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May 27, 2022

## VIA E-FILING

## **PUBLIC VERSION**

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Ms. Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
Office of Proceedings  
395 E. Street, S.W., Room 1034  
Washington, D.C. 20024

ENTERED  
Office of Proceedings  
May 27, 2022  
Part of  
Public Record

**Re: Docket No. FD 35743**  
***Application of the National Railroad Passenger Corporation Under 49***  
***U.S.C. § 24308(a) – Canadian National Railway Company***

Dear Ms. Brown:

We represent National Railroad Passenger Corporation (“Amtrak”) in the above-captioned proceeding.

Enclosed for e-filing is a public version of the Opening Brief of National Railroad Passenger Corporation and supporting Verified Statements and exhibits, with appropriate redactions that the Board can place on its docket. We are concurrently filing a confidential version of the Opening Brief to be filed under seal.

Should you have any questions, please contact the undersigned. Thank you for your attention to this matter.

Respectfully submitted,

*Jerry A. Cuomo*

Jerry A. Cuomo

Enclosure.

cc: All Parties of Record

[CONTAINS REDACTED INFORMATION TO BE FILED ON PUBLIC DOCKET]

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 35743

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APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER  
49 U.S.C. § 24308(A) - CANADIAN NATIONAL RAILWAY COMPANY

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**OPENING BRIEF OF NATIONAL RAILROAD PASSENGER CORPORATION**

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May 27, 2022

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## **PRELIMINARY STATEMENT**

In this action pursuant to 49 U.S.C. § 24308(a)(2), the Surface Transportation Board (“the Board”) will establish the terms and conditions (including the terms of compensation) of a new operating agreement (“OA”) under which the National Railroad Passenger Corp. (“Amtrak”) will have access to the facilities of certain subsidiaries of Canadian National Railway in order to operate Amtrak passenger trains. Among other things, the Board will establish terms under which Amtrak will pay incentives to CN, or CN will incur penalties, based upon the performance of Amtrak trains operating on CN’s tracks.

Neither the Board nor the Parties are writing on a blank slate. The Parties previously engaged in extensive discovery and submitted voluminous briefs and evidence (including several verified statements). Upon reviewing the record, the Board issued a Decision dated August 9, 2019 (“the 2019 Decision”), providing the Parties with rulings on certain issues and guidance on others, and directing the Parties to engage in Board-sponsored mediation (which ultimately was unsuccessful).

Since the Board’s 2019 Decision, significant developments in the applicable law have occurred. On November 16, 2020, fourteen months after the Board’s 2019 Decision, the Federal Railroad Administration (“FRA”) issued a Final Rule which established a “customer on-time performance” (“COTP”) metric which assesses the performance of Amtrak’s trains based on the percentage of all Amtrak passengers that have arrived on-time at their destination stations. The Final Rule set a COTP “minimum standard” of 80 % for any two consecutive calendar quarters. The FRA also established other metrics to measure the extent to which Host Railroads have delayed Amtrak’s trains (including measuring the minutes of Host-responsible delay (“HRD”) minutes per 10,000 train miles). The metrics established in the FRA’s Final Rule are not only

reasonable, but were issued after careful deliberation and review of comments submitted by numerous railroad industry stakeholders (including Amtrak, CN, other Host Railroads, and the Board).

In proposing its terms and conditions for a new operating agreement with CN, Amtrak's goal is to address the Board's findings, guidance and concerns as expressed in its 2019 Decision. Amtrak's proposal is also intended to propose terms that not only are fair and equitable to CN, but also incentivize conduct by the Parties which will foster the provision of quality passenger rail service to Amtrak's passengers. For example, Amtrak is proposing an incentive and penalty system which incentivizes CN to deliver all of Amtrak's passenger to their destinations on-time, but which does not inordinately penalize CN for delays that it did not cause (for example, delays caused by another Host Railroad or by Amtrak itself).

Amtrak's proposed terms are consistent with the Board's 2019 Decision, the Final Rule and the law (including Amtrak's Congressionally mandated mission, goals and right to preference over other rail traffic when operating on a Host Railroad's system). The essential elements of Amtrak's proposal are the following:

- Amtrak proposes to incorporate the COTP metric and standard into its system for calculating whether CN earns an incentive payment or incurs a penalty (sometimes called performance or quality payments, as they are based on the quality of the performance of Amtrak trains on CN's system);
- Amtrak proposes that CN receive less in incentives (and may incur a penalty) as its own HRDs for an Amtrak route increase. This assures that CN is incentivized to promote greater COTP of Amtrak trains on Amtrak's routes. This also incentivizes CN to minimize delays impacting Amtrak trains which are already

late - - something the Board urged the Parties to consider by factoring the “degree of lateness” of an Amtrak train into their new OA. Also, under Amtrak’s proposed incentive and penalty system, CN will still earn an incentive on a multi-Host route where COTP is low, but CN’s minutes of HRD are low. This affords CN a reasonable and meaningful opportunity to earn incentives as to an Amtrak route where it is providing quality service and is not the cause of poor COTP.

- Consistent with the Board’s concern expressed in its 2019 Decision that an OA without a “lookback” provision might effectively require CN to “pay Amtrak” to host its trains, Amtrak no longer proposes eliminating the lookback provision. Rather, Amtrak proposes including a modified “lookback” provision in a new OA, accompanied by “concrete” remedial action (again, as recommended by the Board) to be implemented in the event of sustained poor on-time performance of Amtrak trains on CN’s system. Under Amtrak’s proposal, such remedial action is triggered only in the event CN-responsible delays are high and penalties are incurred. No remedial action would be implemented under Amtrak’s proposed system if COTP on a route is poor, but CN’s HRDs are low (indicating CN is not the cause of that poor performance on Amtrak’s route).
- In response to the Board’s concern that a COTP-like metric for measuring on-time performance at each station might require reallocation of Recovery Time in Amtrak’s schedules in order to give CN a “meaningful opportunity” to earn incentives, Amtrak has done just that. Indeed, CN has agreed to “certify” under the Final Rule that the majority of Amtrak’s schedules (and the allocation of Recovery Time in them) aligns with the COTP metric.

Ultimately, the common thread of Amtrak’s proposed terms and conditions is that they incentivize CN to maintain quality on-time performance of Amtrak’s trains on CN’s system, both by rewarding on-time performance and implementing self-executing remedial actions for sustained poor performance. In the end, Amtrak’s proposal serves to advance an overarching Congressionally-mandated goal of Amtrak - - to deliver Amtrak’s passengers to their destinations on-time. And, at all times when CN provides quality service to Amtrak, and does not itself cause delays of Amtrak trains, it will have a meaningful opportunity to earn incentives under Amtrak’s system in accordance with the statutory direction that any payment above incremental cost be based on the quality of service provided by the Host Railroad.

As discussed in further detail herein, the other terms that Amtrak is proposing are also reasonable and are consistent with the interim findings in the Board’s 2019 Decision and the statutes, rules and regulations which govern Amtrak’s relationship with CN.

## **FACTUAL AND PROCEDURAL HISTORY**

### **I. Initiation of this Proceeding**

Since 1971, Amtrak has operated passenger trains over rail lines now owned by Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (collectively “CN”). The following Amtrak routes operated on CN’s system are the subject of this action: Blue Water, Wolverine, Lincoln, Texas Eagle, Illini/Saluki and City of New Orleans. (Blair V.S., ¶ 5 n.2). For Amtrak’s Illini/Saluki and City of New Orleans routes, CN is the only Host Railroad (although Amtrak itself hosts certain portions of those routes).<sup>1</sup> (Id.). The Blue

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<sup>1</sup> In this brief, Amtrak uses “Host Railroad” as that term is defined in the Final Rule - - *i.e.*, “a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment.” See 49 C.F.R. § 273.3. For purposes of this brief, use of the term “Host Railroad” does not include Amtrak, unless expressly indicated.

Water, Wolverine, Lincoln, and Texas Eagle routes are hosted by other Host Railroads in addition to CN. (Id.).<sup>2</sup>

Amtrak's use of CN's rail lines, including CN's compensation relating to same, is governed by an OA . The current version of the Parties' OA was effective May 1, 2011, and was scheduled to expire on August 11, 2013 ("the 2011 OA"). (Verified Statement of James Blair ("Blair V.S."), Exh. 1; 2019 Dec., p. 4).<sup>3</sup>

On July 30, 2013, after the Parties unsuccessfully engaged in extensive negotiations concerning a new OA, Amtrak applied to the Board pursuant to 49 U.S.C. § 24308(a)(2) for the establishment of "new terms and compensation for the use by Amtrak of [CN's] facilities (including rail lines) and services . . . ." (Amtrak Application filed 7/30/19 (S.T.B. Filing # 234604)). On August 9, 2013, the Board confirmed the institution of such proceeding. (S.T.B. Decision served 8/9/13 (S.T.B. Dec. ID # 43257)). The Board also required CN to continue to provide facilities and services to Amtrak on an interim basis under the terms of 2011 OA. (Id., p. 3, ¶ 1). The 2011 OA continues to govern the Parties' relationship through present day. (Blair V.S., ¶ 23).

Over the next several years, the Parties engaged in discovery, after which they submitted extensive briefs and evidence to the Board concerning their proposed terms for a new OA.

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<sup>2</sup> Amtrak also operates its Sunset Limited and Adirondack routes on CN's system. (Blair V.S., ¶ 5 n.2). Those routes are not, however, material to the Parties' disputes. (Id.).

<sup>3</sup> The 2011 OA is entitled "Operating Agreement between National Railroad Passenger Corporation and Grand Trunk Western Railroad Company (GTW) and Illinois Central Railroad Company (IC), dated May 1, 2011." Portions of the 2011 OA (and certain Amendment Agreement Change Records (AACs)) have been filed under seal, as certain material contained in them is confidential as defined within the Board's Protective Order entered December 16, 2013. (Protective Order served 12/16/13 (STB Decision ID. 43522)). Amtrak has redacted the same information from the Amtrak Redline.

## **II. The Board’s August 9, 2019 Decision**

On August 9, 2019, the Board issued the 2019 Decision, providing the Parties with “interim findings and guidance” and also directing the Parties to Board-Sponsored Mediation.<sup>4</sup> The Board’s interim findings and guidance are summarized below.

### **A. On-Time Performance of Amtrak’s Trains on CN’s System and Amtrak’s Schedules**

#### ***1. Applicable Performance Metric***

The 2011 OA has a performance provision, the purpose of which is to determine whether, and to what extent, CN will earn an incentive payment or incur penalties related to the performance of Amtrak’s passenger trains on CN’s system during a month. (2019 Dec., p. 10). The 2011 OA measures performance using a “checkpoint system” by “dividing the number of trips of a train that arrived at a checkpoint within tolerance of the agreed-to contract schedule by the number of trips operated by the train to that checkpoint.” (*Id.*, p. 8). Each checkpoint (with one exception on the City of New Orleans route) is the endpoint of the Amtrak train’s line - - there are no intermediate checkpoints. (*Id.*).

Amtrak argued that the 2011 OA’s checkpoint system “ignores the quality of service experienced by the vast majority of passengers travelling on CN’s lines because [they] ride to and/or from intermediate stations that are not currently checkpoints.” (*Id.*, p. 9). Amtrak argued that CN had “no incentive to minimize . . . delays at non-checkpoint stations . . . .” (*Id.*). Amtrak proposed a framework where performance of Amtrak trains would be measured by calculating the “Host-Responsible Delays” [“HRD”] at *all* Amtrak stations on a route. (*Id.*). CN argued that the existing checkpoint system in the 2011 OA should remain in place. (*Id.*).

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<sup>4</sup> The 2019 Decision is attached as Exhibit 2 to the Blair V.S.

The Board agreed with Amtrak that “a significant portion of Amtrak’s passengers travel to or from stations that are not endpoints and also not OTP checkpoints under the 2011 [OA].” (Id., p. 10). In fact, the Board observed that “only between 2.6% and 25.5% of passengers travel endpoint to endpoint, whereas between 74.5% and 97.6% travel between intermediate stations.” (Id.). The Board stated:

[I]f an OTP metric only includes checkpoints at the final station and two to three select intermediate points . . . that metric does not measure performance in a way that captures whether a significant portion of Amtrak’s passengers actually arrived at their selected destinations on time. Such a metric would be an unrepresentative measure of performance.

(Id., p. 10).

The Board found CN’s arguments to retain the 2011 OA’s checkpoint system to be “unconvincing.” (Id.). The Board reasoned that CN had not proffered an “adequate justification for an OTP metric that would disregard the punctuality, hence the quality, of a passenger’s trip simply because of a passenger’s destination.” (Id.).

The Board further stated that a performance metric in a new OA “would ideally include checkpoints at all stations along a route . . . .” (Id. at 11). The Board did not, however, impose a specific OTP metric on the Parties, but rather deferred to them to negotiate the issue during Board-Sponsored Mediation. (Id.). The Board advised the Parties, however, that an “OTP metric could measure the percentage of passengers that arrive at their destination stations on time” and that such a metric would “create an incentive structure more closely tied to the service delivery to the end consumer, the passenger.” (Id. at 11, n. 25). The Board stated that such a metric “could be consistent with [its] interim findings and guidance.” (Id.).

## ***2. Potential Adjustments to Amtrak’s Then-Current Schedules***

CN also argued that if, under a new performance metric, checkpoints were added to

Amtrak's routes, those additions "must be combined with appropriate adjustments to Amtrak's public schedules" and that "the pure run time in Amtrak's schedules must be lengthened." (2019 Dec., p. 9). Amtrak opposed lengthening its schedules. (Id.).

As to Amtrak's then-current schedules,<sup>5</sup> the Board observed that most of the "recovery time" was allocated "to the end of the routes," with none "towards the beginning of routes." (Id., p. 11). The Board noted that: "if all stations were checkpoints, recovery time would have to be redistributed to give CN a meaningful opportunity to meet its performance obligations." (Id.).

Although the Board found that recovery time may need to be redistributed, it agreed with Amtrak and held that the record *did not* "establish that the total time between a route's origin and its endpoint, *i.e.*, the final station, should be lengthened." (Id., p. 12).

#### **B. Incentives and Penalties for Amtrak's Operations on CN's System**

Under the 2011 OA, each month, Amtrak calculates the on-time percentage of each Amtrak train operating on CN's system at the contractually-mandated checkpoints. (2019 Dec., p. 12). For purposes of calculating incentives and penalties under the 2011 OA, an Amtrak train is on-time if it arrives at a checkpoint "at or before a prescribed arrival time *plus* additional tolerances."<sup>6</sup> (Id.). Amtrak then divides the number of times the train was on-time at a checkpoint by the number of times the train operated to that checkpoint. CN is penalized if less than 70% of Amtrak's trains arrive on-time for the month at the checkpoint, and it earns incentive payments (also called "performance payments") if more than 80% of Amtrak trains are

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<sup>5</sup> As discussed *infra*, many of Amtrak's schedules for trains operating on CN's system have been adjusted and "certified" by Amtrak and CN pursuant to the FRA's Final Rule issued on November 16, 2020. (See Metrics and Minimum Standards for Intercity Passenger Rail Service, 85 Fed. Reg. 72972 (Nov. 16, 2020)).

<sup>6</sup> "Additional tolerances" are based on the reason for a delay to an Amtrak train and are specifically enumerated in Appendix V of the 2011 OA. (2011 OA, Appendix V, § A(1)).

on-time. (Id.). If on-time performance at the checkpoint is between 70%-80% (“the Neutral Zone”), CN is neither penalized, nor does not earn an incentive. (Id.).

Amtrak argued that, because the 2011 OA’s checkpoint system does not consider the “overall degree of lateness” of Amtrak’s trains, it “rewards CN for arriving at a checkpoint within tolerance, but does not otherwise encourage CN to minimize delays and the adverse effect delays have on arrival times at stations that are not checkpoints.” (Id.).

Amtrak further argued that “once a train is sufficiently delayed so as not to count favorably for CN for incentive purposes, whether it is late by one minute or several hours, there are no negative consequences to CN for additional delays” although “it has a significant negative impact on Amtrak and its passengers.” (Id.). Amtrak also proposed that the “Neutral Zone” be eliminated. (Id.).

CN argued that the 2011 OA’s penalty and incentive system should remain in place and that Amtrak’s proposal would “profoundly modify” the 2011 OA. (Id.). CN also opposed eliminating the “Neutral Zone.” (Id., p. 14).

Although the Board did not impose a specific penalty and incentive system, it did find that the Parties “should eliminate” the Neutral Zone. (Id.). The Board provided guidance as to the features it believed should be incorporated into an incentive and penalty system. The Board agreed with Amtrak that:

a reasonable incentives and penalties system is one that incentivizes both OTP and a reduction in the duration of train delays when OTP is not achieved. There is merit to Amtrak’s argument that, while the increasing lateness of already-late Amtrak trains may not have negative consequences for CN, it negatively affects Amtrak and its passengers.

(Id.). Accordingly, the Board held that, in addition to incentivizing on-time performance, “the parties should incorporate the degree of lateness into their penalty calculation in some manner.”

(Id.). The Board found that “[b]y incorporating the degree of lateness, CN would have an incentive to help deliver a late train more expeditiously and not allow the duration of the delay to increase.” (Id.).

The Board did “[find] merit to an 80% OTP standard to receive incentive payments.” (Id.). The Board found significant that, pursuant to 49 U.S.C. § 24308(f)(1), a Board investigation can be triggered following two consecutive quarters of OTP below 80%. (Id.). Accordingly, the Board found that an 80% OTP standard “appears to be reasonable” and that “the parties should negotiate how best to address those occasions when 80% OTP is not achieved.” (Id., pp. 14-15).

### **C. The “Lookback” Provision**

The 2011 OA includes a “lookback” provision which, as the Board described it: “offsets penalties incurred by CN against any incentives earned by CN up to the point that those penalties exceed incentives.” (2019 Dec., p. 15). Under the provision, “one ‘looks back’ over the prior 12 months for any net incentives which those penalties may offset.” (Id.). Effectively, the “lookback” provision limits the amount of penalties Amtrak can collect from CN to the amount of incentives that CN earned over the preceding twelve months. (Blair V.S., ¶ 99).

Amtrak proposed eliminating the “lookback” entirely from a new OA on the ground that it effectively “contravene[s] the statutory requirement to have penalty for untimely performance” under 49 U.S.C. § 24308(a)(1) and because “a penalty that CN does not have to pay because of the application of the lookback provision does not motivate CN to improve OTP.” (2019 Dec., pp. 15-16).

CN argued that the “lookback” provision should remain because “CN is statutorily entitled to recover at least its incremental costs under [49 U.S.C.] § 24308(a)(2)(B).” (Id., p. 16).

According to CN, “allowing its overall compensation to fall below incremental costs would result in CN and its customers further subsidizing Amtrak’s operations.” (Id.). CN proposed that, in addition to keeping the “lookback” provision of the 2011 OA as part of a new OA, the Parties should include a “reopener” provision which, if CN was penalized for six consecutive months, would require the Parties to use “best efforts” to “develop remedial measures including, if appropriate, changes to the [OA].” (Id.). Amtrak objected to the “reopener” proposed by CN because: (a) remedial action should be implemented before CN is penalized for six consecutive months; and (b) CN was not obligated to implement any remedial measures in response. (Id.).

The Board did not decide whether the “lookback” provision was contrary to the requirement that the OA include a penalty for untimely performance under 49 U.S.C. § 24308(a)(1), as Amtrak had argued. However, the Board was “concerned” that entirely removing the “lookback” provision from a new OA could “place CN in a situation where it may be required to, effectively, pay Amtrak to host Amtrak passenger trains on CN’s own network.” (Id.).

The Board also recognized and found that “periods of sustained poor performance must be acknowledged and addressed as appropriate.” (Id., p. 17). The Board “encourage[d] the Parties to include an effective reopener provision in the new OA that will result in concrete action in order to resolve potential future performance disputes and to prevent sustained poor performance.” (Id.).<sup>7</sup>

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<sup>7</sup> The Parties disputed whether the total compensation CN receives for hosting Amtrak service could fall below CN’s “incremental costs.” (2019 Dec., p. 15). The Board observed that eliminating the “lookback” provision, as Amtrak proposed, could result in incremental costs and incentive and penalty payments being “independent, in which case CN could possibly receive total net compensation that is lower than incremental costs.” (Id.). The Board did not decide this issue, but noted that, if the Parties did not reach agreement on a new OA, the Board would address the Parties’ “statutory arguments” (including their competing

**D. Definition of “Incremental Costs”**

The Parties also disputed exactly which costs incurred by CN are “incremental” and, therefore, must be reimbursed by Amtrak. (2019 Dec., p. 18). The Board noted that Congress did not define “incremental costs.” (Id.). The 2011 OA defined “incremental costs” as “all costs that CN would not incur but for: (a) the operations of Amtrak on the [r]ail [l]ines or (b) the provision of associated services to Amtrak pursuant to the [a]greement and/or the Act.” (Id.). The OA also enumerated specific costs incurred by CN and reimbursable by Amtrak which qualified as “incremental” on Appendix IV. (Id.; see, e.g., 2011 OA, Appendix IV, pp. 2, 9, 10, 12, 14, 15).

CN argued that the following three categories of costs should be added to a new OA as “incremental costs”:

- (1) “all costs which would not be incurred if no passenger service were performed for Amtrak,” including “‘freight delay costs’ . . . incurred by CN for the delays to CN trains that would not have been incurred but for Amtrak’s presence on CN’s lines.”;<sup>8</sup>
- (2) “costs caused by freight rate suppression, capacity costs, and lost opportunity costs”; and
- (3) certain unidentified costs that CN “incurs as a result of Amtrak,” but which allegedly were “not currently readily quantifiable.” (2019 Dec., pp. 18-19).

Amtrak argued that the Board should reject CN’s proposed added categories, and that

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interpretations of 49 U.S.C. § 24308(a) in a subsequent decision. (Id., p. 16-17, n.30). As discussed herein, because Amtrak is not proposing to eliminate the lookback provision, CN arguments on this issue are moot.

<sup>8</sup> CN claimed that these “freight delay costs” consisted of three elements: (1) “train crew costs due to additional delay time, including wages, constructive allowances, and fringe benefits”; (2) “additional fuel consumption costs due to additional stops, starts, and idling”; and (3) “additional equipment costs.” (2019 Dec., p. 18).

“incremental costs”: (1) were limited to “short run avoidable costs”; and (2) do not include CN’s costs to provide Amtrak trains with their statutory preference. (Id., p. 20). Further, as to CN’s proposed “freight delay costs,” Amtrak argued that such costs could be “incremental” only if CN established that: (1) CN had actually incurred such delays; (2) the delays were caused by Amtrak; and (3) CN incurred actual costs as a result of the Amtrak-caused delays. (Id.).

The Board held that “incremental costs are those costs that CN has actually incurred, and that CN would not have incurred ‘but for’ the presence of Amtrak.” (Id., p. 22). The Board found that “incremental costs do not include costs that CN cannot specifically and verifiably quantify.” (Id.). Accordingly, the Board rejected “the non-quantified or otherwise amorphous costs CN proposes to include as incremental costs, such as freight rate suppression, capacity costs, foregone volume, lost opportunity costs, and other currently non-quantified costs CN might later identify.” (Id.). Because Congress did not impose a “temporal limitation” on “incremental costs,” however, the Board rejected Amtrak’s position that such costs only include those in the “short run.” (Id.).

Although it did not accept or reject CN’s position that “freight delay costs” should be considered “incremental costs” under a new OA, the Board held that, to qualify as such, those costs must be “specific, verifiable and quantifiable.” (Id., p. 23). The Board also further held that:

[T]he Board agrees with Amtrak that CN would have to show that it has actually incurred delays, that those delays were caused by Amtrak, and that it incurred actual costs as a result of the delays caused by Amtrak. . . . [E]ach cost proposed by CN should be separately evaluated in accordance with the interim findings and guidance stated above. . . . [T]he burden would be on CN to show that those specific costs could be included in a reasonable manner, consistent with the “but for” standard and the need for specificity,

verifiability, and quantifiability as described above. (Id.).<sup>9</sup>

## **E. Performance Measurements and Delays**

### ***1. “Root Cause”***

The Board correctly observed that, under the 2011 OA, “[t]he cause of a delay, whether it originates from CN, Amtrak, or a third-party, is a critical component in determining whether a host railroad has met its OTP obligations.” (2019 Dec., p. 23). Under the 2011 OA, Amtrak’s conductors are responsible for recording “the cause and location of each delay based on the conductor’s direct observations and information from train bulletins, radio communications, Amtrak engineers, freight train crews, dispatchers, maintenance-of-way crews, and other personnel.” (Id.).

Amtrak proposed keeping the “same delay recording and review process” in place in a new OA and adding procedures for a dispute resolution process (which Amtrak proposed). (Id., p. 24). CN proposed to amend the OA to state that “evidence of root cause, as opposed to proximate cause, shall be taken as the best evidence of the cause of a delay.” Amtrak opposed CN’s “root cause” proposal because, *inter alia*: CN did not define the term “root cause;” the determination of “root cause” would be entirely subjective; and because “one would have to arbitrarily decide how far back in time and how far away in distance to look for contributing factors.” (Id.).

The Board rejected CN’s “root cause” approach, finding CN:

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<sup>9</sup> The Board also dismissed CN’s argument that the Board’s rejection of CN’s proposed added categories of “incremental costs” would be an unconstitutional taking. (2019 Dec., p. 23). The Board held that such an argument was plainly contrary to controlling precedent. (Id.) (citing Metro. Transp. Auth. v. Interstate Commerce Commn, 792 F.2d 287, 296 (2d Cir. 1986); Nat’l Rail Passenger Corp. Appl. Under Section 402(a) of the Rail Passenger Serv. Act, 1 I.C.C.2d 243, 247 (1984); Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. 24308(a) - Union Pac. R.R., 3 S.T.B. 143, 156 (1998)).

has neither adequately explained how a “root cause” approach would work in practice nor shown that such an approach would not be too burdensome and time-consuming to apply. For example, CN does not offer an adequate description of how far back in time or distance to look for contributing factors. It also does not explain the standard or mechanism for judging the evidence provided by the parties.

(Id.). The Board observed that “the conductor delay reports may not provide definitive proof of the cause of Amtrak delays” and - - although it did not expressly endorse the dispute resolution terms proposed by Amtrak - - the Board did encourage the Parties “to review their dispute resolution process regarding delay coding and to streamline that process.” (Id.).

## 2. *“Recovery Time Base”*

“Recovery Time Base” (“RTB”) is a portion of the Recovery Time in each Amtrak route which “is designed to compensate for specific, Amtrak-caused delays . . . .” (2019 Dec., p. 24). Under the 2011 OA, if the Amtrak-caused delay is subject to RTB, an Amtrak train operating on CN’s system is not considered late when calculating OTP to the extent the delay exceeds the applicable RTB for the route. (Id.).

Amtrak argued that: (1) higher portion of Recovery Time should be allocated to RTB; and (2) the delays subject to RTB should be expanded to include all “non-CN-caused delays.” (Id., p. 25). CN opposed each of Amtrak’s positions. (Id., p. 25).

The Board decided that: “[r]egarding Amtrak’s proposed redistribution of the split of recovery time between RTB and the portion specifically designated for CN for recovery time, the Board will not impose a specific split at this time.” (Id.). The Board noted that any such “split should reflect the real-world operating conditions on a segment and each party’s susceptibility to events resulting in a delay to Amtrak trains.” (Id.). The Board also did “not make any specific findings” on whether additional categories of delay should be subject to RTB, as Amtrak

requested. (*Id.*, p. 26). Rather, the Board held that the Parties should “negotiate the most efficient agreement for operation of the network in accordance with these stated goals.” (*Id.*).

**F. Other Contract Terms**<sup>10</sup>

The Board’s 2019 Decision also addressed certain other contractual terms and issues.

**1. *Term of the Agreement***

CN argued for a three-year term for a new OA (with an “evergreen” renewal clause), while Amtrak argued for a ten-year term. (2019 Dec., p. 27). The Board found that a seven-year term “would be reasonable and would balance the concerns of both parties.” (*Id.*). The Board also encouraged the Parties to include an “evergreen” clause because it “would not require the continuation of the [OA] beyond the initial term but would provide the parties with predictability by which they could continue to have an [OA] in force while negotiating any future changes.” (*Id.*).

**2. *Confidentiality***

Amtrak, citing prejudice to its negotiations with other Host Railroads, argued that a new OA should include a confidentiality provision. (2019 Dec., p. 28). CN objected, arguing that “Amtrak is seeking to impose terms on CN by Board order, not by means of a confidential commercial negotiation, and that the ‘outcome of that effort is a matter of public interest.’” (*Id.*).

The Board stated that the Parties could negotiate to include a confidentiality provision in the OA,

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<sup>10</sup> The 2019 Decision also addressed the Parties’ positions regarding “short-shunts” on Amtrak’s Illini/Saluki service. A “short shut” occurs when a “train fails to timely and properly close (shunt) an electric circuit that activates automated crossing warning devices . . . .” (2019 Dec., p. 26). As a result, crossing signals are not timely activated. (*Id.*). Amtrak contended that this issue was caused by rail contamination for which CN is responsible. (*Id.*). CN contended it was caused by the “weight, speed and/or design” of Amtrak’s cars. (*Id.*). The Board found that “the determination of the short shunt question is properly within the FRA’s jurisdiction, and the Board will defer to the FRA on the issue.” (*Id.*). This issue is, therefore, no longer before the Board.

but that it “would make public any specific terms it would need to set in a later decision, as the Board disfavors confidential decision making unless absolutely necessary.” (*Id.*).

### **3. *Additional Issues Not Decided by the Board in 2019 Decision***

The Board did not address other contractual issues raised by the Parties, including: (1) whether provisions of a new OA would apply retroactively; (2) the incorporation of two-side letter agreements (concerning costs incurred by CN related to Positive Train Control (“PTC”) and Safety Appliances) dated May 1, 2011 (“the Side-Letters”); and (3) the elimination of certain references to the term “incremental costs” as unnecessary. (2019 Dec., p. 27, n.44).

#### **G. Board-Sponsored Mediation**

In light of the Board’s guidance and rulings in the 2019 Decision, the Board directed the Parties to mediation. If the Parties did not reach a settlement, the Board stated that it:

expect[ed] that the residual issues, if any, would be limited in number and scope, as the mediation will have proceeded with the knowledge of the Board’s interim findings and guidance concerning this case. The Board [will] then issue a final decision on any residual issues in this proceeding.

(2019 Dec., p. 29).

### **III. The FRA’s Final Rule and New Metrics and Standards**

On November 16, 2020, fourteen months after the Board’s 2019 Decision, the Federal Railroad Administration (“FRA”) issued a Final Rule to “establish[] metrics and minimum standards for measuring the performance and service quality of Amtrak’s intercity passenger rail service.” (See *Metrics and Minimum Standards for Intercity Passenger Rail Service*, 85 Fed. Reg. 72972 (Nov. 16, 2020) (codified at 49 C.F.R. 273.1 *et seq.*) (“the Final Rule”)). (Blair V.S., Exh. 3). The Final Rule became effective on December 16, 2020. (*Id.* at 72971). Before issuing the Final Rule, the FRA received and considered extensive commentary from the public and

stakeholders, including Amtrak, the Board, CN and number of other Host Railroads, and State and Multi-State sponsors of Amtrak service. (Id. at 72972).

The Final Rule establishes metrics and standards for on-time performance of Amtrak trains operating on Host Railroads, including tracking the causes of delays which impact Amtrak trains operating on Host Railroads. These metrics and standards bear directly upon and inform how the Board should finally resolve several issues left open in its 2019 Decision.

**A. The COTP Metric**

In assessing the OTP element of Amtrak’s intercity passenger train service, the Final Rule establishes a metric based on “customer on-time performance” or “COTP.” (85 Fed. Reg. at 72974). This metric is defined as “the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.”<sup>11</sup> (Id.). The purpose of this metric is to “focus[] on intercity passenger train performance as experienced by the customer,” including passengers who detrain at intermediate stations along a route, as well as those who ride the entire route. As the FRA described it: “the OTP metric should measure train performance from the eyes of the customer.” (85 Fed. Reg. at 72976). Notably, the FRA quoted the Board’s statement in its 2019 Decision that “if any OTP metric only includes checkpoints at the final station and two or three select intermediate points,” it would be “an unrepresentative measure of performance.” (85 Fed.

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<sup>11</sup> The COTP metric is based on the number of actual passengers riding to a specific station. As the FRA noted: “Amtrak measures detraining passengers by the number of passengers actually travelling on the train, as determined by conductor ticket collections via electronic ticket scanning for a specific arrival station.” (85 Fed. Reg. at 72978). If a passenger purchases a ticket for a trip, but does not actually board and ride the train, that passenger is not counted for purposes of the COTP metric.

Reg. at 72976).<sup>12</sup>

COTP is calculated for each Amtrak train as follows: (a) the number of passengers arriving at their detraining point for an intercity rail train no later than 15 minutes after the scheduled arrival time; divided by (b) the total number of customers on that train. (Id.). The Final Rule establishes “a minimum standard for COTP of 80 percent for any 2 consecutive calendar quarters.” (Id. at 72975).

Under the Final Rule, even if parts of a single train route are controlled by different Host Railroads, COTP is measured based on the entire route travelled by the Amtrak train. The FRA expressly rejected a metric measuring OTP “by host railroad in routes with multiple host railroads.” (Id.). The FRA noted that “[the Passenger Rail Investment and Improvement Act of 2008” (“PRIIA”)] calls for measuring the intercity passenger train’s OTP performance, not the host railroad’s performance in hosting the intercity passenger train.” (Id.).

The FRA also rejected an “all-stations OTP metric” that would measure train performance separately at each station on the route (without considering the number of passengers detraining at each station). (Id. at 72976). Among other things, the FRA found that “[c]ustomer OTP . . . offers host railroads more flexibility in adjusting recovery time based on passenger load versus recovery needed for every station stop.” (Id.).

Although it is not part of the COTP metric or COTP minimum standard, the FRA recognized the importance of measuring “delays by host railroad.” (Id.). As such, the Final Rule

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<sup>12</sup> The FRA expressly rejected a metric that “would measure train performance at key stations on a host railroad.” (85 Fed. Reg. at 72976). The FRA observed that such a metric “fails to recognize the importance of customers who do not use a key station.” (Id.). Further, the FRA stated that “the COTP metric resembles a key stations OTP metric because stations with many detraining passengers have greater influence on the train’s COTP and serve as de facto key stations.” (Id.).

“does include train delay metrics that describe train performance on individual host railroads,” including measuring those delays by the number of HRD minutes directly attributable to a Host Railroad (and to a particular Host where the Amtrak route is hosted by multiple Host Railroads). (Id.).<sup>13</sup> Those metrics are discussed *infra*.

Although the Operating Agreements between Amtrak and the Host Railroads were not before the FRA, it noted that PRIIA § 207(c) “provides that, the extent practicable, Amtrak and its Host rail carriers shall incorporate the metrics and standards into their access and service agreements (the operating agreement).” (Id. at 72977) (citing Union Pac. R.R. Co. v. Surface Transp. Bd., 863 F.3d 816, 826 (8th Cir. 2017), *cert. den. sub nom.*, Natl. R.R. Passenger Corp. v. Union Pac. R.R. Co., 138 S. Ct. 1042 (2018) (“The § 207 on-time-performance metric was, to the extent practicable, to be incorporated into Amtrak’s contracts with host railroads.”). The FRA encouraged “Amtrak and the host railroads to work toward aligning the [OAs] with the COTP metric and standard to ensure performance is measured, and appropriately incentivized, in a consistent manner.” (Id. at 72978) (citing PRIIA § 207(c)). Indeed, the 2011 OA provides that: “[t]o the extent practicable, and as soon as possible, CN and Amtrak shall negotiate such amendments to this Agreement as may be necessary to reflect metrics and standards developed by the FRA under [PRIIA] . . . .” (2011 OA, § 3.4(D)).<sup>14</sup>

#### **B. Amtrak Train Schedules and the Schedule “Certification” Process**

The FRA found that “Amtrak and the host railroads should align schedules with the

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<sup>13</sup> For example, the FRA stated that identifying the cause of delays (and allocating the cause of a delay to the appropriate Host Railroad on a multi-Host route) is important to an investigation by the Board pursuant to PRIIA § 213 into “whether and to what extent delays are due to causes that could reasonably be addressed by a host railroad.” 85 Fed. Reg. at 72975.

<sup>14</sup> Amtrak proposes to include the same term in the new OA.

COTP metric.” (85 Fed. Reg. at 72978). Accordingly, the FRA established “a certified schedule metric that addresses alignment with the COTP metric and standard . . . .” (Id. at 72979). The Final Rule required Amtrak to report the number of “certified,” “uncertified” and “disputed” schedules by train, by route and by host railroad. (Id.)<sup>15</sup> A “certified schedule” is defined as “a published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer on-time performance metric and standard” established in the Final Rule. See 49 C.F.R. § 273.3. The Final Rule “encourages the parties to agree on certified schedules while not explicitly requiring them.” (Id. at 72980).

In the event that Amtrak and a Host Railroad cannot agree on a schedule and it is “disputed,” the Final Rule “does not require [them] to engage in a dispute resolution process, nor does the final rule attempt to prescribe the process the parties use if they do choose to engage a dispute resolution process.” (Id. at 72979). The FRA did, however, encourage Amtrak and a Host Railroad to “engage in a dispute resolution process if they are unable to reach agreement amongst themselves.” (Id. at 72979-80).

The FRA observed that, through the schedule certification process, a Host Railroad and Amtrak “can arrive at an efficient use of recovery time, which is an inherent element in a schedule.” (Id. at 72980). For example, the FRA observed that “a COTP metric may encourage a schedule with more recovery time at those stations with more de-boarding passengers . . . .” (Id. at 72978, n.19). It noted, however, that:

adjusting train schedules to align with the customer OTP standard  
does not mean that recovery time must be added for each station.

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<sup>15</sup> The Final Rule’s COTP metric applies to “a train beginning on the first full calendar quarter after May 17, 2021.” (85 Fed. Reg. at 72975). Where a schedule is reported as disputed on or before May 17, 2021, the COTP metric “shall apply beginning on the second full calendar quarter after May 17, 2021.” (Id.).

Recovery time should, for example, be included across a schedule to protect performance at larger volume stations, locations where passenger trains can wait clear of main tracks, where stations are farther apart, or where trains are more likely to incur operational delays.

(Id. at 72977).

**C. Metrics Related to the Causes of Delays on Host Railroads**

**1. *The “Train Delays” Metric***

The FRA recognized that “there are factors that contribute to poor OTP on a route that are not evident from measuring station arrival times” under the COTP metric. (85 Fed. Reg. at 72980-81). Among other things, a delay caused by one Host Railroad on a multi-Host Amtrak route may reduce overall COTP, despite the other Host Railroad (or Host Railroads) along the route performing well. (Id.). Because the COTP metric “does not easily distinguish performance on individual host railroads,” the Final Rule “establishes metrics to measure train delays, station performance, and host running time, to provide more information about the customer experience, train performance on individual host railroads, and the minutes and causes of delay.” (Id. at 72981).

The Final Rule requires the reporting of minutes of delay attributable to:

- (1) “*Amtrak-responsible delays*,” defined as “delays recorded by Amtrak, in accordance with Amtrak procedures, as Amtrak-responsible delays, including passenger-related delays at stations, Amtrak equipment failures, holding for connections, injuries, initial terminal delays, servicing delays, crew and system delays, and other miscellaneous Amtrak-responsible delays.”;
- (2) “*Host-responsible delays*,” defined as “delays recorded by Amtrak, in accordance with Amtrak procedures, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.”;
- (3) “*Third-party delays*,” defined as “delays recorded by Amtrak, in

accordance with Amtrak procedures, as third party delays, including bridge strikes, debris strikes, customs, drawbridge openings, police-related delays, trespassers, vehicle strikes, utility company delays, weather-related delays (including heat or cold orders, storms, floods/washouts, earthquake-related delays, slippery rail due to leaves, flash-flood warnings, wayside defect detector actuations caused by ice, and high-wind restrictions), acts of God, or waiting for scheduled departure time.”;

- (4) Amtrak-responsible delays and Host-responsible delays, combined; and
- (5) Non-Amtrak host-responsible delays.

(85 Fed. Reg. at 72981 (codified at 49 C.F.R. § 273.3)). The metric also requires the reporting of “disputed delay minutes” where “Amtrak and the host railroad are unable to agree on a delay category.” (85 Fed. Reg. at 72982).

## **2. The “Station Performance” Metric**

The “station performance” metric “measure[s] the number of detraining passengers, the number of late passengers, and the average minutes late that late customers arrive at their detraining stations . . . .” (85 Fed. Reg. 72983). The purpose of this metric is to “reflect[] the severity of the delayed train, as experienced by the customer.” (Id.).

## **3. Train Delays Per 10,000 Train-miles**

To measure delays, the FRA set a metric of “train delays per 10,000 miles.” (85 Fed. Reg. at 72984). Specifically, the metric measures the “minutes of delay per 10,000 train-miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route.” (Id.). The FRA noted this metric would be useful “when assessing an individual railroad’s performance” on multi-host routes and that “[m]inutes of . . . host-responsible delays have historically been normalized by 10,000 train-miles to compare performance more easily on routes of varying length.” (Id.).

#### 4. *The “Host Running Time” Metric*

The FRA also established a “host running time” metric which “measure[s] the average actual running time and median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad segment set forth in the Amtrak schedule skeleton<sup>16</sup> . . . by host railroad.” (*Id.* at p. 72983). This metric “shows the performance of a host railroad against the time allowed for in the schedule and provides more insight into a host railroad’s operating impact on OTP.” (*Id.*).

#### IV. Events After the Board’s August 9, 2019 Decision and FRA’s Final Rule

As required by the 2019 Decision, the Parties participated in mediation, but were unable to resolve any outstanding issues. (See Joint Motion to Est. Proc. Sch. (S.T.B. Filing # 303581), p. 2).

