations from the TSB, including recent recommendations from the TSB's investigation into the 2015 derailments near Gogama, ON.*
- *Call on the federal government to allocate adequate resources to Transport Canada to implement TSB recommendations and to properly enforce all subsequent rail safety measures.*



Priority 2: Expand funding for crossing safety improvements

The issue of railway-community proximity is still an outstanding concern when it comes to grade crossings. In February 2014, FCM submitted comments on Transport Canada's proposed *Grade Crossings Regulations (GCR)*, which were finalized and published in the *Canada Gazette*, Part II, on December 17, 2014 and are intended to respond to the TSB's long-standing recommendations related to safety management at grade crossings.

While FCM fully supports the intent of the GCR, we are continuing discussions with Transport Canada to ensure that additional funding is made available to municipalities and railways to assist them with meeting their obligations to upgrade existing crossings to basic standards over the next seven years. Over the coming months, FCM will be working closely with our members and industry to better quantify the financial impact of these regulations on municipalities. This should help inform the federal government's funding decisions.

Recent investments through the Rail Safety Improvement Program have made significant progress in addressing these issues, but FCM is recommending that the RSA Review Panel:

- *Request that the federal government allocate additional funding to municipalities and railways to assist them with improving crossing safety through crossing openings, closures and grade separations.*

Priority 3: Minimize the impact of blocked grade crossings on safety

As the quantity of goods shipped by Canada's railways increases, so too does the amount of rail traffic going through our cities and communities. The reality of longer and more frequent crossings has led to widespread safety concerns caused by repeated obstruction of grade crossings by moving trains.

The municipal sector remains concerned about the different treatment that is currently afforded to the obstruction of grade crossings by standing trains versus repeated blocking by moving trains. FCM supports the prohibition on stopped trains or switching operations from obstructing a public grade crossing for more than five minutes. This is specified in section 103(d) of the *Canadian Railway Operating Rules*, and in section 97(2) of the new GCR. Nevertheless, FCM and its members remain concerned about the frequent obstruction of grade crossings by moving trains, which is only addressed in a limited fashion through section 98 of the GCR. While this section includes a process for municipalities to identify safety concerns raised by repeated obstruction by moving trains, there is no upper time limit, as exists for stopped trains.

The GCR final regulations require railways to work toward a solution with any municipality that identifies a safety concern as per the process laid out in section 98 of the GCR. If this is not possible within a period of 90 days, municipalities are then able to notify the Minister of Transport who can use their existing powers under section 31 of the *Railway Safety Act* to take action if there is an immediate threat to safety.



While FCM is hopeful that this process will address cases of blocked crossings that have clear safety implications, the fact remains that the obstruction of grade crossings by moving trains is both a safety and an economic issue. Municipalities of all sizes struggle with this problem. This is an increasing concern due to the rapid growth in the volume and frequency of freight shipments. There has been little to no commensurate increase in network capacity on the part of the railways. The result is heavy traffic congestion leading to delays and frustration for residents, commercial and emergency vehicles.

Therefore, we recommended that the RSA Review:

- *Consider possible legislative changes that would allow Transport Canada to take a more comprehensive approach to the obstruction of grade crossings by moving trains, taking into account both safety and economic factors.*

Priority 4: Identify and restrict rail operations at high-risk locations commonly used as stopover locations where trains should not be left unattended

The TSB investigation into the Lac-Mégantic derailment exposed numerous weaknesses in Transport Canada's regulatory regime for rail safety and the transportation of dangerous goods. Since then, FCM has been a leading advocate for regulatory changes that will improve community safety. This includes robust oversight and enforcement of Canada's railways by Transport Canada, speed restrictions and risk assessments along dangerous goods routes and enhanced tank car standards. We are encouraged by the steps taken to date, including strengthened operating rules for key trains and key routes shipping dangerous goods. We also support enhanced and transparent risk assessments, and new requirements for applying handbrakes and securing unattended trains.

Our members welcome these improved operating rules and the opportunity to participate in the risk assessment process. However, they continue to express concerns regarding trains being left unattended at high-risk locations (even with the two lines of defenses applied as per the new operating rules). This includes the top of steep grades or near environmentally sensitive areas.

Therefore, FCM is recommending that the RSA Review:

- *Encourage Transport Canada to identify high-risk locations commonly used as stopover locations, where trains should not be left unattended. This is due to extraordinary site-specific risks like very steep grade and curvature leading in to populated areas. Railways must restrict rail operations accordingly.*

Priority 5: Support the implementation of solutions to railway proximity issues

We need land use planning that fully considers safety issues related to developing lands in close proximity to railway facilities. The practice of developing land in close proximity to rail operations and the expansion of rail operations in urban areas have generated a variety of



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opportunities as well as challenges for municipalities, developers and railways. We must work together to balance a variety of competing goals and aspirations.

