



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

General Counsel

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

ENTERED
Office of Proceedings
March 30, 2016
Part of
Public Record

March 30, 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

**Re: Docket No. EP 726
On-Time Performance Under Section 213 Of The
Passenger Rail Investment and Improvement Act of 2008**

Dear Ms. Brown:

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

Respectfully,

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WASHINGTON, D.C.

On-Time Performance Under Section 213
Of The Passenger Rail Investment And
Improvement Act of 2008

No. EP 726

**REPLY COMMENTS OF THE
UNITED STATES DEPARTMENT OF TRANSPORTATION**

The United States Department of Transportation (Department or DOT) and Federal Railroad Administration (FRA), an operating administration of DOT, respectfully submit their reply comments in this matter. DOT appreciates the Board's consideration of the important issues raised in this proceeding relating to passenger rail on-time performance (OTP), as well as the thoughtful viewpoints expressed by numerous stakeholders at the opening comment stage.

In its Notice of Proposed Rulemaking (NPRM), the Board has, for purposes of implementing section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub. L. No. 110-432, Div. B, 122 Stat. 4907, proposed to adopt a definition of OTP drawn from one previously used by the Interstate Commerce Commission (ICC). Under this definition, "a train is deemed to be 'on time' if it arrives at its final destination within five minutes of its scheduled arrival time per one hundred miles of operation (capped at 30 minutes)." NPRM at 5; Appx. § 1040.2. The Board has also set forth a Table of Maximum Allowances corresponding to this definition. NPRM at 5; Appx. § 1040.3. This methodology, the Board reasons, has the advantage of being "clear and relatively easy to apply," and it "would simplify

the record-keeping and production of evidence that may otherwise be necessary for Amtrak and the host carriers if” another definition were used. NPRM at 6.

Upon further consideration of the NPRM and review of other parties’ submissions, DOT’s reply comments focus on two issues relating to the Board’s proposal: (1) the application of an alternative to endpoint OTP to account for intermediate stops; and (2) the need for caution about measures that could have the effect of lengthening train schedules across the board.

All-Stations OTP. At the opening comment stage, DOT recognized that the Board’s Table of Maximum Allowances has the benefit of clarity, but opined that the OTP analysis would be improved by consideration of additional factors beyond endpoint performance. In particular, DOT noted that the Board’s proposal does not sufficiently take into account the experiences of passengers traveling between intermediate points, who make up a significant portion of ridership for the National Railroad Passenger Corporation (Amtrak). Amtrak and other parties to this proceeding have provided further details that highlight this concern:

- Endpoint stations only make up 10% of Amtrak’s total stations. *See* Comments of the National Railroad Passenger Corporation at 7 (“Amtrak Comments”) (Feb. 8, 2016).
- Two-thirds of Amtrak passengers detrain at intermediate stations. *Id.*
- Of the 46 states to which Amtrak provides service, 24 have intermediate, but not endpoint, stations. *Id.* at 8.
- Very few passengers on long-distance Amtrak trains travel from endpoint to endpoint. *See* Opening Comments of the Environmental Law and Policy Center *et al.* at 6 (Feb. 7, 2016) (“Env’tl Law & Policy Ctr. Comments”) (“[E]ndpoint-to-endpoint passengers comprise just 6% of total riders” of long-distance trains except for the Auto Train).

In light of these concerns, numerous parties have filed comments recommending that the Board modify its OTP definition to take intermediate stations into account. *See, e.g.*, Letter from Sens. Roger F. Wicker and Cory A. Booker (Feb. 25, 2016) (STB should consider “the arrival of Amtrak trains at all stations along a route”); Letter from Sen. Richard J. Durbin (Feb. 22, 2016) (focusing on only endpoint OTP would mean that “many passengers traveling within Illinois could face terrible delays with no recourse from the STB”); Comments of the Nat’l Ass’n of R.R. Passengers at 2 (Feb. 8, 2016) (“urg[ing] regulators to measure on-time arrivals at all stations, not just at the end points”); Comments of the States for Passenger Rail Coalition, Inc. at 3 (“The public should be able to rely upon train schedules at intermediate stops as well as at the ‘final terminus’ of a route.”).¹ DOT agrees with this recommendation, and shares the view that all passengers, not just those at endpoints, should be the beneficiaries of reliable service.²

Consequently, DOT agrees with Amtrak that “All-Stations OTP” is an appropriate measure of OTP for purposes of the Board’s proceedings under section 213 of PRIIA. Amtrak Comments at 5-11. “All-Stations OTP measures the performance of each train at each station along the train’s route against the published schedule,” and “[a] train is considered ‘on time’ at a station if it arrives within 15 minutes of the scheduled arrival time.” *Id.* at 5. The fifteen-minute variance is derived from statute, as Congress established a goal for Amtrak to “operate [its] trains, to the maximum extent feasible, to all station stops within 15 minutes of the time

¹ By contrast, the host freight railroads oppose an OTP definition that accounts for intermediate stops. *See, e.g.*, Comments of the Ass’n of Am. R.R. at 16 (Feb. 8, 2016) (“AAR Comments”) (supporting the Board’s “focus” on endpoint-based performance); Comments of CSX Transportation, Inc. at 2 (Feb. 8, 2016) (“CSX Comments”). DOT appreciates the freight railroads’ views but respectfully disagrees on this point.