After issuance of the Final Rule, CN and Amtrak agreed to certify schedules for 20 of the 26 regularly scheduled Amtrak trains operating over CN’s lines “as being aligned with the customer [OTP] metric.” (See Joint Motion to Est. Proc. Sch., Filing # 303581, p. 2; Verified Statement of Yoel Weiss (“Weiss V.S.”), ¶¶ 34-35).<sup>17</sup>

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<sup>16</sup> “Schedule skeletons” represent the Parties’ agreed upon operating schedule, and include: the arrival, departure and dwell times at each station, and the “Pure Running Time,” “Recovery Time,” and any “Miscellaneous Time” between each station. (*See* Weiss V.S., ¶ 11).

<sup>17</sup> The twenty (20) schedules the Parties have certified pertain to trains operating on the following Amtrak routes: Wolverine (Trains 350, 351, 352, 353, 354 and 355); Blue Water (Trains 364 and 365); Lincoln (Trains 300, 301, 302, 303, 304, 305, 306 and 307); Texas Eagle (Trains 21 and 22) and Sunset Limited (Trains 1 and 2). (*Weiss V.S.*, ¶ 35). The six (6) schedules that remain disputed pertain to trains operating on the following Amtrak routes: City of New Orleans (Trains 58 and 59); and Illini/Saluki (Trains 390, 391, 392 and 393). (*Id.*, ¶ 36).

**AMTRAK’S PROPOSED TERMS AND  
CONDITIONS FOR A NEW OPERATING AGREEMENT**

**I. Framework for the Board’s Final Decision**

The Board’s Final Decision setting terms and conditions of a new OA between CN and Amtrak must be informed by the regulatory and statutory frameworks applicable to Amtrak’s relationship with its Host Railroads. In addition to the Board’s 2019 Decision, that framework includes:

1. the requirements imposed on freight railroads under the “public bargain” which accompanied Congress’ creation of Amtrak;
2. the Congressionally-mandated preference afforded to Amtrak’s passenger trains while operating on a Host Railroad’s system;
3. Amtrak’s Congressionally-mandated mission and goals; and
4. the COTP and other metrics and standards established by the FRA in its Final Rule and the requirement that Amtrak’s OAs are consistent with them.

**A. The Public Bargain and Amtrak’s Statutory Preference Right**

As common carriers, freight and other private railroads were historically obligated to provide passenger rail services. Nat’l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co., 470 U.S. 451, 454 (1985). By the mid-20th century, “[a]s cars, buses, and airplanes displaced the passenger railroads, those railroads that continued to provide passenger carriage incurred heavy and continuing losses.” Id. To ensure that passenger rail service continued in the United States, Congress enacted the Rail Passenger Service Act of 1970 (“RPSA”), creating Amtrak. Id. at 454-55. To “avert the threatened extinction of passenger trains in the United States,” the RPSA enabled freight railroads to relinquish their passenger service obligations and transfer those obligations to Amtrak. Lebron v. Nat’l R.R. Passenger Corp., 513 U.S. 374, 383

(1995).

Once Amtrak took over passenger rail service, Congress recognized that to provide those services, “Amtrak, of necessity, must rely . . . on track systems owned by the freight railroads.” Dep’t of Transp. v. Ass’n of Am. R.Rs., 575 U.S. 43, 46 (2015). For this reason, in exchange for relieving the freight railroads of their burden to provide non-profitable passenger services, Congress required them “to allow Amtrak to use their tracks and facilities at rates agreed to by the parties -- or in the event of disagreement to be set by the Interstate Commerce Commission,” and later by the Board (as the ICC’s successor). (Id., at 46-47). The ICC referred to this exchange as a “public bargain” struck with the freight railroads to relieve them of “any duty to provide passenger service in exchange for making their tracks available to Amtrak at incremental costs.” Interstate Commerce Commission, Study of Interstate Commerce Commission Regulatory Responsibilities, p. 62 (October 25, 1994).

Operating Amtrak’s passenger trains and freight trains on the same tracks “[n]aturally . . . can cause coordination problems.” Ass’n of Am. Railroads v. Dep’t of Transp., 721 F.3d 666, 669 (D.C. Cir. 2013). The “public bargain,” therefore, required the freight railroads to provide intercity passenger trains with a “preference” over freight traffic in using any line, junction or crossing. Indeed, Congress had been assured by the freight railroads that they would continue to provide Amtrak passenger service the “priority” they had traditionally provided to passenger service they had previously operated themselves.<sup>18</sup>

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<sup>18</sup> For example, John Reed (President of the Atchison, Topeka and Santa Fe Railway Company) testified to Congress: “[Santa Fe] traditionally has given passenger train operations preference over freight service and would continue to afford Amtrak trains such priority.” He further stated that “regularly scheduled passenger trains shall continue to be designated as first-class trains and shall continue, except in cases of emergencies or exigencies beyond the reasonable control of the dispatcher, to be afforded preferential dispatch and handling over other classes of train operations.” Review and Refunding of Rail Passenger Service Act: Before the

Almost immediately after passage of the RPSA, however, freight railroads began to prioritize freight traffic over passenger service, with the average on-time performance of long distance passenger trains plummeting from over 70% in 1972 to 35% in 1973.<sup>19</sup> In response, that same year (1973), Congress enacted what is now 49 U.S.C. § 24308(c) (formerly 45 U.S.C. § 563(e)), requiring freight railroads to do what they had earlier promised to do: provide preference to passenger service over freight traffic in using any line, crossing or junction. See Ass'n of Am. Railroads, 575 U.S. at 47 (“Since 1973, Amtrak has received a statutory preference over freight transportation in using rail lines, junctions, and crossings.”).

Nonetheless, even Congress’ codification of Amtrak’s preference did not assure that freight railroads would prioritize Amtrak’s service over its own freight traffic. In 2008, “the Department of Transportation’s Inspector General reported that [Amtrak’s] preference right was weak.” Union Pac. R.R. Co. v. Surface Transp. Bd., 863 F.3d 816, 820 (8th Cir. 2017) (citing Office of Inspector Gen., Fed. R.R. Admin., CR-2008-076, Root Causes of Amtrak Train Delays 4 (2008)). Among other things, the Inspector General noted that “freight railroads could adjust their dispatching practices to give their own trains an advantage over Amtrak.” (Id.).

To address freight railroads’ continued failure to honor Amtrak’s preference, “Congress enacted [PRIIA].” Union Pac. R.R. Co., 863 F.3d at 820-21. PRIIA § 213(a) (codified at 49 U.S.C. § 24308(f)) “authorizes, and sometimes requires, the Board to investigate when an

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Subcomm. on Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce, 92nd Cong. 1, H.R. Rep. 92-54, pt. 2 at 670 (Dec. 7, 1971). Similarly, in his statement, Roger Lewis (then-President of Amtrak) stated: “I have assumed that the railroads in operating would follow a railroad tradition which was to give the passenger trains preference.” Id. at 651, 692 (Dec. 7, 1971).

<sup>19</sup> Hearings on H.R. 8351 before the Subcomm. on Transp. and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 93rd Cong., 1st Sess., at 29-32 (June 12, 1973).

Amtrak train fails to meet certain performance standards.” (Id.). If the Board determines that “the failure is attributable to the host railroad’s failure to honor Amtrak’s preference right, then the Board may award damages and other relief.” (Id.).

Amtrak’s statutory preference remains a critically important aspect of its operations over systems operated by Host Railroads. Indeed, in Executive Order No. 14036, President Biden directed that:

To further competition in the rail industry and to provide accessible remedies for shippers, the Chair of the Surface Transportation Board (Chair) is encouraged to work with the rest of the Board to:

\* \* \*

- (iii) ensure that passenger rail service is not subject to unwarranted delays and interruptions in service due to host railroads’ failure to comply with the required preference for passenger rail, vigorously enforce new on-time performance requirements adopted pursuant to the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110-423, 122 Stat. 4907) that will take effect on July 1, 2021, and further the work of the passenger rail working group formed to ensure that the Surface Transportation Board will fully meet its obligations; and
- (iv) in the process of determining whether a merger, acquisition, or other transaction involving rail carriers is consistent with the public interest under 49 U.S.C. 11323-25, consider a carrier’s fulfillment of its responsibilities under 49 U.S.C. 24308 (relating to Amtrak’s statutory rights).

Exec. Order 14036, 86 FR 36987 (July 9, 2021).

**B. Amtrak’s Congressionally-Mandated Mission and Goals**

When it created Amtrak, Congress mandated that Amtrak’s “mission” is “to provide efficient and effective intercity passenger rail mobility consisting of high quality service that is trip-time competitive with other intercity travel options and that is consistent with the goals set

forth in subsection (c).” 49 U.S.C. § 24101(b). In specifying Amtrak’s “goals,” Congress stated that, *inter alia*, “Amtrak shall”:

- (1) “operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables”;
- (2) “improve its contracts with operating rail carriers”;
- (3) “implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort”; and
- (4) “encourage rail carriers to assist in improving intercity rail passenger transportation.”

(See 49 U.S.C. §§ 24101(c)(1)(D), (c)(4, 6, 7)).

### **C. The FRA’s Final Rule and Amtrak’s Operating Agreements**

Amtrak is authorized to enter into OAs with the Host Railroads concerning Amtrak’s operation on their systems. See 49 U.S.C. § 24308(a)(1) (“Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree.”).

As discussed above, under PRIIA § 207(c), Amtrak’s OAs must, to the extent practicable, incorporate the metrics and standards of the FRA’s Final Rule into their operating Agreement. (See 85 Fed. Reg. at 72977) (citing Union Pac. R.R. Co., 863 F.3d at 826).

If Amtrak and the Host Railroad cannot reach an OA, the Board is empowered to order that the Host Railroad’s “facilities be made available and the services provided to Amtrak” and to “prescribe reasonable terms and compensation for using the facilities and providing the services.” 49 U.S.C. §§ 24308(a)(2)(A)(i-ii). And:

When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Board *shall consider quality of service* as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the

incremental costs of using the facilities and providing the services.

49 U.S.C. § 24308(a)(2)(B) (emphasis added). Among other things, how Amtrak's trains are performing on a Host Railroad's system under the COTP metric must be considered indicative of the "quality of service" being provided to Amtrak passengers along routes on the Host's system. Quality service therefore, is a prerequisite to Amtrak's payment of a incentives over and above a Host Railroad's incremental costs. See 85 Fed. Reg. at 72972 (FRA's metric and standards measure "service quality" of Amtrak's passenger service). More particularly, the minutes of Host-responsible delays per 10,000 train-miles will reflect the quality of service the Host Railroad is providing with respect to Amtrak trains operating on its system.

\* \* \*

In sum, based on the foregoing, where the Board is called upon to set terms and compensation of an OA between a Host Railroad and Amtrak, the following principles apply and must be considered:

1. The terms and compensation prescribed by the Board for Amtrak's use of CN's facilities and services must be "reasonable."
2. The Board must consider the "quality of service as a major factor" in deciding whether (and to what extent) to allow compensation in excess of CN's incremental costs associated with Amtrak's use of CN's facilities. (See 49 U.S.C. § 24308(a)(2)(B)).
3. The Board's imposition of terms concerning the OTP of Amtrak's passenger trains on CN's system must be in accordance with the FRA's recent Final Rule, including the COTP metric. Indeed, that COTP metric is a key indicator of the "quality of service" on Amtrak's route as a whole.

4. The Board's imposition of terms must be consistent with Amtrak's mission to "carry out" its Congressionally-mandated goals, including Amtrak's operation of trains "to all station stops within 15 minutes of the time established in public timetables." (See 49 U.S.C. § 24101(c)(4)).
5. The Board's imposition of terms, including those concerning the applicable incentive and penalty system, should operate to incentivize CN's strong performance under the metrics and standards established by the FRA and otherwise incentivize CN to meet its statutory obligations to Amtrak - - including honoring Amtrak's statutory preference (a requirement historically disregarded by the freight railroad industry through, *inter alia*, abuses in dispatching practices).

\* \* \*

Based upon the foregoing, the terms and conditions of a new OA between CN and Amtrak which Amtrak is requesting that the Board impose are discussed in detail *infra*. Amtrak has submitted a redline draft of its proposed new OA. That redline ("Amtrak Redline") identifies the differences between Amtrak's proposed new OA and the 2011 OA (as amended by the Parties) and is attached as Addendum #1 to this brief.

Below, Amtrak addresses the following terms it is asking the Board to impose:

1. **OTP Metrics, Incentives and Penalties** - Amtrak explains its proposed terms and conditions by which the on-time performance of Amtrak's passenger trains operating on CN's system will be measured (*i.e.*, COTP) and the circumstances under which CN will earn a performance incentive payment or incur performance penalties.
2. **Allocation of Recovery Time** - in light of Amtrak's proposed performance

payment provisions, Amtrak explains the reallocation of Recovery Time in the schedules for its trains operating on CN's system (the majority of which have been agreed to and "certified" by CN as aligned with the FRA's Final Rule). For schedules which remain disputed, Amtrak explains how its proposed reallocation of Recovery Time is also aligned with the Final Rule and affords CN a meaningful opportunity to earn performance incentives.

3. **Lookback and "Reopener" Provisions** - as encouraged by the Board in the 2019 Decision, Amtrak explains its proposal for a modified "lookback" provision in the new OA and a "reopener" which provides for concrete remedial action by CN in the event of sustained poor performance of Amtrak's trains on CN's system.
4. **Term of the New OA** - Amtrak explains its proposal for a seven-year term for the new OA, with an "evergreen" clause.
5. **Retroactivity** - Amtrak explains its proposal for the new OA to apply prospectively only, except as to certain terms set forth in separate letter agreements executed in 2011.
6. **Confidentiality** - Amtrak explains its proposal as to the limited confidentiality of its submissions and the new OA (pertaining only to pricing and cost terms and the OA's indemnification clauses).
7. **Incorporation of the Side Letters** - Amtrak explains its position as to the incorporation by reference of the 2011 Side Letter agreements between CN and Amtrak into the new OA by reference.

## **II. Terms Related to COTP, Performance Incentives and Penalties**

Amtrak's proposal for assessing the on-time performance of Amtrak's passenger trains

on CN's system, and the circumstances under which CN may earn an incentive or incur a penalty,<sup>20</sup> incorporates the metrics and standards set forth in the FRA's Final Rule, as well as guidance from the Board in its 2019 Decision. Amtrak's incentive and penalty system incentivizes CN to minimize or otherwise eliminate CN-controllable delays to Amtrak trains. Ultimately, this benefits Amtrak passengers by delivering them to their destinations on time, or subject to minimal delay.

**A. Overview**

Amtrak's proposed incentive and penalty system is intended to incorporate a number of concepts, including: the COTP metrics and standards; ridership on Amtrak's routes hosted by CN (and any increases or decreases in ridership from year to year); CN's HRDs; and guidance contained in the Board's 2019 Decision. Amtrak's proposed system has the following features:

- Amtrak proposes to assess whether CN has earned an incentive or will be penalized by measuring performance quarterly on a per-route basis. Although the Parties have historically calculated incentives and penalties on a monthly basis, proceeding quarterly aligns with and links to Amtrak's quarterly obligations to report the metrics established in the Final Rule to the FRA.
- Amtrak's proposed system measures on-time performance of Amtrak's trains operating on CN's system using the customer OTP metric ("COTP") endorsed by the FRA and consistent with the Board's guidance in its 2019 Decision. The better the COTP on the route, the more likely CN is to earn incentives, and avoid penalties.

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<sup>20</sup> In Amtrak's proposed Redline, Amtrak refers to incentives as "Quality Payments" and refers to penalties as "Performance Penalties." (Amtrak Redline, Appendix V).

- Amtrak realizes that COTP, as a route level metric, is not a perfect measure of CN's performance on any of the routes - - particularly those where there are other Host Railroads that host the lion's share of the track miles for the route.<sup>21</sup> As such, although COTP is one factor in Amtrak's calculation of whether CN earns incentives or is penalized, it is not the sole factor. This is by design. As the FRA observed, the COTP metric is not intended to reflect the specific "quality of service" provided by any particular Host. And, even though overall COTP may be poor for a particular train or route as a whole, CN may not be responsible for the delays which caused that poor performance (rather, Amtrak itself or another Host Railroad may have caused the delay).
- Accordingly, Amtrak's calculations consider additional metrics. Under Amtrak's system and calculations, the amount of incentives that CN can earn increases as: (a) the number of passenger miles travelled on an Amtrak route on CN's system increase; and (b) the number of CN's HRDs per 10,000 train-miles (a metric expressly endorsed by the FRA) decreases. Because CN earns more incentives as passenger miles increase, it is incentivized to aid Amtrak in expanding ridership, primarily through good on-time performance. Similarly, because CN earns more incentives as its HRDs decrease, it is incentivized to minimize delays to Amtrak trains which are within CN's control.
- Using CN's HRDs as a metric has added benefits. It incorporates a "degree of lateness" into the assessment - - as urged by the Board. Even if an Amtrak train is

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<sup>21</sup> For example, on the Texas Eagle route, CN hosts only 35.7 of the 1,305 miles on the route. (2019 Dec., p. 4).

delayed, under Amtrak's system, CN is always incentivized to reduce that delay both: (a) to minimize its own HRDs (if it caused the train to be late); and (b) to cooperate to improve COTP on the route.

- Amtrak's consideration of HRDs in its proposed system also enables CN to earn an incentive even where COTP for a route is below the minimum standard, but delays caused by CN are not the cause of that substandard performance. Thus, Amtrak's proposed terms afford CN a meaningful opportunity to earn incentives based upon its own performance, even if other Host Railroads for the route perform poorly.

The mechanics of the calculation Amtrak proposes for determining whether CN earns incentives or incurs penalties for a particular Amtrak route for a given quarter, are explained in detail below. The steps in the calculation are summarized as follows:

1. For each Amtrak route, Amtrak has determined an initial "Ridership Factor," which establishes a baseline pool of incentives that CN may earn for a quarter for a particular route, based upon the amount of incentives that CN earned in 2019. (See Point II(B), *infra*).

2. Amtrak adjusts that Ridership Factor on January 1 of each year during the life of the OA based upon the passenger miles travelled for the route during the preceding two years. This sets the Ridership Factor for the next year's incentive and penalty calculations. (See Point II(C), *infra*).

3. The amount of the incentives actually paid to CN (or the penalty assessed against it) is a percentage of the dollars comprising the Ridership Factor. That amount is determined by factoring in both the quarterly COTP for the route and CN's HRDs per 10,000 train miles for the quarter. The better the COTP and the lower the number of HRD minutes, the higher the

incentives are that CN may earn. Conversely, the lower the COTP and the higher the HRD minutes, the lower the incentives CN may earn - - and CN may incur penalties. (See Point II(C), *infra*).

**B. Calculation of the Ridership Factor**

The first aspect of Amtrak’s system is the “Ridership Factor.” (Blair V.S., ¶ 37). This term establishes a base amount of incentives that CN may earn for a particular quarter. (Id.). It also establishes a baseline for the calculation of penalties in the event that CN incurs them. (Id.).

The initial base “Ridership Factor” which Amtrak proposes for each of Amtrak’s routes in a new OA is based upon the amount of incentives which CN earned in 2019 - - the last year during which Amtrak’s trains operated free from the impacts and limitations caused by the Covid-19 pandemic. (Id.). The initial base Ridership Factor for each route is calculated by taking 25% of the total incentives earned by CN in 2019, which provides an average incentive amount earned by CN for each quarter in 2019. (Id., ¶ 38).<sup>22</sup> That amount is then adjusted for inflation that has occurred between 2019 and 2021.<sup>23</sup> (Id.). Amtrak then uses these adjusted prior earnings to calculate a number that ensures that CN earns a similar amount of inflation-adjusted

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<sup>22</sup> Because CN did not earn incentives on the Illini/Saluki route in 2019, Amtrak is utilizing the historical incentive data for 2020 and 2021 for that route. CN earned incentives on the Illini/Saluki route in 2020 (\$1,256,359) and 2021 (\$1,545,594), for an average of \$1,400,976.50. As such, for the calculations detailed herein, where data for 2019 is utilized for other routes, the data will be from 2020 and 2021 for the Illini/Saluki route. (Blair V.S., ¶ 38 n.4).

<sup>23</sup> Amtrak proposes to perform this inflation adjustment using the approach under Method B set forth in the Price Level Adjustment Table to Appendix IV. (Blair V.S., ¶ 38 n.5). Under that approach, prices are adjusted based on the “relationship of the most recent Third Quarter index from Association of American Railroads (AAR) quarterly Indices of Chargeout Prices and Wage rates (Table C)-East ‘Material prices, wage rates and supplements combined (excluding fuel)’ , to the Third Quarter 2010 index value.” Because Amtrak’s calculations in its proposed new OA result in a base Ridership Factor adjusted to 2021 equivalents, Amtrak proposes to index to the Third Quarter 2021 index value, which is 558.9. (Id.).

incentives under the new OA as it earned in 2019, if the subject route performs near 80% COTP. This calculation yields the Ridership Factor for the route for each quarter that incentives will be calculated under a new OA. (Id.)

Calculating the initial Ridership Factor for Amtrak's City of New Orleans services (where CN is the only Host Railroad) and Amtrak's Blue Water service (where CN is a Host Railroad along with other Hosts, including Norfolk Southern), is illustrative.

**(a) Amtrak's Blue Water Route**

i. For 2019, CN actually earned \$647,107 in incentives on the Blue Water route, or an average of \$161,777 per quarter. When adjusted for inflation, the 2019 quarterly average increased to \$164,729. (Id.)<sup>24</sup> Assuming COTP for the Blue Water route was at 80% for an average quarter, an initial Ridership Factor of \$205,911 for the Blue Water route would result in equivalent incentives earned in 2021 (\$164,729 in adjusted incentives earned per quarter). (Blair V.S., ¶ 40).

**(b) City of New Orleans ("CNO") Route**

i. For 2019, CN actually earned \$2,075,983 in incentives on the CNO route, or an average of \$518,996 per quarter. (Id.). When adjusted for inflation, the 2019 quarterly average increased to \$528,467. (Id.). Assuming COTP for the CNO route was at 80% for an average quarter, an initial Ridership Factor of \$660,584 for the CNO route would result in equivalent incentives for earned in 2021 (\$528,467 in adjusted incentives earned per quarter). (Id.).

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<sup>24</sup> Inflation was calculated dividing 569.1 (the relevant Third Quarter index for 2021) by 558.9 (the relevant Third Quarter index for 2019). That calculation equals 1.01825.  $\$161,777 \times 1.01825 = \$164,729$ . (Blair V.S., ¶ 40, n.7).

**C. Annual Adjustment of the Ridership Factor**

Beginning in 2024, during the life of the new OA, Amtrak proposes that the Ridership Factor will be adjusted annually on January 1 of each calendar year based upon the number of passenger miles actually travelled on a given Amtrak route. (Blair V.S., ¶ 41). Amtrak proposes to perform that annual adjustment calculation as follows.

Amtrak proposes to divide: (a) the then-current Ridership Factor; by (b) the total number of passenger miles for subject route for the fiscal year two years prior to the calculation.<sup>25</sup> (Id., ¶ 42). This calculation yields a base value for each passenger mile travelled on the subject route. (Id.). Amtrak then proposes to multiply: (a) this per passenger mile value; by (b) the total passenger miles travelled during for the subject route for the fiscal year preceding the calculation.<sup>26</sup> (Id., ¶ 43). At the same time, Amtrak will also adjust this calculation for inflation.<sup>27</sup> This calculation yields the new Ridership Factor to be in place for the calendar year during which the adjustment calculation is performed. (Id.).

Continuing the example calculations for the Blue Water and CNO routes is illustrative. These example calculations relate to a hypothetical adjustment calculation performed on January 1, 2022 in order to set the resulting Ridership Factor which applies to calculate the incentives

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<sup>25</sup> In Amtrak’s redline, these passenger miles are the “Amtrak Base Passenger Miles,” which are defined as “the Amtrak Passenger Miles on each Amtrak Route as published in the Route Level Results in the Amtrak Final Monthly Performance Report for the fiscal year two years prior to the year of the calculation. For example, a calculation that occurred on January 1, 2024 would use ridership from Amtrak Fiscal Year 2022.” (Amtrak Redline, § Article I).

<sup>26</sup> In Amtrak’s redline, these passenger miles are “Amtrak Passenger Miles Prior Year,” which are defined as the “Amtrak Passenger Miles on each Amtrak Route as published in the Route Level Results in the Amtrak Final Monthly Performance Report for that fiscal year. For example, a calculation that occurred on January 1, 2024 would use ridership from Amtrak Fiscal Year 2023.” (Amtrak Redline, § Article I).

<sup>27</sup> Again, Amtrak will utilize Method B from Appendix IV to the OA to calculate inflation.

that CN may earn in 2022.<sup>28</sup>

**(a) Blue Water Route**

i. In 2020 (two years before the calculation is being performed on January 1, 2022), the total passenger miles on the Blue Water route were 18,900,000. There is a base per-passenger value on the Blue Water route of \$.01089 (\$205,911 (initial base quarterly Ridership Factor) ÷ 18,900,000 passenger miles in 2020). (Blair V.S., ¶ 44).

ii. In 2021 (one year before the calculation is being performed on January 1, 2022), the total passenger miles on the Blue Water route were 18,300,000. The new quarterly Ridership Factor to be utilized in 2022 is \$205,604.40 (18,300,000 in passenger miles in 2021 × \$.01089 per passenger mile × 1.0317<sup>29</sup> (accounting for inflation)). (Id.).

**(b) CNO Route**

i. In 2020 (two years before the calculation is being performed on January 1, 2022), the total passenger miles on the CNO route were 53,300,000. There is a base per-passenger value on the Blue Water route of \$.01239 (\$660,584 (initial quarterly base Ridership Factor) ÷ 53,300,000 passenger miles in 2020). (Id.).

ii. In 2021 (one year before the calculation is being performed on January 1, 2022), the total passenger miles on the CNO route were 41,000,000. The new quarterly Ridership Factor to be utilized for 2022 is \$524,093.28 (41,000,000 in passenger miles in

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<sup>28</sup> This 2022 example is illustrative only, as Amtrak proposes beginning to adjust the Ridership Factor on January 1, 2024. This is intended to avoid any adverse impacts to CN in the adjustment calculation caused by Amtrak's low ridership and passenger mile statistics for 2020 and 2021. (Blair V.S., ¶ 44 n.12).

<sup>29</sup> Inflation was calculated dividing 569.1 (the relevant Third Quarter index for 2021) by 551.6 (the relevant Third Quarter index for 2020). That calculation equals 1.0317. (Blair V.S., ¶ 44 n.13).

2021 × \$.01239 per passenger mile × 1.0317 (accounting for inflation)). (Id.).

**D. Calculating the Incentives Due or Penalty Incurred by CN**

The Ridership Factor forms part of the calculation used to determine the incentives that CN will earn or the penalty that it will incur, for a route for a given quarter. Amtrak proposes to calculate that amount by multiplying: (a) the Ridership Factor; by (b) the COTP for the route for the quarter; and by (c) the Delay Adjustment Factor. (Blair V.S., ¶ 45).

The “Delay Adjustment Factor” which Amtrak proposes is an adjustment based upon the number of minutes of CN’s HRDs on the subject route during the quarter (as determined by Amtrak pursuant to its existing procedures for recording delays impacting its trains). (Id., ¶ 46). Consistent with the Final Rule’s metrics and standards, Amtrak proposes “normalizing” the actual minutes of CN’s HRDs (as determined by Amtrak pursuant to its procedures) for the quarter to the number of HRDs per 10,000 train-miles. (Id., ¶ 47); see 85 Fed. Reg., at 72984 (stating that minutes of delay “have historically been normalized by 10,000 train-miles”).

Based on the number of CN’s HRDs per 10,000 train miles, Amtrak proposes to apply a sliding scale to determine how the Delay Adjustment Factor impacts the amount of incentives CN will receive (or the penalty it will incur). (Id., ¶ 48). Under the sliding scale, CN will begin to earn incentives when its HRDs per 10,000 train miles for the route for the quarter are between 900 and 924. (Id., ¶ 49). When HRDs are within that range, the Delay Adjustment Factor will be 10%. (Id.). Amtrak has determined that, where HRDs are approximately 900 minutes per 10,000 train miles, the COTP for a given Amtrak route is approximately 80% (meeting the minimum COTP standard under the Final Rule). (Id.). As CN’s HRDs per 10,000 train miles decrease below 900, the incentives that CN will earn increase under Amtrak’s system. (Id., ¶ 50). So, for example, if CN’s HRDs are 825 per 10,000 train miles, the Delay Adjustment Factor will

be 60%. (Id.). Conversely, when CN's HRDs per 10,000 train miles increase above 924, then CN will begin to incur penalties and the amount of the penalty will increase as the number of CN's HRDs increase. (Id., ¶ 51). So, for example, if CN's HRDs per 10,000 train miles are 975, the Delay Adjustment Factor will be -60%, meaning CN will incur a penalty.<sup>30</sup> (Id.).

Continuing the examples for the Blue Water and CNO routes is illustrative of these calculations. These calculations relate to a hypothetical calculation of incentives earned or penalties incurred by CN during 2022:

**(a) Blue Water Route**

i. The quarterly Ridership Factor for 2022 for the Blue Water route (as calculated above) is \$205,604.40. If, for a quarter in 2022, the COTP for the Blue Water route was 75% and CN's HRDs per 10,000 train miles were 800, Amtrak proposes to calculate the incentives due to CN as follows: \$205,604.40 (2022 quarterly Ridership Factor) × 75% (quarterly COTP) × 80% (the Delay Adjustment Factor which correlates to 800 HRDs) = \$123,362.64 in incentives earned by CN for the quarter. (Blair V.S., ¶ 53).

ii. If CN's HRDs per 10,000 train miles were 975 (instead of 800), the calculation would be as follows: \$205,604.40 (2022 quarterly Ridership Factor) × 75% (quarterly COTP) × -60% (the Delay Adjustment Factor which correlates to 975 HRDs) = a penalty of \$92,521.98. (Id.).

**(b) CNO Route**

i. The quarterly Ridership Factor for 2022 for the CNO route (as calculated above) is **\$524,093.28**. If, for a quarter in 2022, the COTP for the CNO route was 85%

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<sup>30</sup> A complete table of Amtrak's proposed Delay Adjustment Factors is set forth the Blair Verified Statement, ¶ 52 and the Amtrak Redline at Appendix V, § Table 2.

and CN's HRDs per 10,000 train miles were 600, Amtrak proposes to calculate the incentives due to CN as follows: \$524,093.28 (2022 quarterly Ridership Factor) × 85% (COTP) × 115% (the Delay Adjustment Factor which correlates to 600 HRDs) = \$512,301.18 in incentives earned by CN for the quarter. (Id.).

ii. If CN's HRDs per 10,000 train miles were 950 (instead of 600) and COTP for the route was 75% (instead of 85%), the calculation would be as follows: \$524,093.28 (2022 quarterly Ridership Factor) × 75% (COTP) × -40% (the Delay Adjustment Factor which correlates to 950 HRDs) = a penalty of \$157,227.98. (Id.).

**E. Amtrak's Incentive and Penalty Proposal is Consistent with the Applicable Framework for the Board's Final Decision**

Each step in the process of Amtrak's calculations is reasonable and consistent with the Board's 2019 Decision, the FRA's Final Rule and the other statutes and regulations which guide the Board's setting of terms and conditions of a new OA.

**1. The Ridership Factor**

Amtrak's use of the Ridership Factor to set the initial quarterly baseline for the incentive that CN may earn is fair and reasonable. The Ridership Factor is based on the incentives which CN earned in 2019 (adjusted for inflation). (Blair V.S., ¶ 55). 2019 is the last year during which Amtrak's operations (including on CN's system) were at normal levels, and its ridership was not impacted by the Covid-19 pandemic. (Id.). As such, utilizing incentive data from those years provides the most reasonable measure to set a potential pool of incentives that CN may earn under normal operating conditions for Amtrak routes in 2022 and into the future, now that ridership and Amtrak service is starting to return to pre-pandemic levels. (Id.).

Additionally, utilizing 2019 data to establish a baseline for the incentives that CN may earn, allows CN to earn nearly the same amount of incentives it earned in 2019. (Id., ¶ 56). In

calculating the Ridership Factor in this manner, Amtrak is seeking to assure that CN's potential incentive earnings under the new OA are not less than what CN earned in 2019 under the 2011 OA - - again, the last full year of normal, full-time operations of Amtrak's trains on CN's system. (Id.).

## 2. Adjusting the Ridership Factor Based upon Passenger Miles

The baseline Ridership Factor for each route is adjusted annually based upon the actual passenger miles travelled on the Amtrak route during the preceding two years. (Blair V.S., ¶ 57). Utilizing actual passenger miles to calculate and adjust the Ridership Factor during the life of the new OA ties the incentives CN may earn to the most detailed (and accurate) customer-level measurement possible. (Id.). That is, Amtrak's actual ridership on the route, both in terms of the total number of passengers and the miles each passenger travels. (Id.). Every passenger - - no matter how short or long their trip on Amtrak route - - is accounted for in this metric.

This is consistent with the FRA's endorsement of metrics that account for the experience of each and every passenger, and its rejection of metrics that do not.<sup>31</sup> It is also consistent with the Board's similar rejection in its 2019 Decision of metrics which do not account for each passenger's experience.<sup>32</sup>

Further, because the amount of the Ridership Factor (and the incentives CN may earn for

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<sup>31</sup> For example, the FRA endorsed a COTP metric because it "focuses on intercity passenger train performance as experienced by the customer." (85 Fed. Reg. at 72974). Similarly, in adopting the revised "station performance metric", the FRA expanded it to include "all passengers, not just late passengers, by route, train and station." (Id. at 72983). Conversely, the FRA rejected a "key stations" metric in measuring OTP because "a key stations OTP metric fails to recognize the importance of customers who do not use a key station." (85 Fed. Reg. at 72976).

<sup>32</sup> See, e.g., 2019 Dec., p. 100 (rejecting CN's proposed OTP metrics because some "would disregard the punctuality, hence the quality, of a passenger's trip simply because of a passenger's destination.").

an Amtrak route based upon it) *increases* with the number of passenger miles actually travelled on that route, CN is incentivized to assist Amtrak in its efforts to increase Amtrak ridership. (*Id.*, ¶ 59). Incentivizing CN to increase ridership furthers several of Amtrak’s Congressionally-mandated missions and goals related to maximizing travel by Amtrak’s passenger rail service. See, e.g., 49 U.S.C. § 24101(b) (Amtrak’s mission is to provide intercity passenger rail service “that is trip-time competitive with other intercity travel options”); 49 U.S.C. § 240101(c)(3) (goal of Amtrak is to “carry out strategies to achieve immediately maximum productivity”).

### 3. *Impact of COTP on CN’s Incentives*

Amtrak’s proposed incentive and penalty system calculates performance using the COTP metric established by the FRA in the Final Rule - - *i.e.*, “the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.” (85 Fed. Reg. at 72974).<sup>33</sup> The FRA established this as the metric for measuring OTP for an Amtrak route because it: “measures the on-time arrival of every intercity passenger customer, including those who detrain at intermediate stops along a route and those who ride the entire route.” (*Id.*).

Even *before* the Final Rule was issued, in the 2019 Decision the Board indicated approval of a performance metric - - like the COTP metric - - which measures “the percentage of passengers that arrive at their destination stations on time.” (2019 Dec., p. 11, n. 25). Importantly, the Board found this to be an appropriate metric because it would “create an incentive structure more closely tied to the service delivery to the end consumer, the passenger.” (*Id.*).

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<sup>33</sup> As required by the Final Rule, Amtrak will calculate quarterly COTP on an aggregate basis over the applicable quarter. (Blair V.S., ¶ 60 n.8). Amtrak does not calculate COTP as “a simple average of daily numbers.” (85 Fed. Reg. at 72975).

Because COTP was approved by the FRA in the Final Rule, it is now the metric applicable to the judging performance of Amtrak's trains on a Host Railroad. Incorporation of it into Amtrak's incentive and penalty system in a new OA is clearly reasonable and appropriate. (See 85 Fed. Reg. at 72973 (“[T]o the extent practicable, Amtrak and its host rail carriers shall incorporate the Metrics and Standards into their access and service agreements.”)).<sup>34</sup> Moreover, incorporating the FRA's metrics and standards in their OA is precisely what the Parties agreed to do. (See 2011 OA, § 3.4(D) (requiring incorporation of FRA's metrics and standards into Parties' operating agreement)).

Using COTP as a factor in calculating (and reducing) the quarterly incentive that CN may earn is likewise appropriate. COTP is a direct reflection of the health of Amtrak's routes as to the most important goals Congress established for Amtrak - - the delivery of Amtrak passengers to their destinations on-time. See 49 U.S.C. § 24101(c)(4) (goal of Amtrak is to “operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables”); 85 Fed. Reg. at 72976 (FRA stating that an OTP metric “should measure train performance from the eyes of the customer.”). Poor COTP evidences problems with a route which must be remedied. Indeed, the FRA established a “minimum standard for COTP of 80 percent for any 2 consecutive calendar quarters.” (85 Fed. Reg. at 72972-73). And, under PRIIA § 213, an investigation by the Board may be triggered by sub-80% OTP over two consecutive quarters. See 49 U.S.C. § 24308(f).

Reducing the amount of incentives for a route as COTP declines, therefore, incentivizes

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<sup>34</sup> The concept of “Recovery Time Base” is not part of Amtrak's proposed use of the COTP metric or its incentive and penalty system. RTB is not a metric used under the system premised upon COTP. Indeed, RTB was not mentioned or considered by the FRA in mandating the COTP metric. (Blair V.S., ¶ 61 n.19).

CN to work to enable Amtrak's trains to arrive on-time at their destinations. (Blair V.S., ¶ 66). The better the COTP for a quarter, the greater the amount of incentives it will be able to earn. (Id.). This is well-aligned with Amtrak's Congressional goals, the FRA's Final Rule and consistent with the Board's finding that factoring OTP into an incentive and penalty could "create an incentive structure more closely tied to the service delivery to the end consumer, the passenger." (2019 Dec., p. 11, n. 25).

For these reasons, Amtrak's consideration of COTP in its incentive and penalty calculations - - and more particularly, its reduction of the amount of incentives available to CN as COTP decreases - - is wholly appropriate.

Amtrak acknowledges that considering COTP as a factor in its calculations does not account for whether a Host Railroad (or a particular Host Railroad on a multi-Host route) is actually responsible for delays which caused Amtrak's train to be late. (Blair V.S., ¶ 68). In the Final Rule, however, the FRA expressly stated that a COTP metric is not intended to serve that function. (85 Fed. Reg. at 72975). Indeed, in rejecting comments by Host Railroads requesting that an OTP metric be measured on a per-Host basis, the FRA stated that: "a host-specific measurement of OTP . . . would result in a system that is misaligned with the customer experience: passenger trains that arrive late at their destinations but are reported as 'on-time.'" (Id.).

Instead, the FRA endorsed other metrics to assess whether a Host Railroad is responsible for a delay or, on multi-Host routes, which Host Railroad caused the delay. Those metrics include, for example, including the "train delays" metric and the tracking of HRDs per 10,000 train-miles. (85 Fed. Reg. 72980-84; see also 85 Fed. Reg. at 72975-76 (train delays metric "speak[s] to the individual host railroad's performance.")). As discussed below, Amtrak has

imported those metrics into its incentive and penalty system to account for circumstances where, for example, COTP is below 80%, but CN has not caused those delays and - - to the contrary - - is performing well.

#### **4. Impact of HRDs on CN's Incentives and Penalties**

Using CN's HRDs per 10,000 train miles as a factor in calculating the quarterly incentive that CN may earn is likewise appropriate. Several aspects of utilizing this metric align with the 2019 Decision and the FRA's Final Rule

##### **(a) Amtrak's Identification of the Cause of Delay is Appropriate**

As a threshold issue, under Amtrak's proposed system, the cause of a delay to an Amtrak train - - and more particularly, whether it was caused by CN and therefore is an HRD - - is determined by Amtrak's on-board conductors in the first instance using Amtrak's delay code system. (Blair V.S., ¶ 71). This is consistent with the Final Rule, which defines "Host-responsible delays" as "delays recorded *by Amtrak, in accordance with Amtrak procedures . . .*." (See 49 C.F.R. § 273.3). The FRA cited the Board's discussion in the 2019 Decision of Amtrak's procedures for determining the cause of a delay through use of "delay codes", including whether a Host Railroad caused the delay. (See 85 Fed. Reg. at 72982 n.32) (citing 2019 Dec., p. 23-24).<sup>35</sup> Indeed, the FRA *requires* that train delays be reported to it based upon the delay code Amtrak assigns to the delay. (85 Fed. Reg. at 72981-82).

Amtrak proposes to define "Host-responsible delays" in a new OA in nearly identical

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<sup>35</sup> As the Board described Amtrak's process: "the Amtrak train's conductor . . . records the cause and location of each delay based on the conductor's direct observations and information from train bulletins, radio communications, Amtrak engineers, freight train crews, dispatchers, maintenance-of-way crews, and other personnel." (2019 Dec., p. 23). Then, "[e]ach delay is categorized by a code that classifies the delay into one of three categories: HRDs (e.g., freight train interference); Amtrak-responsible delays (e.g., crew and system delays); or third-party-responsible delays (e.g., weather delays)." (Id., p. 24).

terms to the FRA’s definition of that term in the Final Rule. (Blair V.S., ¶ 72; Amtrak Redline, Article I). For example, the Final Rule defines HRDs to include delays resulting from freight train interference, commuter train interference, passenger train interference, a Host Railroad’s issuance of slow orders, problems with the Host Railroad’s signals, and the Host Railroad’s maintenance of way work. (See 49 C.F.R. § 273.3). As defined by Amtrak in the proposed new OA, delays are HRDs if they are identified by the codes which correlate to those very same causes. (Amtrak Redline, Appendix I).<sup>36</sup>

Notably, the Board rejected CN’s proposal to identify the cause of delays through a “root cause” analysis. (2019 Dec., p. 24). Similarly, in endorsing Amtrak’s delay code system, the FRA likewise rejected commenters’ requests that it adopt a “root cause” approach. (see 85 Fed. Reg. at 72981).