FCM has a long-standing partnership with the Railway Association of Canada, focused on developing and promoting guidelines to help local and provincial governments take these safety considerations into account in municipal land use planning. FCM and RAC are committed to building a common approach to the prevention and resolution of issues that may arise when people live and work in close proximity to railway operations.

Both organizations continue to work cooperatively, with the most recent open-ended Memorandum of Understanding signed in 2016. In May 2013, the FCM/RAC Proximity Initiative released updated *Guidelines for New Development in Proximity to Railway Operations*. This includes recommended setbacks for “greenfield” developments and a process to review the viability of infill and conversion developments where it is not possible to meet the recommended setbacks.

FCM remains committed to this important initiative. We do note however, that these challenges must be addressed by municipal and provincial governments, as the federal government does not have authority over local land use planning. The federal government should continue to work collaboratively with provincial and municipal governments to advance land use planning practices in proximity to railway operations, rather than mandating a one-size-fits-all approach not suitable for a country as diverse as Canada.

For example, the regulations under Ontario's *Planning Act* require railways to be notified of official plans (and amendments), subdivision plans, zoning bylaws and consents to sever lands if activities are to occur within 300 metres of a railway line. Under this framework, railways may review the documents and recommend provisions to address any potential land use compatibility issues. If the railway's proposed adjustments are not incorporated into the land development project, the railways may raise the matter with the Ontario Municipal Board. Similar notification processes that are aligned with provincial land use regulations would help advance our shared objective of consistency in land use planning in proximity to railway operations while recognizing the geographic and jurisdictional diversity of Canada.

Therefore, FCM is recommending that the RSA Review:

- *Call on the federal government to continue working collaboratively with provincial and municipal governments to advance land use planning practices in proximity to railway operations, rather than mandating a one-size-fits-all approach not suitable for a country as diverse as Canada; and*
- *Call on the federal government to continue working closely with its provincial counterparts to support provincial efforts develop railway notification processes that are aligned with provincial land use regulations.*



Priority 6: Implement the Emergency Response Task Force recommendations

Following the derailment in Lac-Mégantic, Transport Canada also announced the creation of a multi-stakeholder Emergency Response Task Force. Since the ERTF was first established, FCM has been involved as a member, ensuring municipal concerns were addressed in the Task Force's recommendations, which touch on three main areas:

- Improving the Emergency Response Assistance Plan Program;
- Expanding ERAP requirements to other flammable liquids; and
- Enhancing emergency response, preparedness and training.

We are pleased that the ERTF's final report and recommendations respond directly to many of our concerns. With the release of the ERTF's final report and Transport Canada's commitment to implementing all of its recommendations, there is a renewed opportunity to engage with stakeholders. This will improve municipal capacity to prepare for and respond to rail incidents involving dangerous goods.

FCM's advocacy on these important issues will continue to be guided by the work undertaken by the ERTF. Our expectation is that the Task Force's recommendations will be fully implemented in close consultation with municipalities, including ERTF recommendations that are not referenced in subsequent sections of this submission. It is also important to note that implementing the remaining ERTF recommendations will require close consultation with local governments, while recognizing the diverse approaches to emergency preparedness and response across the country.

Therefore, FCM is recommending that the RSA Review:

- *Call on Transport Canada to develop a clear timetable and municipal consultation plan to effectively implement the remaining ERTF recommendations.*

Priority 7: Ensure that municipal first responders have the necessary training and equipment to respond to incidents involving dangerous goods

FCM has been clear that railways and federal agencies must be involved as active partners to both equip and support municipal first responders to prevent rail safety emergency costs from being added to the limited fiscal capacities of municipal governments. For this reason, FCM has repeatedly advocated for additional improvements to the ERAP program. Municipalities should not be expected to have specialized equipment and resources in the event of a major incident involving dangerous goods.

FCM welcomed Transport Canada's expansion of the ERAP program to include shipments of flammable liquids and we appreciate that Transport Canada continues its work to classify additional dangerous goods for inclusion in the ERAP program. The expanded program is an important step forward in addressing the Working Group's concerns.



In its final report, the ERTF identified the need to focus on first responders' capacity to handle flammable liquid spills or fires, given that the responder community has limited knowledge and training opportunities in this area. The report also outlined the limited capacity for small or remote communities to fund adequate resources and training to respond in case of an incident. However, the ERTF did not provide recommendations on how to accommodate volunteer fire departments with limited access to resources for specialty training programs, facilities and equipment. Furthermore, the ERTF has previously identified the need for consistent response timeframes and a common approach when providing ERAP services. They also pointed to the need for an oversight mechanism to determine if ERAP holders are providing an appropriate level of assistance and to ensure continuous improvement of the program.

