



Department of
Transportation

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Honorable Daniel R. Elliot
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

**RE: STB Docket No EP 726 - On-Time Performance Under Section 213 of the
Passenger Rail Investment and Improvement Act of 2008**

Dear Chairman Elliot,

Please find the comments of the New York State Department of Transportation
attached for e-filing on the record of the subject proceeding.

Sincerely,

Ronald L. Epstein
Assistant Commissioner for Policy and Planning/CFO

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ON-TIME PERFORMANCE UNDER SECTION 213 OF THE PASSENGER
RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008**

Docket EP 726

BEFORE THE
SURFACE TRANSPORTATION BOARD
Docket EP 726
COMMENTS OF THE
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

The New York State Department of Transportation (“NYSDOT”) respectfully submits the following comments regarding the Notice of Proposed Rulemaking in Docket EP 726 – On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”).

BACKGROUND

NYSDOT is an executive branch agency of the State of New York, with broad responsibility for transportation matters within the state, including the establishment of statewide transportation policies, funding and administration of capital investment programs across all modes and the sponsorship of intercity passenger rail service operated by the National Railroad Passenger Corporation (“Amtrak”) pursuant to Section 209 of PRIIA.

NYSDOT sponsors four routes and jointly sponsors a fifth route with the Vermont Agency of Transportation. These routes are as follows:

Empire Service: Empire service consists of seven weekday round trips¹ between Penn Station, New York City and Albany, NY. The route is 141 miles in length and Amtrak and the

¹ Reduced frequencies operate on weekends and holidays.

MTA Metro-North Commuter Railroad (MNCR) are host railroads for the service. Annual ridership is in excess of 1.15 million patrons.

Empire West Service: Empire West / Maple Leaf Service consists of two daily round trips between Penn Station, New York City and Niagara Falls, NY. The route is 460 miles in length and Amtrak, MNCR and CSX Transportation, Inc. (CSXT) are host railroads for the service. Annual ridership is approximately 267,000 patrons.

Maple Leaf Service: Maple Leaf Service consists of one daily round trip between Penn Station, New York City and Toronto, Ontario. Maple Leaf service is operated by Amtrak between New York City and the United States / Canadian border at Niagara Falls and is operated by VIA Rail Canada (VIA) between the United States / Canadian border and Toronto, Ontario. NYSDOT sponsorship of the Maple Leaf under Section 209 of PRIIA is limited to operations within the United States. The route is 544 miles in length and Amtrak, MNCR and CSXT are host railroads for the service in the United States and Canadian National Railway Company (CN) is the host railroad where VIA is the operator in Canada. Annual ridership is approximately 137,000 patrons.

Adirondack Service: Adirondack Service consists of one daily round trip between Penn Station, New York City and Montreal, Quebec. Adirondack Service is operated entirely by Amtrak in both the United States and Canada. NYSDOT sponsorship of the Adirondack under Section 209 of PRIIA encompasses the entire route, including those segments in Canada. The route is 381 miles in length and Amtrak, MNCR, Canadian Pacific Railway (CP) and CN² are host

² NYSDOT notes that the Adirondack route was not included in Amtrak's original complaint filed with the Board pursuant to Section 213 of PRIIA in Docket No. NOR 42134, requesting that the Board initiate an investigation into

railroads for the service in the United States and CN is the host railroad in Canada. Annual ridership is in excess of 132,000 patrons.

Ethan Allen Service: Ethan Allen Service consists of one daily round trip between Penn Station, New York City and Rutland, Vermont. Sponsorship of Ethan Allen Service under Section 209 of PRIIA is shared with the Vermont Agency of Transportation. The route is 241 miles in length and Amtrak, MNCR, CP and Clarendon & Pittsford Railroad Co. (CLP) are host railroads for the service. Annual ridership is approximately 48,000 patrons.

NYSDOT COMMENTS ON PROPOSED RULE

NYSDOT concurs with the Boards adoption of a definition of on-time performance that relies on a comparison between the scheduled arrival time and the actual arrival time at a station. Adoption of such a definition simplifies data collection and is easily understood by the travelling public. Nevertheless, NYSDOT believes some changes are required to the proposed rule.