Accordingly, it is appropriate for Amtrak to determine the cause of a delay impacting an Amtrak train in the first instance, including where that delay was caused by CN. As discussed below, Amtrak’s determination is subject to a dispute resolution in the event CN disagrees with Amtrak’s categorization of a delay.

**(b) Amtrak’s Proposed Dispute Resolution Provisions**

In the 2019 Decision, the Board noted that Amtrak’s “conductor delay reports may not provide definitive proof of the cause of Amtrak delays” and, therefore, encouraged the Parties

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<sup>36</sup> Amtrak’s definition of “Host-responsible delays” includes delays identified by the following delay codes: “FTI” (used for freight train interference); “CTI” (used for commuter train interference); “PTI” (used for passenger train interference); “DCS” (used for delays caused by signals); “DMW” (used for delays caused by maintenance of way work); and “DSR” (used for temporary speed restrictions). (Amtrak Redline, Article I). Although the Final Rule defines “detours” as an HRD, Amtrak is not seeking to include detours within the new OA’s definition of HRDs. (Blair V.S., ¶ 71 n.20). Amtrak does not believe that CN should be penalized in the form of HRD minutes when it accommodates Amtrak traffic via detours. (*Id.*).

“to review their dispute resolution process regarding delay coding.” (2019 Dec., p. 24). Similarly, the FRA acknowledged that Host Railroads and Amtrak “may disagree on how to assign responsibility for any particular delay.” (85 Fed. Reg. at 72982). Although the FRA did not “prescribe[e] an additional process for the parties to use to reach agreement or insert[] FRA in the process to adjudicate disputes,” the FRA stated that it “expects that Amtrak and the [Host Railroad] will be in frequent communication about train delays.” (*Id.*). In fact, CN and Amtrak do communicate regularly about the causes of delays of Amtrak trains on CN’s system and how to address them. (*See* *Weiss V.S.*, ¶ 8).

Beyond these regularly-occurring communications, Amtrak’s proposal incorporates specific procedures which require the Parties to confer frequently to resolve disputes, including disputes about Amtrak’s determination of the cause of the delays to Amtrak trains. (*Blair V.S.*, ¶¶ 75-76; *Amtrak Redline*, Appendix V, § II). As a first step, if CN disputes Amtrak’s causation determination, Amtrak’s system requires the Parties to confer almost immediately after the trip of the delayed Amtrak train has occurred via a “daily process.” (*Id.*). In this process, CN reviews Amtrak’s daily delay data and must notify Amtrak of any disputed delay determinations “within four (4) calendar days after the Origin date of the Amtrak Train . . . .” (*Id.*). The Parties then “shall endeavor to reach agreement on any such corrections to the MRS delay data within five (5) calendar days after the Origin date of the Amtrak Train.” (*Id.*). If agreement is not reached, the Parties may escalate the dispute through a “quarterly process.” (*Id.*). If the dispute is not resolved through the quarterly process, the Parties may then seek to resolve their dispute through binding arbitration. (*Id.*).

These procedures are robust and are designed to provide “real time” resolution of disputes immediately after the delayed Amtrak train trip at issue, when the relevant information

is most readily available. Indeed, the dispute must be resolved in less than a week after the delayed train's trip, or must be escalated. If CN disagrees with an Amtrak delay code, it may present any evidence it has to support its position, which will be considered by Amtrak in good faith. (Blair V.S., ¶ 77). Moreover, the Parties already communicate concerning delays and how to resolve them. (Weiss V.S., ¶ 11). Amtrak's proposal does no more than add a formal contractual structure to that existing process. In sum, Amtrak's proposed dispute resolution procedures are reasonable and should be imposed by the Board as part of a new OA between the Parties.

**(c) *Reducing CN's Incentives or Assessing Penalties Against CN Based upon the Number of CN's HRDs per 10,000 Train Miles is Appropriate***

Ultimately, once the number of CN's HRDs are determined, the number of minutes of those HRDs will be a factor in the calculation setting the precise amount of the incentives CN will be able to earn, or the penalty CN will incur, for the quarter. (Blair V.S., ¶ 78). Factoring HRDs into the incentive and penalty calculation is consistent with the purpose of HRDs as described in the Final Rule and incentivizes CN to minimize its own HRDs on a route, even if an Amtrak train is already late. (*Id.*).

As the FRA noted in the Final rule, reviewing the precise causes of Amtrak train delays helps distinguish between: (a) the performance of Host Railroads and Amtrak; and (b) for multi-Host routes, the performance of each Host Railroad. (*See* 85 Fed. Reg. at 72981). In particular, tracking minutes of HRDs "normalized" to 10,000 train-miles is "helpful when assessing an individual railroad's performance on a route that has more than one host." (85 Fed. Reg. at 72984).

In tracking CN's HRDs, Amtrak is doing precisely that - - it is segregating the delays

caused by CN (and over which CN has control) from delays caused by Amtrak itself or by other Host Railroads on a given Amtrak route. (Blair V.S., ¶ 80). This assures that the amount of CN's incentives or penalties is driven by delays that *CN caused* - - not by delays over which it had no control, such as delays caused by Amtrak or another Host. (Id.). Under Amtrak's system, delays caused by Amtrak or another Host have no impact on the amount of incentives CN may earn. (Id.).

Tying the incentives CN may earn (or the penalties it may incur) to CN's HRDs per 10,000 train-miles, incentivizes CN to dispatch Amtrak trains in a manner that delivers Amtrak's passengers on-time. (Id., ¶ 81). Because CN earns more incentives the lower its HRDs per 10,000 train-miles are for a quarter, CN is incentivized to reduce delays on its system. (Id.). And, if a CN's delay has caused an Amtrak train to be late, CN is incentivized to keep that delay to a minimum or to enable Amtrak to make up that delay. (Id.). If it does so, the number of CN's HRDs will be lower, and its incentives higher. (Id.). If CN allows that delay to worsen, its incentives will decrease and it may incur a penalty. (Id.). Because the penalties will continue to increase as the number of HRDs also increase, CN will constantly remain incentivized to reduce delays within its control. (Id.).

Factoring CN's HRDs per 10,000 train-miles into Amtrak's system is in accord with the Board's finding in its 2019 Decision that "a reasonable incentives and penalties system is one that incentivizes both OTP and a reduction in the duration of train delays when OTP is not achieved." (2019 Dec., p. 14). The Board further found that "[b]y incorporating the degree of lateness" into an incentive and penalty system, "CN would have an incentive to help deliver a late train more expeditiously and not allow the duration of the delay to increase." (Id.).<sup>37</sup>

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<sup>37</sup> The FRA's Final Rule also adopted metrics taking into consideration the degree

Amtrak's system does this, with the end result being that CN is at all times incentivized to aid Amtrak in delivering its passenger to their destination on-time or - - if an Amtrak train is already late - - to reduce the delay or not allow the delay to become more severe. (Blair V.S., ¶ 82).

Lastly, setting the quarterly threshold for CN to earn incentives at 900-924 minutes of HRDs per 10,000 train miles is reasonable and appropriate. Based upon historical data of HRDs impacting Amtrak trains operated on routes hosted by CN and other Host Railroads from April 2019 through March 2022, Amtrak has determined that where COTP for an Amtrak route is approximately 80%, HRDs per 10,000 train miles average approximately 900 minutes. (See Weiss V.S., ¶¶ 82-85).<sup>38</sup> Where HRDs decreased below 900 minutes per 10,000 train miles, COTP improved above 80% and was closer to 100%. (*Id.*). Conversely, where HRDs were above 900, COTP decreased and moved below 80%. (*Id.*).

In the 2019 Decision, the Board found that “there is merit to an 80% OTP standard to receive incentive payments.” (2019 Dec., p. 14). As Amtrak has confirmed 900 HRDs per 10,000 train miles correlates to 80% COTP for a route. Accordingly, the 900-924 per 10,000 miles threshold for CN to earn incentives under Amtrak's system is consistent with the 80% standard established by the FRA and endorsed by the Board, and with incentivizing CN to meet it each quarter.<sup>39</sup>

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of lateness of an Amtrak train, including the Final Rule's “station performance metric” which measures the “average minutes late that late customers arrive at their detraining stations.” (85 Fed. Reg. at 72983). This metric is designed to “reflect[] the severity of the delayed train.” (*Id.*)

<sup>38</sup> In all, Amtrak reviewed the COTP and HRDs associated with 8,361 trains. (Weiss V.S., ¶ 82).

<sup>39</sup> Amtrak notes that, in 2010, the FRA previously issued metrics and standards which set “limits on permissible delays capping the delays for which a host railroad may be responsible at 900 minutes per 10,000 route miles.” Association of American Railroads v. Department of Transp., 865 F. Supp. 2d 22, 26-27 (D.C.C. 2012), *rev'd*, 721 F.3d 666 (D.C. Cir.

As noted, under Amtrak’s system, even if COTP for the route as a whole is below 80% (perhaps significantly below 80%), based on the sliding scale of Delay Adjustment Factors Amtrak is proposing, CN can still earn incentives if its own HRDs are less than 900 minutes per 10,000 train-miles. (Blair V.S., ¶ 86). Under such circumstances, the sub-80% COTP will likely be driven by delays on the route caused by entities other than CN. (*Id.*). Under these circumstances, because CN likely did not cause the delays that are negatively impacting COTP on the route, Amtrak does not believe CN should be penalized for performance in that quarter. (*Id.*) In fact, CN should be incentivized to continue to perform well, despite overall poor COTP on the route. (*Id.*)

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For the foregoing reasons, Amtrak requests that the Board impose the terms and conditions set forth above in a new OA between the Parties as to the calculation of COTP of Amtrak trains on CN’s system and the computation of incentives earned or penalties incurred.

### **III. Reallocation of Recovery Time in Amtrak’s Schedules**

In discussing the current schedules for Amtrak trains, the Board specifically found that there was no evidence in the record that overall travel time from origin to endpoint for any of

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2013), *vacated and remanded*, 575 U.S. 43 (2015) (citing Final Metrics and Standards for Intercity Passenger Rail Service, Docket No. FRA-2009-0016 (May 6, 2010)). After remand from the Supreme Court, the D.C. Circuit declared those metrics and standards to be unconstitutional, (821 F.3d 19 (D.C. Cir. 2016), and the District Court subsequently vacated them. *See* 2017 WL 6209642 at \* 3 (D.D.C. 2017). The D.C. Circuit’s determination of unconstitutionality rested on the basis that, because Congress had authorized Amtrak in PRIIA to jointly formulate the metrics and standards with the FRA, it had impermissibly delegated to “Amtrak, a self-interested entity, the authority to regulate its resource competitors in violation of the Due Process Clause.” *Association of American Railroads v. Department of Transp.*, 896 F.3d 539, 543 (D.C. Cir. 2018). At no point, however, did any party argue, or any court find, that the 900-minute per 10,000 train mile standard was unreasonable or improper. Moreover, in the current Final Rule, the FRA has reaffirmed that measuring HRDs per 10,000 train-miles is an appropriate metric which must be tracked. (85 Fed. Reg. at 72984).

Amtrak's train schedules needed to be lengthened. (2019 Dec., pp. 11-12). However, the Board found that, if on-time performance were measured at all stations on a route, the Recovery Time built into the train schedules under the checkpoint system might have to be redistributed "to give CN a meaningful opportunity to meet its performance obligations." (*Id.*, p. 11). In particular, the Board noted that most Recovery Time in Amtrak's then-current schedules was allocated toward "the end of the routes," with none "towards the beginning of routes." (*Id.*, p. 11). Because Amtrak's proposed COTP metric measures performance at all stations, Amtrak has taken into account the Board's findings regarding the distribution of Recovery Time.

In the Final Rule, the FRA also addressed the potential need to reallocate Recovery Time under the COTP metric. The FRA noted that:

[a]n OTP metric, in part, can inform the formulation of a train schedule. For example, a [COTP] metric may encourage a schedule with more recovery time at those stations with more de-boarding passengers, while an endpoint OTP metric may encourage a schedule with more recovery time at the endpoints of a line segment.

(85 Fed. Reg. 85 at 72978, n. 19). The FRA found, however, that a COTP metric "does not mean that recovery time must be added for each station." (*Id.* at 72977). Where Recovery Time is reallocated, however, the FRA cautioned against simply "spreading existing recovery time linearly across a schedule." (*Id.*). Rather, it sanctioned a measured approach, under which Recovery Time is reallocated to "protect performance at larger volume stations, locations where passenger trains can wait clear of main tracks, where stations are farther apart, or where trains are more likely to incur operational delays." (*Id.*).

Because Amtrak's proposed COTP metric measures performance at all stations, Amtrak has taken into account the Board's findings and the FRA's statements regarding the distribution of Recovery Time. As discussed below, Amtrak's schedules for the routes on CN's system and

the Recovery Time allocated within them, afford CN a meaningful opportunity to meet its performance obligations and to earn incentives under the new OA as proposed by Amtrak.

***1. Amtrak and CN have “Certified” that the Majority of Amtrak’s Schedules Align with the COTP Metric***

In the Final Rule, the FRA established a “certified schedule” metric to “address alignment with the [COTP] metric.” (85 Fed. Reg. at. 72929). Specifically, Amtrak is required to report which of its schedules - - by train, by route, and by host - - are “certified” and which are “uncertified” or “disputed.” (Id.). A “certified schedule” is “a published train schedule that Amtrak and the host railroad *jointly certify is aligned with the [COTP] metric and standard in § 273.5(a)(1) and (2).*” (See 49 C.F.R. § 273.3, *Definitions*) (emphasis added)). Notably, if a schedule is “certified” by Amtrak and the Host Railroad, “*it cannot later be designated as an uncertified schedule.*” (Id.). When Amtrak and a Host Railroad (here, CN) “certify” a Amtrak train’s schedule, they are agreeing that schedule (including the Recovery Time allocated within it) is aligned with the COTP minimum standard of “80 percent for any 2 consecutive calendar quarters.” (See 49 C.F.R. §§ 273.3, 273.5(a)(2)).

In accordance with the Final Rule, Amtrak evaluated which of its schedules aligned with the COTP metric and should be “certified.” (Weiss V.S., ¶¶ 20-21). Amtrak evaluated, among other things, the train’s performance during Fiscal Year 2020 under a COTP metric and whether the placement of Recovery Time was allocated to protect high passenger volume stations. (Weiss V.S., ¶¶ 24-31). Based on Amtrak’s review and analysis, Amtrak proposed to CN that the Parties certify twenty-three (23) schedules for trains operating on CN’s system. (See VS Weiss ¶, 33, Ex. 2). *CN agreed to certify twenty (20) of them.*(Weiss V.S., ¶ 34).

Specifically, CN agreed to certify the schedules for Amtrak’s trains on its Wolverine,

Blue Water, Lincoln, and Texas Eagle routes. (VS Weiss ¶ 35; Exh. 4, p. 1).<sup>40</sup> As to these “certified” schedules, the Parties have agreed that Recovery Time within them is appropriately allocated to afford CN a “meaningful opportunity” to meet the COTP metric (*i.e.*, 80% COTP) established by the Final Rule and correspondingly to earn incentives under Amtrak’s proposed incentives and penalty system.

***2. The Schedules for the Disputed Routes Provide CN with a Meaningful Opportunity to Meet its Performance Obligations***

The only Amtrak schedules which are currently “disputed” (*i.e.*, not “certified”) are for trains operating on the Illini/Saluki and City of New Orleans routes (collectively, “the Disputed Schedules”). Although CN has not certified the schedules Amtrak has proposed, as discussed below, the proposed schedules also align with the COTP metric and afford CN a “meaningful opportunity to meet its performance obligations” under them.

As discussed in detail in the Verified Statement of Yoel Weiss, Amtrak utilized its LASER tool to aid in its evaluation of the Disputed Schedules.<sup>41</sup> (Weiss V.S., ¶ 39). LASER optimizes schedules through algorithms that reallocate recovery time from parts of a schedule and route where it is not fully utilized, to those parts where it is needed the most - - that is, stations with higher passenger volumes and places where Amtrak trains are likely to incur operational delay. (*Id.*, ¶ 40.). In doing so, LASER seeks to distribute Recovery Time in a manner that optimizes COTP. (*Id.*). LASER does not simply spread Recovery Time “linearly

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<sup>40</sup> CN believes that a portion of Amtrak’s Adirondack route that operates over CN’s system in the United States (1.4 miles) is not subject to the Final Rule’s certification metric - - Amtrak believes it is. (Weiss V.S. ¶ 34, n.9.). Amtrak’s brief, therefore, does not discuss the Sunset Limited or the Adirondack schedules.

<sup>41</sup> “LASER” stands for “Limited Adjustment of Schedule or Equivalent Recovery.” (See VS Weiss V.S., ¶ 39).

across a schedule” - - which the FRA cautioned against. (See 85 Fed. Reg. at 72977).

Rather, Amtrak, through LASER, has redistributed Recovery Time to better ensure on-time arrivals at the highest passenger-volume stations along the Disputed Routes. (Weiss V.S., ¶ 41). This is consistent with the FRA’s findings concern the allocation of Recovery Time. (See 85 Fed. Reg. at 72977) (Recovery Time should be used to “protect performance at larger volume stations . . .”). And, by redistributing Recovery Time to protect high-volume stations, Amtrak is ensuring that more passengers will arrive at those stations on-time (*i.e.*, within 15 minutes of their scheduled arrival time). The more passengers that arrive on time at these high-volume stations, the higher the COTP for the route will be. (See 85 Fed. Reg. 85 at 72976 (under COPT metric, “stations with many detraining passengers have greater influence on the train’s customer OTP and serve as de facto key stations.”)).

Notably, Amtrak’s reallocations of Recovery Time are based on *existing* schedule length. (Weiss V.S., ¶ 42). Although, where necessary, LASER adjusted the arrival or departure times at interim stations, the arrival time at the final Amtrak station stop on each route remained the same. (See Id. at ¶ 48(f)). As such, Recovery Time can be optimized in the existing schedules for the Disputed Routes - - and CN afforded a “meaningful opportunity” to meet the COTP metric - - without extending the length of any of the Disputed Schedules. This is consistent with the Board’s conclusion in its 2019 Decision that the total time from origin to endpoint in Amtrak’s schedules did not need to be lengthened. (2019 Dec., pp. 11-12).

Lastly, because Amtrak ran LASER’s Recovery Time and COTP optimization calculations based on *actual* performance data for each of the schedules on the Disputed Routes, it necessarily accounted for delays and location of such delays - - including CN’s HRDs - - encountered by each Amtrak train. (Weiss V.S., ¶ 52). Stated another way, the optimized COTP

figures calculated by LASER assume *no* reduction to HRDs. (Id.). This means that CN can continue to cause the same number of delays on its system and Amtrak's train could achieve the optimized COTP calculated by LASER. (Id.). Of course, if CN reduces the minutes of its HRDs, the COTP will continue to improve.

**(a) Optimized Disputed Schedules where COTP is Above 80%**

All six (6) of the Disputed Schedules currently fail to meet the 80% COTP standard set by the Final Rule. (See Weiss V.S., ¶¶ 43, 58). The modified schedules that Amtrak has proposed to CN are based on optimizations of Recovery Time and COTP performed using LASER. (Id.). After optimizing these schedules, the COTP for two (2) of the Disputed Routes *increased* above 80%. (Id. at ¶ 43).

The Amtrak trains falling into this category are Trains 391 (on the Illini/Saluki route) and 59 (on the City of New Orleans route). The Verified Statement of Yoel Weiss provides greater detail into the specific reallocation of Recovery Time that Amtrak proposes for the trains. (Id. at ¶¶ 34-57). In sum, Recovery Time was reallocated to protect on-time arrivals at the highest-passenger volume stations (Champagne, IL for both trains). (Id.). With this optimized reallocation of Recovery Time, for April 2021 to March 2022, the COTP for Train 391 increased from 40.26% to 80.95% and the COTP for Train 59 increased from 76.80% to 81.67%. (Id.). Both COTPs are above the 80% standard set by the FRA in the Final Rule. (See 49 C.F.R. § 273.5(a)(2)).

Again, LASER - - in optimizing Recovery Time and COTP in Amtrak's proposed schedules - - accounted for the delays the trains actually encountered, which means that Train 391 and Train 59 can meet an 80% COTP standard without *any* reduction in HRDs. Accordingly, CN has a "meaningful opportunity to perform" under Amtrak's proposed

schedules.

**(b) Where Schedules are Optimized Below 80% COTP - CN Still Has a Meaningful Opportunity to Perform**

For the four (4) remaining schedules (Trains 390, 392 and 393 on Amtrak Illini/Saluki route and Train 58 on Amtrak City of New Orleans route) Amtrak has utilized LASER to optimize COTP, but the optimized COTP remains lower than 80%. (Weiss V.S., ¶ 58). Nevertheless, the proposed and optimized schedules align with the 80% COTP metric. First, the sub-80% COTP for these trains has been driven by the high number of HRDs routinely experienced during trips of these trains. (Id.). Second, these trains have, on occasion, been able to achieve 80% COTP even *without* LASER optimizations. (Id.).

Preliminarily, although the optimized COTP for these trains is still below 80%, it is very close to that threshold. In that regard, the optimized COTPs are as follows: Train 390 - 78.62%; Train 392 - 75.70%; Train 393 - 79.70%; and Train 58 - 76.21%. (Weiss V.S., ¶ 58, n. 20).

**(i) Train Performance and COTP for These Disputed Routes has been Driven by CN's HRDs**

In evaluating the schedules for these four trains, Amtrak analyzed delay data from April 2019 through March 2022 (36 months). (Weiss V.S., ¶ 59). Specifically, Amtrak assessed the reason for the delays which resulted in the sub-80% COTP, including whether the delays were Amtrak-responsible delays, HRDs or third-party delays. (Id.). Amtrak determined that the number of minutes of CN's HRDs experienced by the trains directly correlated to the train's COTP. In that regard, when CN's HRDs were lower, the COTP was higher; when minutes of CN's HRDs were higher, the COTP was lower. (Id.).

For example, Train 392 performed at or above 80% COTP for three of the thirty-six months reviewed. (Weiss V.S., ¶ 70). During those months, it averaged 84% COTP and 717

minutes of CN HRDs per 10,000 train miles. (Id.). But, for sixteen of the thirty-six months reviewed, Train 392 performed *below* 80% COTP. (Id.). During those months it averaged 43% COTP and 1,376 minutes of CN HRDs per 10,000 train miles. (Id.).<sup>42</sup> This clear trend - - higher COTP when HRDs were lower; and lower COTP when HRDs were higher - - was also evident with respect to Trains 58, 390 and 392.

(ii) CN Has Achieved 80% COTP on the Disputed Routes with the Current Schedules

Historical data Train 58, 390, 392 and 393 confirms that CN *has achieved* 80% or greater COTP for each of these trains *based on existing schedules, without any optimization or reallocation of Recovery Time*. (Weiss V.S., ¶ 60). Amtrak calculated the actual COTP for each of these trains from April 2019 through March 2022 (36 months) and found: Train 390 was able to achieve 80% or greater COTP for sixteen months; Train 392 was able to achieve COTP for three months;<sup>43</sup> Train 393 was able to achieve 80% COTP for seven months; and Train 58 was able to achieve 80% COTP for five months. (Id., ¶¶ 65, 70, 74, 79).

Since CN is capable of achieving 80% COTP even under the *non-optimized* existing schedules for Trains 58, 390, 392 and 393, those schedules align with the COTP metric as they are currently constructed. But, in Amtrak's proposed and revised schedules for those trains, Amtrak has used LASER to reallocate Recovery Time so that COTP is optimized. Therefore, there is an even greater likelihood that 80% COTP can be achieved for these trains under Amtrak's proposed schedules.

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<sup>42</sup> Train 392 did not operate for seventeen of the thirty-six months reviewed due to the Covid 19-pandemic. (Weiss V.S., ¶ 70).

<sup>43</sup> Notably, Train 392 did not operate for 17 months. (Weiss V.S., ¶ 70). This means that Train 392 was able to achieve 80% COTP for three out of nineteen months (approximately 15% of the time). (Id.).

\* \* \*

In sum, the Board's concerns about the reallocation of Recovery Time have been addressed for the 26 schedules for Amtrak's trains operating on CN's system. Amtrak and CN have certified twenty (20) of them, agreeing that Recovery Time has been appropriately allocated to align with the COTP metric. For the schedules on the Disputed Routes, Recovery Time has been reallocated to optimize COTP, affording CN a meaning opportunity to meet that metric. Indeed, if CN reduces its HRDs - - which it is incentivized to do under Amtrak's incentive and penalty structure - - it has every opportunity to consistently achieve COTP over 80%.

#### **IV. Lookback and "Reopener" Provisions**

The 2011 OA's "lookback" provision operates to limit the penalties Amtrak can collect from CN for poor performance to the amount of incentives CN earned over the prior twelve months. Amtrak previously argued that the provision should be eliminated because it nullifies the statutory requirement that Amtrak/Host OA's include a penalty for untimely Amtrak passenger train performance on the Host's system. (2019 Dec., p. 15; see also 49 U.S.C. § 24308(a)(1)).

In the 2019 Decision, the Board expressed "concern" that an OA without any "lookback" provision may "place CN in a situation where it may be required to, effectively, pay Amtrak to host Amtrak passenger trains on CN's own network" because its total compensation could fall below CN's incremental costs. (Id.). At the same time, the Board recognized the importance of addressing periods of sustained poor performance on CN's system. (Id., p. 17). Consequently, the Board encouraged the Parties to include a "reopener" mandating remedial "concrete action" to address sustained periods of poor performance. (Id.).

Given the Board's guidance, Amtrak no longer proposes removing the "lookback"

provision in its entirety. Rather, Amtrak requests that the Board modify the existing “lookback” provision in the new OA, along with including a “reopener” provision (discussed *infra*) to implement “concrete action” in the event of periods of sustained poor performance by CN resulting in delays to Amtrak passenger trains.

**A. “Lookback” Provision Over the Life of the New Operating Agreement**

The “lookback” provision Amtrak proposes for the new OA between CN and Amtrak operates nearly identically to the provision in the 2011 OA. That is, Amtrak may collect penalties for CN’s poor performance only to the extent those penalties are less than the incentives earned by CN over the “lookback” period. In the 2011 OA, the lookback period is established arbitrarily at only twelve months. Amtrak’s proposal extends the “lookback” period to be equal to the life of the new OA, measured prospectively from the date it becomes effective. (See Blair VS, ¶ 104; Amtrak Redline, § 5.2(A)(2)).

The application of the “lookback” is illustrated as follows. As the clause currently operates in the 2011 OA, if in a given month CN incurred a penalty of \$100,000, but had not earned any incentives over the preceding twelve months, Amtrak would be unable to collect any portion of the penalty. (Blair V.S., ¶ 105). This is because the amount of the penalty during the given month exceeds the amount of the incentives earned by CN in the preceding twelve months (\$0). If, however, CN had earned incentives totaling \$200,000 over the preceding twelve months of the “lookback,” Amtrak would be able to collect the \$100,000 penalty in its entirety. (*Id.*, ¶ 106). This is because the amount of the penalty (\$100,000) is less than the amount of the incentives CN earned over the preceding twelve months. (*Id.*). If CN’s penalty were \$300,000 for the given month, Amtrak would be able to collect the penalty only up to the amount of the incentives paid to CN over the preceding twelve month “lookback” timeframe (*i.e.*, \$200,000).

(Id., ¶ 107).

Notably, the “lookback” provision only operates to limit the amount of penalties Amtrak can collect. It neither limits nor reduces the incentives that CN may earn for a given month. (Id., ¶ 108). In other words, CN can always collect from Amtrak all incentives properly earned under the 2011 OA, without any offset for penalties accrued over the preceding twelve months. (Id.).

Under Amtrak’s proposed “lookback” provision, the clause operates in the same manner, except that the period of the “lookback” is not 12-months, but rather is equal to the length of the life of the new OA at the time the penalty accrues to CN. (Id., ¶ 109). So, for example, if CN is penalized \$100,000 during the twenty-fourth month of the new OA, whether Amtrak may collect that penalty is dependent on the amount of the incentives CN has earned over the preceding twenty-three months since the new OA has been in effect. (Id.).

Under Amtrak’s proposal, the “lookback” would operate as it currently does for the first year the new OA is in effect.<sup>44</sup> But, when the new OA has been in place for more than one year, the provision has the effect of increasing the length of the “lookback” timeframe in the 2011 OA (*i.e.*, twelve months). (Id., ¶ 110). This means that a penalty due to sustained poor performance will not be negated and at the same time penalties will never be greater than incentives paid under the OA. (Id.). This is reasonable and appropriate.

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<sup>44</sup> Amtrak does not believe that, when a new OA becomes effective, that the “lookback” should apply retroactively. (Blair V.S., ¶ 110 n. 23). As the Board correctly observed in its Decision the “lookback” applies for a “time period over which the incentives and penalties are calculated.” (2019 Dec., p. 15). Amtrak is proposing an incentive and penalty system for the new OA which is different than the system in the 2011 OA (and under which the Parties have operated during the pendency of this case). (Id.). As such, if the “lookback” were applied retroactively when the new OA becomes effective, one would assess whether Amtrak can collect penalties accrued by CN under the new system based on a retroactive calculation of the amount of incentives CN had earned under the “old” incentive/penalty system. (Id.). This does not appear consistent. As such, Amtrak proposes that the “lookback” clause in the new OA apply be limited to a prospective application. (Id.).

Under the new OA Amtrak is proposing, as discussed above, the incentives that CN may earn are reduced (and it will incur a penalty) in the event that the CN's HRDs per 10,000 train-miles exceed 924 minutes, and HRDs account for approximately 67% to 70% of all delays impacting Amtrak passenger trains on Host Railroads, including on CN's system. (Weiss V.S., ¶ 81, n. 23). Accordingly, where Amtrak trains fail to meet the 80% COTP metric, HRDs are typically the driving force behind that failure. (*Id.*). CN's failure to limit its HRDs to under 900 minutes per 10,000 train-miles, therefore, is a cause of Amtrak's "untimely performance" for which Congress mandates that the OA "shall" provide for a penalty. See 49 U.S.C. § 24308(a)(1).

However, for periods of time during which CN has not earned a sufficient amount (or any amount) of incentives, although CN may accrue a penalty, the "lookback" provision prevents Amtrak from collecting it and there are no adverse consequences to CN for a month of poor OTP of Amtrak trains on CN's system. (Blair V.S., ¶ 112). This is equally true where there are *multiple* months (including consecutive months) of poor performance on CN's system. (*Id.*, ¶ 113). Indeed, the "lookback" eliminates Amtrak's ability to collect penalties when it makes the most sense to assess them - - during periods of sustained poor performance on CN's system.

Extending the "lookback" (potentially making it more likely Amtrak can collect a penalty) serves to further incentivize CN to continue to work to reduce its own HRDs to enable strong COTP of Amtrak's passenger trains on its system (by, for example, by honoring Amtrak's statutory preference). (*Id.*, ¶ 114). Incentivizing such conduct on the part of CN is consistent with the directives of both the FRA<sup>45</sup> and the Board in its 2019 Decision<sup>46</sup> that the OA's

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<sup>45</sup> See 85 Fed. Reg. 72978 (encouraging "Amtrak and the host railroads to work toward aligning the [Operating Agreements] with the COTP metric and standard to ensure performance is measured, and *appropriately incentivized*, in a consistent manner.") (emphasis

provisions should incentivize strong OTP which, in turn, plainly benefits Amtrak’s passengers. (Id.).

Lastly, Amtrak is not proposing that the current “lookback” in the 2011 OA be amended to impact, limit or curtail CN’s ability to immediately collect incentives it properly earns. (Id., ¶ 115). Rather, CN is further incentivized to maintain timely performance of Amtrak trains on its system in order - - not only to avoid penalties - - but also to immediately collect the full amount of incentives earned without the specter that they will be reduced or limited by the amount of penalties it previously incurred. (Id.). So, even during sustained periods of poor performance over which it has consistently incurred penalties, it remains incentivized to foster strong OTP by reducing its HRDs on its system in order to earn incentives - - which incentives would be immediately payable by Amtrak. (Id.).

In short, it is eminently reasonable and consistent with the applicable statutes, the FRA’s Final Rule and the Board’s 2019 Decision, for the new OA to include a longer “lookback” period. Preserving Amtrak’s ability to assess penalties for poor performance by CN is consistent with Congress’ requirement of a “penalty” for untimely performance on CN’s system and the requirement that the Board consider the “quality of service” to the extent it permits compensation to CN about its incremental costs. See 49 U.S.C. § 24308(a)(2)(b). And, since the “lookback” still limits the amount of penalties Amtrak can collect to the amount of incentives Amtrak has paid to CN over the life of the OA, CN is not at risk of receiving compensation that is less than

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added).

<sup>46</sup> See 2019 Dec., p. 14 (stating that “a reasonable incentives and penalties system is one that *incentivizes both OTP* and a reduction in the duration of train delays when OTP is not achieved.”) (emphasis added).

its “incremental costs.”<sup>47</sup> In the end, the “lookback” provision proposed by Amtrak will serve only to foster better OTP on CN’s system and benefit Amtrak’s passengers.

**B. “Reopener” and Concrete Remedial Action**

In the 2019 Decision, the Board stated that “periods of sustained poor performance must be acknowledged and addressed as appropriate.” (*Id.*, p. 17). The Board, therefore, “encourage[d] the parties to include an effective reopener provision in the new [OA] *that will result in concrete action in order to resolve potential future performance disputes and to prevent sustained poor performance.*” (*Id.*) (emphasis added).

As discussed below, in the event of sustained poor performance of Amtrak trains on CN’s system, Amtrak proposes terms to implement specific and appropriate remedial actions to help protect the interests of Amtrak’s passengers. These are tailored narrowly to apply only in the event of sustained poor performance on CN’s system which is the result of CN-responsible delays. As discussed above, under CN’s incentive and penalty system, CN will begin to incur penalties once the CN’s HRDs for a particular Amtrak route exceed 924 per 10,000 train miles. Notably, because remedial action is triggered by CN’s own HRDs, poor performance resulting from delays for which CN is *not* responsible do *not* trigger remedial action (such as delays

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<sup>47</sup> Indeed, because Amtrak is no longer proposing to eliminate the “lookback” provision, CN’s prior argument that “the lookback provision should remain because CN is statutorily entitled to recover at least its increment costs” (2019 Dec., p. 16) is now moot. Like the provision in the 2011 OA, the provision proposed by Amtrak, allows Amtrak to collect a penalty from CN up to the amount of incentives earned by CN over the length of the “lookback.” Therefore, even during sustained periods of poor performance, the worst case scenario for CN is that it will earn \$0 in incentives. (*Id.*). It will not be in a position of paying penalties in an amount greater than the amount of the incentives it earned. (*Id.*). As a result, there is no threat that CN’s net compensation from Amtrak will be less than its “incremental costs.” (*Id.*) In the event CN disagrees with the foregoing, Amtrak reserves all rights with respect to this issue, including the right to argue - - as it did during the last round of submissions to the Board - - that CN’s incremental costs do not establish or set a minimum level of its compensation as a Host Railroad, regardless of its performance.

caused by Amtrak or another Host Railroad along the route of the train).

Amtrak does not propose that the trigger for remedial action be based upon COTP for a particular train or service. This is consistent with the guidance from the FRA in the Final Rule. Indeed, the FRA expressly rejected measuring COTP by Host Railroad. (See 85 Fed. Reg. at 72975). To measure a particular Host's performance, the FRA instead established other metrics, including a "train delay" metric which includes measuring delays impacting an Amtrak train by HRDs and a metric of measuring such HRDs across 10,000 train-miles. (Id.; see also 85 Fed Reg. at 72984) (measuring train delays per 10,000 train-miles "is helpful when assessing an individual railroad's performance on a route that has more than one host."). Because minutes of HRDs per 10,000 train-miles are specifically intended to measure the performance of an individual Host Railroad (here, CN), that metric is most appropriate for assessing when, and to what extent, remedial action is necessary to remedy poor performance of Amtrak trains caused by CN-responsible delays.

Amtrak proposes a "tiered" approach to the remedial action available to Amtrak. Under this approach, the remedial action which Amtrak has the discretion to employ becomes more extensive as the minutes of CN-responsible HRDs increase for a given train. (Blair V.S., ¶ 123; Amtrak Redline, Appendix V, § IV).<sup>48</sup>

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<sup>48</sup> Amtrak notes it is not proposing a true "reopener" provision. In general, "a contract reopener provision permits midterm modification of a contract." Lear Siegler Inc. v. N.L.R.B., 890 F.2d 1573, 1575 (10th Cir. 1989). Stated another way, during the life of a contract, a "reopener" provision typically "opens up" contract terms for midterm renegotiation. A true "reopener" is what CN previously proposed to the Board. As the Board correctly observed, CN previously proposed that, after periods of poor performance of Amtrak trains on CN's system, the Parties would "confer to determine how to improve service." (2019 Dec., p. 16). Amtrak is not proposing that - - after a specified period of poor performance - - the Parties "reopen" the OA to discuss how to address it. Rather, Amtrak is now asking the Board establish specific remedial, concrete actions the Parties must undertake in the event of such poor performance.

***1. Tier 1 Remedial Action***

The first tier of remedial action available to Amtrak will be triggered in the event of one quarter where CN's HRDs exceed 924 minutes per 10,000 train-miles for a particular Amtrak train. (Blair V.S., ¶ 124). At that point, that train is likely to be performing at below (perhaps well below) the 80% COTP metric established in the Final Rule and CN is incurring penalties based upon the applicable Delay Adjustment Factor. (*Id.*). The Tier 1 remedies Amtrak requests that the Board make available to Amtrak are as follows.

First, CN must begin reporting on a monthly basis to Amtrak and the Board the following information as to each HRD for the subject train in excess of five minutes:

- a. Why the delay occurred;
- b. How the delay could have been prevented;
- c. Name of dispatcher and dispatch supervisor;
- d. Whether the dispatcher was counseled;
- e. Date/time of counseling session; and
- f. Corrective actions taken to prevent repeat of the delay. (collectively, "the Dispatch Reporting Requirement").

(Blair V.S., ¶ 124).

Second, CN must provide Amtrak and the Board with on-line view access to CN's dispatch screens for the Amtrak route which includes the non-performing train at issue, with approval to record data from those screens for use in any Board investigation pursuant to PRIIA § 213 ("the Screen View Requirement"). (*Id.*). This serves to enable Amtrak and the Board to assess whether CN is, in fact, addressing past problems related to dispatching and, going forward, properly dispatching trains to assure Amtrak trains have the statutory preference to which they are entitled.

Amtrak proposes that these Tier 1 remedies to remain in effect for at least six months, unless discontinued earlier by Amtrak in its discretion. (*Id.*, ¶ 125).

These Tier 1 remedies focus on CN's dispatching practices. This is for good reason - - whether a Host Railroad is giving Amtrak the statutory preference to which it is entitled is directly related to a Host's dispatching practices. See Union Pac. R.R. Co., 863 F.2d at 820. In the event of CN-responsible HRD minutes in excess of 924, affording Amtrak visibility into CN's dispatching practices - - including the shortcomings therein - - will be critical to reducing the minutes of HRD caused by CN.

## **2. Tier 2 Remedial Action**

The second tier of remedial action available to Amtrak will be triggered in the event of two consecutive quarters where CN's HRD minutes exceed 924 minutes per 10,000 train-miles for a particular Amtrak train and Tier 1 remedial action (standing alone) has not proven effective in reducing delays. (*Blair V.S.*, ¶ 127). At that point, the remedies available to Amtrak will include: (a) the Dispatch Reporting Requirement; and (b) the Screen View Requirement. (*Id.*, ¶ 128).

When Tier 2 Remedial Action is triggered, CN's level of HRDs in excess of 924 will have continued for two consecutive quarters. As such, more extensive remedies are warranted. In addition to the Tier 1 Dispatch Reporting and Screen View Requirements remaining in effect, Amtrak proposes that Amtrak, Amtrak's OIG and the Board be permitted, at their discretion, to designate a representative sit alongside CN's dispatchers in real time as to the subject Amtrak route on which the non-performing train is operating. (*Id.*, ¶ 128).

Additionally, Amtrak proposes that CN must obtain Amtrak's prior written approval before scheduling any non-emergency Right of Way ("ROW") repair (such as signal upgrades)

or Maintenance of Way (“MOW”) work which is reasonably expected to impact the on-time performance of Amtrak trains on the subject route (“the MOW/ROW Work Notice/Approval Requirement”). (Id., ¶ 129). This will assure that - - in addition to having visibility into CN’s dispatching practices - - Amtrak also has visibility and advance notice of and approval over any ROW and MOW work being planned by CN which might also serve to delay Amtrak’s trains. (Id.).

Amtrak proposes that these Tier 2 remedies remain in place for a period of at least one year after they are implemented. (Id., ¶ 130).

### **3. Tier 3 Remedial Action**

The third tier of remedial action is available to Amtrak in the event of four consecutive quarters where CN’s HRD minutes exceed 924 minutes per 10,000 train-miles for a particular Amtrak train. (Blair V.S., ¶ 131). At that point, the remedies available to Amtrak will include all Tier 1 and Tier 2 remedies discussed above. (Id.).

In addition, given the lengthy period of poor performance for which Tier 3 remedies apply, and the apparent ineffectiveness of the prior tiers’ remedies, Amtrak proposes that it be permitted to take over (either directly or through a third-party) dispatching on the Amtrak route at issue on CN’s system. (Id., ¶ 132).

Amtrak proposes that Tier 3 remedial action remain in place for the longer of: (a) a period of two years; or (b) until CN’s HRDs have been at or below 924 minutes per 10,000 train miles for twelve consecutive months. (Id., ¶ 133). Again, this will enable Amtrak to directly address significant sustained periods of poor performance by CN in its dispatching and other practices.

If this Tier 3 Remedy is implemented, Amtrak proposes that, during the time that Amtrak

has taken over CN's dispatching (either directly or through a third-party), the calculation of incentives and penalties be suspended for the impacted route. (Blair V.S., ¶ 134). During such a timeframe, CN is not entitled to an incentive because any effective dispatching resulting in favorable OTP on the service would be provided by Amtrak (or a third-party on its behalf). For the same reason, to the extent OTP is poor, CN should not be penalized. (Id.).