Since the tragedy in Lac-Mégantic, both railways and shippers have made significant investments in training programs and initiatives for municipal responders. However, deployment of these initiatives will remain limited without a coordinated and continued effort from the federal government to develop an enhanced and accessible Canadian-based training for first responders. FCM was pleased that Transport Canada launched a Steering Committee on First Responder Training to develop an operational and specialized-level training program to be delivered at provincial fire colleges or fire department training facilities. FCM is an active member of the steering committee and continues to support Transport Canada's efforts to develop a Canada-based training program and standard for first responders.

Recent rail incidents involving dangerous goods underscore the need for consistent response timeframes and a common approach when providing ERAP services that accommodate the scale and nature of individual rail incidents. Furthermore, federal leadership and stronger partnerships with industry and first responders remains critical for improving access to additional resources. This would further enhance emergency preparedness in all municipalities, beyond improvements to the ERAP program and access to a Canadian-based training curriculum.

FCM has repeatedly urged Transport Canada to complement the new training regime and ERAP program improvements with additional resources to ensure all municipal emergency services receive the necessary training and equipment to respond to dangerous goods incidents. While many first responders will only require basic level training, FCM has been clear that Transport Canada must work with industry and municipalities to identify first responders that require operational or specialized training. This would include providing resources to facilitate access to training facilities.

Improving access to specialized response exercises, training programs or facilities and a greater understanding of the resources available to municipal first responders during incidents, will significantly improve the capacity of first responders to respond to rail incidents involving dangerous goods.

Moving forward, FCM is recommending that the RSA Review:

- *Call on the federal government to work with the provinces/territories and industry to provide the necessary resources to ensure municipal first responders can access operational and specialized training, if necessary;*



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- *Call on the federal government to work with shippers and carriers to improve access for first responders, particularly volunteer departments in small and remote communities, to participate in response exercises and specialized training programs and facilities to improve emergency preparedness and to test and evaluate the effectiveness of the ERAP program; and*
- *Call on Transport Canada to continue to work with industry partners to expand awareness and outreach efforts with municipalities, to improve understanding of the resources available to them during incidents involving dangerous goods.*

Priority 8: Implement a permanent solution for sharing information for emergency planning purposes

The events in Lac-Mégantic shed light on the important information and communication gaps between the Government of Canada, shippers, rail companies and local first responders. FCM identified two different, but related, challenges: (1) securing access to historical information for planning purposes; and (2) ensuring that information-sharing during emergencies occurs in real-time.

In April 2016, Transport Canada announced Protective Direction 36 (PD36), which responds directly to a number of FCM's requests and is an important step forward in improving the safe transportation of dangerous goods by rail. Under PD36, municipalities will benefit from more frequent reporting on dangerous goods from Class 1 railways, eventually receiving the information quarterly. Furthermore, PD36 addresses the need for more detailed information on the nature and volume of dangerous goods, within 30 months of coming into force. FCM also appreciates the greater clarity provided in PD36 on how local governments can share the data for emergency preparedness. We also recognize that PD36 is designed to inform emergency preparedness and not emergency response, and FCM will continue to request improved access to real-time information and technical support during emergencies.

While these measures will enhance the ability of communities to plan for rail incidents involving dangerous goods, it is important to note that PD36 is intended to be a temporary measure and could be cancelled at the discretion of the Minister. Therefore, FCM recommends that the RSA Review:

- *Call for the development of regulations respecting the subject matters of PD36 be made under section 27 of the Transportation of Dangerous Goods Act.*

Priority 9: Expand the supplementary fund levy to other dangerous goods

At the time of the Lac-Mégantic derailment, Transport Canada did not have a robust liability and insurance regime for the shipment of dangerous goods by rail. FCM identified this liability gap as a key issue for municipalities, who often incur significant costs when responding to rail safety incidents. FCM called on the federal government to address this gap, and supported the government's approach of sharing these costs between shippers of dangerous goods and the railways, with different requirements for short-line and Class 1 railways.



Bill C-52, *The Safe and Accountable Rail Act*, was an important step forward in improving the safe transportation of dangerous goods by rail. For years, FCM led the call for new measures to limit the fiscal impact of rail safety and emergency response costs for municipal governments, and this legislation responded directly to this request. The major reforms to the insurance and third party liability regime for railways and dangerous goods shippers, including higher insurance limits for railways and the creation of a new supplementary fund to be capitalized by a levy on crude oil shippers, responded directly to our concerns.

