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Comments Submitted for STB Docket EP-728-0
Proposal #2: Notice of Proposed Policy Statement on Implementing Intercity Train
On-Time Performance and Preference Provisions of 49 U.S.C. Sec 24308(c) & (f)

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Submitter

Daniel Peacock, Member
Virginia Association of Railway Patrons (VARP)
Virginians for High Speed Rail (VHSR)
National Association of Railroad Passengers (NARP)
Midwest High Speed Rail Association
Friends of the Cardinal

9302 Main Street
Manassas, Virginia 20110

Tel 703-365-0031

E-Mail: vrerail1@earthlink.net

A. Background

Proposal #2: Notice of Proposed Policy Statement: Interpretation of Statute on
Issues and Evidence under Sec 24080(f) Complaints

1. Preference of Amtrak over Freight Trains [(49 USC, Sec 24308(c)]
2. Phrase, "attributable to a ... failure to provide preference" [(49 USC, sec 24308(f)(2)]
3. Guidance on most useful evidence in proceedings
4. Potential Factors to Mitigate Preference Failures

B. Comments

1. Preference of Amtrak over Freight Trains [(49 USC, Sec 24308(c)]

This policy statement (Docket No. EP 728) argues that the preference of passenger over freight rails is not "absolute" and that "preference for ... passenger transportation ... [should not] materially lessen the quality of freight transportation provided to shippers. However, the opposite is true. Data in recent years showing the "on-time

performance” of Amtrak trains to be declining steeply and reaching lows of 20 to 50% proves that freight trains have increasingly been operating as if the law gave the preference to freight over passenger rails. This preference of freight rails is materially degrading the quality of passenger rail transportation provided to passenger, a result contrary to the law’s language and intent. For example, Amtrak’s Cardinal 50 had on-time performance of 34% between December 2014 and December 2015.

The following table reminds the STB why passenger trains have preference over freight trains:

Why Passenger Trains Have Preference Over Freight Trains	
No	Why Passenger Trains Have Preference
1	The law under 49 U.S.C., Sec 24308(c) provides for this preference.
2	The public relieved the freight railroads from the burden of money-losing passenger rail operations.
3	The financial relief from running passenger trains eventually helped the freight railroads to become very profitable, an industry that provides American jobs, removes trucks from highways, and helps the environment, all important results of the law creating Amtrak.
4	Though the public was now responsible for the cost of passenger rail, the preference of passenger over freight rails allowed the United States to maintain a robust, profitable passenger operation in the Northeast Corridor and to preserve a skeletal long distance operation.
5	<p>The public has continued to subsidy the upgrade of freight railroad infrastructures, including this incomplete list of examples:</p> <ul style="list-style-type: none"> • CSX’s National Gateway Project: ~\$280 million • NS’s infrastructure from Norfolk to Petersburg: ~\$100 million • NS’s infrastructure from Lynchburg to Roanoke and Altavista to Roanoke: ~\$100 million • Buckingham Branch Railroad’s (BBRR’s) infrastructure from Orange to Clifton Forge: ~\$30 million. <p>I support such investments. While these improvements also improve passenger rail operations, freight railroads are the far bigger beneficiary because these improvements allow them to move more goods more efficiently. In 2014, both CSX and NS reported \$2 billion in profits.</p>

2. Phrase, “attributable to a ... failure to provide preference” [(49 USC, sec 24308(f)(2)]

Amtrak already compiles extensive, detailed data on the types and causes of delays on all of its routes. You can find this information in its Monthly Performance Reports posted on its website under “Reports & Documents”. Here is the link:

<https://www.amtrak.com/servlet/ContentServer?c=Page&pagename=am%2FLayout&cid=1241245669222>

The current policy of certain freight railroads giving preference to freight trains need not be written down. That policy could simply be verbal or “understood” if an employee wants to advance in the organization. The simple fact is that the data prove that too many of the freight railroads are increasingly ignoring the law and their own self-interest, which includes receiving millions of dollars of public infrastructure subsidies.

3. Guidance on most useful evidence in proceedings

As suggested above, the most useful evidence in proceedings would be Amtrak’s details Monthly Performance Reports and the data backing up those Reports.

**4. Potential Factors to Mitigate Preference Failures:
Stakeholders Jointly Adopt Decisions, in Advance, about
Preferences for Major Situations, as Shown in “If – then” Table**

The STB and other stakeholders should adopt, in advance, simple guidance as to when freight and passenger rail trains have “Preference”. As a starting point, the following “If – then” table captures how the decision for preference could be made, given the most common situations. By agreeing to adopt these decisions in advance, the parties would have far fewer reasons to request STB hearings and both freight and passenger rail operations should operate more smoothly and efficiently.

How to Decide the Preference of Trains	
If	then
passenger train is “on-time” (1/2 hr or after scheduled time),	passenger train has preference.
freight train is “unscheduled”,	passenger train has preference.
passenger train is “late” (1/2 to 1 hr after scheduled time),	one freight train has preference over course on entire passenger route, if lack of preference would cause freight train to be 3 hr late at final destination.
passenger train is “very late” (1 hr or later after scheduled time),	passenger train has preference.

This table recognizes that passenger trains are much more “time sensitive” to successful operations than freight trains. The table is a starting point for a much more comprehensive set of “situations” and “decisions”.