## **V. Incremental Costs**

In its 2019 Decision, the Board rejected “the non-quantified or otherwise amorphous costs CN proposes to include as incremental costs, such as freight rate suppression, capacity costs, foregone volume, lost opportunity costs, and other currently non-quantified costs CN might later identify.” (See 2019 Dec., p. 22). The Board held that CN's proposed “freight delay costs” could qualify as “incremental costs” only if, for each alleged cost, CN carried its burden to establish: (1) CN actually incurred such “freight delays”; (2) the delays were caused by Amtrak; and (3) CN incurred actual costs as a result of the Amtrak-caused delays. (Id., pp. 22-23). The Board also made clear that CN needed to show that such costs were “specific, verifiable and quantifiable.” (Id. at 23).

Appendix IV of the 2011 OA (entitled “Current Costs and Price Level Adjustments”) enumerates the costs which CN may bill to Amtrak and which must be paid by Amtrak. Amtrak believes that Appendix IV includes all of the currently known and quantifiable “incremental costs” for which Amtrak must reimburse CN, and Amtrak has included a term to that effect in its proposed new OA. (Blair V.S., ¶ 137; Amtrak Redline, § 5.1(A)).

Amtrak also proposes that the new OA need not define the term “incremental costs.” Amtrak's redline, therefore, proposes deletion of “incremental costs” as a defined term. As CN incurs future costs which it believes Amtrak must reimburse as “incremental costs,” Amtrak can

assess whether that cost aligns with the Board’s description in the 2019 Decision of what constitutes an “incremental cost” (and any additional guidance or rulings in the Board’s Final Decision).

Because the Board held in the 2019 Decision that CN had not proven that any of the additional costs it raised qualified as “incremental costs,” Amtrak does not propose adding any costs to OA as reimbursable (as part of Appendix IV or elsewhere). In the event CN, in its opening submission, continues to argue that its alleged “freight delay costs” qualify as “incremental costs,” Amtrak reserves all of its rights, defenses and arguments with respect thereto.

#### **VI. Agreement Term**

In the 2019 Decision, the Board found that a seven-year term would be reasonable and encouraged the Parties to include an “evergreen” clause. (2019 Dec., p. 27). Amtrak’s proposed OA includes both of those terms. (Amtrak Redline, § 8.8).

#### **VII. Retroactivity of New Operating Agreement**

The 2011 OA was scheduled to expire on August 11, 2013, but by directive of the Board, has been governing the Parties’ relationship since that time. (STB Dec. ID # 43257, p. 3, ¶ 1). The Parties initially asked the Board to make its decision in this proceeding retroactive to the August 2013. In its 2019 Decision, the Board did not decide the extent to which a new OA would apply retroactively, in whole or in part. (2019 Dec., p. 27 n.44).

Since the scheduled expiration of the 2011 OA in August 2013, nearly a decade has passed. The FRA’s Final Rule is a significant development in the law, which has impacted how Amtrak and CN must measure OTP on CN’s system and, as a result, how Amtrak has proposed calculating CN’s potential incentive payments and penalties. Amtrak submits that it is not

practical to retroactively apply a new OA to the preceding ten years of the Parties' relationship.

Where the Board sets the terms of an agreement, it generally does not apply those terms retroactively, absent agreement of the parties.<sup>49</sup> The Board should not apply a different approach here.

Indeed, retroactive application of some terms would be unfair and prejudicial to Amtrak. For example, CN has asked the Board to find that its "freight delays costs" are reimbursable "incremental costs." Amtrak should not, however, be saddled with paying nearly ten-years' worth of such costs accruing after 2013. During that ten-year period, Amtrak may have been able to take operational steps to control or reduce those costs. Simply allowing CN to retroactively collect these costs now would deny Amtrak any chance to implement any sort of operational cost-control measures as to those costs.

Amtrak's proposal that a new OA apply prospectively is subject to one exception. In the Side Letters dated May 1, 2011, the Parties have already agreed that Amtrak's obligation to reimburse certain costs incurred by CN are retroactive. (Blair V.S., Exhs. 5 & 6). Amtrak's proposal for incorporating those letter agreements into the new OA is discussed *infra*, at Point IX. Amtrak's obligation to reimburse CN for those costs is subject to retroactivity, as specifically stated in the Side Letters.

## **VIII. Confidentiality Issues**

### **A. The Board's Final Decision and Public Docket**

In the 2019 Decision, the Board indicated that it "would make public any specific terms it

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<sup>49</sup> See, e.g., New Eng. C. R.R., Inc. - Trackage Rights Order - Pan Am S. LLC, FD 35842, 2017 WL 5639660, at \*24-\*25 (S.T.B., Oct. 30, 2017); Nat'l R.R. Passenger Corp. Appl. Under Section 402(a) of the Rail Passenger Serv. Act, 1 I.C.C.2d 243, 248 (1984); Nat'l R.R. Passenger Corp. & Union Pac. R.R., Use of Tracks & Facilities & Establishment of Just Compensation, 348 I.C.C. 926, 935-37 (1977)).

would need to set in a later decision, as the Board disfavors confidential decision making unless absolutely necessary.” (2019 Dec., p. 28). Although Amtrak acknowledges that the Board’s decisions are matters of public record, Amtrak requests that, in issuing its Final Decision, the Board keep confidential certain proposed terms of the 2011 OA and the new OA related to: (1) costs and pricing; and (2) the indemnification arrangements between CN and Amtrak as to certain claims, damages and losses. (Blair V.S., ¶ 146).<sup>50</sup>

The Board entered a Protective Order on December 16, 2013, which defined “Confidential Information” to include “confidential financial and cost information.” (Protective Order served 12/16/13 (S.T.B. Decision Id. #43522), p. 1, ¶ 2). The Protective Order also provides that “individual personnel information, shipper-specific rate or cost data, trackage rights compensation levels, *certain other confidential financial or cost information, or other competitively sensitive or proprietary information*” may be designated as “Highly Confidential.” (Id., ¶ 3) (emphasis added).

The specific pricing and cost information<sup>51</sup> Amtrak requests that the Board keep confidential qualifies as “Confidential” and as “Highly Confidential” under the Protective Order. The referenced prices and costs constitutes confidential “financial or cost information.” It also is “competitively sensitive” because public disclosure of these prices and costs could place Amtrak at a competitive disadvantage in negotiations with other Host Railroads. (Blair V.S., ¶ 148).

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<sup>50</sup> CN had previously made a similar request to the Board to “keep confidential terms that implicate CN’s costs and trade secrets.” (2019 Dec., p. 28).

<sup>51</sup> The specific pricing and cost information at issue appears in Appendices IV (“Current Costs and Price Level Adjustments), V (Performance Payments and Penalties), Appendix VI (Payment for Operations of Amtrak Train on GTW Lines) and IX (Payment for Amtrak Operations over the St. Charles Air Line Route) to the 2011 OA and the Amtrak Redline. (Blair V.S., ¶ 147).

Similarly, the terms under which CN and Amtrak will indemnify one another in the event of certain claims, damages and losses arising from railroad operations should be treated as confidential.<sup>52</sup> Indeed, courts often shield indemnity provisions from discovery, in whole or in part, through the issuance of protective orders.<sup>53</sup> Further, Amtrak's new OA proposed indemnification provisions that are identical to those in the 2011 OA. As such, there does not appear any need for the Board to disclose or reference the indemnification clauses in its Final Decision setting new terms.

The Board has previously granted a party's request to keep confidential such sensitive financial or business information.<sup>54</sup> As such, Amtrak requests that the Board maintain the confidentiality of the pricing and costs information and indemnification clauses referenced by Amtrak.

Lastly, the Side-Letters dated May 1, 2011 (discussed, *infra*, Point IX), also both contain a clause in which the Parties have agreed to keep those Agreements and their terms confidential. (Blair V.S., Exh. 5, p. 2; Exh. 6, p. 2). Accordingly, the Board should maintain the terms of the Side-Letters confidential.

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<sup>52</sup> The indemnification clauses at issue appear in § 7.2(A-K) of the 2011 OA and the Amtrak Redline. (Blair V.S., ¶ 149). Those clauses have been redacted from the publicly filed versions of the 2011 OA and Amtrak Redline

<sup>53</sup> See, e.g., ASUS Computer Int'l v. Round Rock Research, LLC, 2013 WL 6113253, at \*2 (N.D. 2013) (holding that indemnification agreements should be protected under protective order).

<sup>54</sup> See, e.g., S.P. Transp. Co., the Denver and Rio Grande W. R.R. Co., St. Louis S.W. Ry. Co., and SPCSL Corp.- Trackage Rights Exemption- the Wichita Union Terminal Ry. Co. Lines in Wichita, KS, 1995 WL 567409, at \*1, Fin. Docket 32771 (I.C.C. Sept. 25, 1995) (holding that financial terms of an agreement may be kept confidential); Sunshine Mills, Inc.- Feeder Line Acq.- Norfolk S. Ry. Co. Line Between Corinth, MS, and Haleyville, AL, 1993 WL 309192, at \*1, Fin. Docket 32337 (I.C.C. Aug. 13, 1993) (party's request to keep "financial information from the public docket and nondisclosure by the parties, is reasonable and will be granted.").

**B. Inclusion of Confidentiality Clause in the OA**

Amtrak likewise proposes that the new OA between the Parties require that the same information (pricing and cost information, indemnification clauses and the Side Letters) be maintained by the Parties as confidential. (Amtrak Redline, § 8.14). The reasons discussed above why the Board should not disclose the referenced prices, costs or indemnification clauses in issuing its Final Decision also favor the Board’s imposition of a confidentiality clause during the life of the new OA.

**IX. Incorporation of May 2011 Side Letters**

CN and Amtrak entered in the Side Letters, both of which are dated May 1, 2011 and are described therein as agreements which “supplement” to the 2011 OA. (Blair V.S., Exhs. 5 & 6). One letter agreement pertains to PTC-related costs paid by CN (the “PTC Letter Agreement”). (Id., Exh. 5). The other pertains to “Safety Appliance” costs paid by CN (“the Safety Appliance Letter Agreement”). (Id., Exh. 6). The Side Letters provide that Amtrak must reimburse CN for certain costs defined in the letters, respectively, as “Incremental PTC Costs”<sup>55</sup> and “Incremental Safety Appliance Costs.”<sup>56</sup> (Id., Exh. 5, p. 2; Exh. 6, p. 2).

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<sup>55</sup> In pertinent part, “Incremental PTC Costs” are defined as “PTC Costs that CN would not incur but for the operations of Amtrak on or over a route or portion of a route for which CN is the Host Railroad . . . .” (Blair V.S., Exh. 5, p. 2). “PTC Costs” is defined as “the costs incurred by CN of design, testing, installation, and maintenance (including renewal, upgrade, and replacement) of PTC . . . .” (Id., p. 1).

<sup>56</sup> In pertinent part, “Incremental Safety Appliance Costs” are defined as “Safety Appliance Costs that CN would not incur but for the operations of Amtrak on or over a CN route or portion of a CN route over which Amtrak trains operate on a regular basis.” (Blair V.S., Exh. 6, p. 2). “Safety Appliance Costs” means “the costs incurred by CN of design, testing, installation, and maintenance of Safety Appliances to comply with the Safety Appliance Mandate.” (Id.). The “Safety Appliance” means “any equipment, device, or system, other than PTC, mandated by the FRA . . . or required by any other government agency with jurisdiction or by applicable statute, regulation, or rule to be installed on a CN route or portion of a CN route over which Amtrak trains operate on a regular basis . . . .” (Id., p. 1-2).

Both Side Letters provide that their terms should be incorporated into the Parties' OA.

For example, the Safety Appliance Letter provides, in pertinent part:

On or before April 30, 2013 (or, failing that, as soon as possible thereafter), the Parties shall incorporate into the Operating Agreement the basic terms and conditions of this Letter Agreement to provide that Amtrak shall reimburse CN for all Incremental Safety Appliance Costs incurred by CN after April 30, 2013, including all Incremental Safety Appliance Costs incurred after April 30, 2013 with respect to any Safety Appliance prior to that date. The parties further agree that in the event that such a provision is added to the Operating Agreement after April 30, 2013, that provision and Amtrak's obligation to reimburse CN under it shall be made retroactive to that date so as to ensure that CN is fully reimbursed for all Incremental Safety Appliance Costs. Upon incorporation of the basic terms of this Letter Agreement into the Operating Agreement this Letter Agreement shall terminate; provided, however, that termination shall not affect any claim arising or relieve either Party of any liability or obligation incurred prior to such termination.

(Blair V.S., Exh. 6, p. 3). The PTC Letter Agreement contains a substantially similar term. (Id., Exh. 5, p. 3).

Amtrak proposes that the terms and conditions of the Side Letters be incorporated into the new OA by reference and by attaching them as Exhibits to the new OA. (Blair V.S., ¶¶ 155-156).<sup>57</sup> Where appropriate, Amtrak has included references to the Side Letters in the new OA. (Id., ¶ 156).

As to the specific costs addressed in the Side Letters, Amtrak notes that CN represented that, as of the date of the Agreements (May 1, 2011), that "it is CN's best judgment and belief"

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<sup>57</sup> Incorporating contract terms by reference is routine and permissible. See ROHM Semiconductor USA, LLC v. MaxPower Semiconductor, Inc., 17 F.4th 1377, 1384 (Fed. Cir. 2021) ("In contracts between sophisticated parties, it is fair to hold the parties to all provisions of their contract, including those incorporated by reference."); Penn v. Ryan's Fam. Steak Houses, Inc., 269 F.3d 753, 760 (7th Cir. 2001) ("It is also permissible to incorporate such contract terms by reference in a separate contemporaneous document.").

that: (1) “no Incremental PTC Costs will be incurred for Amtrak routes operating over CN”; and (2) “no Incremental Safety Appliance Costs have been incurred . . . for Amtrak routes operating over CN.” (Blair V.S., Exh. 5, p. 2; Exh. 6, p. 3). Moreover, since the Side Letters were executed, CN has neither identified nor invoiced Amtrak for any such costs. (Blair V.S., ¶ 158). Under the Side Letters, Amtrak retains and reserved the right to dispute when any cost invoiced in the future by CN qualify as “Incremental Safety Appliance Costs” or “Incremental PTC Costs.” (Id.).

### CONCLUSION

For the reasons explained in this brief, and in the Verified Statements of Yoel Weiss and James Blair, Amtrak requests that the Board, in imposing terms and conditions for a new Operating Agreement between CN and Amtrak, imposed the terms and conditions discussed herein and memorialized in the Amtrak Redline.

Respectfully submitted,

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**ADDENDUM #1 - Amtrak Redline**

**REDACTED - CONTAINS CONFIDENTIAL  
INFORMATION**

*Text appearing in red has been added to the base agreement through the Parties use of Amendment Agreement Change Records (or AACs).*

OPERATING AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

GRAND TRUNK WESTERN RAILROAD COMPANY

AND

ILLINOIS CENTRAL RAILROAD COMPANY

DATED: ~~May 1, 2014~~ Date ordered by STB

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OPERATING AGREEMENT BETWEEN  
NATIONAL RAILROAD PASSENGER CORPORATION  
AND  
GRAND TRUNK WESTERN RAILROAD COMPANY  
AND  
ILLINOIS CENTRAL RAILROAD COMPANY

THIS OPERATING AGREEMENT ("Agreement") is between National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act now codified at 49 U.S.C. §§ 24101 et seq. (hereafter referred to as the "Act"), and the laws of the District of Columbia, having offices at 160 Massachusetts Avenue, N.W.E., Washington, D.C. 200012 (hereafter referred to as "Amtrak"), on the one hand, and Grand Trunk Western Railroad Company ("GTW") and Illinois Central Railroad Company ("IC"), having offices at 17641 Ashland Avenue, Homewood, IL 60430-1345 (hereafter collectively referred to as "CN"), on the other hand; Amtrak and CN are individually referred to in this Agreement as a "Party" and referred to collectively as the "Parties."

WHEREAS, as of ~~February~~ May 1, 2011~~1995~~, IC and GTW entered into an agreement with Amtrak with respect to the provision by IC and GTW of services and facilities for intercity rail passenger operations, which agreement has subsequently been amended (hereafter referred to as "the ~~1995-2011~~ Agreement"); and

WHEREAS, ~~Amtrak and CN have agreed to completely restate the 1995 Agreement to extend its application~~ has been made to the Surface Transportation Board ("STB" or "Board") (Finance Docket No. FD-35743) and the STB has ordered that the terms of the 2011 Agreement remain in effect until a new agreement is reached by the Parties or the

~~STB imposes terms and compensation to rail lines of GTW and to provide for continuing Amtrak operations on CN's rail lines through April 30, 2013; and,~~

~~WHEREAS, Amtrak and IC have agreed to extend the term of the 1995 Agreement to the effective date of this Agreement;~~

NOW THEREFORE, effective as of ~~May 1, 2011~~[the date ordered by the STB], the Parties agree to terminate and supersede the ~~1995-2011~~ Agreement, and replace it with this Agreement as follows:

## ARTICLE I DEFINITIONS

~~“Checkpoint” means any of the stations identified in Table 1 of Appendix V.~~

“Accelerated Speed” means an increase in the Base Timetable Speed (as defined in Subsection 4.2.A., below) for passenger trains operating on the Rail Lines.

“Amtrak Base Passenger Miles” shall represent the Amtrak Passenger Miles on each Amtrak Route as published in the Route Level Results in the Amtrak Final Monthly Performance Report for the fiscal year two years prior to the year of the calculation. For example, a calculation that occurred on January 1, 2024 would use ridership from Amtrak Fiscal Year 2022.

“Amtrak Passenger Miles Prior Year” shall represent the Amtrak Passenger Miles on each Amtrak Route as published in the Route Level Results in the Amtrak Final Monthly Performance Report for that fiscal year. For example, a calculation that occurred on January 1, 2024 would use ridership from Amtrak Fiscal Year 2023.

“Amtrak Routes” (or “Amtrak Route” in the singular) means the groupings of regularly scheduled Amtrak Trains known as *Blue Water*, *City of New Orleans*, *Illini/Saluki*, *Lincoln*, *Texas Eagle*, and *Wolverine* as shown in Table 1 of Appendix V.

“Base Timetable Speed” means the speed under the heading “Base Timetable Speed”

in Appendix I.

“Customer OTP” or “COTP” is the percentage of on-time passengers as measured by the Federal Railroad Administration’s (FRA) Customer OTP Report in each calendar quarter (“Quarterly Report”) for each Amtrak Route identified in Appendix V Table I. If the FRA data is unavailable, COTP can be measured by Amtrak and the Parties will adjust for any discrepancies when the FRA report is published.

“Delay Adjustment Factor” means the adjustment made for CN’s host-responsible delays as determined by Appendix V Table II.

“Dwell Time” is the amount of time to perform station work.

"Emergency Train" means any unplanned, non-regularly-scheduled Amtrak Train operated on the Rail Lines, including Amtrak Ttrains that are ordinarily operated over rail lines of other railroads, but which are detoured over the Rail Lines.

“FRA Track Class” means the track class assigned to railroad track by the Federal Railroad Administration as set forth in 49 C.F.R. Part 213.

“Grand Crossing Route” means a future Grand Crossing connection constructed under the Chicago Region Environmental and Transportation Efficiency (CREATE) Program or otherwise, and that would run from the Rail Lines in the vicinity of 83rd Street to the Norfolk Southern (former Conrail) line, and associated improvements.

“GTW Lines” means those portions of the Rail Lines between:

- (1) Gord, MI (MP 175.5) and Port Huron, MI (MP 334.2), 158.7 miles;
- (2) Pontiac, MI (MP 25.8) and West Detroit, MI (MP 50.2), 26.3 miles; and
- (3) Gord, MI (MP 175.5) and Baron, MI (MP 176.7), 1.2 miles; and

“Host-Responsible Delays” or “HRD” means all delays reported in accordance with Amtrak’s policies and procedures for the following delay codes:

DCS - Signal delays.

DMW - Maintenance of way ("MW") work.

DSR - Temporary speed restrictions.

FTI - Freight train interference.

CTI - Commuter train interference.

PTI - Passenger train interference.

RTE - Routing.

A delay in one of the foregoing delay codes will be considered a Host Responsible Delay when (a) an Amtrak Train is on the Rail Lines or (b) an Amtrak Train is delayed from entering the Rail Lines due to an issue included in one of the foregoing delay codes. When an Amtrak Train is delayed by another railroad from leaving the Rail Lines due to an issue included in one of the foregoing delay codes, those delays shall not be considered to be Host Responsible Delays even if the Amtrak Train is at that time physically located on the Rail Lines.

"HRD per 10K Train Miles" means the sum of all minutes of Host Responsible Delays that occurred on an Amtrak Route during a month, divided by the number of train miles (excluding trains that experienced detours) operated by that Amtrak Route on the Rail Lines during that month, times 10,000.

"Intercity Rail Passenger Service" means intercity rail passenger service as defined as of the effective date of this Agreement by 49 U.S.C. § 24102(5), including, but not limited to, the rail passenger service operated by Amtrak over the Rail Lines on the effective date of this Agreement.

~~"IC Lines" means those portions of the Rail Lines other than the GTW Lines.~~

~~"Incremental Costs" means all costs that CN would not incur but for: (a) the operations of Amtrak on the Rail Lines or (b) the provision of associated services to Amtrak~~

~~pursuant to the Agreement and/or the Act.~~

"Intercity Rail Passenger Trains" means all trains operated in Intercity Rail Passenger Service (hereafter sometimes referred to as "Amtrak Itrains").

"Markham-to-Grand Crossing Route" means the portion of the Rail Lines from Markham Yard to the point on the St. Charles Air Line Route where the future Grand Crossing Route would connect in the vicinity of 83rd Street (approximately MP 20.1 to MP 10.4 on CN's Chicago Subdivision), totaling approximately 9.7 miles.

"Miscellaneous Time" is time that Amtrak may add or remove from a schedule for operational convenience.

"MW Trains" means all movement of Amtrak Maintenance of Way Trains and equipment (except daily track inspection vehicles) between Baron, MI (MP 176.7) and Gord, MI (MP 175.5) including, without limitation, maintenance-of-way equipment moving under its own power grouped together as one train, and maintenance-of-way trains such as, but not limited to, ballast trains, tie trains and rail trains. For example, one ballast train is one MW Train, or one "convoy" of multiple pieces of maintenance equipment moving at the same time in one contiguous movement is one MW Train. The Parties acknowledge that Intercity Rail Passenger Trains and freight trains have priority over MW Trains and the CN dispatcher will manage movements of MW Trains so as to not delay Intercity Rail Passenger Trains or CN freight trains. Each such movement shall be in charge of an Amtrak employee qualified on CN and any third party operator shall be considered an Amtrak MW Train. For purposes of Section 7.2, MW Trains shall be considered Amtrak Itrains.

"Net Performance Penalty" has the meaning ascribed to it in Section I of Appendix V.

"Net Performance Quality Payment Charges" has the meaning ascribed to it in Section I  
~~means the net of Performance Payments and Performance Penalties calculated in accordance with Part D of Appendix V.~~

“Other Time Classifications” are time classifications other than Pure Running Time, Dwell Time, Recovery Time, or Miscellaneous Time that may be added to a schedule on a route-specific basis upon agreement by the Parties, provided that the purpose for that classification is clearly specified, including any conditions that may allow for its removal. Any such time classifications shall be agreed upon by the Parties prior to their inclusion in a Schedule Skeleton.

“Origin Date” means the date a train departed its origin location.

“Performance Payments” means the payments calculated in accordance with Part B of Appendix V.

“Performance Penalties” (“Performance Penalty” in the singular) means the penalties paid by CN as calculated in accordance with Part C of Appendix V.

~~“Performance Segment” means a portion of a route of a train between two Checkpoints.~~

“Pure Running Time” is the travel time between two points at maximum authorized passenger train speeds, without delays. The current Pure Running Times are shown in Appendix II.

“Quality Payments” (“Quality Payment” in the singular) means the payments paid to CN for quality service as calculated in accordance with Appendix V.

“Rail Lines” means such of CN’s trackage, rights of way and real properties as indicated on the maps in Appendix VIII, whether owned, leased or otherwise held, together with the facilities and structures thereon or appurtenant thereto, and all of CN’s rights to use such properties of others used in connection with the operation of Amtrak Ttrains as provided for in this Agreement, subject to the terms of any applicable agreements for the use of such property of others.

“Recovery Time” is time added to the schedule to compensate for certain delays encountered en route.

“Ridership Factor” means the adjustment made for Amtrak ridership listed in Appendix V Table I and adjusted annually in accordance with Appendix V.

“Schedule Skeleton” is an operating schedule grid in the format of the schedules provided in Appendix II.

“Side Letters” means the letter dated May 1, 2011 regarding Reimbursement of Incremental Positive Train Control Costs and the letter dated May 1, 2011 regarding Reimbursement of CN Incremental Safety Appliance Costs, both of which are attached hereto as Exhibit A.

"Special Train" means any planned, non-regularly-scheduled Amtrak Ttrain operated on the Rail Lines.

“Statement of Charges” shall have the meaning ascribed to it in Section 5.2.A.2 hereof.

“Statement of Payments” shall have the meaning ascribed to it in Section 5.2.A.1 hereof.

“St. Charles Air Line” means the approximately 0.6 miles of the Rail Lines that are jointly owned by CN, BNSF Railway Company, and Union Pacific Railroad Company and that are located between approximately MP 1.71 on CN’s Chicago Subdivision and 16th Street Interlocking (approximately MP 1.4) and between 16th Street Interlocking and the connection with BNSF at the end of CN’s ownership approximately 70 feet west of the bascule bridge over the South Branch of the Chicago River.

“St. Charles Air Line Route” means the portion of the Rail Lines from a connection with the Markham-to-Grand Crossing Route in the vicinity of 83rd Street to 16th Street Interlocking (approximately MP 10.4 to MP 1.4 on CN’s Chicago Subdivision), from 16th Street Interlocking (Clark Street) to the connection with BNSF at the end of CN’s ownership approximately 70 feet west of the bascule bridge over the South Branch of the Chicago River (approximately 0.6 miles on CN’s St. Charles Air Line), and from 16th Street Interlocking to the connection with NS at 21st Street Interlocking (approximately

MP 2.1 to MP 2.7 on CN's Freeport Subdivision), collectively totaling approximately 10.2 miles.

## ARTICLE II [Reserved]

## ARTICLE III THE SERVICES

### Section 3.1 Right to Services

Subject to and in accordance with the terms and conditions of this Agreement, CN agrees to provide Amtrak with the use of the Rail Lines and the services requested by Amtrak for or in connection with the operation of Amtrak's Intercity Rail Passenger Service, including the carrying of mail and express on Intercity Rail Passenger Trains to the extent authorized by law. The routes, schedules, and consists shall be compatible with the physical capabilities and resource limitations of CN.

### Section 3.2 Modified or Additional Services

#### A. ~~Definitions~~

~~The following definitions shall apply to this Section 3.2:~~

~~(1) "Pure Running Time" is the travel time between two points at maximum authorized passenger train speeds, without delays.~~

~~(2) "Dwell Time" is the amount of time to perform station work.~~

~~(3) "Recovery Time" is time added to the schedule to compensate for certain delays encountered en route.~~

~~(4) "Miscellaneous Time" is time that Amtrak may add or remove from a schedule for operational convenience.~~

~~(5) —“Schedule Skeleton” is an operating schedule grid in the format of the schedules provided in Appendix II.~~

~~(6) —“Other Time Classifications” are time classifications other than Pure Running Time, Dwell Time, Recovery Time, or Miscellaneous Time that may be added to a schedule on a route-specific basis upon agreement by the Parties, provided that the purpose for that classification is clearly specified, including any conditions that may allow for its removal. Any such time classifications shall be agreed upon by the Parties prior to their inclusion in a Schedule Skeleton.~~

~~(7) —“FRA Track Class” means the track class assigned to railroad track by the Federal Railroad Administration as set forth in 49 C.F.R. Part 213.~~

~~(8) —“Accelerated Speed” means an increase in the Base Timetable Speed (as defined in Subsection 4.2.A., below) for passenger trains operating on the Rail Lines.~~

#### BA. Scope of Section

Subject to and in accordance with the terms and conditions of this Agreement, including but not limited to Section 4.3 and other provisions regarding increases in the Level of Utility of any part of the Rail Lines, and this Section 3.2, (i) Amtrak shall have the right from time to time to request modified or additional services, including changes to existing schedules, additional Amtrak Trains, or Accelerated Speeds; and (ii) CN shall have the right from time to time to request changes to existing schedules.

It should be noted that the Parties have negotiated a modification of service and schedule for the initiation of Amtrak service by Amtrak Trains #58 and #59 to a new station in Marks, MS with certain terms and conditions of each service and schedule outlined in Section 8.13 of this Agreement.

#### GB. Procedures for Additional Trains, Accelerated Speeds, and Modified and Additional Services

The procedures in Paragraphs (1) through (8) of this Subsection ~~C-B~~ shall be followed with respect to any request or proposal by Amtrak for: (i) additional Amtrak Ttrains; (ii) Accelerated Speeds that require a change in FRA Track Class (including changes that require operation at Base Timetable Speed of greater than 79 mph); and (iii) other modified or additional services (where such modifications or additions are other than changes in schedule or changes in consist or equipment described in Subsection 3.2.~~D~~C).

(1) Amtrak shall submit a request to CN in writing sufficiently in advance of the date proposed for the commencement of any additional Amtrak Ttrain, Accelerated Speed, or other modified or additional service so as to permit adequate individual and joint analysis, planning, and preparation, and shall, with respect to additional trains, include such information as specified below in Paragraph (1) of Subsection 3.2.~~E~~D.

(2) Additional Amtrak Ttrains, Accelerated Speeds, or other modified or additional services shall be compatible with CN's physical capabilities and resource limitations, giving due regard to (i) CN's speed, weight, and similar operating restrictions and rules and safety standards and to the avoidance of unreasonable impairment of the adequacy, safety, and efficiency of all railroad operations over the Rail Lines, and (ii) the importance of fast and convenient schedules and passenger comfort and convenience to the success of Amtrak's Intercity Rail Passenger Service.

(3) CN shall respond to Amtrak's request in writing within 30 days of its receipt.

(4) If CN accepts the request, its response shall be in the form of a notice of acceptance, which shall include any terms or conditions applicable to its acceptance. The Parties shall seek agreement on any terms and conditions, which shall include a date for implementation of the proposed additional Amtrak Ttrains, Accelerated Speeds, or other modified or additional services.

(5) If CN rejects the request, its response shall be in the form of a notice of rejection, which shall include a detailed explanation.

(6) If CN rejects Amtrak's request, or accepts Amtrak's request subject to terms or conditions that are unacceptable to Amtrak, then either CN or Amtrak may submit an alternative proposal for consideration by the other Party.

(7) CN shall not be required to permit the operation of additional Amtrak Itrains or Amtrak Itrains at Accelerated Speeds or to provide other modified or additional services absent agreement of the Parties or an order by the STB, a court of competent jurisdiction, or an arbitrator pursuant to Article VI requiring CN to do so.

(8) If and when the Parties agree upon a modified or additional service pursuant to this Subsection 3.2.CB, they shall promptly execute an amendment to Appendix II and/or to Appendix V ~~or Appendix VI~~ of this Agreement, as applicable, reflecting that modified or additional service. Such amendment must be executed before the subject modified or additional service is implemented or Amtrak's timetable is published or amended to reflect such modified or additional service.

#### DC. Changes to Existing Schedules Not Requiring Changes in FRA Track Class

The procedures set forth in Paragraphs (1) through (6) of this Subsection DC, rather than the procedures set forth in Subsection 3.2.CB, shall apply to requests for changes to existing schedules (including schedule modifications that require changes in Base Timetable Speed, additions, deletions, or modifications of station stops, and material changes in consist or type of equipment operated for a sustained period), if such changes do not require a change in the FRA Track Class applicable to any part of the Rail Lines (including a change to permit operation at greater than 79 mph).

(1) Either Party may request changes to an existing schedule. Changes to an existing schedule shall be compatible with CN's physical capabilities and resource limitations, giving due regard to (i) CN's speed, weight, and similar operating restrictions

and rules and safety standards and to the avoidance of unreasonable impairment of the adequacy, safety, and efficiency of all railroad operations over the Rail Lines, and (ii) the importance of fast and convenient schedules and passenger comfort and convenience to the success of Amtrak's Intercity Rail Passenger Service.

(2) The Party requesting a change to an existing schedule ("Proposing Party") shall provide to the other Party ("Reviewing Party") a proposed Schedule Skeleton which indicates, for each affected train, the current and proposed: (i) time of arrival at the point of entry to the Rail Lines, and time of departure from the point of exit from the Rail Lines; (ii) Dwell Time at each station on the Rail Lines; and (iii) Pure Running Time, Recovery Time, Miscellaneous Time, and any Other Time Classifications between each station, including the points of entry to and exit from the Rail Lines. The Proposing Party shall also indicate a proposed effective date for the schedule change. The Parties acknowledge and agree that Amtrak may need to advise and obtain the concurrence of other railroads involved in the proposed schedule change. The Proposing Party shall also supply such other information necessary to permit the Reviewing Party to analyze the proposed schedule change.

(3) The date agreed to by the Parties for implementation of the proposed schedule changes will be sufficiently in the future to allow the agreed schedules to be entered into reservation systems, to be published in timetables for use by the public, and to allow reserved passengers to be notified of the change.

(4) No schedule change shall be implemented absent agreement of the Parties or an order by the STB, a court of competent jurisdiction, or an arbitrator pursuant to Article VI requiring such schedule change.

(5) Each published timetable for Amtrak Itrains operated over the Rail Lines shall be consistent at all times with the corresponding Schedule Skeleton in Appendix II. Should any difference arise between any one of Amtrak's published timetables and a corresponding Schedule Skeleton in Appendix II, Amtrak agrees to promptly amend its published timetable to bring it into conformance with that Schedule Skeleton.

(6) If and when the Parties agree upon a change in schedule pursuant to this Subsection 3.2.~~DC.~~, they shall promptly execute an amendment to Appendix II and/or to Appendix V ~~or Appendix VI~~ of this Agreement, as applicable, reflecting that change. Such amendment must be executed before the schedule change is implemented or Amtrak's timetable is published or amended to reflect such schedule change.

#### ED. Additional Trains

In addition to the procedures set forth in Subsection 3.2.~~CB.~~ above, the following provisions shall apply to requests by Amtrak to operate additional Amtrak Ttrains on the Rail Lines:

(1) In its request to operate additional trains, Amtrak shall clearly indicate in a Schedule Skeleton, for each such additional Amtrak Ttrain: (i) the proposed time of arrival at the point of entry to the Rail Lines, and the proposed time of departure at the point of exit from the Rail Lines; (ii) the proposed Dwell Time at each station on the Rail Lines; and (iii) the proposed Pure Running Time, Recovery Time, and Miscellaneous Time, and any Other Time Classifications between each station, including the points of entry to and exit from the Rail Lines. In its request, Amtrak shall indicate a proposed start date of each requested additional train. The Parties acknowledge and agree that Amtrak may need to advise and obtain the concurrence of other railroads involved in the requested additional trains.

(2) If and when the Parties agree upon the addition of an Amtrak Ttrain pursuant to this Subsection 3.2.ED., they shall promptly execute an amendment to Appendix II and/or to Appendix V ~~or Appendix VI~~ of this Agreement, as applicable, reflecting that addition. Such amendment must be executed before the new train is added or Amtrak's timetable is published or amended to reflect such additional train.

#### FE. Accelerated Speeds Greater than 79 Miles Per Hour

In addition to the procedures set forth in Subsection 3.2.~~CB.~~, above, the following

provisions shall apply to any request by Amtrak to operate a train at a speed greater than 79 miles per hour:

(1) In the event that Amtrak wishes to operate a train or trains in excess of 79 miles per hour on the Rail Lines, it shall so notify CN in writing sufficiently in advance to permit the Parties to negotiate terms prior to the proposed date for commencement of the requested speeds, such terms including, but not limited to, compensation, realistic and achievable schedules, and infrastructure improvements to make such Accelerated Speeds safe and practicable.

(2) If and when the Parties agree upon Accelerated Speeds pursuant to this Subsection 3.2.FE., they shall promptly execute an amendment to Appendix II and/or to Appendix V ~~or Appendix VI~~ of this Agreement, as applicable, reflecting the Accelerated Speeds. Such amendment must be executed before the Accelerated Speeds are implemented or Amtrak's timetable is published or amended to reflect such Accelerated Speeds.

### Section 3.3 Emergency Trains, Detour Trains, and Emergency Services

#### A. Emergency Trains (on CN)

Amtrak shall have the right to request and, subject to and in accordance with the terms and conditions of this Agreement, CN agrees to allow Amtrak to operate Emergency Trains on the Rail Lines as required as a result of the Rail Lines or the rail lines of another railroad used in the operation of Amtrak Ttrains becoming impassable, unsafe, or impractical for use by Amtrak Ttrains. Amtrak may make an oral request to CN for the operation of an Emergency Train, but any such request shall be made as far in advance as possible, and shall be confirmed in writing to CN within twenty-four (24) hours after the oral request to CN. The operation of Emergency Trains shall recognize and be subject to the physical capabilities and resource limitations of CN and shall give due regard to CN's speed, weight, and similar operating restrictions and rules and safety standards. The Emergency Trains shall not be subject to, and Amtrak hereby

waives, any metric, measurement, or penalty to which CN would otherwise be subject as a result of operation of any Emergency Train, whether operating on the Rail Lines or on the rail lines of any other carrier. CN agrees to use its best efforts to provide services requested under this Subsection 3.3.A. in an expeditious and efficient manner. Amtrak shall reimburse CN for all incremental costs and all directly related costs incurred by CN in providing service to Emergency Trains, as provided for in Appendix IV, Item 18. CN shall not bill other railroads for any costs or charges in connection with such Emergency Trains. Employees of other railroads who operate trains on behalf of Amtrak over the Rail Lines shall, while on such Rail Lines, be deemed employees of Amtrak for purposes of Subsection 7.2.A.

B. Detour Trains (on Other Railroads)

In the event of detours of Amtrak trains over rail lines of other railroads ordinarily operated over the Rail Lines, Amtrak shall reimburse CN as provided in Appendix IV, Item 19, for all incremental costs incurred by CN as a result of the detours over rail lines of other railroads.

C. Emergency Services

In emergency situations, Amtrak shall have the right to request and, subject to and in accordance with the terms and conditions of this Agreement and the physical capabilities and resource limitations of CN, CN shall provide the requested emergency services that Amtrak may be unable to perform for an Amtrak train located on the Rail Lines or as may be necessary to permit an Amtrak locomotive or a car in the consist of an Amtrak train to complete a trip over the Rail Lines that is required for safe operation or for basic passenger comfort. Amtrak may make an oral request to CN for emergency services, but any such request shall be made as far in advance as possible, and shall be confirmed in writing to CN within twenty-four (24) hours after the oral request to CN. Amtrak shall compensate CN for all incremental costs and all directly related costs incurred by CN in providing any emergency services performed by CN pursuant to this Subsection 3.3.C. as provided in Appendix IV, Item 21. Article VII notwithstanding, if

emergency services are provided by CN on rail lines of another railroad, Amtrak shall indemnify and save CN harmless, irrespective of any negligence or fault of CN, its employees, agents, or servants or howsoever the same shall occur or be caused, from any and all liability for injury or death of any person or persons, and from any and all liability for loss, damage, or destruction to any properties, which arise from the provision of such services.

#### Section 3.4 Standards of Performance

A. With respect to services required or agreed to be provided by CN to Amtrak under this Agreement, CN agrees to provide and furnish all labor, materials, equipment, and facilities necessary to perform such services (except as the same are provided by Amtrak), but shall not, except as otherwise provided in this Agreement or upon agreement with Amtrak, be required to purchase, construct, rebuild or replace Rail Lines, locomotives, cars, rolling stock, or Fixed Ancillary Facilities (as defined in Section 3.8).

B. CN shall provide services hereunder in an economic, safe, and efficient manner and shall make reasonable efforts:

1. To deliver Amtrak Ttrains to all scheduled passenger stops on CN by the scheduled time therefor in accordance with the schedules as provided in Appendix II;
2. To avoid excessive delays to Amtrak Ttrains;
3. To regain time lost by Amtrak Trains due to delays incurred on the Rail Lines;
4. To regain time lost by Amtrak Trains due to delays incurred on rail lines of other railroads; and
5. To the extent that CN has reasonably available resources, to service, inspect, and perform routine running repairs as necessary to permit an Amtrak

locomotive or a passenger car in the consist of an Amtrak Ttrain to complete a trip over the Rail Lines.

C. Amtrak and CN shall perform their obligations to one another under this Agreement in good faith.

D. To the extent practicable, and as soon as possible, CN and Amtrak shall negotiate such amendments to this Agreement as may be necessary to reflect metrics and standards developed by the FRA under Section 207(a) of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432 ("PRIIA"), including any changes to those metrics and standards, consistent with the requirements of PRIIA and the operational and administrative requirements of both Parties to this Agreement.

E. Amtrak shall maintain and fuel its locomotives and cars such that no maintenance, servicing, or fueling of any locomotives or cars will be required on the Rail Lines, except in an emergency. Except in an emergency, Amtrak shall not switch out locomotives or cars, or perform maintenance or fueling of any of its locomotives or cars on any portion of the Rail Lines, other than in a terminal station or other locations as may be agreed to by the Parties in writing (or, pursuant to Section 8.5, by e-mail to the Amtrak Operations Officer, later confirmed in writing).

### Section 3.5 No Violation of Labor Agreements

Each Party agrees that it will not require the performance of services hereunder by the other in a manner that would cause the other to: (a) violate the terms of any then current labor agreement between that other Party and any organization representing any of its employees, or (b) incur penalties under such agreement, unless such penalties are reimbursed by the Party requiring such performance of services.

