



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

General Counsel

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

February 22, 2016

FILED ELECTRONICALLY

Ms. Cynthia Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

240174

ENTERED
Office of Proceedings
February 22, 2016
Part of
Public Record

**Re: Docket No. EP 728
Policy Statement On Implementing Intercity Passenger Train
On-Time Performance And Preference Provisions
Of 49 U.S.C. § 24308(c) and (f)**

Dear Ms. Brown:

Please find attached for filing in the above-referenced proceeding the Opening Comments of the United States Department of Transportation (DOT), signed by the General Counsel, Kathryn B. Thomson. If you have any questions, please feel free to contact me.

Respectfully,

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time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters,” the Board “may initiate an investigation,” or Amtrak or other specified parties may file a complaint asking the Board to investigate. 49 U.S.C. § 24308(f)(1). In so doing, the Board must determine the causes of the delays, as well as whether they “are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required” by law. *Id.* § 24308(f)(2). In that case, the Board may order the host railroad to pay damages, or may fashion other appropriate relief. *Id.*

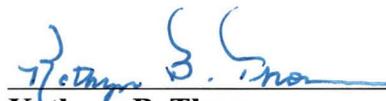
The Board has put forth the proposed Policy Statement for comment to obtain views on how the term “preference” in § 24308(c) should be interpreted. The Board also makes clear that the proposed “preliminary guidance [is] merely [] a potential starting point for parties to consider when developing evidence for § 24308(f) proceedings, recognizing that the fact-specific nature of § 24308(c) preference issues means that the Board’s approach to such issues will likely be refined in individual § 24308(f) proceedings.” Policy Statement at 3. The Board “do[es] not view the preference requirement as absolute,” so that “a host rail carrier need not resolve every individual dispatching decision between freight and passenger movements in favor of the passenger train.” *Id.* Instead, the Board proposes to “take a systemic, global approach in determining whether a host carrier has granted the intercity passenger trains preference.” *Id.* The Board would examine a wide variety of evidence “on whether or not a host carrier made identifiable, consistent efforts to minimize total delays for intercity passenger train movements while on the host carrier’s network and on whether or not such efforts have in fact done so.” *Id.* at 4.

DOT promotes an integrated, cohesive, efficient, and optimized national rail system for the movement of goods and people as part of its national rail policy, and therefore places great

importance on the movement of both passenger and freight trains. DOT furthermore supports the enhancement of passenger rail service and the improvement of on-time performance, and appreciates the efforts of the Board, Amtrak, host railroads, and other stakeholders to achieve these goals. Because Congress saw fit to enact a passenger rail preference provision into law, it is important to gather additional data and viewpoints to understand how preference is actually implemented in practice, and to ensure that Congress's intent is fulfilled. DOT views this proceeding as a very important one for the provision of passenger rail service, both now and into the future, and we therefore look forward to continuing our consideration of the issues presented here and to hearing the view of other stakeholders. The Department anticipates submitting further views at a later stage of this proceeding.

February 22, 2016

Respectfully submitted,



Kathryn B. Thomson

General Counsel

United States Department of Transportation