A. The definition of “on time” should be harmonized with the definitions adopted by the FRA under Section 207 of PRIIA.

In the proposed Part 1040, the Board has proposed to define “On Time” as follows:

“A train is “on time” if it arrives at its final terminus no more than five minutes after its scheduled arrival time per 100 miles of operation, or 30 minutes after its scheduled arrival time, whichever is less.”

alleged “substandard performance of Amtrak passenger trains” on certain rail lines owned by CN, as only one mile of CN’s route is located in the United States. (Amtrak Complaint, NOR 42134, at 7 (Jan 19, 2012))

Section 207 of PRIIA charged Amtrak and the Federal Railroad Administration (“FRA”) to jointly develop new or improve existing metrics and standards for measuring performance of intercity passenger rail operations, including on-time performance and train delays incurred on host railroads. The FRA conducted public outreach and, consistent with Congressional direction, consulted with *“the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, nonprofit employee organizations representing Amtrak employees, and groups representing Amtrak passengers”*³ and the public in crafting metrics and standards, including a definition of on-time performance⁴. The Board submitted comments to the FRA in response to this public outreach wherein the Board stated *“STB representatives have been kept informed during this process and observed several of the meetings at which the FRA’s and Amtrak’s staff discussed the form and content of the proposed metrics and standards in detail. The draft metrics and standards appear to be robust, detailed and responsive to the concerns of Congress as expressed in PRIIA.”*⁵ The FRA published the final Metrics and Standards for Intercity Passenger Rail Service⁶ which became effective May 12, 2010. The PRIIA Section 207 Metrics and Standards adopted the following definition of On-Time Performance:

“A train is considered “late” if it arrives at its endpoint terminal more than 10 minutes after its scheduled arrival time for trips up to 250 miles; 15 minutes for trips 251-350 miles; 20 minutes for trips 351-450 miles; 25 minutes for trips 451-550 miles; and 30 minutes for trips of 551 or more miles. These tolerances are based on former ICC rules.

³ PRIIA Section 207

⁴ Proposed Metrics and Standards for Intercity Passenger Rail Service, Federal Register (74 FR 10983).

⁵ STB comments submitted to FRA Docket FRA-2009-0016, posted 04/01/2009

⁶ Docket No. FRA-2009-0016

The exception is that all Acela trips, regardless of run length, are considered late if they arrive at their endpoint terminal more than 10 minutes after their scheduled arrival times.”

The definition of “on-time” proposed by the Board in Part 1040 varies from the definition adopted by the FRA in the PRIIA Section 207 Metrics and Standards. The table below compares the two definitions:

Distance Operated (Miles)		Maximum Allowance Proposed §1040 (min)	Maximum Allowance PRIIA Section 207 (min)
Over	Up to and Including		
0	50	5	10
50	100		
100	150		
150	200	10	
200	250		
250	300	15	
300	350		
350	400	20	15
400	450		
450	500	25	20
500	550		
Greater than 550		30	25
			30

Applying the standards above to the five routes sponsored by NYSDOT, we see that for three of the routes, the proposed Part 1040 and the PRIIA Section 207 Metrics and Standards have the same allowance beyond the published schedule. However, for the Ethan Allen and for the Maple Leaf, the allowances for on-time performance would be 5 minutes greater under the proposed Part 1040 than under the PRIIA Section 207 Metrics and Standards. See the table below.

Service	Endpoints	Route Miles	Host RR's	Threshold under §1040	Threshold under §207
Empire Service	NYP – ALB	141	AMTK, MNCR	10	10

Adirondack	NYP – MTL	381	AMTK, MNCR, CP, CN ¹	20	20
Ethan Allen	NYP – RUT	241	AMTK, MNCR, CP, CLP	15	10
Empire West	NYP – NFL	460	AMTK, MNCR, CSX	25	25
Maple Leaf	NYP – TOR	544	AMTK, MNCR, CSX, CN	30	25

Having two different federal thresholds for on-time performance creates some undesirable outcomes.