Under the Act, Transport Canada has the power to develop regulations to expand the supplementary fund levy to other dangerous goods as deemed appropriate. The Canada Transportation Act Review final report, *Pathways: Connecting Canada's Transportation System to the World*, which was tabled in Parliament in February 2016, recommended that “consideration be given to extending the revised liability and compensation regime established for crude oil transportation by rail, and enacted with the Safe and Accountable Rail Act, to all other dangerous goods.” Therefore, FCM recommends that the RSA Review:

- *Urge Transport Canada to implement the CTA Review's recommendation to quickly expand the levy to other dangerous goods shipped in large quantities in Canada, such as ethanol.*

Priority 10: Expand the municipal role in the rail safety regulatory framework

Municipalities are the on-the-ground experts that understand community needs, public sentiment and potential barriers to the safe transportation of dangerous goods by rail. Moving forward, FCM continues to call on the federal government and railway companies to continue to work constructively, in partnership with municipalities, to assess all social, economic and environmental risks and to effectively address the hazards associated with Canada's rail transportation system. As we move forward through the next phases of this review, FCM is recommending that the RSA Review and the federal government:

- *Continue to ensure meaningful consultation and awareness-raising with municipalities when further developing, implementing and enforcing proposed amendments to the Railway Safety Act and other legislation.*

Conclusion

FCM has been the national voice of municipal government since 1901. With 2,000 member municipalities, FCM represents the interests of municipal governments on policy and program matters that fall within federal jurisdiction. Members include Canada's largest cities, small urban and rural communities, and 18 provincial and territorial municipal associations.

FCM and its member municipalities look forward to continuing a conversation beyond this preliminary submission with the Chair, Vice-Chairs and Secretariat in the coming year. We will also be available to provide input, examples and regional perspectives on the key issues that



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emerge following this initial round of consultations. It is our hope that the RSA Review will take into account the infrastructure and land use planning challenges, emergency preparedness needs, and safety requirements of Canada's municipalities, in full recognition of their critical role in protecting communities.

For additional information or inquiries, please contact Marc LeBlanc, Policy Advisor at marc.leblanc@fcm.ca or 613-907-6368.

Annex A – Summary of Recommendations

In summary, FCM is recommending that the RSA Review:

- *Recommendation 1.1: Call on Transport Canada to quickly implement any outstanding safety recommendations from the TSB, including recent recommendations from the TSB's investigation into the 2015 derailments near Gogama, ON.*
- *Recommendation 1.2: Call on the federal government to allocate adequate resources to Transport Canada to implement TSB recommendations and to properly enforce all subsequent rail safety measures.*
- *Recommendation 2.1: Request that the federal government allocate additional funding to municipalities and railways to assist them with improving crossing safety through crossing openings, closures and grade separations.*
- *Recommendation 3.1: Consider possible legislative changes that would allow Transport Canada to take a more comprehensive approach to the obstruction of grade crossings by moving trains, taking into account both safety and economic factors.*
- *Recommendation 4.1: Encourage Transport Canada to identify high-risk locations commonly used as stopover locations, where trains should not be left unattended. This is due to extraordinary site-specific risks like very steep grade and curvature leading in to populated areas. Railways must restrict rail operations accordingly.*
- *Recommendation 5.1: Call on the federal government to continue working collaboratively with provincial and municipal governments to advance land use planning practices in proximity to railway operations, rather than mandating a one-size-fits-all approach not suitable for a country as diverse as Canada.*
- *Recommendation 5.2: Call on the federal government to continue working closely with its provincial counterparts to support provincial efforts develop railway notification processes that are aligned with provincial land use regulations.*
- *Recommendation 6.1: Call on Transport Canada to develop a clear timetable and municipal consultation plan to effectively implement the remaining ERTF recommendations.*
- *Recommendation 7.1: Call on the federal government to work with the provinces/territories and industry to provide the necessary resources to ensure municipal first responders can access operational and specialized training, if necessary;*
- *Recommendation 7.2: Call on the federal government to work with shippers and carriers to improve access for first responders, particularly volunteer departments in small and remote communities, to participate in response exercises and specialized training*

programs and facilities to improve emergency preparedness and to test and evaluate the effectiveness of the ERAP program.

- *Recommendation 7.3: Call on Transport Canada to continue to work with industry partners to expand awareness and outreach efforts with municipalities, to improve understanding of the resources available to them during incidents involving dangerous goods.*
- *Recommendation 8.1: Call for the development of regulations respecting the subject matters of PD36 be made under section 27 of the Transportation of Dangerous Goods Act.*
- *Recommendation 9.1: Urge Transport Canada to implement the CTA Review's recommendation to quickly expand the levy to other dangerous goods shipped in large quantities in Canada, such as ethanol.*
- *Recommendation 10.1: Continue to ensure meaningful consultation and awareness-raising with municipalities when further developing, implementing and enforcing proposed amendments to the Railway Safety Act and other legislation.*