### Section 3.6 [Reserved]

### Section 3.7 CN Control and Supervision

In the performance of services referred to in this Agreement, CN shall have sole control of the operation of Amtrak's Intercity Rail Passenger trains while on the Rail Lines. All personnel rendering any services which involve responsibility for CN's operating facilities or for the handling or movement of any Intercity Rail Passenger Train shall be subject to the direction, supervision and control of CN and must be qualified under all operating and safety rules, orders, procedures, and standards of CN as are applicable to Amtrak, and such services performed by or for Amtrak shall be governed by and subject to all then current operating and safety rules, orders, procedures, and standards of CN with respect thereto.

CN may, for cause, require that any person performing services pursuant to this Agreement be prohibited or removed from performance of such services, subject to the requirement that CN shall support any action defending such prohibition or removal and bear any claims (other than from proceedings conducted pursuant to 49 C.F.R. Part 240) growing out of any action determined to be improper by a labor board or on appellate review. In the case of any offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein CN desires to bar Amtrak's employee from service on the Rail Lines pending an investigation, CN will give written notification to the appropriate Amtrak Transportation Officer as soon as possible.

### Section 3.8 Fixed Ancillary Facilities

A. With respect to any fixed ancillary facility, including, but not limited to, depots, platforms, canopies, designated parking areas, and servicing facilities, or any portion thereof, which is owned or leased by CN ("Fixed Ancillary Facility") that is currently being used for services rendered by CN pursuant to Article III hereof, CN shall (i) provide advance notice to Amtrak of at least ninety (90) days of its intention to dispose of or downgrade the Fixed Ancillary Facility, and (ii) on request of Amtrak, furnish a

substitute facility reasonably equivalent in utility prior to disposing of or downgrading the Fixed Ancillary Facility. Notwithstanding the foregoing, if Amtrak has leased from CN an Fixed Ancillary Facility or portion thereof and Amtrak either removes, or fails to replace or maintain such Fixed Ancillary Facility, CN shall be under no obligation to furnish a substitute facility.

B. As soon as possible following the effective date of this Agreement, and on or by May 1 of each subsequent calendar year, Amtrak shall provide to CN an annual list of Fixed Ancillary Facilities, which are not then being used for services rendered by CN pursuant to Article III hereof, but which Amtrak may consider useful for service on (i) Rail Lines on which Amtrak is currently operating Amtrak Ttrains, and (ii) on other CN lines on which Amtrak is not currently operating Amtrak Ttrains but on which Amtrak may be actively considering future service. Inclusion of a Fixed Ancillary Facility on Amtrak's annual list shall not preclude CN from disposing of or downgrading said facility, but CN shall provide advance notice to Amtrak of at least ninety (90) days of its intention to do so for any facility on Amtrak's then current list. CN shall have no obligation under this Agreement to provide Amtrak with any prior notice of disposal of Fixed Ancillary Facilities located on lines not then being used by Amtrak Ttrains that are not included on Amtrak's then current annual list.

C. Nothing in this Section 3.8 shall relieve CN of any statutory obligations it may have to provide notice concerning disposal or downgrading of Fixed Ancillary Facilities.

## ARTICLE IV RAIL LINES

### Section 4.1 Rail Lines

A. CN shall retain and not voluntarily dispose of or abandon or discontinue service on Rail Lines, or any portion thereof (other than Fixed Ancillary Facilities, which shall be governed under Section 3.8 of this Agreement) without written notice to Amtrak at least

thirty (30) days before filing any application, petition for exemption, notice of exemption, or other regulatory filing seeking authority from the STB to dispose of, abandon or discontinue service over the portion of the Rail Lines, or such longer period as may be required by law, and at least thirty (30) days before disposing, abandoning, or discontinuing any portion of the Rail Lines for which regulatory authority to dispose, abandon or discontinue service is not required, for as long as such Rail Lines are in use by Amtrak or for the term of this Agreement, whichever period is the shorter, provided that seasonal changes or suspensions of service by Amtrak shall not be deemed discontinuance of use. Except as provided in Section 3.8, nothing herein shall prevent CN from modifying, changing, or relocating any facility (including removing a track or tracks parallel to a single track on a rail right-of-way), other than Fixed Ancillary Facilities, or any segment of its routes, provided that the continuity of any route then in use by Amtrak is retained.

B. Any proposed reduction in the number of main line tracks on any portion of the St. Charles Air Line Route or the Markham-to-Grand Crossing Route will be discussed in advance with Amtrak, and shall be consistent with Section 4.2 of this Agreement.

C. Subject to termination of its rights under Section 8.9 of this Agreement, Amtrak may remain: (i) on the St. Charles Air Line and the St. Charles Air Line Route, at costs capped at the level as shown in Appendix IV, Table 1, Item 14, adjusted only for inflation in accordance with the formulas contained in Table 2 of Appendix IX hereof; and (ii) on the Markham-to-Grand Crossing Route, at costs determined on the same basis as costs for Amtrak's use of Rail Lines between Markham and New Orleans.

#### Section 4.2 Maintenance of Rail Lines

A. CN shall maintain the Rail Lines at a level of utility ("Base Level of Utility"), defined as a condition that permits each Amtrak Ttrain to operate:

1. at no less than the Base Timetable Speeds ~~as set forth in Appendix I (the "Base Timetable Speeds")~~; and

2. with a reasonable level of reliability, and
3. with a reasonable degree of passenger comfort.

B. CN agrees to maintain the Rail Lines at the Base Level of Utility without reimbursement from Amtrak. Amtrak agrees to reimburse ~~pay~~ CN the amount specified in Appendix IV, Table 1, Item 6 for all incremental costs above the cost of CN incurs to maintaining the Rail Lines at the Base Level of Utility, to the extent that those costs are ~~attributable to~~ in connection with the operation of Amtrak Ttrains (“Incremental Maintenance Costs”), as shown in Appendix IV, Item 6. If temporary slow orders are imposed on the Rail Lines and result in operating speeds for the Rail Lines that are below those specified in Section 4.2 of this Agreement, CN will use its best efforts to remedy the slow order condition promptly. Amtrak’s obligation to reimburse CN for Incremental Maintenance Costs shall be reflected in any compensation arrangement between Amtrak and CN, whether negotiated by the Parties or established by a third party pursuant to Section 5.1 of this Agreement.

C. Changes made by the FRA to the specifications for FRA Class of Track shall not result in a change to the Base Level of Utility obligation pursuant to this Section 4.2. Amtrak agrees to reimburse CN for any increased incremental costs CN incurs to maintain the speeds specified in Appendix I solely due to a change in the applicable FRA specification. (For example, if FRA changes curve elevation requirements for various track speeds, thus lowering the acceptable speed for existing elevations, CN may reduce the speed as required without penalty under this Agreement. If Amtrak desires to maintain the previous higher speed, then Amtrak shall compensate CN for the actual incremental cost attributable solely to ~~of~~ the necessary elevation adjustments.)

D. If the authorized speeds are lawfully decreased by a governmental entity with authority to do so in a way that is likely to have a significant impact on the operation of an Amtrak Ttrain, then the Parties shall make such schedule changes, pursuant to Subsection 3.2.DC., as may be necessary to comply with the modified law or regulation.

E. Amtrak agrees that CN may adjust speeds at various locations when conditions require; provided, however, that overall Pure Running Time ~~(as defined in Subsection 3.2.A.)~~ for the train in any Performance Segment on the Rail Lines will not be lengthened as a result of such changes.

#### Section 4.3 Additional Maintenance and Improvements

A. Upon the request of Amtrak, ~~and at the sole expense of Amtrak for any additional cost not reimbursed under Appendix IV,~~ CN shall as promptly as feasible modify its maintenance of the Rail Lines so as to increase the Level of Utility of any part of its Rail Lines above the Base Level of Utility, to the level specified in such request. Amtrak will pay CN the incremental cost attributable solely to such increase in the level of utility to the extent such incremental cost is not already paid to CN under Appendix IV or Appendix IX.

B. Amtrak shall have the right, ~~at its sole expense,~~ to require CN to improve the Rail Lines; provided, however, (i) that any such improvement shall not unduly interfere with or unduly limit CN's scheduled railroad operations, (ii) that any such requested improvement shall be made by CN as promptly as feasible, (iii) that Amtrak will pay CN the incremental cost attributable solely to such improvement, and (iv) that any increase in the Incremental Maintenance Cost occasioned solely by such improvement shall be paid by Amtrak, to the extent that such increased cost is not already paid to CN reimbursed under Appendix IV, or Appendix IX or the Side Letters.

C. Amtrak shall have the right, at its sole cost and expense, to install, own, maintain, replace and renew Wayside Signage at the locations identified on Appendix X, attached hereto and made a part hereof. Appendix X may be amended, restated, supplemented or otherwise modified from time to time as mutually agreed by written amendment, executed by the parties hereto. The facilitation of the work necessary to install, maintain, replace and renew the Wayside Signage shall be governed by the terms and conditions of the two separate Master Railroad Property Right of Entry Agreements dated May 26, 2010, as amended, between the parties hereto. For purposes of this

Section 4.3(C), the term "Wayside Signage" shall mean that station identification signage on the side of the tracks opposite of platforms, which Amtrak is required to install at its intercity passenger rail stations under the Americans with Disabilities Act of 1990 and pursuant to the United States Department of Transportation ADA Standards (2006). In the event that Amtrak fails to properly maintain such Wayside Signage, or such Wayside Signage presents a threat to human health or safety or unreasonably interferes with CN's scheduled railroad operations, CN shall notify Amtrak of the specific failure, threat, or interference, in writing. In the event that Amtrak shall not have reasonably addressed CN's stated concerns regarding such Wayside Signage within sixty (60) days after Amtrak's receipt of CN's notice, or in the event that any such Wayside Signage presents an imminent threat to human health or safety or an unsafe or dangerous condition, as determined by CN in its reasonable discretion, then CN shall have the right to remove such Wayside Signage at the sole cost and expense of Amtrak. Once installed, Wayside Signage shall be deemed Amtrak's property for purposes of Section 7.2(C) of this Agreement and liability and indemnification regarding Wayside Signage shall be governed by Sections 7.2(A) through 7.2(D) of this Agreement.

## ARTICLE V ACCOUNTS AND PAYMENTS

### Section 5.1 Basis of Payment

Amtrak shall pay CN amounts set forth or calculated in accordance with Subsections A, B, and C, below, and other adjustments provided in Subsection D, below, as compensation for the routine services and activities performed by CN and the Rail Lines and equipment and other items made available to Amtrak under this Agreement, and for CN's provision of management and corporate resources necessary to enable CN to provide the services, activities, and Rail Lines specified herein.

Amtrak may request that CN render for or provide to Amtrak non-routine services or items that are not otherwise covered by this Agreement. Any such request shall be

made in writing (or, pursuant to Section 8.5, by e-mail to CN's Amtrak Operations Officer). Subject to CN's physical capabilities and resource limitations, CN agrees to provide Amtrak with such requested non-routine services. Amtrak will pay CN the ~~incremental costs~~ incurred by CN in performing non-routine services or providing such items. ~~In addition to other applicable costs under this Section 5.1, Amtrak will pay CN costs for non-routine services and items for which CN is entitled to reimbursement under this Section shall include (i) materials, (ii) wages (fringe benefits, overheads), and (iii) other incremental personnel costs. Such costs shall also include (provided (i) – (iii) hereof are attributable solely to such non-routine services or items), and for small tools and supplies as may be required by the project. Amtrak's Authorization Notice Procedures shall be utilized for the approval and billing authorization of these costs, and billings for such costs shall be subject to audit by Amtrak.~~

#### A. Initial Service

With respect to the operation of Amtrak ~~T~~trains by CN hereunder, and the services and Rail Lines provided by CN in connection therewith as of the effective date of this Agreement ("Initial Service"), Amtrak shall pay CN the amounts specified in Appendices IV and ~~VIX~~ and the Side Letters. The Parties agree that the amounts to be paid by Amtrak specified in Appendices IV and ~~VIX~~ and the Side Letters represent reimbursement to CN of all of CN's incremental costs resulting from Amtrak's operation of trains over the Rail Lines and for the services and activities provided by CN in connection therewith and specified therein.

#### B. Quality Payments and Performance Penalties

CN shall be provided with the opportunity to earn Quality Payments and shall be subject to the payment of Performance Penalties, all as set forth in Appendix V and in accordance with Section 5.2.

#### B.C. Modified or Additional Service

In response to any request by Amtrak for modified or additional services to be provided

by CN pursuant to Section 3.2, compensation for such services shall correspond to that in Subsection 5.1.A. and Appendix IV. If either Party believes the modified or additional services requested differ in a manner from existing services that would affect compensation, that Party may propose to the other Party compensation which shall be calculated using the methodology employed in calculating the rates in Subsection 5.1.A. and Appendix IV and shall be designed to provide CN with payment as nearly as possible on the same basis as for comparable services being rendered at that time, taking into account, however, any relevant differences in such services. Any Performance-Quality Payments and Performance Penalties shall be consistent with those in Subsection 5.1.GB. and Appendixces V and VI in connection with the operation of such service or comparable services.

In the event that either Party believes that the basis used for developing compensation pursuant to this Subsection 5.1.BC. differs significantly from the basis used for developing compensation for the Initial Service as provided in Subsections 5.1.A. and Subsection 5.1.GB., taking into account, however, any relevant differences in such services, then that Party may apply to the National Arbitration Panel (the "Panel") pursuant to Article VI of this Agreement for an order prescribing the compensation to be paid for the modified services on the same basis used to establish compensation pursuant to Subsections 5.1.A. and 5.1.GB., taking into account, however, any relevant differences in such services. Such order shall be effective on the date of the Panel's order or such other date as the Parties may agree to or, in the absence of such agreement, on the date set by the Panel. CN shall provide the services requested by Amtrak under the terms of this Agreement during the pendency of the proceeding, and Amtrak shall pay CN interim payments based on Subsection 5.1.A. and Appendix IV, and Subsection 5.1.GB. and Appendixces V and VI of this Agreement. The Parties agree to adjust any such interim payments to the final compensation determination as established by the Panel, including retroactively to the date the interim payments commenced.

### ~~C. Performance Payments~~

~~In addition to the reimbursement paid to CN under this Section, CN shall be provided with the opportunity to earn additional payments for schedule adherence as set forth in Appendix V and in accordance with Section 5.2.~~

### D. Payment Adjustment

The amount of payments stated to be payable by Amtrak under Subsection 5.1.A. and 5.1.B., and the amounts which become effective for payment under Subsection 5.1.BC., shall be subject to further adjustments as follows:

1. For the purpose of keeping the cost provisions current with CN's labor, fringe benefit, and material costs, the fixed payments specified in Appendix IV shall be adjusted in accordance with the provisions set forth in that Appendix.
2. The basis or the amounts of payment shall be appropriately adjusted whenever:
  - (a) CN ceases to perform any service or activity;
  - (b) The provision of any service, activity, or facility hereunder is changed in accordance with this Agreement.
3. Amtrak may notify CN that it no longer desires CN to perform or furnish specific services, activities, or facilities for which Amtrak compensates CN, and CN shall cease to perform or provide the same on the date requested. Such notice shall include a schedule of the services, activities, or facilities to be terminated, and after the date requested for termination of performance, Amtrak shall no longer be required to pay CN with respect thereto. Amtrak agrees, however, to reimburse CN the costs associated with the service as specified in Appendix IV until it ceases, and the incremental cost of removing facilities installed at Amtrak's request which are incurred as a consequence of CN's orderly termination of such services, activities, or facilities irrespective of the date

incurred. For purposes of this Paragraph 3, Amtrak shall reimburse CN ~~for~~ incremental ~~costs~~ and any directly related costs incurred by CN in removing facilities installed at Amtrak's request and which Amtrak no longer desires to have provided by CN.

4. If Amtrak and CN are unable to resolve any dispute regarding the amount of any change in the basis of payment which may be made pursuant to Paragraphs 1 through 3 of this Subsection 5.1.D., either Party may apply to the Panel pursuant to Article VI of this Agreement, for an order prescribing the amount or basis of payment consistent with such paragraphs. Such order shall be effective on the date agreed by the Parties or (in the absence of such agreement) upon the date set by the Panel. During the pendency of any such proceedings, CN shall provide the services requested by Amtrak under the terms of this Agreement and Amtrak shall pay CN the amount due for services provided by CN pursuant to the terms of this Agreement and not requested to be terminated in accordance with Paragraph 3, above, or shall, for additional services requested, pay the amount proposed by Amtrak or an interim amount set by the Panel. The Parties agree to adjust any interim payments to reflect the final compensation determination as established by the Panel.

#### E. Trackage Agreements

To the extent possible, CN shall not bill any other railroad in connection with the operation of Amtrak ~~trains~~ by CN or such other railroad. In the event that charges payable by or to CN under existing joint trackage agreements are affected by operation of Amtrak ~~trains~~, CN shall credit to Amtrak the entire amount of increased payments received from another railroad (or reduced payments to another railroad) as a result of Amtrak operations, and Amtrak shall pay to CN any increase in the amount of payments CN is required to make to another railroad (or reduced payments to CN) pursuant to such agreements as a result of Amtrak operations; provided, however, that the amount of any payments for ~~incremental track~~ Maintenance Costs payable pursuant to

Appendix IV of this Agreement with respect to trackage or facilities also covered by this Subsection shall first be offset against any amount determined to be payable by Amtrak pursuant to this Subsection.

F. Annulled, Rescheduled, and Terminated Trains.

For any portions of a trip of a scheduled Amtrak Train that, due to reasons within CN's reasonable control, are annulled, cancelled, rescheduled, or do not complete their trips, then CN shall pay Amtrak's reasonable costs, including alternative transportation costs, arising from such annulment, cancellation, rescheduling or failure to complete any portion of a trip.

Section 5.2 Billing and Payment

A. Payment of Monthly Billing

1. Statement of Payments

Within fifteen (15) business days after the last day of each calendar month, Amtrak shall submit a statement of payments to CN's Amtrak Operations Officer, calculated for the immediately preceding month in accordance with the provisions of Section 5.1 (the "Statement of Payments"). The Statement of Payments shall clearly and separately set forth: (i) flat-rated payments specified in Appendices IV and IX, (ii) fixed monthly payments specified in Appendices IV and IX, and, with respect to the Statement of Payments for the last month in each calendar quarter, (iii) Quality Payments earned and Performance Penalties incurred by CN for each Amtrak Route during the immediately preceding calendar quarter pursuant to Appendix V. The Statement of Payments shall be submitted in the form and contain such information substantially similar to that shown in Appendix VII.

Within ten (10) business days after receipt of the Statement of Payments, CN and Amtrak shall confer on the Statement of Payments.

(i) If CN elects not to confer with Amtrak within such ten (10) business

days, CN shall be deemed to agree with the Statement of Payments, and payment shall be made in accordance with Subsections (ii).a and (ii).b of this Section 5.2.A.1, within twenty (20) business days following the submission of the initial Statement of Payments to CN.

(ii) If Amtrak and CN agree to the Statement of Payments including, if applicable, any adjustments, CN shall confirm such agreement to Amtrak in writing, and

a. if payment is due CN, such payment will be made by Amtrak within ten (10) business days after Amtrak's receipt of such confirmation, or

b. if payment is due Amtrak, such payment will be made by CN within ten (10) business days after Amtrak's receipt of such confirmation.

(iii) If Amtrak and CN cannot reach agreement on the Statement of Payments, or if CN does not send confirmation of its agreement to the Statement of Payments to Amtrak in accordance with Subsection 5.2.A.1(ii), then

a. if payment is due CN, such payment will be made by Amtrak within twenty (20) business days following the submission of the initial Statement of Payments to CN, based on that initial Statement of Payments. Amtrak shall wire transfer its payment to CN, according to such instructions as CN shall have provided for such payment (or, with CN's concurrence, mail its payment to CN), or

b. if payment is due Amtrak, such payment will be made by CN within twenty (20) business days following the submission of the initial Statement of Payments to CN, based on that initial Statement of Payments. CN shall wire transfer its payment to Amtrak, according to such instructions as Amtrak shall have provided for such payment (or,

with Amtrak's concurrence, mail its payment to Amtrak).

#### 4.2. Statement of Charges

Within thirty (30) days after the last day of each calendar month, CN shall submit a Statement of Charges to Amtrak calculated for such month in accordance with the provisions of Section 5.1. The Statement of Charges shall clearly and separately set forth amounts owed to CN (excluding the amounts, including flat rated payments and fixed monthly payments, reflected on the Statement of Payments) that are calculated and paid pursuant to Section 5.1 and set forth in Appendix IV, Table 1, including items 1(a), 1(b), 1(c), 2(b), 3, 4(a) and 4(b), 7, 8(a) and 8(b), 9, 10(a), 12, 13(a) and 13(b), 14, 16, 17(a) and 17(b), 18, 19, 21, 22, 23, 24, 26, Appendix IX, Table 1, including items 1(c), 7, 10(a), 17(a) and 17(b), and Authorization Notices submitted by CN in accordance with Amtrak's Authorization Notice Procedures~~Base Charges (defined as all amounts owed to CN pursuant to Section 5.1, excluding Performance Payments), Performance Payments earned by CN during such month pursuant to Part B of Appendix V, and Performance Penalties incurred by CN during such month pursuant to Part C of Appendix V. The Statement of Charges shall set forth Performance Payments and Performance Penalties for each category of train defined in Part D of Appendix V and shall be submitted in the form and contain such information as shown in Appendix VII. Amtrak may request revisions in the forms and methods of billing. If a requested revision would significantly change the amount of work required by CN in connection with billing Amtrak, then, prior to the implementation of that revision, the Parties will negotiate and determine what, if any, new basis of compensation is appropriate for such activity. If the Statement of Charges is in the form and includes the data and information specified in Appendix VII, or in another form as may be agreed to in writing by the Parties, then no payment shall be withheld and no adjustment shall be made on account of the form of the Statement of Charges or the absence of any data or information from the Statement of Charges. Further, no payment shall be withheld by Amtrak unless Amtrak provides a full and complete written explanation of the basis on which it is withholding such payment, including, without limitation, the contractual reference and contractual basis.~~

Within thirty (30) days after receipt of such Statement of Charges, the Party that owes a payment Amtrak shall wire transfer its payment to CN ~~the other Party~~, according to such instructions as ~~CN~~ the Party that is owed shall have provided for such payment (or with ~~CN's~~ such Party's concurrence mail its payment ~~or make checks available at the Controller's office of Amtrak for CN's authorized agent~~ to the other Party).

Subject to the setoffs and adjustments otherwise provided for herein, Amtrak's payment to CN shall include (1) the bBase cCharges due in accordance with Section 5.1, plus (2) the ~~Net Performance Charges~~ Quality Payment, calculated in accordance with ~~Part D of Appendix V~~, for each category of Amtrak trains listed in ~~Part D of Appendix V~~ for which ~~the Net Performance Charges are greater than zero~~. To the extent CN owes ~~that the Net Performance~~ Penalty Charges for any category of Amtrak trains are less than zero and there is no good-faith dispute between CN and Amtrak as to the amount by which ~~Performance~~ total Performance Penalties for all Amtrak Routes for the calendar quarter exceed ~~Performance~~ Quality Payments for ~~that category of trains~~ all Amtrak Routes for the calendar quarter, Amtrak shall have the right to set off such negative-Net ~~Performance Charges~~ Penalty up to the level of the bBase cCharges for that month, but only up to the amount of ~~Performance~~ Quality Payments earned for all trains within that category of trains (*i.e.*, within the applicable one of the three categories defined in ~~Part D of Amtrak Routes pursuant to Appendix V~~) at all Checkpoints during the preceding 12 months since the effective date of this Agreement, less any amounts by which those ~~Performance~~ Quality Payments have previously been reduced by setoffs on a first in, first out basis. If there is a good-faith dispute between CN and Amtrak as to the amount by which ~~Performance Penalties~~ exceed ~~Performance~~ Quality Payments for any ~~category of trains~~, Amtrak's right to set off ~~negative~~ the Net Performance ~~Charges~~ Penalty for that category of trains shall be limited as provided in Subsection 5.2.D.

### 3. Revision of Forms and Methods

Either Party may request revisions in the forms and methods of billing, which will be adopted upon the other Party's approval, which approval shall not be unreasonably

withheld, conditioned or delayed.

A.B. Right of Review and Audit

Any payment by Amtrak or settlement between Amtrak and CN shall be subject to an audit and evaluation of operations, performance, and costs. The scope of such audit and evaluation shall be both financial and operational, and may include, in addition to costs and wages reimbursed by Amtrak, CN's controls, practices, and procedures and their effect upon the efficiency and quality of performance provided by CN, and sources of information used to calculate Performance Quality Payments and Performance Penalties. In the event that an audit of Amtrak payments ~~proves under this Agreement~~ indicates that Amtrak or CN has made payments in excess of its obligations under this Agreement, CN or Amtrak shall promptly refund such overpayments to Amtrak or CN, respectively. In the event that an audit of operations indicates a deficiency in CN's performance under this Agreement, that finding shall not entitle Amtrak to any offset to its payment obligations or any reimbursement by CN, other than specifically provided for herein. Each Party and/or its representatives shall, upon reasonable notice, be given reasonable access during business hours to the other Party's records for inspection and/or copying and to its facilities and appropriate personnel.

B.C. Records

Both Parties shall maintain supporting accounting, operating, and mechanical department records and any other related data which may reasonably concern the performance of services for Amtrak, and such supporting documents shall be available for review and audit at points where such records are ordinarily kept. Where pertinent, such records shall include the designated train number and/or locomotive number and or car numbers, and shall be maintained and accumulated on a location-by-location basis. Such records shall be retained not less than 36 months and shall be available for inspection and copying during the regular business hours of the location where the record is retained. Specification of such minimum retention period shall not limit the right of review and audit of any records that exist.

## C.D. Adjustments

Except as provided otherwise in Appendix V, in the event either Party believes it has made a payment which exceeds (or has received a payment which is less than) the amount required by the provisions of this Agreement or a settlement between the Parties of a matter covered by this Agreement, or in the event either Party proposes to pay an amount different than that billed by the other Party, such Party shall formally submit its claim in reasonable detail to the other Party, including the specific factual basis and contract references for any adjustment, in the format and containing information as mutually agreed upon and shown in Appendix VII. ~~(The Parties agree to develop jointly a format for presentation of the factual basis and contract references in support of claims for adjustment and to present any such claim in such format as may be developed, as provided in Appendix VII.)~~

If there is a dispute between CN and Amtrak as to any adjustment to the Statement of Charges or Statement of Payments, then that adjustment shall be regarded as a disputed adjustment for that month and all subsequent months until resolution of the dispute. ~~If an adjustment~~ Disputes related to Performance Penalties or Performance Quality Payments is disputed, it shall not be included as a Performance Penalty or Performance Payment or in the determination of Net Performance Charges for purposes of Part D of Appendix V; such adjustments shall instead be resolved by the Parties in accordance with this ~~Subsection 5.2.D~~ Appendix V.

Undisputed adjustments shall be paid promptly by the other Party. In the event that a Party disagrees with the proposed adjustment or lacks sufficient information to assess the adjustment, such Party shall provide a written statement of its need for information or the theory of its disagreement and the facts supporting that theory in a form which will permit the claiming Party to evaluate the merits of the other Party's position. Any adjustment which is unresolved ninety (90) days after having been formally presented shall, at the request of either Party, be submitted to arbitration for resolution in accordance with Article VI. If it is established by agreement or arbitration more than 90

days after a claim is initially submitted to a Party that an overpayment or underpayment has occurred, the amount of such excess or shortfall shall bear interest at the 90 day U.S. Treasury bill rate applicable on the date on which the claim was first presented to the other Party, as published in the Federal Reserve Bulletin, from such date, until the date the appropriate adjustment is made. Such interest rate shall be considered an annual percentage rate and shall be computed on a monthly basis.

#### D.E. Revision of Flat Rates

If the amount of compensation specified in Appendix IV for a flat-rated item varies clearly and substantially from the actual, incremental costs incurred by CN in connection with such item, and if the flat rate is inaccurate because of the existence of a material mistake of fact, Appendix IV shall be amended so that the compensation with respect to such item shall reasonably reflect the incremental costs incurred by CN which are covered by that item. The effective date of any such amendment shall be retroactive to the date upon which notice of discovery of such mistake is given by either Party. If the Parties are unable to agree upon an amendment to Appendix IV in accordance with this Subsection, the question shall be referred, upon the request of either Party, to arbitration pursuant to Article VI. Any arbitration decision requiring adjustment of a flat rate in Appendix IV shall be applied retroactively to the date upon which notice of discovery of material mistake of fact is reported. For purposes of this provision, a material mistake of fact has occurred when there has been significant factual understanding which was incorrect and (1) was relied upon by both Parties without knowledge of its error, or (2) was relied upon by one Party, where that Party could not reasonably have known that it was incorrect, while the other Party either knew it was incorrect or failed to take reasonable steps to determine its accuracy. For purpose of this provision, a variance between actual, incremental costs and the agreed upon flat rate amount for that item which is less than 20% (unless such variance exceeds \$25,000 per year for the item) will normally be deemed not to be substantial.

### Section 5.3 Contract Advance

The contract advance in the sum of \$247800,000, which is currently in CN's possession, shall be increased to ~~\$800,000~~ effective with the execution of this agreement and shall be retained by CN until forty-five (45) days after the last day of the last month for which this Agreement provides for the basis of payment. At that time, such advance shall be credited against any amount then properly owing from Amtrak to CN under this Agreement and any remaining amount shall be refunded to Amtrak, or Amtrak shall pay CN the difference between the advance and the payments due and owing under the Agreement for the last month's operation, as the case may be. The amount of the advance shall be appropriately adjusted in the event of a deletion, addition, or substantial modification of Amtrak passenger operations over the Rail Lines.

## ARTICLE VI ARBITRATION

Except as otherwise provided herein, any claim or controversy between Amtrak and CN concerning the interpretation, application, or implementation of this Agreement shall be submitted to binding arbitration in accordance with the provisions of the Amtrak Arbitration Agreement dated April 16, 1971, among Amtrak and certain of the railroads (the "Arbitration Agreement"). CN and Amtrak hereby agree to be bound by the provisions of the Arbitration Agreement. As between the Parties hereto, the term of said Arbitration Agreement shall be deemed to continue during the term hereof, and this Agreement shall be deemed the "Basic Agreement" for purposes of the Arbitration Agreement.

## ARTICLE VII GENERAL

Section 7.1 [Reserved]

Section 7.2 Risk of Liability

■ [REDACTED]

### Section 7.3 Information

Amtrak or its designated agents shall have the right upon reasonable conditions and notice to examine the Rail Lines. CN shall furnish, when reasonably requested by Amtrak, reports to Amtrak pertaining to the Base Level of Utility and operations on the Rail Lines, which reports shall ~~set forth~~ include, but not be limited to, the speed and slow orders on each line segment of the Rail Lines, the condition and capacity of stations and terminals (including any contractual limitations governing CN's use of such stations and terminals), the availability and capacity of maintenance facilities for the Rail Lines, and current maintenance, operating and dispatching procedures for the Rail Lines.

### Section 7.4 Amtrak Operations Officer

CN shall appoint an individual of appropriate rank to be Amtrak Operations Officer and shall so notify Amtrak. The Amtrak Operations Officer shall have the responsibility within the CN organization for ensuring the performance by CN of its obligations under this Agreement.

### Section 7.5 Transportation Privileges

Company mail of CN may be transported without charge on any Intercity Rail Passenger Train by Amtrak over the Rail Lines, provided that no extra or special personnel shall be required in connection with the handling thereof.

Business cars of CN and CN officials and administrative personnel transported therein may be handled on Intercity Rail Passenger Trains, provided that the same may be done consistently with the safe and efficient operation of such trains and shall not cause

any material delays in the operation thereof and that any additional cost resulting therefrom will be borne by CN.

CN shall deadhead passenger cars in freight trains, at the request of Amtrak, provided that the same may be done consistent with the safe and efficient operation of such freight trains. Amtrak shall compensate CN for this service in accordance with Appendix IV, Table 1, Item 10(a). Employees of CN shall be entitled to ride on Intercity Rail Passenger Trains, including locomotives, without charge, whenever necessary in connection with the inspection, maintenance or operation of such trains.

Transportation privileges, if any, with respect to business and personal travel of CN personnel shall be as determined by Amtrak.

## ARTICLE VIII MISCELLANEOUS

### Section 8.1 Force Majeure

The obligations of the Parties hereunder, other than payment, shall be subject to force majeure (which shall include war, strikes, riots, floods, accidents, acts of God, terrorism, and other causes or circumstances beyond the reasonable control of the Party claiming such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

### Section 8.2 Successors and Assigns

All the covenants and obligations of the Parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns. None of Amtrak's operating or use rights under this Agreement may be assigned to any other party, other than a party that is entitled by federal statute to access, operating, and use rights to the Rail Lines on the same terms and subject to the same conditions as Amtrak, without CN's written consent.

### Section 8.3 Interpretation

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof. This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the appendices shall bind the Parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm, or corporation other than Amtrak or CN any legal or equitable right, remedy, or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived, or modified orally, but only by an instrument in writing signed by Amtrak and CN, unless a provision hereof expressly permits either of said Parties to effect termination, amendment, supplementation, waiver, or modification hereunder, in which event such action shall be taken in accordance with the terms of such provision.

### Section 8.4 Severability

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

### Section 8.5 Notices

Except as provided below with respect to communications pursuant to Section 3.2, Subsection 3.4.E., and Section 5.1, any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one Party by the other Party, shall be in writing and shall be delivered by hand, by a nationally recognized overnight courier postage prepaid, or by deposit in the mails of the United States postage prepaid,

if to Amtrak, in an envelope addressed as follows:

National Railroad Passenger Corporation  
2955 Market Street  
Philadelphia, PA 19104  
Attention: Senior Director Host Railroads

with a copy to:

National Railroad Passenger Corporation  
1 Massachusetts Avenue, NW  
Washington, DC 20001  
Attention: General Counsel/Chief Legal Officer

and if to CN, in an envelope addressed as follows:

CN  
17641 Ashland Avenue  
Homewood, IL 60430-1345  
Attention: Amtrak Operations Officer

Each Party may change the address at which it shall receive notification hereunder by notifying the other of such change.

All notices, requests, and other written communications pursuant to Section 3.2, Subsection 3.4.E., and Section 5.1 shall be made, whenever feasible, by e-mail, addressed by Amtrak to the Amtrak Operations Officer of CN or by CN to the Director Scheduling of Amtrak. If such e-mail communication is not feasible, then such communications shall be by mail, to CN at the address provided above, and to Amtrak at the following address:

National Railroad Passenger Corporation  
525 West Van Buren Street, Suite 226  
Chicago, IL 60607

Attention: Director Scheduling

#### Section 8.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original.

#### Section 8.7 Relationship of Parties

In rendering any service or in furnishing any equipment, materials or supplies hereunder, CN is acting solely pursuant to this Agreement with Amtrak made pursuant to the Act and not in its capacity as a common carrier. Neither Party shall be deemed an agent of the other Party to this Agreement.

#### Section 8.8 Term

A. This Agreement shall become effective on May 1, 2011~~[date ordered by the STB]~~ and, except as otherwise provided in Subsections B through D below, shall remain in effect for a period of seven (7) yearsthrough August 11, 2013. At any time after [the day and month ordered by the STB], 2029<sup>1</sup>, either Party may give the other Party twelve (12) months' written notice to terminate.

B. The provisions of Subsection 4.1.B., Section 4.2, Section 8.9, and Appendices I and IV with respect to the St. Charles Air Line Route and the Markham-to-Grand Crossing Route shall survive any termination of this Agreement. The provisions of Subsection 4.1.C., Appendix IV, Item 14, and Appendix IX with respect to the St. Charles Air Line Route shall survive any termination of this Agreement.

C. CN shall have the right to terminate this Agreement, with 60 days' written notice to Amtrak, at any time during the term of this Agreement in the event that legislation is

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<sup>1</sup> Use of the year "2029" in Section 8.8.A presumes the Board issues a final decision setting terms and conditions in 2022. If the Board's decision is not issued until 2023, the year "2030" should be inserted here instead.

enacted that terminates Amtrak's existence or fundamentally changes Amtrak in a manner that has or will have a material adverse impact on CN's rights and obligations under this Agreement.

D. On the effective date of this Agreement, the ~~1995-2011~~ Agreement is terminated. ~~Notwithstanding anything to the contrary in the Twenty-First Amendment to the 1995 Agreement, that Amendment is terminated as of the effective date of this Agreement.~~ The termination of the ~~1995-2011~~ Agreement shall not affect any claim arising under or dispute resolution mechanism afforded by such Agreement or relieve either Party of any liability or obligation incurred prior to such termination.

#### Section 8.9 St. Charles Air Line and Markham to Grand Crossing Routes

A. CN's obligations and Amtrak's rights and costs to use the St. Charles Air Line Route, shall expire and have no further effect upon the earlier of (i) six (6) months after Amtrak begins to provide regularly scheduled passenger rail service over either the Grand Crossing Route or another route that provides an alternative to the St. Charles Air Line Route for passenger rail service to or from Union Station in Chicago acceptable to Amtrak, or (ii) such time as Amtrak ceases for a continuous period of one year to use the St. Charles Air Line Route to provide scheduled passenger rail service at least three (3) days per week to and from Union Station in Chicago.

B. Section 4.1 notwithstanding, if, at any time after expiration of Amtrak's rights to use the St. Charles Air Line Route provided in Subsection 8.9.A., CN or another carrier files an application, petition, or other request for regulatory authority for discontinuance of service on or abandonment of the St. Charles Air Line Route or any portion thereof, Amtrak shall not (i) protest or oppose, either directly or indirectly, such application, petition, or request, (ii) make or support any office of financial assistance or subsidy respecting any portion of the St. Charles Air Line Route; or (iii) request that the STB establish conditions or compensation regarding an acquisition of any portion of the St. Charles Air Line Route.

C. Section 4.1 shall expire with respect to and have no further effect with respect to the Markham-to-Grand Crossing Route if and when Amtrak ceases for a continuous period of one (1) year to use the Markham-to-Grand Crossing Route to provide scheduled passenger rail service at least three (3) days per week to and from Union Station in Chicago.

#### Section 8.10 Southport Junction Adjustments.

For the term of this Agreement, CN shall waive its charges to Amtrak for the incremental costs of operation and maintenance attributable to Amtrak train operations over the interlocking at Southport Junction, Louisiana. In consideration of that waiver, for the term of this Agreement, and notwithstanding the termination of the agreement between Amtrak and the City of New Orleans by and through the New Orleans Union Passenger Terminal Committee, dated June 1, 1977 ("New Orleans Agreement") and the termination of the Agreement Providing For The Construction And Use of a Union Passenger Terminal in the City of New Orleans, dated October 22, 1947 ("Terminal Agreement"), Amtrak shall continue to provide CN, free of charge, with the rights specified in Paragraph 8 of the New Orleans Agreement, including rights to use the trackage referenced in said Paragraph 8 (and the Sections of the Terminal Agreement incorporated by reference therein). To the extent that construction of any additional tracks or turnouts connecting to New Orleans Union Passenger Terminal trackage is required by CN solely for CN's freight operations, CN shall pay the cost of construction and maintenance of such additional tracks and turnouts.

#### Section 8.11 Equal Employment Opportunity.

CN shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CN will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of

compensation, and selection for training, including apprenticeship.

#### Section 8.12 Office of Inspector General

Nothing in this Agreement is intended to derogate any right, duty, or obligation of Amtrak's Office of Inspector General under the Inspector General Act of 1978, as amended.

#### Section 8.13 Marks, MS Station

To accommodate the initiation of Amtrak service by Amtrak Ttrains #58 and #58 to a new station in Marks, MS, and effective on the date of commencement of such service, CN and Amtrak have adjusted the schedules and tables in Appendices II and V for Amtrak Ttrains #58 and #59 as follows: (a) added twenty (20) minutes of miscellaneous time, plus five (5) additional minutes to accommodate stops at the New Station by each of the trains (three (3) minutes of run time and two (2) minutes of station dwell time), and (b) reduced station dwell time ten (10) minutes at Memphis, TN. Except as provided below in this Section 8.13, no changes to these adjustments shall be made except by agreement by the Parties.

If a station side track reasonably acceptable to CN is constructed at Marks, MS, CN and Amtrak shall amend this Agreement to adjust the schedules and tables in Appendices II and V for Amtrak Ttrains #58 and #59 solely to remove the twenty (20) minutes of Miscellaneous Time that was added to such schedules and tables at the commencement of the service to Marks, MS, less the number of minutes, if any, by which such Miscellaneous Time has subsequently (i.e., already) been removed from such schedules and tables. The Parties agree that the effective date of such an amendment shall be the date that the station side track is placed into service for use by Amtrak's trains.

If service to the Marks, MS station is discontinued, CN and Amtrak shall amend this Agreement to adjust the schedules and tables of Appendices II and V for Amtrak

Ttrains #58 and #59 solely to (i) remove the (20) minutes of Miscellaneous Time that was added to such schedules and tables at the commencement of the service to Marks, MS, less the number of minutes, if any, by which the Miscellaneous Time that was added to the schedules and tables in Appendices II and V at the commencement of the service to Marks, MS has subsequently (i.e., already) been removed from such schedules and tables, and (ii) remove from such schedules and tables the three (3) minutes of Pure Running Time and two (2) minutes of Dwell Time that was added for the station stop at Marks, MS at the commencement of service to Marks, MS. The Parties agree that the effective date of such an amendment shall be the date Amtrak service to the Marks, MS station is discontinued.

Amtrak shall modify its public schedules in accordance with any schedule amendments made pursuant to this Section 8.13, with any such modification taking effect on the effective date of the corresponding amendment under this Section 8.13.