Public Reporting of OTP: Pursuant to the PRIIA Section 207 Metrics and Standards, Amtrak is required to submit quarterly reports on the performance of Amtrak services to the FRA, including on-time performance, which are subsequently posted for public viewing on the FRA’s website (See <https://www.fra.dot.gov/Page/P0532>). The on-time performance data utilizes the definition of on-time performance found in the PRIIA Section 207 Metrics and Standards. This publicly reported data for particular routes could indicate that a train has poor on-time performance, but would not be eligible for relief under Section 213. Conversely, for routes of 100 miles or less, a train could be eligible for relief under Section 213 while reporting 100% OTP to the public.

Impact on Host Railroads: Having two different federal thresholds for measuring on-time performance creates uncertainty for host railroads. Section 207 of PRIIA states: *“to the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards...into their access and service agreements.”* However, under the proposed Part 1040, it is possible that a host carrier could fully comply with the Section

207 Metrics and Standards and any terms incorporated into their access and service agreements, yet still be subject to investigation pursuant to PRIIA Section 213.

Proceedings under Section 213 of PRIIA: The differences in the on-time performance thresholds between the PRIIA Section 207 Metrics and Standards and the proposed Part 1040 may provide a host railroad with a basis to defend their performance in any proceeding brought under Section 213 or to challenge the outcome of such a proceeding in court.

For the reasons outlined above, NYSDOT recommends that the Board modify their proposed Part 1040 to adopt the definition of “on time” found in the PRIIA Section 207 Metrics and Standards.

B. The proposed definition of “on-time” ignores intermediate stations

The proposed Part 1040 focuses exclusively at the performance of any particular train at its final destination. However unlike an aircraft, a train can serve many intermediate stations with dozens of potential origin / destination pairs along its route. These passengers deserve the same quality of service as those passengers riding the train to its endpoint terminal. The Interstate Commerce Commission recognized the importance of serving passengers at intermediate stops when it said “*The public should be able to rely upon train schedules at intermediate stops as well as at the “final terminus” of a route*”⁷. For many routes, ridership between intermediate stations, or involving an intermediate station and the beginning or

⁷ Interstate Commerce Commission, Docket EP 277 Sub No 3, (351 I.C.C. 910)

endpoint station, represent a significant portion of the ridership. For NYSDOT sponsored services in FFY 2015, end to end ridership, as a percentage of total ridership was:

Service	FFY 2015 % Ridership Using One or More Intermediate Station
Empire Service (NYP – ALB)	43.2%
Adirondack Service (NYP – MTL)	46.9%
Ethan Allen Service (NYP – RUT)	74.7%
Empire West / Maple Leaf ⁸ (NYP – NFL + Canada)	89.7%

Limiting the on time performance standard to only the endpoint disenfranchises the significant number of riders who utilize these intermediate stations.

The Section 207 Metrics and Standards incorporates a measure of All-Station OTP, which it defines as *“... the percentage of train times (departure time from origin station and arrival time at all other stations) at all of a trains stations that take place within 15 minutes (10 minutes for Acela) of the time in the public schedule.”⁹*

NYSDOT recommends that the Board incorporate a measure of All-Stations OTP in Part 1040. As with the Endpoint OTP metric, NYSDOT believes that the All-Stations OTP standard adopted in Part 1040 should match the standard adopted by the FRA pursuant to the Section 207 Metrics and Standards.

⁸ Includes travel with origins and destinations of New York City and Niagara Falls, NY or across the US/Canadian border. Endpoint OTP for the Maple Leaf is measured at Toronto, ON, while the Endpoint OTP for Empire West trains is Niagara Falls, NY.

⁹ The 15 minute All Stations OTP tolerance is derived from 49 U.S. C. 24101(c)(4).

C. On time performance for international passenger rail services

Of particular concern for NYSDOT-sponsored service, two of the points at which Endpoint on-time performance is measured are located in Canada. The Adirondack runs between New York City and Montreal, QC, and the Maple Leaf runs between New York City and Toronto, ON. While the Board's jurisdiction to conduct an investigation, either on its own motion or upon filing of a complaint, is limited to routes and host carriers operating within the United States, the calculation of on-time performance for international passenger rail services should still be based upon the end terminal of the route, even if one end of the route is located in Canada.