June 1, 2020

Mr. Ronald Batory

Administrator

Federal Railroad Administration

U.S. Dept. of Transportation

1200 New Jersey Avenue, SE

Washington, DC 20590

Re: Docket FRA-2019-0069 Metrics and Minimum Standards for Intercity Passenger Rail Service

Dear Administrator Batory:

On behalf of the Environmental Law & Policy Center, I am writing in support of the proposed rule defining Metrics and Minimum Standards for Intercity Passenger Rail Service.

This proposed rule is a long time coming. Congress directed the Federal Railroad Administration (“FRA”) to promulgate this rule twelve years ago when it passed the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”). Going back even further, the rule seeks a workable method of enforcing the right to priority dispatching given to Amtrak by Congress in 1973.

Background

In 1973, in response to poor on-time performance (“OTP”), Congress investigated concerns that some of the railroads were continually impeding the movement of Amtrak trains and instituting slow orders. Senator Vance Hartke from Indiana, Chairman of the Surface Transportation Subcommittee stated that: “[I]n Indiana, the James Whitcomb Riley is forced to run at speeds of 10 miles per hour because of slow orders on bad track between Indianapolis and Chicago. Running a passenger train over track like that is a public disservice.” *Amtrak Oversight and Authorization: Hearing on S. 1763:Before the Surface Transportation Subcomm. of the S. Comm. on Commerce*, 93rd Cong. 88 (1973)(statement of Senator Vance Hartke).

Accordingly, Congress granted Amtrak a “general preference” over freight transportation in using rail facilities, specifying that Amtrak has “preference over freight transportation in using a rail line, junction or crossing, subject to the objection of a rail carrier, and the [STB] orders otherwise under this subsection after section 553 of Title 5 hearing.” 49 U.S.C. § 2308(c). See also Amtrak Improvement Act of 1973, Pub. L. No. 93,146, §10(2), 87 Stat. 552 (initial version).

In 2008, Congress enacted PRIIA, in part, because it recognized that on-time performance was critical to the success of achieving viable national intercity passenger rail service in the United States. Just prior to the passage of PRIIA, Amtrak’s on-time performance for long-distance trains was below 40%. Following the passage of PRIIA, Amtrak’s on-time performance increased dramatically. Section 207(a) of PRIIA required the development of metrics and standards. The metrics and standards that were finalized in May 2010 required that Amtrak achieve on-time performance of 80% to 95%. Just two years later, in 2012, Amtrak achieved its highest ever on-time performance level of 88.7% system-wide, and 81.2% for long distance.

The Court of Appeals decision in 2013 invalidating Amtrak’s on time performance metrics and standards under Section 213 of PRIIA, *Ass’n of Am. R.Rs. v. Dep’t Transp*., 721 F.3d 666 (D.C. Cir. 2013), which was later unanimously overturned by the U.S. Supreme Court, *USDOT v. Ass’n of Amer. Railroads*, 2015 U.S. Lexis 1713 (U.S. March 9, 2015) had an almost immediate negative impact on Amtrak’s on-time performance and resulted in delays that often were several hours in length.

In its 2014 performance report, Amtrak found host (freight) railroad delays accounted for roughly two-thirds of all of its delays. “[Amtrak] saw an immediate drop in on-time performance across the board that was directly attributable to train handling by the host carriers. . . . Freight train interference rates have nearly tripled, and this indicates not only that there are more delays, but also that those delays are of longer duration. In response, ridership and ticket revenues have fallen by 15% year over year to date.” D.J. Stadtler, Vice President of Operations, Amtrak, Testimony Before the Surface Transportation Board (April 10, 2014),

www.amtrak.com/ccurl/899/180/Amtrak- VP%20Operations-Stadler-STBApr-09-2014.pdf .

As of May 2014, only seven of Amtrak's 48 routes had a better on-time rate than they had in the prior year, before the ruling by the Court of Appeals. Eight of the 33 routes, including most of the long-distance cross-country lines, experienced on-time arrivals less than 50 percent of the time over the past 12 months. The Empire Builder, running from Chicago to Seattle ran on time only 21 percent of the time in the past year. Only one in three California Zephyr trains made their trips between Chicago and San Francisco on time. By June 2014, the system-wide OTP rate had fallen to 69.7%, and the rate for long distance routes was only 41.2%, half of what it had been 29 months earlier. See Amtrak, Monthly Performance Report for June 2014, at E-7 (July 31, 2014), [www.amtrak.com/ccurl/621/650/Amtrak-Monthly-Performance-Report-June2014.pdf](http://www.amtrak.com/ccurl/621/650/Amtrak-Monthly-Performance-Report-June2014.pdf).

Data would suggest that “where there’s a will, there’s a way” for freight railroads to deliver Amtrak trains on time. In 2007, host railroads caused Amtrak 72,000 hours of delay. After the passage of PRIIA in late 2008, the delays dropped to 46,000 hours of delay in 2009. This held fairly constant until OTP standards were invalidated in 2013, but in 2014 OTP rose to 57,000 hours. Host railroad delays in 2018, the most recent data reported, were 55,000 hours[[1]](#footnote-1).

<https://www.bts.gov/content/amtrak-time-performance-trends-and-hours-delay-cause>.

