

February 22, 2016

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Daniel R. Elliott III, Chairman  
Surface Transportation Board  
395 E. Street, S.W.  
Washington, D.C. 20423-0003

Re: Docket No. EP 728

Submitted via E-file at [www.stb.dot.gov](http://www.stb.dot.gov)

Dear Chairman Elliott,

The Midwest Interstate Passenger Rail Commission (MIPRC) appreciates the opportunity to comment on the Surface Transportation Board's proposed policy statement regarding "preference" under 49 U.S.C. § 24308.

Since the Surface Transportation Board is now responsible for initiating investigations as well as responding to complaints regarding untimely performance of Amtrak's service, MIPRC understands the STB's desire for clarity in defining "preference" under 49 U.S.C. § 24308.

However, we believe that 49 U.S.C. § 24308 already provides clear direction to the STB on how to interpret "preference":

1. 49 U.S.C. § 24308 (c) clearly provides that "except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing." In choosing to take a "systemic" view of preference, the STB's proposed policy statement is ignoring the specificity in law of preference for Amtrak in using "a rail line, junction, or crossing."
2. 49 U.S.C. § 24308 (c) also clearly provides that "a rail carrier affected by this subsection may apply to the Board for relief" and outlines the steps the STB should then take to determine whether "preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers."
3. Lastly, 49 U.S.C. § 24308(f)(1) provides ample guidelines to the STB on when and how to initiate or respond to substandard performance "to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators."

The Board's proposed Policy Statement regarding how the Board proposes to interpret "preference" under 49 U.S.C. § 24308(c) and "failure to provide preference" under 49 U.S.C. § 24308(f)(2) changes those definitions as found in 49 U.S.C. § 24308, and MIPRC does not support that change.

MIPRC believes that if the STB changes its definition of OTP to include a definition for interim stops in addition to the final destination (please see "MIPRC Comments into STB rule on OPT 020816"), the Board should have ample information to adjudicate § 24308(f) complaint proceedings and initiate investigations resulting in recommendations to improve service, quality, and on-time performance.

Thank you for your consideration.

Sincerely,

Tim Hoeffner  
MIPRC Chair

Joan Bray  
MIPRC Vice Chair

Laura Kliewer  
MIPRC Director

cc: Deb Miller, Vice Chairman, STB; Ann D. Begeman, Member, STB

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*Director*  
Laura Kliewer

*Bringing Together  
State Leaders from  
Across the Region  
to Advocate  
for Passenger Rail  
Improvements*

The Midwest Interstate Passenger Rail Commission is a nine-state interstate compact commission that promotes, coordinates and supports regional improvements to passenger rail service. Our member states include Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota and Wisconsin.