#### Section 8.14 Confidentiality

CN and Amtrak agree that Section 7.2 and Appendices IV, V and IX of this Agreement are confidential and that neither Party shall disclose all or any portion Section 7.2 or Appendices IV, V or IX of this Agreement to any third party or allow any third party access to Section 7.2 or Appendices IV, V or IX of this Agreement without the prior written consent of the other Party, except to the extent required by law, regulation or legal process, including, but not limited to the Freedom of Information Act. In the event either Party is required by law, regulation or legal process to disclose all or any portion Section 7.2 or Appendices IV, V or IX of this Agreement to a third party, such Party agrees to (i) give the other Party notice prior to such disclosure so such other Party has the opportunity to contest the disclosure or seek a protective order, and (ii) invoke and apply any legally available exemptions from disclosure.

IN WITNESS WHEREOF, Amtrak, GTW, and IC have caused this Agreement to be duly

executed by their respective officers thereunto duly authorized.

NATIONAL RAILROAD PASSENGER  
CORPORATION

GRAND TRUNK WESTERN RAILROAD  
COMPANY

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Region Director Contracts & Administration

ILLINOIS CENTRAL RAILROAD  
COMPANY

By: \_\_\_\_\_

Title: Region Director Contracts & Administration

## **APPENDIX I**

### **Maximum Passenger Train Speeds**

[AMTRAK HAS OMITTED THE TIMETABLES AS THEY ARE NOT RELEVANT TO  
ANY DISPUTED ISSUES IN THIS MATTER]

## **APPENDIX II**

### **Amtrak Passenger Schedules**

(30 pages following)

[AMTRAK HAS OMITTED APPENDIX II AS IT IS NOT RELEVANT TO ANY  
DISPUTED ISSUES IN THIS MATTER]

## APPENDIX III

[Reserved]

## **APPENDIX IV**

### **Current Costs and Price Level Adjustments**

(145 pages following)

[REDACTED]

## APPENDIX V

### **Performance Quality Payments and Performance Penalties**

(18-8\_pages following)

**[REDACTED]**

**APPENDIX VI**

**[Reserved]Payment for Operations of Amtrak Trains on GTW Lines**

(8 pages following)

**[REDACTED]**

**APPENDIX VII**

**Statement of Charges Format**

And

Statement of Payments Format

(406 pages following)



STATEMENT OF PAYMENTS - NRPC to CN

Month of \_\_\_\_\_

QUALITY PAYMENTS AND PENALTIES

| ROUTE               | COTP | FTI | D-SR | DCS | RTE | DNW | PTI | <CTI | TOTAL DELAY MINUTES | ROUTE TRAIN MILES | DAF | Quality \$ | Penalty \$ | TOTAL INVOICE AMOUNT |
|---------------------|------|-----|------|-----|-----|-----|-----|------|---------------------|-------------------|-----|------------|------------|----------------------|
| City of New Orleans |      | -   | -    | -   | -   | -   | -   | -    | -                   | -                 | -   | \$ -       | \$ -       |                      |
| Illini Saluki       |      | -   | -    | -   | -   | -   | -   | -    | -                   | -                 | -   | \$ -       | \$ -       |                      |
| Lincoln             |      | -   | -    | -   | -   | -   | -   | -    | -                   | -                 | -   | \$ -       | \$ -       |                      |
| Texas Eagle         |      | -   | -    | -   | -   | -   | -   | -    | -                   | -                 | -   | \$ -       | \$ -       |                      |
| Wolverine           |      | -   | -    | -   | -   | -   | -   | -    | -                   | -                 | -   | \$ -       | \$ -       |                      |
| Blue Water          |      | -   | -    | -   | -   | -   | -   | -    | -                   | -                 | -   | \$ -       | \$ -       |                      |
|                     |      |     |      |     |     |     |     |      |                     |                   |     |            | \$ -       |                      |

| APPENDIX V TABLE 1  | Ridership Factor |
|---------------------|------------------|
| City of New Orleans | \$290,584        |
| Illini Saluki       | \$245,725        |
| Lincoln             | \$127,522        |
| Texas Eagle         | \$12,114         |
| Wolverine           | \$122,720        |
| Blue Water          | \$205,311        |

**STATEMENT OF CHARGES - CN to NRPC**

Month of \_\_\_\_\_

FLAT RATED COSTS

SAP Invoice Number

| Item Number | Description                     | No of Units | Unit of Measure | Unit Cost | Total Cost | Remarks |
|-------------|---------------------------------|-------------|-----------------|-----------|------------|---------|
| 1(c)        | Fuel Handling                   |             | Gallons         |           | \$ -       |         |
| 3           | Locomotive Rentals:             |             |                 |           |            |         |
|             | 0 - 1999 HP                     |             | Per Hour        |           | \$ -       |         |
|             | 2000 - 2999 HP                  |             | Per Hour        |           | \$ -       |         |
|             | over 2999 HP                    |             | Per Hour        |           | \$ -       |         |
| 7           | Non Routine Switching           |             | Per Hour        |           | \$ -       |         |
|             | Non Routine Hostling            |             | Per Hour        |           | \$ -       |         |
| 10(a)       | Transporting Amtrak Cars        |             | Car Unit Mile   |           | \$ -       |         |
| 10(a)       | Transporting Amtrak Locomotives |             | Loco Unit Mile  |           | \$ -       |         |
| 14          | St Charles Air Line             |             | Per Trip        |           | \$ -       |         |
| 17(a)       | Special Trains - Base           |             | Train Mile      |           | \$ -       |         |
| 17(b)       | Special Trains - Incentive      |             | Train Mile      |           | \$ -       |         |
| 26          | Pontiac Wye                     |             | Per Train       |           | \$ -       |         |
|             |                                 |             |                 |           | \$ -       |         |

**STATEMENT OF CHARGES - CN to NRPC**

Month of \_\_\_\_\_

**ACTUAL COSTS**

| Item Number | Description   | Labor | Material | Other | Total |
|-------------|---|-------|----------|-------|-------|
| 1(a)        | Train and Engine Piloting and<br>Emergency Crew Wages | \$ -  | \$ -     | \$ -  | \$ -  |
| 1(b)        | Diesel Fuel   | \$ -  | \$ -     | \$ -  | \$ -  |
| 2(b)        | Non-Routine Servicing                                 | \$ -  | \$ -     | \$ -  | \$ -  |
| 4(a)        | Station Maintenance                                   | \$ -  | \$ -     | \$ -  | \$ -  |
| 4(b)        | Snow Removal  | \$ -  | \$ -     | \$ -  | \$ -  |
| 8(a)        | Material & Train Supplies                             | \$ -  | \$ -     | \$ -  | \$ -  |
| 8(b)        | Materials Handling 10%                                | \$ -  | \$ -     | \$ -  | \$ -  |
| 9           | Clearing Wrecks<br>AN#                                | \$ -  | \$ -     | \$ -  | \$ -  |
| 12          | Timetable Printing                                    | \$ -  | \$ -     | \$ -  | \$ -  |
| 13(a)(b)    | Passenger Facilities                                  | \$ -  | \$ -     | \$ -  | \$ -  |
| 16          | Amtrak Operations Officer                             | \$ -  |          |       | \$ -  |
| 16          | Manager Passenger Contract Compliance                 | \$ -  |          |       | \$ -  |
| 16          | Service Design/Analyst/Account (FTE)                  | \$ -  |          |       | \$ -  |
| 18          | Emergency Trains                                      | \$ -  | \$ -     | \$ -  | \$ -  |
| 19          | Detour Trains on Other Railroads                      | \$ -  | \$ -     | \$ -  | \$ -  |
| 21          | Emergency Services                                    | \$ -  | \$ -     | \$ -  | \$ -  |
| 22          | Running Repairs                                       | \$ -  | \$ -     | \$ -  | \$ -  |
| 23          | Removal of Facilities                                 | \$ -  | \$ -     | \$ -  | \$ -  |
| 24          | Fuel Oil Spill Cleanup                                | \$ -  | \$ -     | \$ -  | \$ -  |
|             |   | \$ -  | \$ -     | \$ -  | \$ -  |



**STATEMENT OF CHARGES - CN to NRPC**

Month of July 2015

**SUMMARY STATEMENT**

| Description                | Amount | <p>The above named Railroad hereby certifies to NRPC that this monthly report is complete and correct. furthermore, all statistics shown herein are appropriately related to NRPC activities, and all costs shown herein are properly chargeable to NRPC under the National Railroad Passenger Corporation agreement dated _____ and subsequent amending agreements.</p> <p>_____<br/>Responsible CN Officer</p> <p>_____<br/>Manager Receivables</p> |
|----------------------------|--------|---|
| Flat Rated Costs           | \$ -   |   |
| Actual Costs               | \$ -   |   |
| Authorization Notice Costs | \$ -   |   |
| Total Payable to CN        | -      |   |
|                            |        |   |

**STATEMENT OF PAYMENTS - NRPC to CN**

Month of \_\_\_\_\_

**FLAT RATED COSTS**

| Item Number | Description                   | No of Units | Unit of Measure | Unit Cost | Total Cost | Remarks |
|-------------|-------------------------------|-------------|-----------------|-----------|------------|---------|
| 5           | Station Utilities             |             | Month           |           | \$ -       |         |
| 6           | Incremental Track Maint.      |             | Train Miles     |           | \$ -       |         |
| 10(b)       | Transporting CN Business Cars |             | Car Unit Mile   |           | \$ -       |         |
| 10(b)       | Transporting CN Business Cars |             | Loco Unit Mile  |           | \$ -       |         |
| 11          | Communications                |             | Month           |           | \$ -       |         |
| 13(c)       | Passenger Facilities          |             | Month           |           | \$ -       |         |
| 15          | Other Train Costs             |             | Per Mile        |           | \$ -       |         |
| 25          | MW Trains                     |             | Per train       |           | \$ -       |         |
|             |                               |             |                 |           | \$ -       |         |

\$ -

**QUALITY PAYMENTS AND PENALTIES**

| ROUTE               | Quality \$ | Penalty \$ |
|---------------------|------------|------------|
| City of New Orleans | \$ -       | \$ -       |
| Illini/Saluki       | \$ -       | \$ -       |
| Lincoln             | \$ -       | \$ -       |
| Texas Eagle         | \$ -       | \$ -       |
| Wolverine           | \$ -       | \$ -       |
| Blue Water          | \$ -       | \$ -       |

OTP Total

\$ -

Total Payable to CN (Payable to NRPC)

\$ -

**STATEMENT OF PAYMENTS - NRPC to CN**

Month of \_\_\_\_\_

**QUALITY PAYMENTS AND PENALTIES      DETAIL**

| ROUTE               | FTI | DSR | DCS | RTE | DMW | PTI | CTI | TOTAL HRD DELAY MINUTES | ROUTE TRAIN MILES | HRD PER 10K TRAIN MILES | Quality \$  | Penalty \$ | TOTAL INVOICE AMOUNT |
|---------------------|-----|-----|-----|-----|-----|-----|-----|-------------------------|-------------------|-------------------------|-------------|------------|----------------------|
| City of New Orleans | -   | -   | -   | -   | -   | -   | -   | -                       | -                 | -                       | \$ -        | \$ -       |                      |
| Illini/Saluki       | -   | -   | -   | -   | -   | -   | -   | -                       | -                 | -                       | \$ -        | \$ -       |                      |
| Lincoln             | -   | -   | -   | -   | -   | -   | -   | -                       | -                 | -                       | \$ -        | \$ -       |                      |
| Texas Eagle         | -   | -   | -   | -   | -   | -   | -   | -                       | -                 | -                       | \$ -        | \$ -       |                      |
| Wolverine           | -   | -   | -   | -   | -   | -   | -   | -                       | -                 | -                       | \$ -        | \$ -       |                      |
| Blue Water          | -   | -   | -   | -   | -   | -   | -   | -                       | -                 | -                       | \$ -        | \$ -       |                      |
|                     |     |     |     |     |     |     |     |                         |                   |                         | <b>\$ -</b> |            |                      |

**APPENDIX V  
TABLE 1**

|                     | Threshold | Maximum Quality Payment Point | Maximum Penalty Payment Point | Quality Rate | Penalty Rate |
|---------------------|-----------|-------------------------------|-------------------------------|--------------|--------------|
| City of New Orleans | 709       | 426                           | 1145                          | 0.0206       | 0.0206       |
| Illini/Saluki       | 432       | 147                           | 1240                          | 0.0206       | 0.0206       |
| Lincoln             | 1073      | 441                           | 1680                          | 0.0094       | 0.0094       |
| Texas Eagle         | 615       | 408                           | 1604                          | 0.0281       | 0.0281       |
| Wolverine           | 411       | 40                            | 1609                          | 0.0133       | 0.0133       |
| Blue Water          | 936       | 750                           | 1163                          | 0.0146       | 0.0146       |

**STATEMENT OF CHARGES - CN to NRPC**

Month of \_\_\_\_\_

**FLAT RATED COSTS**

SAP Invoice Number

| Item Number | Description   | No of Units | Unit of Measure | Unit Cost | Total Cost | Remarks |
|-------------|---|-------------|-----------------|-----------|------------|---------|
| 1(c)        | Fuel Handling   |             | Gallons         |           | \$ -       |         |
| 3           | Locomotive Rentals<br>0 - 1999 HP<br>2000 - 2999 HP<br>over 2999 HP |             | Per Hour        |           | \$ -       |         |
|             |   |             | Per Hour        |           | \$ -       |         |
|             |   |             | Per Hour        |           | \$ -       |         |
| 7           | Non Routine Switching<br>Non Routine Hostling                       |             | Per Hour        |           | \$ -       |         |
|             |   |             | Per Hour        |           | \$ -       |         |
| 10(a)       | Transporting Amtrak Cars  |             | Car Unit Mile   |           | \$ -       |         |
| 10(a)       | Transporting Amtrak Locomotives                                     |             | Loco Unit Mile  |           | \$ -       |         |
| 14          | St Charles Air Line   |             | Per Trip        |           | \$ -       |         |
| 17(a)       | Special Trains - Base   |             | Train Mile      |           | \$ -       |         |
| 17(b)       | Special Trains - Incentive  |             | Train Mile      |           | \$ -       |         |
| 26          | Pontiac Wye   |             | Per Train       |           | \$ -       |         |
|             |   |             |                 |           | \$ -       |         |

**STATEMENT OF CHARGES - CN to NRPC**

Month of \_\_\_\_\_

**ACTUAL COSTS**

| Item Number | Description   | Labor | Material | Other | Total |
|-------------|---|-------|----------|-------|-------|
| 1(a)        | Train and Engine Piloting and<br>Emergency Crew Wages | \$ -  | \$ -     | \$ -  | \$ -  |
| 1(b)        | Diesel Fuel   | \$ -  | \$ -     | \$ -  | \$ -  |
| 2(b)        | Non-Routine Servicing                                 | \$ -  | \$ -     | \$ -  | \$ -  |
| 4(a)        | Station Maintenance                                   | \$ -  | \$ -     | \$ -  | \$ -  |
| 4(b)        | Snow Removal  | \$ -  | \$ -     | \$ -  | \$ -  |
| 8(a)        | Material & Train Supplies                             | \$ -  | \$ -     | \$ -  | \$ -  |
| 8(b)        | Materials Handling 10%                                | \$ -  | \$ -     | \$ -  | \$ -  |
| 9           | Clearing Wrecks<br>AN #                               | \$ -  | \$ -     | \$ -  | \$ -  |
| 12          | Timetable Printing                                    | \$ -  | \$ -     | \$ -  | \$ -  |
| 13(a)(b)    | Passenger Facilities                                  | \$ -  | \$ -     | \$ -  | \$ -  |
| 16          | Amtrak Operations Officer                             | \$ -  | \$ -     | \$ -  | \$ -  |
| 16          | Manager Passenger Contract Compliance                 | \$ -  | \$ -     | \$ -  | \$ -  |
| 16          | Service Design/Analyst/Account (FTE)                  | \$ -  | \$ -     | \$ -  | \$ -  |
| 18          | Emergency Trains                                      | \$ -  | \$ -     | \$ -  | \$ -  |
| 19          | Detour Trains on Other Railroads                      | \$ -  | \$ -     | \$ -  | \$ -  |
| 21          | Emergency Services                                    | \$ -  | \$ -     | \$ -  | \$ -  |
| 22          | Running Repairs                                       | \$ -  | \$ -     | \$ -  | \$ -  |
| 23          | Removal of Facilities                                 | \$ -  | \$ -     | \$ -  | \$ -  |
| 24          | Fuel Oil Spill Cleanup                                | \$ -  | \$ -     | \$ -  | \$ -  |
|             |   | \$ -  | \$ -     | \$ -  | \$ -  |



**STATEMENT OF CHARGES - CN to NRPC**

Month of \_\_\_\_\_

**SUMMARY STATEMENT**

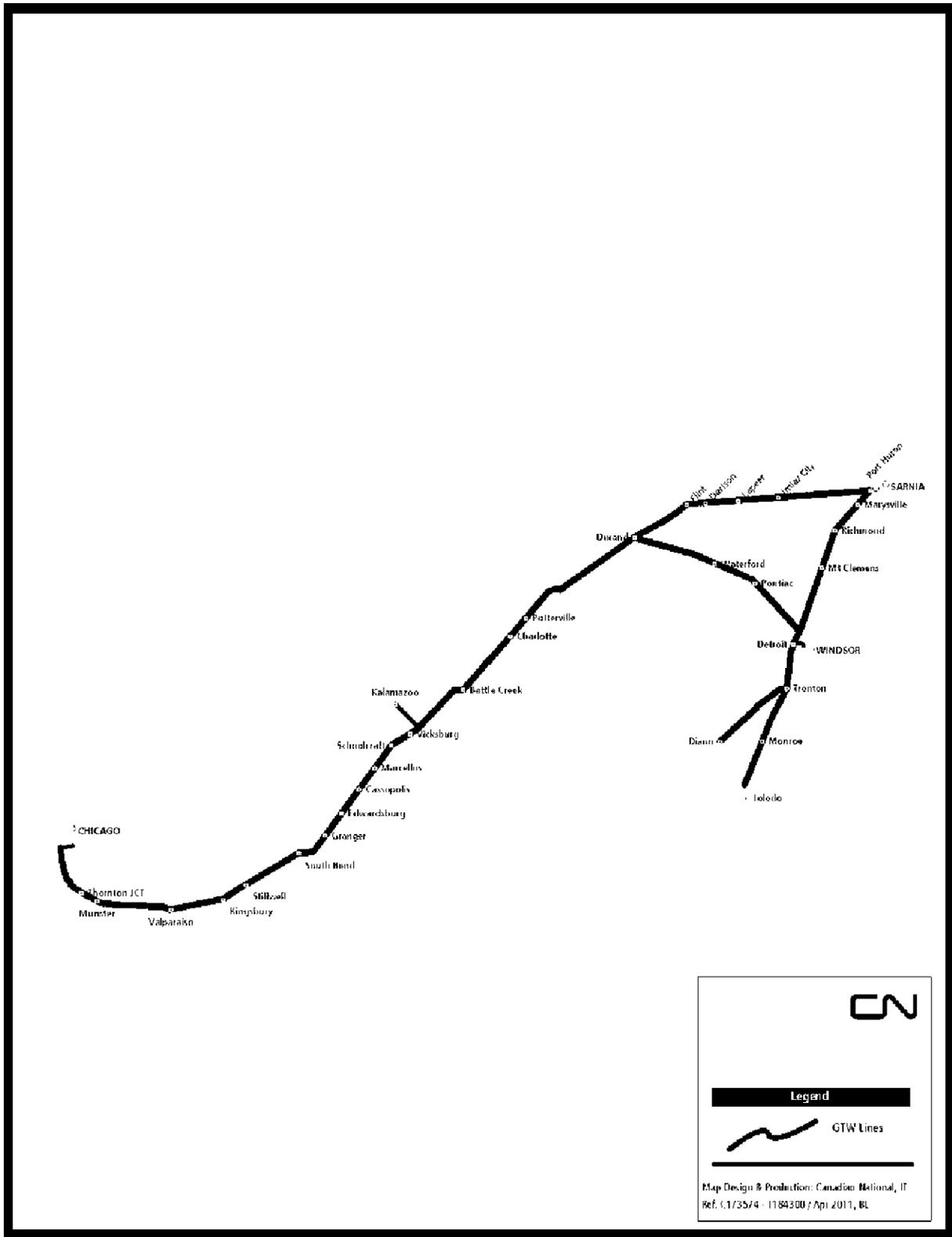
| Description                | Amount | The above named Railroad hereby certifies to NRPC that this monthly report is complete and correct. furthermore, all statistics shown herein are appropriately related to NRPC activities, and all costs shown herein are properly chargeable to NRPC under the National Railroad Passenger Corporation agreement dated _____ and subsequent amending agreements. |
|----------------------------|--------|---|
| Flat Rated Costs           | \$ -   |   |
| Actual Costs               | \$ -   |   |
| Authorization Notice Costs | \$ -   |   |
| Total Payable to CN        |        | _____<br>Responsible CN Officer   |
|                            |        | _____<br>Manager Receivables  |

**APPENDIX VIII**

**Maps of Rail Lines**

(2 pages following)





**APPENDIX IX**

**Payment for Amtrak Operations over the St. Charles Air Line Route**

(7 pages following)

[REDACTED]

## APPENDIX X

### General Location of Wayside Signage

| Amtrak Station   | Station Address                                      |
|------------------|--|
| Battle Creek     | 104 Capital Ave. SW<br>Battle Creek, MI 49017        |
| Royal Oak        | 202 South Sherman Dr.<br>Royal Oak, MI 48069         |
| Troy             | 1201 Doyle Rd.<br>Troy, MI 48084                     |
| Detroit          | 11 W. Baltimore Avenue<br>Detroit, MI 48202          |
| Durand           | 200 South Railroad Street<br>Durand, MI 48429        |
| East Lansing     | 1240 S. Harrison Road<br>East Lansing, MI 48823      |
| Flint            | 1407 S. Dort Highway<br>Flint, MI 48503              |
| Lapeer           | 73 Howard Street<br>Lapeer, MI 48446                 |
| Pontiac, MI      | 51000 Woodward Avenue<br>Pontiac, MI 48342           |
| Port Huron       | 2223 16 <sup>th</sup> Street<br>Port Huron, MI 48069 |
| Carbondale       | 401 South Illinois Street<br>Carbondale, IL 62901    |
| Centralia        | 108 E. Broadway<br>Centralia, IL 62801               |
| Champaign-Urbana | 45 E. University Avenue<br>Champaign, IL 61820       |
| Du Quoin         | 20 North Chestnut Street<br>Du Quoin, IL 62832       |

| Amtrak Station | Station Address   |
|----------------|---|
| Effingham      | 401 West National Avenue<br>Effingham, IL 62401               |
| Gilman         | U.S. Highway 24 & West Wenona Street<br>Gilman, IL 60983      |
| Homewood       | 18015 Park Avenue<br>Homewood, IL 60430                       |
| Kankakee       | 199 South East Avenue<br>Kankakee, IL 60901                   |
| Mattoon        | 1718 Broadway Avenue<br>Mattoon, IL 61938                     |
| Rantoul        | West Sangamon & North Kentucky<br>Rantoul, IL 61866           |
| Summit, IL     | Archer Avenue & South Center Avenue<br>Summit, IL 60501       |
| Fulton         | 21 Newton Road<br>Fulton, KY 42041                            |
| Hammond, LA    | 404 N.W. Railroad Avenue<br>Hammond, LA 70401                 |
| Brookhaven     | 440 N. Railroad Avenue<br>Brookhaven, MS 39601                |
| Hazelhurst     | N Ragsdale Avenue & E. Conway Street<br>Hazelhurst, MS 39083  |
| Greenwood      | Carrollton Avenue & East Gibson Street<br>Greenwood, MS 38930 |
| Jackson, MS    | 300 West Capitol Street<br>Jackson, MS 39201                  |

| Amtrak Station    | Station Address                            |
|-------------------|--|
| McComb, MS        | 110 Railroad Avenue<br>McComb, MS 39648    |
| Yazoo City        | 222 West Broadway<br>Yazoo City, MS 39194  |
| Memphis           | 545 South Main Street<br>Memphis, TN 38103 |
| Newbern-Dyersburg | 108 Jefferson Street<br>Newbern, TN 38059  |

**Exhibit A**

**Side Letters**

(7 pages following)

**[REDACTED]**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER  
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**VERIFIED STATEMENT OF JAMES A. BLAIR  
ON BEHALF OF NATIONAL RAILROAD PASSENGER CORP.**

1. I submit this Verified Statement in support of the opening submission of the National Railroad Passenger Corporation (“Amtrak”) in this matter.

2. This Verified Statement will explain Amtrak’s proposal for certain terms and conditions of a new operating agreement (“OA”) between Amtrak and certain subsidiaries of Canadian National Railway Company.

**I. Background and Qualifications, Statutory History Relevant to the Parties’ Relationship, the 2011 Operating Agreement and the Board’s 2019 Decision**

3. I am presently employed by the National Railroad Passenger Corporation (“Amtrak”) as Assistant Vice President - Host Railroads. I have held this position since October 2021. Before holding this position, I held the following positions: Senior Director - Host Railroads for 2 years; Director - Host Railroads and Principal - Host Railroads for 11 years. I have worked in and around the railroad industry since 1984, including 12 years at Conrail before I become employed with Amtrak.

4. Approximately 97% of the tracks on which Amtrak’s passenger trains operate are owned, maintained, and dispatched by Host Railroads,<sup>1</sup> including several freight railroads.

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<sup>1</sup> In this Verified Statement, “Host Railroad” has the same meaning as defined in the FRA’s Final Rule (discussed later in this Verified Statement) - - *i.e.*, “a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment.” See 49 C.F.R. § 273.3. For purposes of this Verified Statement, use of the term “Host Railroad” does not include Amtrak, unless expressly indicated.

5. Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (subsidiaries of Canadian National Railway Company and direct parties to the governing OA with Amtrak at issue in this proceeding) are two of Amtrak’s Host Railroads. In this Verified Statement, “CN” refers collectively to IC and GTW, but not their parent company.<sup>2</sup>

6. In my present position as Assistant Vice President - Host Railroads, I am extensively involved in and manage Amtrak’s business relationships with its Host Railroads, including CN.

7. The Host Railroads Group (“HRG”) has a number of responsibilities, which include the administration and oversight of Amtrak’s OAs with the Host Railroads.

8. Currently, Amtrak has approximately 34 OAs with 30 different Host Railroads. Among Amtrak’s Host Railroads are six Class 1 freight railroads (Canadian National Railway Company, CSXT, BNSF Railway, Norfolk Southern Railway, Union Pacific Railroad and Canadian Pacific Railway) or their subsidiaries.

9. The HRG also manages approximately 2,000 additional agreements related to Amtrak’s operations over Host Railroad systems. Those agreements include leases for real property and tracks, construction agreements, agreements impacting regional rail services, and an assortment of other agreements addressing various matters, including, for example, the operation of Amtrak “special” (not regularly scheduled) trains.

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<sup>2</sup> The following Amtrak routes operated on CN’s system are the subject of this action: Blue Water, Wolverine, Lincoln, Texas Eagle, Illini/Saluki and City of New Orleans. For Amtrak’s Illini/Saluki and City of New Orleans services, CN is the only Host Railroad (although Amtrak itself hosts certain portions of those routes). The Blue Water, Wolverine, Lincoln, and Texas Eagle routes are hosted by other Host Railroads in addition to CN. Amtrak also operates its Sunset Limited and Adirondack routes on CN’s system. Those routes are not, however, material the Parties dispute.

10. Based upon my experience within the HRG, I am personally familiar with the issues that arise in Amtrak's relationships with its Host Railroads. I am also personally familiar with the historical changes in the railroad industry, and resulting federal legislation, which led to the creation of Amtrak and its relationships with its Host Railroads.

11. Historically, as common carriers, private railroads (including freight railroads) were obligated to also provide passenger rail services. By the mid-20th century, railroads were sustaining significant financial losses related to their operation of passenger rail services.

12. Congress enacted the Rail Passenger Service Act of 1970 ("RPSA") to create Amtrak for the purpose of sustaining passenger rail services. Through Amtrak, Congress enabled private railroads (including freight railroads) to be relieved of their common carrier obligation to provide passenger rail services. In exchange, however, Congress mandated that the private railroads allow Amtrak to access their tracks and other facilities necessary for Amtrak to provide passenger rail service.

13. Against this statutory backdrop, the terms and conditions of Amtrak's operations of its passenger trains on Host Railroads are governed by individually negotiated OAs between Amtrak and the Host Railroads.

14. In the event that Amtrak and a Host Railroad are unable to reach an agreement on the terms of an OA, the Surface Transportation Board ("the Board") is empowered to order that the Host Railroad's "facilities be made available and the services provided to Amtrak" and to "prescribe reasonable terms and compensation for using the facilities and providing the services." 49 U.S.C. §§ 24308(a)(2)(A)(i, ii).

15. As the Board is aware, in establishing "reasonable compensation", Congress requires that it "consider quality of service as a major factor when determining whether, and the

extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.” 49 U.S.C. § 24308(a)(2)(B).

16. I have been, and remain, personally involved in the negotiations of terms and conditions concerning OAs between Amtrak and its Host Railroads.

17. Amtrak’s goal is to negotiate OAs with the Host Railroads that are consistent with and further the goals which Congress has established for Amtrak, including the provision of “quality” passenger rail service. Several terms of the OAs are impacted by statutory requirements intended to promote the on-time performance of Amtrak’s passenger trains over the Host Railroads’ tracks.

18. For example, Congress mandates that Amtrak’s passenger trains have preference over freight train traffic on the Host Railroad’s tracks (absent an emergency). 49 U.S.C. § 24308(c). This preference codifies the historical practice of railroads to give priority to passenger trains, and is intended, in part, to ameliorate the cause of the most significant delays impacting Amtrak’s passenger trains - - freight train traffic restricting the movement of Amtrak trains (commonly referred to as “freight train interference” (“FTI”)).

19. Congress also established a goal for Amtrak that it “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. § 24101(c)(4). Because Host Railroads schedule train maintenance on their systems and also make all dispatching decisions, impacting which trains have priority, the Host Railroads have tremendous influence over the performance of Amtrak trains operating on their tracks.

20. Historically, when Host Railroads have employed poor dispatching practices, or dispatching practices which do not preference Amtrak passenger rail traffic over freight traffic,

the on-time performance of Amtrak trains operating on that Host Railroad's system has been poor.

21. To help promote on-time performance of Amtrak's trains on a Host Railroad's system, Congress has mandated that Amtrak's OAs with Host Railroads "include a penalty for untimely performance" of Amtrak's passenger trains on the Host Railroad's system. 49 U.S.C. § 24308(a).

22. To further incentivize Host Railroads to promote on-time performance of Amtrak trains on their systems, most OAs provide for performance or incentive payments to the Host Railroads. Host Railroads can earn these payments if Amtrak trains on its system meet or exceed certain contractual standards.

23. The current OA between CN and Amtrak is dated May 1, 2011 ("the 2011 OA"), and has been amended through the use of approximately fifty (50) Amendment Agreement Change Records ("AAC"). (Exhibit 1).<sup>3</sup> Although that agreement was scheduled to expire on August 11, 2013, the Board directed that CN continue to make its facilities available to Amtrak under the terms of the 2011 OA pending final resolution of this matter and the setting of new terms and conditions for an OA between Amtrak and CN.

24. In my position as Assistant Vice President - Host Railroads, I have personal knowledge of the terms and conditions of the 2011 OA. I have also been personally involved in

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<sup>3</sup> As set forth in more detail in Amtrak's brief, Amtrak has filed certain Appendices to the 2011 OA and the AACs under seal because they contain certain confidential cost and pricing terms. The Appendices filed under seal are Appendices IV (Current Costs and Price Level Adjustments), V (Performance Payments and Penalties), Appendix VI (Payment for Operations of Amtrak Train on GTW Lines) and IX (Payment for Amtrak Operations over the St. Charles Air Line Route). Amtrak has also redacted the indemnification clauses of the 2011 OA which appear in § 7.2(A-K) of the 2011 OA. Amtrak has redacted the same information from the redline Amtrak has submitted as Addendum # 1 to its brief showing the language associated with its proposed terms and conditions (the "Amtrak Redline").

negotiations with CN concerning the potential terms of a new OA to take effect after expiration of the 2011 OA.

25. I have also been personally involved in this matter before the Board since its inception. I have reviewed the Board's decision issued in this matter on August 9, 2019, which provided interim findings and guidance to the Parties. ("the 2019 Decision"). (Exhibit 2).

26. I also personally attended mediation sessions conducted pursuant to the Board's directive in the 2019 Decision that the Parties engage in Board-sponsored mediation in an effort to agree upon terms for a new OA between the Parties. As the Board is aware, that mediation was unsuccessful.

27. I have also been personally involved in formulating the terms and conditions which Amtrak is requesting that the Board establish in this matter as part of a new OA between CN and Amtrak. Those terms and conditions being proposed by Amtrak are described in detail below, as well as Amtrak's rationale for same.

28. The proposed terms and conditions are consistent with the statutes and regulations which govern the relationship between Amtrak and CN (including the RPSA, the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"), and the Final Rule) and this Board's 2019 Decision.

29. In particular, in formulating its proposed terms and conditions, Amtrak sought to address the guidance expressed by the Board in the 2019 Decision, particularly with respect to certain terms in the 2011 OA which it believed needed to be amended or eliminated from a new OA between the Parties.

## **II. Proposed Terms Related to OTP, Incentives and Penalties**

30. Under the 2011 OA, the performance of Amtrak's trains on CN's system for

purposes of determining incentives and penalties is governed by a structure of “checkpoints.” With one exception on Amtrak’s City of New Orleans route, the only checkpoints on Amtrak’s routes on CN’s system are located at the endpoint of the route. Intermediate stations along the route are not checkpoints.

31. For purposes of calculating incentives and penalties under the 2011 OA, an Amtrak train will be considered on-time if it arrives at a checkpoint at or before its scheduled arrival time, plus additional tolerances expressly enumerated in the 2011 OA. Under the 2011 OA, CN earns an incentive payment if 80% or more of Amtrak’s trains in a month arrive on-time at the given checkpoint. It is penalized if under 70% of Amtrak’s trains in a month arrive on-time. It is neither penalized nor receives an incentive if the OTP for an Amtrak train is between 70% and 80% (“the Neutral Zone”).

**A. The Customer On-Time Performance Metric Established in the FRA’s Final Rule**

32. In November 2020, the FRA issued a Final Rule which established “metrics and minimum standards for measuring the performance and service quality of Amtrak’s intercity passenger rail service.” (*See Metrics and Minimum Standards for Intercity Passenger Rail Service*, 85 Fed. Reg. 72972 (Nov. 16, 2020) (codified at 49 C.F.R. 273.1 et seq.) (“the Final Rule”)). (Exhibit 3). I am familiar with the Final Rule and the standards and metrics established therein. Amtrak has considered the metrics and standards established in the Final Rule in formulating the terms and conditions proposed to the Board for a new OA between the Parties.

33. Among other things, the Final Rule established a “customer on-time performance” (“COTP”) metric for determining the on-time performance of Amtrak’s trains on a Host Railroad.

34. The COTP metric in the Final Rule is materially different than the “checkpoint”

system in the 2011 OA used to measure performance. Rather than measuring performance based upon arrival times at “checkpoints”, the COTP metric under the Final Rule measures “the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.” (85 Fed. Reg. at 72974). The Final Rule also establishes a “minimum standard for COTP of 80 percent for any 2 consecutive calendar quarters.” (Id. at 72972-73).

**B. Summary of Amtrak’s Proposed Terms and Conditions of a New OA as to COTP and Incentives and Penalties**

35. Amtrak’s proposed incentive and penalty system is intended to incorporate a number of concepts, including: the COTP metric and standard; ridership on Amtrak’s routes hosted by CN (and any increases or decreases in ridership from year to year); CN’s Host-responsible delays (“HRDs”); and guidance contained in the Board’s 2019 Decision. Amtrak’s proposed system has the following features:

- a. Amtrak proposes to assess whether CN has earned an incentive or will be penalized by measuring performance quarterly on a per-route basis. Although the Parties have historically calculated incentives and penalties on a monthly basis, proceeding quarterly aligns with and links to Amtrak’s quarterly obligations to report the metrics established in the Final Rule to the FRA.
- b. Amtrak’s proposed system measures on-time performance of Amtrak’s trains operating on CN’s system using the COTP metric endorsed by the FRA and consistent with the Board’s guidance in its 2019 Decision. The better the COTP on the route, the more likely CN is to earn incentives, and avoid penalties.

- c. Amtrak realizes that COTP, as a route level metric, is not a perfect measure of CN's performance on any of the routes - - particularly those where there are other Host Railroads that host the majority of the track miles for the route. As such, although COTP is one factor in Amtrak's calculation of whether CN earns incentives or is penalized, it is not the sole factor. This is by design. As the FRA observed, the COTP metric is not intended to reflect the specific "quality of service" provided by any particular Host Railroad. And, even though overall COTP may be poor for a particular train or route as a whole, CN may not be responsible for the delays which caused that poor performance (rather, Amtrak itself or another Host Railroad may have caused the delay).
- d. Accordingly, Amtrak's calculations consider additional metrics. Under Amtrak's system and calculations, the amount of incentives that CN can earn increases as: (a) the number of passenger miles travelled on an Amtrak route on CN's system increase; and (b) the number of CN's HRDs per 10,000 train-miles (a metric expressly endorsed by the FRA) decreases. Because CN earns more incentives as passenger miles increase, it is incentivized to aid Amtrak in expanding ridership, primarily through good on-time performance. Similarly, because CN earns more incentives as its HRDs decrease, it is incentivized to minimize delays to Amtrak trains which are within CN's control.
- e. Using CN's HRDs as a metric has added benefits. It incorporates a "degree of lateness" into the assessment - - as urged by the Board. Even if

an Amtrak train is delayed, under Amtrak's system, CN is always incentivized to reduce that delay both: (a) to minimize its own HRDs (if it caused the train to be late); and (b) to cooperate to improve COTP on the route.

- f. Amtrak's consideration of HRDs in its proposed system also enables CN to earn an incentive even where COTP for a route is below the minimum standard, but delays caused by CN are not the cause of that substandard performance. Thus, Amtrak's proposed terms afford CN a meaningful opportunity to earn incentives based upon its own performance, even if other Host Railroads for the route perform poorly.

36. The mechanics of the calculation Amtrak proposes for determining whether CN earns incentives or incurs penalties for a particular Amtrak route for a given quarter, are explained in detail below. The steps in the calculation are summarized as follows:

- a. For each Amtrak route, Amtrak has determined an initial "Ridership Factor," which establishes a baseline pool of incentives that CN may earn for a quarter for a particular route based upon the amount of the incentives that CN earned in 2019.
- b. Amtrak adjusts that Ridership Factor on January 1 of each year during the life of the OA based upon the passenger miles travelled for the route during the preceding two years. This sets the Ridership Factor for the next year's incentive and penalty calculations.
- c. The amount of the incentives actually paid to CN (or the penalty assessed against it) is a percentage of the dollars comprising the Ridership Factor.

That amount is determined by factoring in both the quarterly COTP for the route and CN's HRDs per 10,000 train miles for the quarter. The better the COTP and the lower the number of HRD minutes, the higher the incentives are that CN may earn. Conversely, the lower the COTP and the higher the HRD minutes, the lower the incentives CN may earn - - and CN may incur penalties.

***1. Calculation of the Ridership Factor to Establish CN's Potential Earnings***

37. The first aspect of Amtrak's system is the "Ridership Factor." This term establishes a base amount of incentives that CN may earn for a particular quarter. It also establishes a baseline for the calculation of penalties in the event that CN incurs them.

38. The initial base "Ridership Factor" which Amtrak proposes for each of Amtrak's routes in a new OA is based upon the amount of incentives which CN earned in 2019 - - the last year during which Amtrak's trains operated free from the impacts and limitations caused by the Covid-19 pandemic. The initial base Ridership Factor for each route is calculated by taking 25% of the total incentives earned by CN in 2019, which provides an average incentive amount earned by CN for each quarter in 2019.<sup>4</sup> That amount is then adjusted for inflation that has occurred between 2019 and 2021.<sup>5</sup>

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<sup>4</sup> Because CN did not earn incentives on the Illini/Saluki route in 2019, Amtrak is utilizing the historical incentive data for 2020 and 2021 for that route. CN earned incentives on the Illini/Saluki route in 2020 (\$1,256,359) and 2021 (\$1,545,594), for an average of \$1,400,976.50. As such, for the calculations detailed herein, where data for 2019 is utilized for other routes, the data will be from 2020 and 2021 for the Illini/Saluki route.

<sup>5</sup> Amtrak proposes to perform this inflation adjustment using the approach under Method B set forth in the Price Level Adjustment Table to Appendix IV. Under that approach, prices are adjusted based on the "relationship of the most recent Third Quarter index from Association of American Railroads (AAR) quarterly Indices of Chargeout Prices and Wage rates (Table C)-East 'Material prices, wage rates and supplements combined (excluding fuel)', to the

39. Amtrak then uses these adjusted prior earnings to calculate a number that ensures that CN earns a similar amount of inflation-adjusted incentives under the new OA as it earned in 2019, if the subject route performs near 80% COTP. This calculation yields the Ridership Factor for the route for each quarter that incentives will be calculated under a new OA. (Id.).

40. Calculating the initial Ridership Factor for Amtrak’s City of New Orleans services (where CN is the only Host Railroad) and Amtrak’s Blue Water service (where CN is a Host Railroad along with other Hosts, including Norfolk Southern), is illustrative.

a. Amtrak’s Blue Water Route<sup>6</sup>

- (i) For 2019, CN actually earned \$647,107 in incentives on the Blue Water route, or an average of \$161,777 per quarter. When adjusted for inflation, the 2019 quarterly average increased to \$164,729.<sup>7</sup> Assuming COTP for the Blue Water route was at 80% for an average quarter, an initial Ridership Factor of \$205,911 for the Blue Water route would result in equivalent incentives earned in 2021 (\$164,729 in adjusted incentives earned per quarter).

b. City of New Orleans (“CNO”) Route<sup>8</sup>

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Third Quarter 2010 index value.” Because Amtrak’s calculations in its proposed new OA result in a base Ridership Factor adjusted to 2021 equivalents, Amtrak proposes to index to the Third Quarter 2021 index value, which is 558.9.