This steep decline in OTP had numerous adverse impacts on the public and taxpayers. American business, passengers and workers have borne the negative consequences of these delays in terms of costs, time and threats to passenger safety.

In 2015, the losses of Amtrak revenues amounted to $13 million as ridership declined from 30.93 million to 30.88 million due in large part to chronic delays and that lack of OTP. Of the 15 major lines on the Amtrak national network, Amtrak’s Empire Builder passenger rail suffered the biggest drop in ticket revenue - - $4 million. The Empire Builder passenger service has suffered from the freight trains serving the oil boom in North Dakota that often are 100 oil tank cars in length. While Minot and Williston, North Dakota were second only to Chicago as origins and destinations for Minnesota riders, Minnesota and Twin Cities ridership fell from 200,000 to 136,000 and 138,000 to 90,000 respectfully. “Amtrak Sees Big Drop in Riders Through Twin Cities,” David Peterson, Star Tribune, December, 27, 2015.

The proposed OTP rule measures the right thing

“To state the obvious, the public policy goal is not that a **train** arrives at its destination on time but that the **passengers** do.” ELPC made that observation in our 2016 testimony before the Surface Transportation Board, which at the time had proposed an endpoint-only definition of on-time performance. We argued that all stations, rather than merely endpoints, should be measured.

The Federal Railroad Administration’s proposed all-passenger definition of OTP does an even better job of capturing this principle. Amtrak, the Surface Transportation Board, the Federal Railroad Administration, Congress, and the public can now focus on this simple metric: how many passengers were how late?

The adoption of an all passenger the definition of OTP is appropriate and warranted. In Section 101(c)(4) of PRIIA, Congress mandates:

Amtrak shall . . . operate Amtrak trains, to the maximum extent feasible, **to all station**

**stops** within 15 minutes of the time established in public timetables. 49 U.S.C. Sec.

24101(c) (4) (Emphasis added.)

The proposed definition appropriately weighs delays at these intermediate stops against the number of passengers using them. A late arrival in Centralia matters less than a late arrival in Chicago.

In promulgating this draft rule, the Federal Railroad Administration acknowledges its one weakness: passenger train schedules were often developed to maximize end-point OTP, with recovery time added to schedules near the terminus. FRA suggests that freight railroads and Amtrak should work together to spread this recovery time through the train’s, provided that “recovery time redistribution should not add time to the current published train schedule.” We concur.

In oral testimony at the April 30, 2020 virtual hearing, representatives from the freight railroad industry raised concern that Amtrak has little incentive to revise schedules that may be “outdated” and somehow impossible for freight railroads to meet.

This argument has three flaws. First, the difficulty in revising schedules resides with freight railroads as they negotiate amongst themselves over the distribution of recovery time. For example, a railroad serving the terminal city that has an hour to get an Amtrak train the last 10 miles to its destination will need to “give” some portion of that time to the carrier that served Amtrak for the preceding 500 miles. In many cases, the “giving” railroad will be the “receiving” railroad on another Amtrak corridor.

Second, Amtrak’s business success depends upon its ability to deliver passengers to their destinations on time. As noted above, late trains hurt Amtrak’s bottom line. Leaving in place schedules where all the recovery time is near the terminal city is not to Amtrak’s advantage.

Third, the concerns raised by freight railroads seem predicated on the erroneous belief that failing to meet OTP standards will result in punishment to the freight railroad. It won’t. All that a poor OTP record does is allow the Surface Transportation Board to initiate an investigation “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.” 49 U.S.C. 24308(f). In conducting such an investigation, the Surface Transportation Board “has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays.”

Moreover, freight railroads have another tool to prevent themselves from being held to what they believe to be unfair OTP standards: “A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of the carrier and Amtrak on reasonable terms.” 49 U.S.C. 24308(c).

The Community Benefits Metric is Appropriate.

Amtrak provides vital transportation services and receives taxpayer support for doing so. It is only reasonable that its services be subject to a community benefits metric. The proposed details of this metric are reasonable, but could be improved. We concur with the recommendation of the Rail Passengers Association concerning this metric. In particular, we would like to highlight two points.

First, all data should be normalized on a per passenger-mile basis rather than a per-passenger basis both here and in the economic metrics. Countless screeds against Amtrak have been written over the decades based on the erroneous – but widely available – metric of “loss per passenger.” Not surprisingly, the longer the route, the greater the net cost. Following this stinted logic, Amtrak could “fix” its worst performing trains by simply cutting them in half. The Texas Eagle would no longer appear on anti-rail press releases because the losses per passenger would be divided between the Chicago-Dallas and the Dallas-Los Angeles trains. The absurdity of this solution demonstrates the need for per passenger-mile metrics.

Second, we strongly endorse the “community access” metric as proposed. One of Amtrak’s vital functions is to connect rural communities with the business, healthcare, leisure, and other resources provided by larger cities. This metric will capture that benefit.

In sum, the proposed rule is reasonable and deserves support.

 Sincerely,



 Kevin Brubaker

 Deputy Director

1. Note that different definitions of OTP are used throughout this and the preceding paragraphs. Our comments are limited to available data, and our use of these metrics does not imply an endorsement of them as a substitute for the proposed rule. [↑](#footnote-ref-1)