² Commenters have also noted that passengers at intermediate stops may have an especially difficult traveling experience as a result of train delays, since many intermediate stops “do not have physical station buildings” with waiting areas. *Env’tl Law & Policy Ctr. Comments* at 6.

established in public timetables.” 49 U.S.C. § 24101(c)(4). Thus, the All-Stations OTP measure reflects Congress’s expectations about how Amtrak should perform.³

Furthermore, All-Stations OTP provides a clear and well-established standard that the Board could administer efficiently, and that is in keeping with the public’s expectations about Amtrak’s performance. This measure has a constant delay tolerance of fifteen minutes at each station stop, no matter where the passenger is boarding, and no matter how long the route.⁴ Data about All-Stations OTP is made publicly available on a regular basis. For example, FRA’s website contains quarterly reports on Amtrak performance and service quality, and these reports contain extensive details about the percentage of Amtrak’s trains that are on time under an All-Stations OTP measure, along with a variety of other data points.⁵ See Federal Railroad Administration, *Rail Service Metrics and Performance Reports*, available at <https://www.fra.dot.gov/Page/P0532> (last visited Mar. 29, 2016). Amtrak also makes All-Stations OTP performance data available on its website, and customers can view the information that Amtrak provides about the primary causes of delay for individual routes (*i.e.*, train interference, operational issues, and tracks and signals). See Amtrak, *Amtrak Train Route On Time Performance*, available at <https://www.amtrak.com/historical-on-time-performance> (last visited Mar. 29, 2016).

³ DOT recognizes that the Board’s proposed measure may in some instances provide for a shorter delay tolerance than All-Stations OTP, particularly on shorter Amtrak routes. However, as explained above and in the submissions of other parties, DOT is concerned that such a measure may create an undesirable incentive to add “pad” time at the end of routes, where a train might “make up” delays so as to be considered on time at the endpoint destination. Such a result is not in the best interests of the many passengers who depend upon Amtrak’s intermediate stops.

⁴ Amtrak’s Acela service has a ten-minute All-Stations OTP delay tolerance.

⁵ These reports also contain endpoint OTP data, but the tolerances are different from what the Board has proposed here. See Federal Railroad Administration, Docket No. FRA-2009-0016, *Response to Comments; Issuance of Metrics and Standards* at 26 n.16, available at <https://www.fra.dot.gov/eLib/Details/L02875> (last visited Mar. 29, 2016). In all events, as discussed above, DOT suggests that All-Stations OTP is appropriate for purposes of PRIIA section 213.

Reasonableness of Schedules. DOT recognizes that some commenters, particularly the host freight railroads, have expressed concerns about Amtrak's schedules, and have opined that these schedules are unrealistic in light of operating conditions or the current level of freight movements across the rail network. *See, e.g.,* CSX Comments at 4-5 (arguing that Amtrak's schedules "were designed as aspirational" and "have not been adapted or changed to reflect current capacity and infrastructure challenges"); *cf.* AAR Comments at 8 (noting that the Board's "standard should acknowledge that capacity and freight volumes today are significantly different from those that existed in 1973, the date the proposed standards were adopted"). Norfolk Southern, for example, contends that the All-Stations OTP measure places an unfair burden upon host freight railroads, because "Amtrak is unwilling to adjust [its] schedules despite experience demonstrating that they cannot reliably be achieved." Opening Comments of Norfolk Southern Railway Company at 12 (Feb. 8, 2016) ("NS Comments").

At the outset, the record indicates that there are some existing mechanisms in place to address these concerns. Amtrak has informed the Board that its "public schedules are negotiated between, and agreed to by, both the host railroad and Amtrak." Amtrak Comments at 6. In addition, the host freight railroads have stated that Amtrak's public schedules are already calculated so as to provide some "recovery time" to account for service issues and disruptions. NS Comments at 14. The fifteen-minute tolerance for All-Stations OTP provides additional flexibility to account for service delays. Furthermore, as the Board points out, the provisions of PRIIA Section 213 that are at issue in this proceeding only come into play when on-time performance averages less than 80% for any two consecutive calendar quarters. NPRM at 2-3.

Notwithstanding the disagreements that commenters have expressed, DOT believes that Amtrak's public schedules depend upon continuous and open communication between Amtrak

and the host railroads about changing conditions and ways to enhance passenger service.⁶ DOT looks forward to its continued role, along with the Board, in facilitating that communication and in fostering an environment in which passenger service will thrive. While such work is ongoing, DOT suggests that the Board exercise caution about a result in this proceeding that would have the effect of substantially adding time to Amtrak's public schedules. Such a result would have unfortunate consequences for passengers who depend upon Amtrak's services, and who have already suffered the effects of delayed performance. In addition, reasonable trip times are necessary to attract ridership and to help sustain Amtrak's operations, and constantly lengthened schedules make Amtrak less attractive to travelers. DOT is also not persuaded, on the basis of the current record or its experience in dealing with Amtrak and freight railroads, that lengthening Amtrak schedules would improve on-time performance.

DOT will continue to consider the views submitted by other parties at this stage of the proceeding and welcomes the opportunity for further discussions with stakeholders on these important issues.

March 30, 2016

Respectfully submitted,


Kristin Amerling
Deputy General Counsel
United States Department of Transportation

⁶ DOT appreciates the concerns that the host freight railroads have raised, and recognizes the significant capital investments they have made to meet the growing demands of the rail network. *See* Ass'n of Am. R.R., 2015 Outlook, at 3, available at <https://www.aar.org/Documents/Outlook%202015/2015OutlookReport.pdf> (noting that freight railroads planned to spend \$29 billion on capital and investment in 2015) (last visited Mar. 29, 2016).