<sup>6</sup> Amtrak’s Blue Water Service encompasses Trains 364 and 365.

<sup>7</sup> Inflation was calculated by dividing 569.1 (the relevant Third Quarter index for 2021) by 558.9 (the relevant Third Quarter index for 2019). That calculation equals 1.01825.  $\$161,777 \times 1.01825 = \$164,729$ .

<sup>8</sup> Amtrak’s City of New Orleans Service encompasses Trains 58 and 59.

- (ii) For 2019, CN actually earned \$2,075,983 in incentives on the CNO route, or an average of \$518,996 per quarter. When adjusted for inflation, the 2019 quarterly average increased to \$528,467. (Id.). Assuming COTP for the CNO route was at 80% for an average quarter, an initial Ridership Factor of **\$660,584** for the CNO route would result in equivalent incentives for earned in 2021 (\$528,467 in adjusted incentives earned per quarter).

## 2. *Annual Adjustments to the Ridership Factor*

41. Beginning in 2024, during the life of the new OA, Amtrak proposes that the Ridership Factor will be adjusted annually on January 1 of each calendar year based upon the number of passenger miles actually travelled on a given Amtrak route. Amtrak proposes to perform that annual adjustment calculation as follows.

42. Amtrak proposes to divide:
- a. the then-current Ridership Factor; by
  - b. the total number of passenger miles for subject route for the fiscal year two years prior to the calculation.<sup>9</sup>

This calculation yields a base value for each passenger mile travelled on the subject route.

43. Amtrak then proposes to multiply:
- a. this per passenger mile value; by
  - b. the total passenger miles travelled during for the subject route for the

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<sup>9</sup> In Amtrak's redline, these passenger miles are the "Amtrak Base Passenger Miles," which are defined as "the Amtrak Passenger Miles on each Amtrak Route as published in the Route Level Results in the Amtrak Final Monthly Performance Report for the fiscal year two years prior to the year of the calculation. For example, a calculation that occurred on January 1, 2024 would use ridership from Amtrak Fiscal Year 2022." (Amtrak Redline, Article I).

fiscal year preceding the calculation.<sup>10</sup>

At the same time, Amtrak will also adjust this calculation for inflation.<sup>11</sup> This calculation yields the new Ridership Factor to be in place for the calendar year during which the adjustment calculation is performed.

44. Continuing the example calculations for the Blue Water and CNO routes is illustrative. These example calculations relate to a hypothetical adjustment calculation performed on January 1, 2022 in order to set the resulting Ridership Factor which applies to calculate the incentives that CN may earn in 2022.<sup>12</sup>

a. Blue Water Route

(i) In 2020 (two years before the calculation is being performed on January 1, 2022), the total passenger miles on the Blue Water route were 18,900,000. There is a base per-passenger value on the Blue Water route of \$.01089 (\$205,911 (initial base quarterly Ridership Factor) ÷ 18,900,000 passenger miles in 2020).

(ii) In 2021 (one year before the calculation is being performed on January 1, 2022), the total passenger miles on the Blue Water route were

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<sup>10</sup> In Amtrak's redline, these passenger miles are "Amtrak Passenger Miles Prior Year," which are defined as the "Amtrak Passenger Miles on each Amtrak Route as published in the Route Level Results in the Amtrak Final Monthly Performance Report for that fiscal year. For example, a calculation that occurred on January 1, 2024 would use ridership from Amtrak Fiscal Year 2023." (Amtrak Redline, Article I).

<sup>11</sup> Again, Amtrak will utilize Method B from Appendix IV to the OA to calculate inflation.

<sup>12</sup> This 2022 example is illustrative only, as Amtrak proposes beginning to adjust the Ridership Factor on January 1, 2024. This is intended to avoid any adverse impacts to CN in the adjustment calculation caused by Amtrak's low ridership and passenger mile statistics for 2020 and 2021.

18,300,000. The new quarterly Ridership Factor to be utilized in 2022 is **\$205,604.40** (18,300,000 in passenger miles in 2021 × \$.01089 per passenger mile × 1.0317<sup>13</sup> (accounting for inflation)). (Id.).

b. CNO Route

(i) In 2020 (two years before the calculation is being performed on January 1, 2022), the total passenger miles on the CNO route were 53,300,000. There is a base per-passenger value on the Blue Water route of \$.01239 (\$660,584 (initial quarterly base Ridership Factor) ÷ 53,300,000 passenger miles in 2020).

(ii) In 2021 (one year before the calculation is being performed on January 1, 2022), the total passenger miles on the CNO route were 41,000,000. The new quarterly Ridership Factor to be utilized for 2022 is **\$524,093.28** (41,000,000 in passenger miles in 2021 × \$.01239 per passenger mile × 1.0317 (accounting for inflation)).

3. ***Calculation of the Incentives Earned or Penalties Incurred by CN based on the Ridership Factor, COTP and CN's HRDs***

45. The Ridership Factor forms part of the calculation used to determine the incentives that CN will earn or the penalty that it will incur for a route for a given quarter. Amtrak proposes to calculate that amount by multiplying:

- a. the Ridership Factor; by
- b. the COTP for the route for the quarter; and by
- c. the Delay Adjustment Factor.

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<sup>13</sup> Inflation was calculated dividing 569.1 (the relevant Third Quarter index for 2021) by 551.6 (the relevant Third Quarter index for 2020). That calculation equals 1.0317.

46. The “Delay Adjustment Factor” which Amtrak proposes is an adjustment based upon the number of minutes of CN’s HRDs on the subject route during the quarter (as determined by Amtrak pursuant to its existing procedures for recording delays impacting its trains).<sup>14</sup>

47. Consistent with the Final Rule’s metrics and standards, Amtrak proposes “normalizing” the actual minutes of CN’s HRDs (as determined by Amtrak pursuant to its procedures) for the quarter to the number of HRDs per 10,000 train-miles. (See 85 Fed. Reg., at 72984 (stating that minutes of delay “have historically been normalized by 10,000 train-miles”).)

48. Based on the number of CN’s HRDs per 10,000 train miles, Amtrak proposes to apply a sliding scale to determine how the Delay Adjustment Factor impacts the amount of incentives CN will receive (or the penalty it will incur).

49. Under the sliding scale, CN will begin to earn incentives when its HRDs per 10,000 train miles for the route for the quarter are between 900 and 924. When HRDs are within that range, the Delay Adjustment Factor will be 10%. As discussed in the Verified Statement of Yoel Weiss of Amtrak, based on Amtrak’s analysis of the COTP and HRDs associated with more than 8,000 Amtrak trains operating on Host Railroads, Amtrak has determined that, where HRDs are approximately 900 minutes per 10,000 train miles, the COTP for a given Amtrak route is approximately 80% (meeting the minimum COTP standard under the Final Rule). (Weiss V.S. ¶¶ 82-83).

50. As CN’s HRDs per 10,000 train miles decrease below 900, the incentives that CN will earn increase under Amtrak’s system. So, for example, if CN’s HRDs are 825 per 10,000

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<sup>14</sup> This is consistent with the Final Rule, which defines “Host-responsible delays” as “delays recorded by Amtrak, in accordance with Amtrak procedures . . . .” (See 49 C.F.R. § 273.3).

train miles, the Delay Adjustment Factor will be 60%.

51. Conversely, when CN’s HRDs per 10,000 train miles increase above 924, then CN will begin to incur penalties and the amount of the penalty will increase as the number of CN’s HRDs increase. So, for example, if CN’s HRDs per 10,000 train miles are 975, the Delay Adjustment Factor will be -60%, meaning CN will incur a penalty.

52. The complete table of the Delay Adjustment Factors that Amtrak proposes are set forth below:

| <b>CN HRD per 10,000 Train Miles</b> | <b>Delay Adjustment Factor</b> |
|--------------------------------------|--------------------------------|
| 0-449                                | 125%                           |
| 500-599                              | 120%                           |
| 600-649                              | 115%                           |
| 650-699                              | 110%                           |
| 700-749                              | 105%                           |
| 750-799                              | 100%                           |
| 800-824                              | 80%                            |
| 825-849                              | 60%                            |
| 850-874                              | 40%                            |
| 875-899                              | 20%                            |
| 900-924                              | 10%                            |
| 925-949                              | -20%                           |
| 950-974                              | -40%                           |
| 975-999                              | -60%                           |
| 1,000-1,049                          | -80%                           |
| 1,050-1,099                          | -100%                          |
| 1,100-1,149                          | -110%                          |
| 1,150-1,199                          | -120%                          |
| 1,200-1,299                          | -130%                          |
| 1,300-1,399                          | -140%                          |
| 1,400-1,499                          | -150%                          |
| 1,500-1,599                          | -160%                          |
| 1,600-1,699                          | -170%                          |
| 1,700-1,799                          | -180%                          |
| 1,800-1,999                          | -190%                          |
| 2,000-2,199                          | -200%                          |
| 2,200-2,399                          | -210%                          |

|                  |       |
|------------------|-------|
| 2,400-2,599      | -220% |
| 2,600-2,799      | -230% |
| 2,800-2,999      | -240% |
| 3,000 or greater | -250% |

(See also Amtrak Redline, Appendix V, Table 2).

53. Continuing the examples for the Blue Water and CNO routes is illustrative of these calculations. These calculations relate to a hypothetical calculation of incentives earned or penalties incurred by CN during 2022:

a. Blue Water Route

(i) The quarterly Ridership Factor for 2022 for the Blue Water route (as calculated above) is \$205,604.40. If, for a quarter in 2022, the COTP for the Blue Water route was 75% and CN's HRDs per 10,000 train miles were 800, Amtrak proposes to calculate the incentives due to CN as follows:  $\$205,604.40$  (2022 quarterly Ridership Factor)  $\times$  75% (quarterly COTP)  $\times$  80% (the Delay Adjustment Factor which correlates to 800 HRDs) = \$123,362.64 in incentives earned by CN for the quarter.

(ii) If CN's HRDs per 10,000 train miles were 975 (instead of 800), the calculation would be as follows:  $\$205,604.40$  (2022 quarterly Ridership Factor)  $\times$  75% (quarterly COTP)  $\times$  -60% (the Delay Adjustment Factor which correlates to 975 HRDs) = a penalty of \$92,521.98.

b. CNO Route

(i) The quarterly Ridership Factor for 2022 for the CNO route (as calculated above) is \$524,093.28. If, for a quarter in 2022, the COTP for the CNO route was 85% and CN's HRDs per 10,000 train miles were 600, Amtrak proposes to calculate the incentives due to CN as follows:

\$524,093.28 (2022 quarterly Ridership Factor) × 85% (COTP) × 115% (the Delay Adjustment Factor which correlates to 600 HRDs) = \$512,301.18 in incentives earned by CN for the quarter.

(ii) If CN's HRDs per 10,000 train miles were 950 (instead of 600) and COTP for the route was 75% (instead of 85%), the calculation would be as follows: \$524,093.28 (2022 quarterly Ridership Factor) × 75% (COTP) × -40% (the Delay Adjustment Factor which correlates to 950 HRDs) = a penalty of \$157,227.98.

**4. *Amtrak's Proposed Calculation of Incentives and Penalties is Consistent with the Framework for the Board's Final Decision, including the 2019 Decision and the Final Rule***

54. Each step in the process of Amtrak's calculations is reasonable and consistent with the Board's 2019 Decision, the FRA's Final Rule and the other statutes and regulations which guide the Board's setting of terms and conditions of a new OA.

55. Amtrak's use of the Ridership Factor to set the initial quarterly baseline for the incentive that CN may earn is fair and reasonable. The Ridership Factor is based on the incentives which CN earned in 2019 (adjusted for inflation). 2019 is the last year during which Amtrak's operations (including on CN's system) were at normal levels, and its ridership was not impacted by the Covid-19 pandemic. As such, utilizing incentive data from those years provides the most reasonable measure to set a potential pool of incentives that CN may earn under normal operating conditions for Amtrak routes in 2022 and into the future, now that ridership and Amtrak service is starting to return to pre-pandemic levels.

56. Additionally, utilizing 2019 data to establish a baseline for the incentives that CN may earn, allows CN to earn nearly the same amount of incentives it earned in 2019. In

calculating the Ridership Factor in this manner, Amtrak is seeking to assure that CN's potential incentive earnings under the new OA are not less than what CN earned in 2019 under the 2011 OA - - again, the last full year of normal, full-time operations of Amtrak's trains on CN's system.

57. The baseline Ridership Factor for each route is adjusted annually based upon the actual passenger miles travelled on the Amtrak route during the preceding two years. Utilizing actual passenger miles to calculate and adjust the Ridership Factor during the life of the new OA ties the incentives CN may earn to the most detailed (and accurate) customer-level measurement possible. That is, Amtrak's actual ridership on the route, both in terms of the total number of passengers and the miles each passenger travels. Every passenger - - no matter how short or long their trip on Amtrak route - - is accounted for in this metric.

58. This is consistent with the FRA's endorsement of metrics that account for the experience of each and every passenger, and its rejection of metrics that do not.<sup>15</sup> It is also consistent with the Board's similar rejection in its 2019 Decision of metrics which do not account for each passenger experience.<sup>16</sup>

59. Further, because the amount of the Ridership Factor (and the incentives CN may earn for an Amtrak route based upon it) *increases* with the number of passenger miles actually travelled on that route, CN is incentivized to assist Amtrak in efforts to increase ridership.

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<sup>15</sup> For example, the FRA endorsed a COTP metric because it "focuses on intercity passenger train performance as experienced by the customer." (85 Fed. Reg. at 72974). Similarly, in adopting the revised "station performance metric", the FRA expanded it to include "all passengers, not just late passengers, by route, train and station." (*Id.* at 72983). Conversely, the FRA rejected a "key stations" metric in measuring OTP because "a key stations OTP metric fails to recognize the importance of customers who do not use a key station." (*Id.* at 72976).

<sup>16</sup> See, e.g., 2019 Dec., p. 10 (rejecting CN's proposed OTP metrics because same "would disregard the punctuality, hence the quality, of a passenger's trip simply because of a passenger's destination.").

Incentivizing CN to help increase ridership furthers several of Amtrak's Congressionally-mandated missions and goals related to maximizing travel on Amtrak's passenger rail service. See, e.g., 49 U.S.C. § 24101(b) (Amtrak's mission is to provide intercity passenger rail service "that is trip-time competitive with other intercity travel options"); 49 U.S.C. § 240101(c)(3) (goal of Amtrak is to "carry out strategies to achieve immediately maximum productivity").<sup>17</sup>

60. Amtrak's proposed incentive and penalty system calculates performance using the COTP metric established by the FRA in the Final Rule - - *i.e.*, "the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route." (85 Fed. Reg. at 72974).<sup>18</sup> The FRA established this as the metric for measuring OTP for an Amtrak route because it: "measures the on-time arrival of every intercity passenger customer, including those who detrain at intermediate stops along a route and those who ride the entire route." (*Id.*).

61. Even *before* the Final Rule was issued, in the 2019 Decision the Board indicated is approval of a performance metric - - like the COTP metric - - which measures "the percentage of passengers that arrive at their destination stations on time." (2019 Dec., p. 11, n. 25). Importantly, the Board found this to be an appropriate metric because it would "create an incentive structure more closely tied to the service delivery to the end consumer, the passenger." (*Id.*).

62. Because COTP was approved by the FRA in the Final Rule, it is now the metric

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<sup>17</sup> In addition to creating incentives for CN to operate Amtrak trains on-time, the construct of Amtrak's proposed incentive system also promotes CN's cooperation in efforts to reduce trip time though speed increases, further improving the Amtrak passenger experience.

<sup>18</sup> As required by the Final Rule, Amtrak will calculate quarterly COTP on an aggregate basis over the applicable quarter. Amtrak does not calculate COTP as "a simple average of daily numbers." (85 Fed. Reg. at 72975).

applicable to the judging performance of Amtrak's trains. Incorporation of it into Amtrak's incentive and penalty system in a new OA is clearly reasonable and appropriate. (See 85 Fed. Reg. at 72973 (“[T]o the extent practicable, Amtrak and its host rail carriers shall incorporate the Metrics and Standards into their access and service agreements.”)).<sup>19</sup>

63. Moreover, incorporating the FRA's metrics and standards in their OA is precisely what the Parties agreed to do. (See 2011 OA, § 3.4(D) (requiring incorporation of FRA's metrics and standards into Parties' operating agreement)).

64. Using COTP as a factor in calculating the quarterly incentive that CN may earn is likewise appropriate. COTP is a direct reflection of the health of Amtrak's routes as to the most important goals Congress established for Amtrak - - the delivery of Amtrak passengers to their destinations on-time. See 49 U.S.C. § 24101(c)(4) (goal of Amtrak is to “operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables”); 85 Fed. Reg. at 72976 (FRA stating that an OTP metric “should measure train performance from the eyes of the customer.”).

65. Poor COTP evidences problems with a route which must be remedied. Indeed, the FRA established a “minimum standard for COTP of 80 percent for any 2 consecutive calendar quarters.” (85 Fed. Reg. at 72972-73). And, under PRIIA § 213, an investigation by the Board may be triggered by sub-80% OTP over two consecutive quarters. 49 U.S.C. § 24308(f).

66. Reducing the amount of incentives for a route as COTP declines, therefore, incentivizes CN to work to enable Amtrak's trains to arrive on-time at their destinations. The

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<sup>19</sup> The concept of “Recovery Time Base” is not part of Amtrak's proposed use of the COTP metric or its incentive and penalty system. RTB is not a metric used under the system premised upon COTP. Indeed, RTB was not mentioned or considered by the FRA in mandating the COTP metric.

better the COTP for a quarter, the greater the amount of incentives it will be able to earn. This is well-aligned with Amtrak's Congressional goals, the FRA's Final Rule and consistent with the Board's finding that factoring OTP into an incentive and penalty system would "create an incentive structure more closely tied to the service delivery to the end consumer, the passenger." (2019 Dec., p. 11, n. 25).

67. For these reasons, Amtrak's consideration of COTP in its incentive and penalty calculations - - and more particularly, its reduction of the amount of incentives available to CN as COTP decreases - - is wholly appropriate.

68. Amtrak acknowledges that considering COTP as a factor in its calculations does not account for whether a Host Railroad (or a particular Host Railroad on a multi-Host route) is actually responsible for delays which caused Amtrak's train to be late. In the Final Rule, however, the FRA expressly stated that a COTP metric is not intended to serve that function. (85 Fed. Reg. at 72975). Indeed, in rejecting comments by Host Railroads requesting that an OTP metric be measured on a per-host basis, the FRA stated that: "a host-specific measurement of OTP . . . would result in a system that is misaligned with the customer experience: passenger trains that arrive late at their destinations but are reported as 'on-time.'"

69. Instead, the FRA endorsed other metrics to assess whether a Host Railroad is responsible for a delay or, on multi-Host routes, which Host Railroad caused the delay. Those metrics include, for example, including the "train delays" metric and the tracking of HRDs per 10,000 train-miles. (85 Fed. Reg. 72980-84; see also 85 Fed. Reg. at 72975-76 (train delays metric "speak[s] to the individual host railroad's performance.")). As discussed below, Amtrak has imported those metrics into its incentive and penalty system to account for circumstances where, for example, COTP is below 80%, but CN has not caused those delays and - - to the

contrary - - is performing well.

70. Using CN's HRDs per 10,000 train miles as a factor in calculating the quarterly incentive that CN may earn is likewise appropriate. Several aspects of utilizing this metric align with the 2019 Decision and the FRA's Final Rule

71. As a threshold issue, under Amtrak's proposed system, the cause of a delay to an Amtrak train - - and more particularly, whether it was caused by CN and therefore is an HRD - - is determined by Amtrak's on-board conductors in the first instance using Amtrak's delay code system. This is consistent with the Final Rule, which defines "Host-responsible delays" as "delays recorded *by Amtrak, in accordance with Amtrak procedures . . .*" (See 49 C.F.R. § 273.3) (emphasis added). The FRA cited the Board's discussion in the 2019 Decision of Amtrak's procedures for determining the cause of a delay through use of "delay codes", including whether a Host Railroad caused the delay. (See 85 Fed. Reg. at 72982 n.32) (citing 2019 Dec., p. 23-24).<sup>20</sup> Indeed, the FRA *requires* that train delays be reported to it based upon the delay code Amtrak assigns to the delay. (85 Fed. Reg. at 72981-82).

72. Amtrak's proposes to define "Host-responsible delays" in a new OA in nearly identical terms to the FRA's definition of that term in the Final Rule. (Amtrak Redline, Article I). For example, the Final Rule defines HRDs to include delays resulting from freight train interference, commuter train interference, passenger train interference, a Host Railroad's issuance of slow orders, problems with the Host Railroad's signals, and the Host Railroad's

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<sup>20</sup> As the Board described Amtrak's process: "the Amtrak train's conductor . . . records the cause and location of each delay based on the conductor's direct observations and information from train bulletins, radio communications, Amtrak engineers, freight train crews, dispatchers, maintenance-of-way crews, and other personnel." (2019 Dec., p. 23). Then, "[e]ach delay is categorized by a code that classifies the delay into one of three categories: HRDs (e.g., freight train interference); Amtrak-responsible delays (e.g., crew and system delays); or third-party-responsible delays (e.g., weather delays). (*Id.*, p. 24).

maintenance of way work. (49 C.F.R. § 273.3). As defined by Amtrak in the proposed new OA, delays are HRDs if they are identified by the codes which correlate to those very same causes. (Amtrak Redline, Article I).<sup>21</sup>

73. Notably, the Board rejected CN's proposal to identify the cause of delays through a "root cause" analysis. (2019 Dec., p. 24). Similarly, in endorsing Amtrak's delay code system, the FRA likewise rejected commenters' requests that it adopt a "root cause" approach. (see 85 Fed. Reg. at 72981).

74. Accordingly, it is appropriate for Amtrak to determine the cause of a delay impacting an Amtrak train in the first instance, including where that delay was caused by CN. As discussed below, Amtrak's determination is subject to a dispute resolution in the event CN disagrees with Amtrak's categorization of a delay.

75. In the 2019 Decision, the Board noted that Amtrak's "conductor delay reports may not provide definitive proof of the cause of Amtrak delays" and, therefore, encouraged the Parties "to review their dispute resolution process regarding delay coding." (2019 Dec., p. 24). Similarly, the FRA acknowledged that Host Railroads and Amtrak "may disagree on how to assign responsibility for any particular delay." (85 Fed. Reg. at 72982). Although the FRA did not "prescribe[e] an additional process for the parties to use to reach agreement or insert[] FRA in the process to adjudicate disputes," the FRA stated that it "expects that Amtrak and the [Host Railroad] will be in frequent communication about train delays." (Id.). In fact, as explained in the

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<sup>21</sup> Amtrak's definition of "Host-responsible delays" includes delays identified by the following delay codes: "FTI" (used for freight train interference); "CTI" (used for commuter train interference); "PTI" (used for passenger train interference); "DCS" (used for delays caused by signals); "DMW" (used for delays caused by maintenance of way work); and "DSR" (used for temporary speed restrictions). (Amtrak Redline, Article I - Definitions). Although the Final Rule defines "detours" as an HRD, Amtrak is not seeking to include detours' within the new OA's definition of HRDs. Amtrak does not believe that CN should be penalized in the form of HRD minutes when it accommodates Amtrak traffic via detours.

Weiss Verified Statement, CN and Amtrak already communicate regularly about the delay codes used by Amtrak and any changes thereto requested by CN if it disagrees with the code used by Amtrak. (See Weiss V.S. ¶ 11).

76. Amtrak’s proposal incorporates procedures which require the Parties to confer frequently to resolve disputes, including disputes about Amtrak’s determination of the cause of the delays to Amtrak trains. (Amtrak Redline, Appendix V, § II). As a first step, if CN disputes Amtrak’s causation determination, Amtrak’s system requires the Parties to confer almost immediately after the trip of the delayed Amtrak train has occurred via a “daily process.” In this process, CN reviews Amtrak’s daily delay data and must notify Amtrak of any disputed delay determinations “within four (4) calendar days after the Origin date of the Amtrak Train . . . .” (Id., § II(1)(a)). The Parties then “shall endeavor to reach agreement on any such corrections to the delay data within five (5) calendar days after the Origin date of the Amtrak Train.” (Id.). If agreement is not reached, the Parties may escalate the dispute through a “quarterly process.” (Id., § II(2)). If the dispute is not resolved through the quarterly process, the Parties may then seek to resolve their dispute through binding arbitration. (Id.).

77. These procedures are robust and are designed to provide “real time” resolution of disputes immediately after the delayed Amtrak train trip at issue, when the relevant information is most readily available. Indeed, the dispute must be resolved in less than a week after the delayed train’s trip, or must be escalated. If CN disagrees with an Amtrak delay code, it may present any evidence it has to support its position, which will be considered by Amtrak in good faith. In sum, Amtrak’s proposed dispute resolution procedures are reasonable and should be imposed by the Board as part of a new OA between the Parties.

78. Ultimately, once the number of CN’s HRDs are determined, the number of

minutes of those HRDs will be a factor in the calculation setting the precise amount of the incentives CN will be able to earn, or the penalty CN will incur, for the quarter. Factoring HRDs into the incentive and penalty calculation is consistent with the purpose of HRDs as described in the Final Rule and incentivizes CN to minimize its own HRDs on a route, even if an Amtrak train is already late.

79. As the FRA noted in the Final Rule, reviewing the precise causes of Amtrak train delay helps distinguish between: (a) the performance of Host Railroads and Amtrak; and (b) for multi-Host routes, the performance of each Host Railroad. (See 85 Fed. Reg. at 72981). In particular, tracking minutes of HRDs “normalized” to 10,000 train-miles is “helpful when assessing an individual railroad’s performance on a route that has more than one host.” (85 Fed. Reg. at 72984).

80. In tracking CN’s HRDs, Amtrak is doing precisely that - - it is segregating the delays caused by CN (over which CN has control) from delays caused by Amtrak itself or by other Host Railroads on a given Amtrak route. This assures that the amount of CN’s incentives or penalties is driven by delays that *CN caused* - - not by delays over which it had no control, such as delays caused by Amtrak or another Host.

81. Tying the incentives CN may earn (or the penalties it may incur) to CN’s HRDs per 10,000 train-miles, incentivizes CN to dispatch Amtrak’s trains on its system in a manner that deliver Amtrak’s passengers on-time. Because CN earns more incentives the lower its HRDs per 10,000 train-miles are for a quarter, CN is incentivized to reduce delays on its system. And, if a CN-responsible delay has caused an Amtrak train to be late, CN is incentivized to keep that delay to a minimum or to enable Amtrak to make up that delay. If it does so, the minutes of CN’s HRDs will be lower, and its incentives higher. If CN allows that delay to worsen, its

incentives will decrease and it may incur a penalty. Because the penalties will continue to increase as the number of HRDs also increase, CN will constantly remain incentivized to reduce delays within its control.

82. Factoring CN's HRDs per 10,000 train-miles into Amtrak's system is in accord with the Board's finding in its 2019 Decision that "a reasonable incentives and penalties system is one that incentivizes both OTP and a reduction in the duration of train delays when OTP is not achieved." (2019 Dec., p. 14). The Board further found that "[b]y incorporating the degree of lateness" into an incentive and penalty system, "CN would have an incentive to help deliver a late train more expeditiously and not allow the duration of the delay to increase." (*Id.*). Amtrak's system does this, with the end result being that CN is at all times incentivized to aid Amtrak in delivering its passengers to their destination on-time or - - if an Amtrak train is already late - - to reduce the delay or not allow the delay to become more severe.

83. Lastly, setting the quarterly threshold for CN to earn incentives at 900 minutes of HRDs per 10,000 train-miles is reasonable and appropriate. As explained in the Weiss Verified Statement, based upon historical data of HRDs impacting every Amtrak train operated on routes hosted by CN and other Host Railroads from April 2019 through March 2022, Amtrak has determined that where COTP for an Amtrak route is approximately 80%, HRDs per 10,000 train-miles average approximately 900 minutes. (*See Weiss V.S.*, ¶¶ 82-85).

84. Where HRDs decreased below 900 minutes per 10,000 train-miles, COTP improved above 80% and closer to 100%. (*Id.*). Conversely, where HRDs were above 900, COTP decreased and moved below 80%. (*Id.*).

85. In the 2019 Decision, the Board found "there is merit to an 80% OTP standard to receive incentive payments." (2019 Dec., p 14). As Amtrak has confirmed, 900 HRDs per

10,000 train miles correlate to 80% COTP for a route. (Weiss V.S., ¶ 85). Accordingly, the 900 HRDs per 10,000 threshold for earning incentives under Amtrak's system is consistent with that 80% standard (established by the FRA and endorsed by the Board) and incentivizing CN to meet it.

86. As noted, under Amtrak's system, even if COTP for the route as a whole is below 80% (perhaps significantly below 80%), based on the sliding scale of Delay Adjustment Factors, Amtrak is proposing, CN can still earn incentives if its own HRDs are 924 minutes per 10,000 train-miles or less. Under such circumstances, the sub-80% COTP will likely be driven by delays on the route caused by entities other than CN. Under these circumstances, because CN likely did not cause the delays that are negatively impacting COTP on the route, Amtrak does not believe CN should be penalized for performance in that quarter. In fact, CN should be incentivized to continue to perform well, despite overall poor COTP on the route.

87. For the foregoing reasons, Amtrak requests that the Board impose the terms and conditions set forth above in a new OA between the Parties as to the calculation of COTP of Amtrak trains on CN's system and the computation of incentives earned or penalties incurred.

### **III. Reallocation of Recovery Time in Amtrak's Schedules**

88. In discussing the current schedules for Amtrak trains, the Board specifically found that there was no evidence in the record that overall travel time from origin to endpoint for any of Amtrak's trains needed to be lengthened. (2019 Dec., pp. 11-12).

89. However, the Board found that if on-time performance were measured at all stations on a route, the recovery time built into schedules that were agreed to under the checkpoint system might have to be redistributed "to give CN a meaningful opportunity to meet its performance obligations." (*Id.*, p. 11). In particular, the Board noted that most Recovery

Time in Amtrak's then-current schedules was allocated toward "the end of the routes," with none "towards the beginning of routes." (Id., p. 11).

90. Because Amtrak's proposed COTP metric measures performance at all stations, Amtrak has taken into account the Board's findings regarding the distribution of Recovery Time.

91. In the Final Rule, the FRA also addressed the potential need to reallocate Recovery Time under the COTP metric. The FRA noted that:

[a]n OTP metric, in part, can inform the formulation of a train schedule. For example, a [COTP] metric may encourage a schedule with more recovery time at those stations with more de-boarding passengers, while an endpoint OTP metric may encourage a schedule with more recovery time at the endpoints of a line segment.

(85 Fed. Reg. at 72978, n.19). The FRA found, however, that a COTP metric "does not mean that recovery time must be added for each station." (Id. at 72977). Where Recovery Time is reallocated, however, the FRA cautioned against simply "spreading existing recovery time linearly across a schedule." (Id.).

92. Rather, it sanctioned a measured approach, under which Recovery Time is reallocated to "protect performance at larger volume stations, locations where passenger trains can wait clear of main tracks, where stations are farther apart, or where trains are more likely to incur operational delays." (Id.).

93. In the Final Rule, the FRA established a "certified schedule" metric to "address alignment with the [COTP] metric." (85 Fed. Reg. at 72929). Specifically, Amtrak is required to report which of its schedules - - by train, by route, and by host - - are "certified" and which are "uncertified" or "disputed." (Id.). A "certified schedule" is "a published train schedule that Amtrak and the host railroad *jointly certify is aligned with the [COTP] metric and standard in § 273.5(a)(1) and (2).*" (See 49 C.F.R. § 273.3, *Definitions*) (emphasis added). Notably, if a

schedule is “certified” by Amtrak and the Host Railroad, *“it cannot later be designated as an uncertified schedule.”* (Id.).

94. As detailed in the Verified Statement of Yoel Weiss of Amtrak, after the FRA issued the Final Rule, Amtrak began evaluating which of its schedules aligned with the COTP metric and could be “certified.” (See Weiss V.S. ¶¶ 20-33). Along with Mr. Weiss and others at Amtrak, I was involved in the process of reviewing Amtrak’s schedules. Amtrak evaluated, among other things: its trains’ performance during Fiscal Year 2020 under a COTP metric; and whether the placement of Recovery Time was allocated to protect high passenger volume stations.

95. Based on Amtrak’s review and analysis, by my letter of December 18, 2020 to Scott Kuxmann (CN’s Amtrak Operations Officer), Amtrak proposed to CN that the Parties certify twenty-three (23) schedules for trains operating on CN’s system. (Exhibit 4).

96. CN agreed to certify twenty (20) of those train schedules. Specifically, CN agreed to certify the schedules for Amtrak’s trains on its Wolverine, Blue Water, Lincoln, and Texas Eagle routes.<sup>22</sup> As to these “certified” schedules, the Parties have acknowledged that Recovery Time within them is appropriately allocated to afford CN a “meaningful opportunity” to meet the COTP metric (i.e., 80% COTP).

97. The only Amtrak schedules which are currently “disputed” (i.e., not “certified”) are for trains operating on the Illini/Saluki and City of New Orleans routes (collectively, “the Disputed Schedules”). Although CN has not certified the schedules Amtrak has proposed, as discussed and detailed in Mr. Weiss’ Verified Statement, Amtrak’s proposed schedules also align with the COTP metric and afford CN has a “meaningful opportunity” to meet its performance

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<sup>22</sup> CN and Amtrak also agreed to certify the schedules for Amtrak’s Sunset Limited route. That route is not a subject of dispute in this case.

obligations. (Weiss V.S., ¶¶ 38 - 79).

98. In sum, the Board's concerns about the reallocation of Recovery Time has been addressed for the twenty-six (26) total schedules for Amtrak's trains operating on CN's system. Amtrak and CN have certified twenty (20) of them, agreeing that Recovery Time has been appropriately allocated to align with the COTP metric. For the schedules on the Disputed Routes, as explained in the Weiss Verified Statement, Amtrak has proposed a reallocation of Recovery Time to optimize COTP, affording CN a meaning opportunity to meet that metric. (See Weiss V.S. ¶¶ 38 - 79).

#### **IV. Lookback and "Reopener" Provisions**

99. The 2011 OA's "lookback" provision operates to limit the penalties Amtrak can collect from CN for poor performance to the amount of incentives CN earned over the prior twelve months. Amtrak previously argued that the provision should be eliminated because it nullifies the statutory requirement that Amtrak/Host OA's include a penalty for untimely Amtrak passenger train performance on the Host's system. (2019 Dec., p. 15; see also 49 U.S.C. § 24308(a)(1)).

100. In the 2019 Decision, the Board expressed "concern" that an OA without any "lookback" provision may "place CN in a situation where it may be required to, effectively, pay Amtrak to host Amtrak passenger trains on CN's own network" because its total compensation could fall below CN's "incremental costs." (Id.).

101. At the same time, the Board recognized the importance of addressing periods of sustained poor performance on CN's system. (Id., p. 17). Consequently, the Board encouraged the Parties to include a "reopener" mandating remedial "concrete action" to address sustained periods of poor performance. (Id.).

102. Given the Board's guidance, Amtrak no longer proposes eliminating the "lookback" provision in its entirety. Rather, Amtrak requests that the Board modify the existing "lookback" provision in the new OA, along with including a "reopener" provision (discussed *infra*) to implement "concrete action" in the event of periods of sustained poor performance by CN resulting in delays to Amtrak passenger trains.

**A. "Lookback" Provision Over the Life of the New Operating Agreement**

103. The "lookback" provision Amtrak proposes for the new OA between CN and Amtrak operates nearly identically to the provision in the 2011 OA. That is, Amtrak may collect penalties for CN's poor performance only to the extent those penalties are less than the incentives earned by CN over the "lookback" period.

104. In the 2011 OA, however, the lookback period is arbitrarily established at only twelve months. Amtrak's proposal extends the "lookback" period to be equal to the life of the new OA, measured prospectively from the date it becomes effective. (See Amtrak Redline, § 5.2(A)(2)).

105. The application of the "lookback" is illustrated as follows. As the clause currently operates in the 2011 OA, if in a given month CN incurred a penalty of \$100,000, but had not earned any incentives over the preceding twelve months, Amtrak would be unable to collect any portion of the penalty. This is because the amount of the penalty during the given month exceeds the amount of the incentives earned by CN in the preceding twelve months (\$ 0).

106. If, however, CN had earned incentives totaling \$200,000 over the preceding twelve months of the "lookback," Amtrak would be able to collect the \$100,000 penalty in its entirety. This is because the amount of the penalty (\$100,000) is less than the amount of the incentives CN earned over the preceding twelve months.

107. If CN's penalty were \$300,000 for the given month, Amtrak would be able to collect the penalty only up to the amount of the incentives paid to CN over the preceding twelve month "lookback" timeframe (*i.e.*, \$200,000).

108. Notably, the "lookback" provision only operates to limit the amount of penalties Amtrak can collect. It neither limits nor reduces the incentives that CN may earn for a given month. In other words, CN can always collect from Amtrak all incentives properly earned under the 2011 OA, without any offset for penalties accrued over the preceding twelve months.

109. Under Amtrak's proposed "lookback" provision, the clause operates in the same manner, except that the period of the "lookback" is not 12-months, but rather is equal to the length of the life of the new OA at the time the penalty accrues to CN. So, for example, if CN is penalized \$100,000 during the twenty-fourth month of the new OA, whether Amtrak may collect that penalty is dependent on the amount of the incentives CN has earned over the preceding twenty-three months since the new OA has been in effect.

110. Under Amtrak's proposal, the "lookback" would operate as it currently does for the first year the new OA is in effect.<sup>23</sup> But, when the new OA has been in place for more than one year, the provision has the effect of increasing the length of the "lookback" timeframe in the 2011 OA (*i.e.*, twelve months). This means a penalty due to sustained poor performance will not

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<sup>23</sup> Amtrak does not believe that, when a new OA becomes effective, that the "lookback" should apply retroactively. As the Board correctly observed in its Interim Decision the "lookback" applies for a "time period over which the incentives and penalties are calculated." (Interim Dec., p. 15). Amtrak is proposing an incentive and penalty system for the new OA which is different than the system in the 2011 OA (and under which the Parties have operated during the pendency of this case). As such, if the "lookback" were applied retroactively when the new OA becomes effective, one would assess whether Amtrak can collect penalties accrued by CN under the new system based on a retroactive calculation of the amount of incentives CN had earned under the "old" incentive/penalty system. This does not appear consistent. As such, Amtrak proposes that the "lookback" clause in the new OA apply be limited to a prospective application.

be negated and at the same time penalties will not be greater than incentives paid under the OA.<sup>24</sup> This is reasonable and appropriate.

111. Under the new OA which Amtrak is proposing, as discussed above, the incentives that CN may earn are reduced (and it will incur a penalty) in the event that the CN's HRDs per 10,000 train-miles exceed 924 minutes. HRDs account for approximately 67% to 70% of all delays impacting Amtrak passenger trains on Host Railroads, including on CN's system. (Weiss V.S., ¶ 81, n. 3). Accordingly, where Amtrak trains fail to meet the 80% COTP metric, HRDs are typically the driving force behind that failure. CN's failure to limit its HRDs to under 924 minutes per 10,000 train-miles, therefore, is a cause of Amtrak's "untimely performance" for which Congress mandates that the OA "shall" provide for a penalty. See 49 U.S.C. § 24308(a)(1).

112. However, for periods of time during which CN has not earned a sufficient amount (or any amount) of incentives, although CN may accrue a penalty, the "lookback" provision prevents Amtrak from collecting it and there are no adverse consequences to CN for a month of poor OTP of Amtrak trains on CN's system.

113. This is equally true where there are multiple months (including consecutive months) of poor performance on CN's system. Indeed, the "lookback" eliminates Amtrak's ability to collect penalties when it makes the most sense to assess them - - during periods of sustained poor performance on CN's system.

114. Extending the "lookback" (potentially making it more likely Amtrak can collect a penalty) serves to further incentivize CN to continue to work to reduce its own HRDs to enable

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<sup>24</sup> This aligns with the Board's 2019 Decision and, in particular, addresses the Board's concern that a new OA with no "lookback" provision might "place CN in a situation where it may be required to, effectively, pay Amtrak to host Amtrak passenger trains on CN's own network." (2019 Dec., p. 16).

strong COTP of Amtrak’s passenger trains on its system (by, for example, by honoring Amtrak’s statutory preference). Incentivizing such conduct on the part of CN is consistent with the directives of both the FRA<sup>25</sup> and the Board in its 2019 Decision<sup>26</sup> that the OA’s provisions should incentivize strong OTP which, in turn, benefits Amtrak’s passengers.

115. Lastly, Amtrak is not proposing that the current “lookback” in the 2011 OA be amended to impact, limit or curtail CN’s ability to immediately collect incentives it properly earns. As such, CN is further incentivized to maintain timely performance of Amtrak trains on its system in order - - not only to avoid penalties - - but also to immediately collect the full amount of incentives earned without the specter that they will be reduced or limited by the amount of penalties it previously incurred. So, even during sustained periods of poor performance over which it has consistently incurred penalties, CN remains incentivized to foster strong OTP by reducing its HRDs on its system in order to earn incentives - - which incentives would be immediately payable by Amtrak.

116. In short, it is reasonable and consistent with the applicable statutes, the FRA’s Final Rule and the Board’s 2019 Decision, for the “lookback” provision in the new OA to include a longer “lookback” period. Preserving Amtrak’s ability to assess penalties for poor performance by CN is consistent with Congress’ requirement of a “penalty” for untimely performance on CN’s system and the requirement that the Board consider the “quality of service” to the extent it permits compensation to CN above its incremental costs. See 49 U.S.C. §

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<sup>25</sup> See 85 Fed. Reg. at 72978 (encouraging “Amtrak and the host railroads to work toward aligning the [Operating Agreements] with the COTP metric and standard to ensure performance is measured, and *appropriately incentivized*, in a consistent manner.”) (emphasis added).

<sup>26</sup> See Interim Dec., p. 14 (stating that “a reasonable incentives and penalties system is one that *incentivizes both OTP* and a reduction in the duration of train delays when OTP is not achieved.”) (emphasis added).

24308(a)(2)(b).

117. Since the “lookback” still limits the amount of penalties Amtrak can collect to the amount of incentives Amtrak has paid to CN over the life of the OA, CN is not at risk of receiving compensation that is less than its “incremental costs.” In the end, the “lookback” provision proposed by Amtrak will serve to foster better OTP on CN’s system and benefit Amtrak’s passengers.

**B. “Reopener” and Concrete Remedial Action**

118. In the 2019 Decision, the Board stated that “periods of sustained poor performance must be acknowledged and addressed as appropriate.” (2019 Dec. p. 17). The Board, therefore, “encourage[d] the parties to include an effective reopener provision in the new OA *that will result in concrete action in order to resolve potential future performance disputes and to prevent sustained poor performance.*” (*Id.*) (emphasis added).

119. As discussed below, in the event of sustained poor performance of Amtrak trains on CN’s system, Amtrak proposes terms to implement specific and appropriate remedial actions to help protect the interests of Amtrak’s passengers. These remedial actions are tailored narrowly to apply only in the event of sustained poor performance on CN’s system which is the result of CN’s controllable delays.

120. More specifically, Amtrak proposes that remedial action will be available to it under the new OA when the number of CN’s HRD minutes per 10,000 train-miles for a train exceed 924. As discussed above, under Amtrak’s proposed incentive and penalty system, CN will begin to incur penalties once CN’s HRDs for a particular Amtrak route exceed 924 per 10,000 train miles. Notably, because remedial action is triggered by CN’s own HRDs, poor performance resulting from delays for which CN is *not* responsible *do not* trigger remedial

action (such as delays caused by Amtrak or another Host Railroad along the route of the train).

121. Amtrak does not propose that the trigger for remedial action be based upon COTP for a particular train or service. This is consistent with the guidance from the FRA in the Final Rule. Indeed, the FRA expressly rejected measuring COTP by Host Railroad. (See 85 Fed. Reg. at 72975). To measure a particular Host's performance, the FRA instead established other metrics, including a metric of measuring such HRDs across 10,000 train-miles. (Id.; see also 85 Fed Reg. at 72984) (measuring train delays per 10,000 train-miles "is helpful when assessing an individual railroad's performance on a route that has more than one host."<sup>27</sup>).

122. Because minutes of HRDs per 10,000 train-miles are specifically intended to measure the performance of an individual Host Railroad (here, CN), that metric is most appropriate for assessing when, and to what extent, remedial action is necessary to remedy poor performance of Amtrak trains caused by CN's delays.

123. Amtrak proposes a "tiered" approach to the remedial action available to Amtrak. Under this approach, the remedial action which Amtrak has the discretion to employ becomes more extensive as the minutes of CN's HRDs increase for a given train. (Amtrak Redline, Appendix V, § IV).

124. The first tier of remedial action available to Amtrak will be triggered in the event of one quarter where CN's HRDs exceed 924 minutes per 10,000 train-miles for a particular Amtrak train. At that point, that train is likely to be performing at below (perhaps well below) the 80% COTP metric established in the Final Rule and CN is incurring penalties based upon the

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<sup>27</sup> Trains operating on the following Amtrak services are hosted by other Host Railroads in addition to CN: Blue Water, Wolverine, Lincoln, and Texas Eagle. For Amtrak's Illini/Saluki and City of New Orleans services, CN is the only Host Railroad. Amtrak also hosts portions of the Illini/Saluki and City of New Orleans routes, but Amtrak delays caused in its capacity as a host of its own passenger service is tracked and reported separately, and is not counted against CN.

applicable Delay Adjustment Factor. The Tier 1 remedies Amtrak requests that the Board make available to Amtrak are as follows.

- a. CN must begin reporting on a monthly basis to Amtrak and the Board the following information as to each HRD for the subject train in excess of five minutes:
  - (i) Why the delay occurred;
  - (ii) How the delay could have been prevented;
  - (iii) Name of the dispatcher and dispatch supervisor;
  - (iv) Whether the dispatcher was counseled;
  - (v) Date/time of counseling session; and
  - (vi) Corrective actions taken to prevent repeat of the delay

(collectively, “the Dispatch Reporting Requirement”).

- b. CN must provide Amtrak and the Board with on-line view access to CN’s dispatch screens for the Amtrak route which includes the non-performing train at issue, with approval to record data from those screens for use in any Board investigation pursuant to PRIIA § 213 (“the Screen View Requirement”). This serves to enable Amtrak and the Board to assess whether CN is, in fact, addressing past problems related to dispatching and, going forward, properly dispatching trains to assure Amtrak trains receive the statutory preference to which they are entitled.

125. Amtrak proposes that these Tier 1 remedies to remain in effect for at least six months, unless discontinued earlier by Amtrak in its discretion.

126. These Tier 1 remedies focus on CN’s dispatching practices. This is for good

reason - - whether a Host Railroad is giving Amtrak the statutory preference to which it is entitled is directly related to a Host's dispatching practices. In the event of CN HRD minutes in excess of 924 HRD per 10,000 train miles, affording Amtrak and the Board visibility into CN's dispatching practices - - including the shortcomings therein - - will be critical to reducing the minutes of HRD caused by CN.

127. The second tier of remedial action available to Amtrak will be triggered in the event of two consecutive quarters where CN's HRD minutes exceed 924 minutes per 10,000 train-miles for a particular Amtrak train and Tier 1 remedial action (standing alone) has not proven effective in reducing delays.

128. When Tier 2 remedial action is triggered, CN's level of HRDs for the subject Amtrak train will have continued for two consecutive quarters. As such, more extensive remedies are warranted. In addition to the Tier 1 Dispatch Reporting and Screen View Requirements remaining in place, Amtrak proposes that Amtrak, Amtrak's OIG and the Board be permitted, at their discretion, to designate a representative to sit alongside CN's dispatcher in real time as to the subject Amtrak route on which the non-performing train is operating.

129. Additionally, Amtrak proposes that CN obtain Amtrak's prior written approval before scheduling any non-emergency Right of Way ("ROW") repair (such as signal upgrades) or Maintenance of Way ("MOW") work which is reasonably expected to impact the on-time performance of Amtrak trains on the subject route ("the MOW/ROW Work Notice/Approval Requirement"). This will assure that - - in addition to having visibility into CN's dispatching practices - - Amtrak also has visibility and advance notice of and approval over any ROW or MOW work being planned by CN which might also serve to delay Amtrak's trains.

130. Amtrak proposes that these Tier 2 remedies remain in place for at least one year

after they are implemented.

131. The third tier of remedial action is available to Amtrak in the event of four consecutive quarters where CN's HRD minutes exceed 924 minutes per 10,000 train-miles for a particular Amtrak train. At that point, the remedies available to Amtrak will include all Tier 1 and Tier 2 remedies discussed above.

132. In addition, given the lengthy period of poor performance for which Tier 3 remedies apply, and the apparent ineffectiveness of the prior tiers' remedies, Amtrak proposes that it be permitted to take over (either directly or through a third-party) dispatching on the Amtrak route at issue on CN's system.<sup>28</sup>

133. Amtrak proposes that Tier 3 remedial action to remain in place for the longer of: (a) a period of two years; or (b) until CN's HRDs have been at or below 924 minutes per 10,000 train miles for twelve consecutive months. Again, this will enable Amtrak to directly address significant sustained periods of Amtrak train poor performance by CN in its dispatching and other practices.

134. If this Tier 3 remedy is implemented, Amtrak proposes that, during the time that Amtrak has taken over CN's dispatching (either directly or through a third-party), the calculation of incentives and penalties be suspended for the impacted route. During such a timeframe, CN is not entitled to an incentive because any effective dispatching resulting in favorable OTP on the route would be provided by Amtrak (or a third-party on its behalf). For the same reason, to the extent OTP is poor, CN should not be penalized.

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<sup>28</sup> Such a takeover of dispatching will of necessity require close coordination and cooperation between Amtrak and CN for the transition, the operation and, if applicable, the return of dispatching to CN. Amtrak may require Board intervention should CN fail to cooperate in these efforts.

## V. Incremental Costs

135. In the 2019 Decision, the Board rejected “the non-quantified or otherwise amorphous costs CN proposes to include as incremental costs, such as freight rate suppression, capacity costs, foregone volume, lost opportunity costs, and other currently non-quantified costs CN might later identify.” (See 2019 Dec., p. 22).

136. The Board held that CN’s proposed “freight delay costs” could qualify as “incremental costs” only if, for each alleged cost, CN carried its burden to establish: (1) CN actually incurred such “freight delays”; (2) the delays were caused by Amtrak; and (3) CN incurred actual costs as a result of the Amtrak-caused delays. (*Id.*, pp. 22-23). The Board also made clear that CN needed to show that such costs were “specific, verifiable and quantifiable.” (*Id.* at 23).

137. Appendix IV of the 2011 OA (entitled “Current Costs and Price Level Adjustments”) enumerates the costs which CN may bill to Amtrak and which must be paid by Amtrak. Amtrak believes that Appendix IV includes all of the “incremental costs” for which Amtrak must reimburse CN, and Amtrak has included a term to that effect in its proposed new OA. (Amtrak Redline, § 5.1(A)).

138. Amtrak also proposes that the new OA need not define the term “incremental costs.” Amtrak’s Redline, therefore, proposes deletion of “incremental costs” as a defined term. As CN incurs future costs which it believes Amtrak must reimburse as “incremental costs,” Amtrak can assess whether that cost aligns with the Board’s description in the 2019 Decision of what constitutes an “incremental cost” (and any additional guidance or rulings in the Board’s Final Decision).

139. Because the Board held in the 2019 Decision that CN had not proven that any of

the additional costs it raised qualified as “incremental costs,” Amtrak does not propose adding any costs to OA as reimbursable (as part of Appendix IV or elsewhere).

**VI. Agreement Term**

140. In the 2019 Decision, the Board found that a seven-year term would be reasonable and encouraged the Parties to include an “evergreen” clause. (2019 Dec., p. 27). Amtrak’s proposed OA includes both of those terms. (Amtrak Redline, § 8.8).

**VII. Retroactivity of New Operating Agreement**

141. The 2011 OA was scheduled to expire on August 11, 2013, but by order of the Board has been governing the Parties’ relationship during the pendency of this case. In its 2019 Decision, the Board did not decide the extent to which a new OA would apply retroactively, in whole or in part. (2019 Dec., p. 27 n.44).

142. Since the expiration of the 2011 OA in August 2013, nearly a decade has passed. The FRA’s Final Rule is a significant development in the law, which has impacted how Amtrak and CN must measure OTP on CN’s system and, as a result, how Amtrak has proposed calculating CN’s potential incentive payments and penalties.

143. Amtrak submits that it is not practical to retroactively apply a new OA to the preceding ten years of the Parties’ relationship.

144. Amtrak proposal that a new OA apply prospectively is subject to one exception. In the Side Letter Agreements dated May 1, 2011, the Parties have already agreed that Amtrak’s obligation to reimburse certain costs incurred by CN are retroactive. (Exhibits. 5 & 6) (collectively, “the Side Letters”). Amtrak’s proposal for incorporating those letter agreements into the new OA is discussed below. Amtrak’s obligation to reimburse CN for those costs is subject to retroactivity, as specifically stated in the Side Letters

### **VIII. Confidentiality Issues**

145. In the 2019 Decision, the Board indicated that it “would make public any specific terms it would need to set in a later decision, as the Board disfavors confidential decision making unless absolutely necessary.” (2019 Dec., p. 28).

146. Although Amtrak acknowledges that the Board’s decisions are matters of public record, Amtrak requests that, in issuing its Final Decision, the Board keep confidential certain terms of the 2011 OA and proposed terms of the new OA related to: (1) costs and pricing; and (2) the indemnification arrangements between CN and Amtrak as to certain claims, damages and losses.

147. As explained in Amtrak’s accompanying brief, Amtrak believes that the costs and pricing information is confidential under the Protective Order the Board entered on December 16, 2013. The specific pricing and cost information at issue appears in Appendices IV (Current Costs and Price Level Adjustments), V (Performance Payments and Penalties), Appendix VI (Payment for Operations of Amtrak Train on GTW Lines) and IX (Payment for Amtrak Operations over the St. Charles Air Line Route) to the 2011 OA and the Amtrak Redline.

148. Public disclosure of these prices and costs could place Amtrak at a competitive disadvantage in negotiations with other Host Railroads.

149. Amtrak also requests that the terms under which CN and Amtrak will indemnify one another in the event of certain claims, damages and losses arising from railroad operations should be treated as confidential. The indemnification clauses at issue appear in § 7.2(A-K) of the 2011 OA and the Amtrak Redline. Amtrak is not proposing any amendments to the indemnification provisions as they appeared in the 2011 OA.

150. Lastly, the Side Letters also both contain a clause in which the Parties have agreed to keep the Side Letters and their terms confidential. Accordingly, the Board should

maintain the terms of the Side Letters confidential.

151. For the same reasons, Amtrak also requests that the Board impose a term in the new OA between the Parties which requires that the same information be maintained by the Parties as confidential. (Amtrak Redline, § 8.14).

#### **IX. Incorporation of the May 2011 Side-Letter Agreements**

152. CN and Amtrak entered in the Side Letters, both of which are dated May 1, 2011 and are described therein as “supplements” to the 2011 OA. (Exhs. 5 & 6). One letter agreement pertains to PTC-related costs paid by CN (the “PTC Letter Agreement”). (Exh. 5). The other pertains to “Safety Appliance” costs paid by CN (“the Safety Appliance Letter Agreement”) paid by CN. (Exh. 6).

153. The Side Letters provide that Amtrak must reimburse CN for certain costs defined in the Letters, respectively, as “Incremental PTC Costs”<sup>29</sup> and “Incremental Safety Appliance Costs.”<sup>30</sup> (Id., Exh. 5, p. 2; Exh. 6, p. 2).

154. Both Side Letters provide that their terms should be incorporated into the Parties’ OA.

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<sup>29</sup> In pertinent part, “Incremental PTC Costs” are defined as “PTC Costs that CN would not incur but for the operations of Amtrak on or over a route or portion of a route for which CN is the Host Railroad . . . .” “PTC Costs” is defined as “the costs incurred by CN of design, testing, installation, and maintenance (including renewal, upgrade, and replacement) of PTC . . . .” (Exh. 5, pp. 2-3).

<sup>30</sup> In pertinent part, “Incremental Safety Appliance Costs” are defined as “Safety Appliance Costs that CN would not incur but for the operations of Amtrak on or over a CN route or portion of a CN route over which Amtrak trains operate on a regular basis.” “Safety Appliance Costs” means “the costs incurred by CN of design, testing, installation, and maintenance of Safety Appliances to comply with the Safety Appliance Mandate.” “Safety Appliance” means “any equipment, device, or system, other than PTC, mandated by the FRA . . . or required by any other government agency with jurisdiction or by applicable statute, regulation, or rule to be installed on a CN route or portion of a CN route over which Amtrak trains operate on a regular basis . . . .” (Exh. 6, pp. 2-3).

155. Amtrak proposes that the terms and conditions of these Side Letters be incorporated into the new OA by reference and by attaching them as Exhibits to the new OA. (See Amtrak Redline, § Article I).

156. Where appropriate, Amtrak has included references to the Side Letters in the new OA. For example, Amtrak has identified those letters as containing incremental costs for which Amtrak may have an obligation to reimburse CN. (Amtrak Redline, § 5.1(A)).

157. As to the specific costs addressed in the Side Letters, Amtrak notes that CN represented that, as of the date of the Side Letters (May 1, 2011), that “it is CN’s best judgment and belief” that: (a) “no Incremental PTC Costs will be incurred for Amtrak routes operating over CN”; and (b) “no Incremental Safety Appliance Costs have been incurred . . . for Amtrak routes operating over CN.” (Exh. 5, p. 2; Exh. 6, p. 2).

158. Moreover, since the Side Letters were executed, CN has neither identified nor invoiced Amtrak for any such costs. Under the Side Letters, Amtrak retains and reserved the right to dispute when any cost invoiced in the future by CN qualify as “Incremental Safety Appliance Costs” or “Incremental PTC Costs.”

159. I, James A. Blair, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.

**Dated: May 26, 2022**  
**Philadelphia, PA**

  
\_\_\_\_\_  
**James A. Blair**

# EXHIBIT 1

CONFIDENTIAL INFORMATION  
REDACTED

OPERATING AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

GRAND TRUNK WESTERN RAILROAD COMPANY

AND

ILLINOIS CENTRAL RAILROAD COMPANY

DATED: May 1, 2011

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OPERATING AGREEMENT BETWEEN  
NATIONAL RAILROAD PASSENGER CORPORATION  
  
AND  
  
GRAND TRUNK WESTERN RAILROAD COMPANY  
AND  
ILLINOIS CENTRAL RAILROAD COMPANY

THIS OPERATING AGREEMENT ("Agreement") is between National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act now codified at 49 U.S.C. §§ 24101 et seq. (hereafter referred to as the "Act"), and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 (hereafter referred to as "Amtrak"), on the one hand, and Grand Trunk Western Railroad Company ("GTW") and Illinois Central Railroad Company ("IC"), having offices at 17641 Ashland Avenue, Homewood, IL 60430-1345 (hereafter collectively referred to as "CN"), on the other hand; individually referred to in this Agreement as a "Party" and referred to collectively as the "Parties."

WHEREAS, as of February 1, 1995, IC entered into an agreement with Amtrak with respect to the provision by IC of services and facilities for intercity rail passenger operations, which agreement has subsequently been amended (hereafter referred to as "the 1995 Agreement"); and

WHEREAS, Amtrak and CN have agreed to completely restate the 1995 Agreement to extend its application to rail lines of GTW and to provide for continuing Amtrak operations on CN's rail lines through April 30, 2013; and,

WHEREAS, Amtrak and IC have agreed to extend the term of the 1995 Agreement to the effective date of this Agreement;

NOW THEREFORE, effective as of May 1, 2011, the Parties agree to terminate and supersede the 1995 Agreement, and replace it with this Agreement as follows:

#### ARTICLE I DEFINITIONS

"Checkpoint" means any of the stations identified in Table 1 of Appendix V.

"Emergency Train" means any unplanned, non-regularly-scheduled Amtrak train operated on the Rail Lines, including Amtrak trains that are ordinarily operated over rail lines of other railroads, but which are detoured over the Rail Lines.

"Grand Crossing Route" means a future Grand Crossing connection constructed under the Chicago Region Environmental and Transportation Efficiency (CREATE) Program or otherwise, and that would run from the Rail Lines in the vicinity of 83rd Street to the Norfolk Southern (former Conrail) line, and associated improvements.

"GTW Lines" means those portions of the Rail Lines between:

- (1) Gord, MI (MP 175.5) and Port Huron, MI (MP 334.2), 158.7 miles;
- (2) Pontiac, MI (MP 25.8) and Vinewood, MI (MP 51.2), 25.3 miles;
- (3) Gord, MI (MP 175.5) and Baron, MI (MP 176.7), 1.2 miles; and
- (4) Munster, IN (MP 31.0) and Thornton Jct., IL (MP 25.2), 5.8 miles.

"Intercity Rail Passenger Service" means intercity rail passenger service as defined as of the effective date of this Agreement by 49 U.S.C. § 24102(5), including, but not limited to, the rail passenger service operated by Amtrak over the Rail Lines on the effective date of this Agreement.

"IC Lines" means those portions of the Rail Lines other than the GTW Lines.

"Incremental Costs" means all costs that CN would not incur but for: (a) the operations of Amtrak on the Rail Lines or (b) the provision of associated services to Amtrak pursuant to the Agreement and/or the Act.

"Intercity Rail Passenger Trains" means all trains operated in Intercity Rail Passenger Service (hereafter sometimes referred to as "Amtrak trains").

"Markham-to-Grand Crossing Route" means the portion of the Rail Lines from Markham Yard to the point on the St. Charles Air Line Route where the future Grand Crossing Route would connect in the vicinity of 83rd Street (approximately MP 20.1 to MP 10.4 on CN's Chicago Subdivision), totaling approximately 9.7 miles.

"Net Performance Charges" means the net of Performance Payments and Performance Penalties calculated in accordance with Part D of Appendix V.

"Performance Payments" means the payments calculated in accordance with Part B of Appendix V.

"Performance Penalties" means the penalties calculated in accordance with Part C of Appendix V.

"Performance Segment" means a portion of a route of a train between two Checkpoints.

"Rail Lines" means such of CN's trackage, rights of way and real properties as indicated on the maps in Appendix VIII, whether owned, leased or otherwise held, together with the facilities and structures thereon or appurtenant thereto, and all of CN's rights to use such properties of others used in connection with the operation of Amtrak trains as provided for in this Agreement, subject to the terms of any applicable agreements for the use of such property of others.

"Special Train" means any planned, non-regularly-scheduled Amtrak train operated on the Rail Lines.

“St. Charles Air Line” means the approximately 0.6 miles of the Rail Lines that are jointly owned by CN, BNSF Railway Company, and Union Pacific Railroad Company and that are located between approximately MP 1.71 on CN’s Chicago Subdivision and 16th Street Interlocking (approximately MP 1.4) and between 16th Street Interlocking and the connection with BNSF at the end of CN’s ownership approximately 70 feet west of the bascule bridge over the South Branch of the Chicago River.

“St. Charles Air Line Route” means the portion of the Rail Lines from a connection with the Markham-to-Grand Crossing Route in the vicinity of 83rd Street to 16th Street Interlocking (approximately MP 10.4 to MP 1.4 on CN’s Chicago Subdivision), from 16th Street Interlocking (Clark Street) to the connection with BNSF at the end of CN’s ownership approximately 70 feet west of the bascule bridge over the South Branch of the Chicago River (approximately 0.6 miles on CN’s St. Charles Air Line), and from 16th Street Interlocking to the connection with NS at 21st Street Interlocking (approximately MP 2.1 to MP 2.7 on CN’s Freeport Subdivision), collectively totaling approximately 10.2 miles.

## ARTICLE II [Reserved]

## ARTICLE III THE SERVICES

### Section 3.1 Right to Services

Subject to and in accordance with the terms and conditions of this Agreement, CN agrees to provide Amtrak with the use of the Rail Lines and the services requested by Amtrak for or in connection with the operation of Amtrak’s Intercity Rail Passenger Service, including the carrying of mail and express on Intercity Rail Passenger Trains to the extent authorized by law. The routes, schedules, and consists shall be compatible with the physical capabilities and resource limitations of CN.

## Section 3.2 Modified or Additional Services

### A. Definitions

The following definitions shall apply to this Section 3.2:

- (1) "Pure Running Time" is the travel time between two points at maximum authorized passenger train speeds, without delays.
- (2) "Dwell Time" is the amount of time to perform station work.
- (3) "Recovery Time" is time added to the schedule to compensate for certain delays encountered en route.
- (4) "Miscellaneous Time" is time that Amtrak may add or remove from a schedule for operational convenience.
- (5) "Schedule Skeleton" is an operating schedule grid in the format of the schedules provided in Appendix II.
- (6) "Other Time Classifications" are time classifications other than Pure Running Time, Dwell Time, Recovery Time, or Miscellaneous Time that may be added to a schedule on a route-specific basis upon agreement by the Parties, provided that the purpose for that classification is clearly specified, including any conditions that may allow for its removal. Any such time classifications shall be agreed upon by the Parties prior to their inclusion in a Schedule Skeleton.
- (7) "FRA Track Class" means the track class assigned to railroad track by the Federal Railroad Administration as set forth in 49 C.F.R. Part 213.
- (8) "Accelerated Speed" means an increase in the Base Timetable Speed (as defined in Subsection 4.2.A., below) for passenger trains operating on the Rail Lines.

B. Scope of Section

Subject to and in accordance with the terms and conditions of this Agreement, including but not limited to Section 4.3 and other provisions regarding increases in the Level of Utility of any part of the Rail Lines, and this Section 3.2, (i) Amtrak shall have the right from time to time to request modified or additional services, including changes to existing schedules, additional Amtrak trains, or Accelerated Speeds; and (ii) CN shall have the right from time to time to request changes to existing schedules.

C. Procedures for Additional Trains, Accelerated Speeds, and Modified and Additional Services

The procedures in Paragraphs (1) through (8) of this Subsection C shall be followed with respect to any request or proposal by Amtrak for: (i) additional Amtrak trains; (ii) Accelerated Speeds that require a change in FRA Track Class (including changes that require operation at Base Timetable Speed of greater than 79 mph); and (iii) other modified or additional services (where such modifications or additions are other than changes in schedule or changes in consist or equipment described in Subsection 3.2.D.).

(1) Amtrak shall submit a request to CN in writing sufficiently in advance of the date proposed for the commencement of any additional Amtrak train, Accelerated Speed, or other modified or additional service so as to permit adequate individual and joint analysis, planning, and preparation, and shall, with respect to additional trains, include such information as specified below in Paragraph (1) of Subsection 3.2.E.

(2) Additional Amtrak trains, Accelerated Speeds, or other modified or additional services shall be compatible with CN's physical capabilities and resource limitations, giving due regard to (i) CN's speed, weight, and similar operating restrictions and rules and safety standards and to the avoidance of unreasonable impairment of the adequacy, safety, and efficiency of all railroad operations over the Rail Lines, and (ii) the importance of fast and convenient schedules and passenger comfort and convenience to the success of Amtrak's Intercity Rail Passenger Service.

- (3) CN shall respond to Amtrak's request in writing within 30 days of its receipt.
- (4) If CN accepts the request, its response shall be in the form of a notice of acceptance, which shall include any terms or conditions applicable to its acceptance. The Parties shall seek agreement on any terms and conditions, which shall include a date for implementation of the proposed additional Amtrak trains, Accelerated Speeds, or other modified or additional services.
- (5) If CN rejects the request, its response shall be in the form of a notice of rejection, which shall include a detailed explanation.
- (6) If CN rejects Amtrak's request, or accepts Amtrak's request subject to terms or conditions that are unacceptable to Amtrak, then either CN or Amtrak may submit an alternative proposal for consideration by the other Party.
- (7) CN shall not be required to permit the operation of additional Amtrak trains or Amtrak trains at Accelerated Speeds or to provide other modified or additional services absent agreement of the Parties or an order by the STB, a court of competent jurisdiction, or an arbitrator pursuant to Article VI requiring CN to do so.
- (8) If and when the Parties agree upon a modified or additional service pursuant to this Subsection 3.2.C., they shall promptly execute an amendment to Appendix II and to Appendix V or Appendix VI of this Agreement, as applicable, reflecting that modified or additional service. Such amendment must be executed before the subject modified or additional service is implemented or Amtrak's timetable is published or amended to reflect such modified or additional service.

D. Changes to Existing Schedules Not Requiring Changes in FRA Track Class

The procedures set forth in Paragraphs (1) through (6) of this Subsection D, rather than the procedures set forth in Subsection 3.2.C., shall apply to requests for changes to existing schedules (including schedule modifications that require changes in Base Timetable Speed, additions, deletions, or modifications of station stops, and material changes in consist or type of equipment operated for a sustained period), if such changes do not require a change in the FRA Track Class applicable to any part of the Rail Lines (including a change to permit operation at greater than 79 mph).

(1) Either Party may request changes to an existing schedule. Changes to an existing schedule shall be compatible with CN's physical capabilities and resource limitations, giving due regard to (i) CN's speed, weight, and similar operating restrictions and rules and safety standards and to the avoidance of unreasonable impairment of the adequacy, safety, and efficiency of all railroad operations over the Rail Lines, and (ii) the importance of fast and convenient schedules and passenger comfort and convenience to the success of Amtrak's Intercity Rail Passenger Service.

(2) The Party requesting a change to an existing schedule ("Proposing Party") shall provide to the other Party ("Reviewing Party") a proposed Schedule Skeleton which indicates, for each affected train, the current and proposed: (i) time of arrival at the point of entry to the Rail Lines, and time of departure from the point of exit from the Rail Lines; (ii) Dwell Time at each station on the Rail Lines; and (iii) Pure Running Time, Recovery Time, Miscellaneous Time, and any Other Time Classifications between each station, including the points of entry to and exit from the Rail Lines. The Proposing Party shall also indicate a proposed effective date for the schedule change. The Parties acknowledge and agree that Amtrak may need to advise and obtain the concurrence of other railroads involved in the proposed schedule change. The Proposing Party shall also supply such other information necessary to permit the Reviewing Party to analyze the proposed schedule change.

(3) The date agreed to by the Parties for implementation of the proposed schedule changes will be sufficiently in the future to allow the agreed schedules to be entered into reservation systems, to be published in timetables for use by the public, and to allow reserved passengers to be notified of the change.

(4) No schedule change shall be implemented absent agreement of the Parties or an order by the STB, a court of competent jurisdiction, or an arbitrator pursuant to Article VI requiring such schedule change.

(5) Each published timetable for Amtrak trains operated over the Rail Lines shall be consistent at all times with the corresponding Schedule Skeleton in Appendix II. Should any difference arise between any one of Amtrak's published timetables and a corresponding Schedule Skeleton in Appendix II, Amtrak agrees to promptly amend its published timetable to bring it into conformance with that Schedule Skeleton.

(6) If and when the Parties agree upon a change in schedule pursuant to this Subsection 3.2.D., they shall promptly execute an amendment to Appendix II and to Appendix V or Appendix VI of this Agreement, as applicable, reflecting that change. Such amendment must be executed before the schedule change is implemented or Amtrak's timetable is published or amended to reflect such schedule change.

#### E. Additional Trains

In addition to the procedures set forth in Subsection 3.2.C. above, the following provisions shall apply to requests by Amtrak to operate additional Amtrak trains on the Rail Lines:

(1) In its request to operate additional trains, Amtrak shall clearly indicate in a Schedule Skeleton, for each such additional Amtrak train: (i) the proposed time of arrival at the point of entry to the Rail Lines, and the proposed time of departure at the point of exit from the Rail Lines; (ii) the proposed Dwell Time at each station on the Rail Lines; and (iii) the proposed Pure Running Time, Recovery Time, and Miscellaneous

Time, and any Other Time Classifications between each station, including the points of entry to and exit from the Rail Lines. In its request, Amtrak shall indicate a proposed start date of each requested additional train. The Parties acknowledge and agree that Amtrak may need to advise and obtain the concurrence of other railroads involved in the requested additional trains.

(2) If and when the Parties agree upon the addition of an Amtrak train pursuant to this Subsection 3.2.E., they shall promptly execute an amendment to Appendix II and to Appendix V or Appendix VI of this Agreement, as applicable, reflecting that addition. Such amendment must be executed before the new train is added or Amtrak's timetable is published or amended to reflect such additional train.

F. Accelerated Speeds Greater than 79 Miles Per Hour

In addition to the procedures set forth in Subsection 3.2.C., above, the following provisions shall apply to any request by Amtrak to operate a train at a speed greater than 79 miles per hour:

(1) In the event that Amtrak wishes to operate a train or trains in excess of 79 miles per hour on the Rail Lines, it shall so notify CN in writing sufficiently in advance to permit the Parties to negotiate terms prior to the proposed date for commencement of the requested speeds, such terms including, but not limited to, compensation, realistic and achievable schedules, and infrastructure improvements to make such Accelerated Speeds safe and practicable.

(2) If and when the Parties agree upon Accelerated Speeds pursuant to this Subsection 3.2.F., they shall promptly execute an amendment to Appendix II and to Appendix V or Appendix VI of this Agreement, as applicable, reflecting the Accelerated Speeds. Such amendment must be executed before the Accelerated Speeds are implemented or Amtrak's timetable is published or amended to reflect such Accelerated Speeds.

### Section 3.3 Emergency Trains, Detour Trains, and Emergency Services

#### A. Emergency Trains (on CN)

Amtrak shall have the right to request and, subject to and in accordance with the terms and conditions of this Agreement, CN agrees to allow Amtrak to operate Emergency Trains on the Rail Lines as required as a result of the Rail Lines or the rail lines of another railroad used in the operation of Amtrak trains becoming impassable, unsafe, or impractical for use by Amtrak trains. Amtrak may make an oral request to CN for the operation of an Emergency Train, but any such request shall be made as far in advance as possible, and shall be confirmed in writing to CN within twenty-four (24) hours after the oral request to CN. The operation of Emergency Trains shall recognize and be subject to the physical capabilities and resource limitations of CN and shall give due regard to CN's speed, weight, and similar operating restrictions and rules and safety standards. The Emergency Trains shall not be subject to, and Amtrak hereby waives, any metric, measurement, or penalty to which CN would otherwise be subject as a result of operation of any Emergency Train, whether operating on the Rail Lines or on the rail lines of any other carrier. CN agrees to use its best efforts to provide services requested under this Subsection 3.3.A. in an expeditious and efficient manner. Amtrak shall reimburse CN for all Incremental Costs and all directly related costs incurred by CN in providing service to Emergency Trains, as provided for in Appendix IV, Item 18. CN shall not bill other railroads for any costs or charges in connection with such Emergency Trains. Employees of other railroads who operate trains on behalf of Amtrak over the Rail Lines shall, while on such Rail Lines, be deemed employees of Amtrak for purposes of Subsection 7.2.A.

#### B. Detour Trains (on Other Railroads)

In the event of detours of Amtrak trains over rail lines of other railroads ordinarily operated over the Rail Lines, Amtrak shall reimburse CN as provided in Appendix IV, Item 19, for all Incremental Costs incurred by CN as a result of the detours over rail lines of other railroads.

### C. Emergency Services

In emergency situations, Amtrak shall have the right to request and, subject to and in accordance with the terms and conditions of this Agreement and the physical capabilities and resource limitations of CN, CN shall provide the requested emergency services that Amtrak may be unable to perform for an Amtrak train located on the Rail Lines or as may be necessary to permit an Amtrak locomotive or a car in the consist of an Amtrak train to complete a trip over the Rail Lines that is required for safe operation or for basic passenger comfort. Amtrak may make an oral request to CN for emergency services, but any such request shall be made as far in advance as possible, and shall be confirmed in writing to CN within twenty-four (24) hours after the oral request to CN. Amtrak shall compensate CN for all Incremental Costs and all directly related costs incurred by CN in providing any emergency services performed by CN pursuant to this Subsection 3.3.C. as provided in Appendix IV, Item 21. Article VII notwithstanding, if emergency services are provided by CN on rail lines of another railroad, Amtrak shall indemnify and save CN harmless, irrespective of any negligence or fault of CN, its employees, agents, or servants or howsoever the same shall occur or be caused, from any and all liability for injury or death of any person or persons, and from any and all liability for loss, damage, or destruction to any properties, which arise from the provision of such services.

### Section 3.4 Standards of Performance

A. With respect to services required or agreed to be provided by CN to Amtrak under this Agreement, CN agrees to provide and furnish all labor, materials, equipment, and facilities necessary to perform such services (except as the same are provided by Amtrak), but shall not, except as otherwise provided in this Agreement or upon agreement with Amtrak, be required to purchase, construct, rebuild or replace Rail Lines, locomotives, cars, rolling stock, or Fixed Ancillary Facilities (as defined in Section 3.8).

B. CN shall provide services hereunder in an economic, safe, and efficient manner and shall make reasonable efforts:

1. To deliver Amtrak trains to all scheduled passenger stops on CN by the scheduled time therefor in accordance with the schedules as provided in Appendix II;
2. To avoid excessive delays to trains;
3. To regain time lost due to delays incurred on the Rail Lines;
4. To regain time lost due to delays incurred on rail lines of other railroads; and
5. To the extent that CN has reasonably available resources, to service, inspect, and perform routine running repairs as necessary to permit an Amtrak locomotive or a passenger car in the consist of an Amtrak train to complete a trip over the Rail Lines.

C. Amtrak and CN shall perform their obligations to one another under this Agreement in good faith.

D. To the extent practicable, and as soon as possible, CN and Amtrak shall negotiate such amendments to this Agreement as may be necessary to reflect metrics and standards developed by the FRA under Section 207(a) of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432 ("PRIIA"), including any changes to those metrics and standards, consistent with the requirements of PRIIA and the operational and administrative requirements of both Parties to this Agreement.

E. Amtrak shall maintain and fuel its locomotives and cars such that no maintenance, servicing, or fueling of any locomotives or cars will be required on the Rail Lines, except in an emergency. Except in an emergency, Amtrak shall not switch out locomotives or cars, or perform maintenance or fueling of any of its locomotives or cars on any portion of the Rail Lines, other than in a terminal station or other locations as may be agreed to

by the Parties in writing (or, pursuant to Section 8.5, by e-mail to the Amtrak Operations Officer, later confirmed in writing).

### Section 3.5 No Violation of Labor Agreements

Each Party agrees that it will not require the performance of services hereunder by the other in a manner that would cause the other to: (a) violate the terms of any then current labor agreement between that other Party and any organization representing any of its employees, or (b) incur penalties under such agreement, unless such penalties are reimbursed by the Party requiring such performance of services.

### Section 3.6 [Reserved]

### Section 3.7 CN Control and Supervision

In the performance of services referred to in this Agreement, CN shall have sole control of the operation of Amtrak's Intercity Rail Passenger trains while on the Rail Lines. All personnel rendering any services which involve responsibility for CN's operating facilities or for the handling or movement of any Intercity Rail Passenger Train shall be subject to the direction, supervision and control of CN and must be qualified under all operating and safety rules, orders, procedures, and standards of CN as are applicable to Amtrak, and such services performed by or for Amtrak shall be governed by and subject to all then current operating and safety rules, orders, procedures, and standards of CN with respect thereto.

CN may, for cause, require that any person performing services pursuant to this Agreement be prohibited or removed from performance of such services, subject to the requirement that CN shall support any action defending such prohibition or removal and bear any claims (other than from proceedings conducted pursuant to 49 C.F.R. Part 240) growing out of any action determined to be improper by a labor board or on

appellate review. In the case of any offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein CN desires to bar Amtrak's employee from service on the Rail Lines pending an investigation, CN will give written notification to the appropriate Amtrak Transportation Officer as soon as possible.

### Section 3.8 Fixed Ancillary Facilities

A. With respect to any fixed ancillary facility, including, but not limited to, depots, platforms, canopies, designated parking areas, and servicing facilities, or any portion thereof, which is owned or leased by CN ("Fixed Ancillary Facility") that is currently being used for services rendered by CN pursuant to Article III hereof, CN shall (i) provide advance notice to Amtrak of at least ninety (90) days of its intention to dispose of or downgrade the Fixed Ancillary Facility, and (ii) on request of Amtrak, furnish a substitute facility reasonably equivalent in utility prior to disposing of or downgrading the Fixed Ancillary Facility. Notwithstanding the foregoing, if Amtrak has leased from CN an Fixed Ancillary Facility or portion thereof and Amtrak either removes, or fails to replace or maintain such Fixed Ancillary Facility, CN shall be under no obligation to furnish a substitute facility.

B. As soon as possible following the effective date of this Agreement, and on or by May 1 of each subsequent calendar year, Amtrak shall provide to CN an annual list of Fixed Ancillary Facilities, which are not then being used for services rendered by CN pursuant to Article III hereof, but which Amtrak may consider useful for service on (i) Rail Lines on which Amtrak is currently operating Amtrak trains, and (ii) on other CN lines on which Amtrak is not currently operating Amtrak trains but on which Amtrak may be actively considering future service. Inclusion of a Fixed Ancillary Facility on Amtrak's annual list shall not preclude CN from disposing of or downgrading said facility, but CN shall provide advance notice to Amtrak of at least ninety (90) days of its intention to do so for any facility on Amtrak's then current list. CN shall have no obligation under this Agreement to provide Amtrak with any prior notice of disposal of Fixed Ancillary

Facilities located on lines not then being used by Amtrak trains that are not included on Amtrak's then current annual list.

C. Nothing in this Section 3.8 shall relieve CN of any statutory obligations it may have to provide notice concerning disposal or downgrading of Fixed Ancillary Facilities.

#### ARTICLE IV RAIL LINES

##### Section 4.1 Rail Lines

A. CN shall retain and not voluntarily dispose of or abandon or discontinue service on Rail Lines, or any portion thereof (other than Fixed Ancillary Facilities, which shall be governed under Section 3.8 of this Agreement) without written notice to Amtrak at least thirty (30) days before filing any application, petition for exemption, notice of exemption, or other regulatory filing seeking authority from the STB to dispose of, abandon or discontinue service over the portion of the Rail Lines, or such longer period as may be required by law, and at least thirty (30) days before disposing, abandoning, or discontinuing any portion of the Rail Lines for which regulatory authority to dispose, abandon or discontinue service is not required, for as long as such Rail Lines are in use by Amtrak or for the term of this Agreement, whichever period is the shorter, provided that seasonal changes or suspensions of service by Amtrak shall not be deemed discontinuance of use. Except as provided in Section 3.8, nothing herein shall prevent CN from modifying, changing, or relocating any facility (including removing a track or tracks parallel to a single track on a rail right-of-way), other than Fixed Ancillary Facilities, or any segment of its routes, provided that the continuity of any route then in use by Amtrak is retained.

B. Any proposed reduction in the number of main line tracks on any portion of the St. Charles Air Line Route or the Markham-to-Grand Crossing Route will be discussed in advance with Amtrak, and shall be consistent with Section 4.2.

C. Subject to termination of its rights under Section 8.9 of this Agreement, Amtrak may remain: (i) on the St. Charles Air Line and the St. Charles Air Line Route, at costs capped at the level as shown in Appendix IV, Table 1, Item 14, adjusted only for inflation in accordance with the formulas contained in Table 2 of Appendix IX hereof; and (ii) on the Markham-to-Grand Crossing Route, at costs determined on the same basis as costs for Amtrak's use of Rail Lines between Markham and New Orleans.

#### Section 4.2 Maintenance of Rail Lines

A. CN shall maintain the Rail Lines at a level of utility ("Base Level of Utility"), defined as a condition that permits each Amtrak train to operate:

1. at no less than the Base Timetable Speeds as set forth in Appendix I (the "Base Timetable Speeds"); and
2. with a reasonable level of reliability, and
3. with a reasonable degree of passenger comfort.

B. CN agrees to maintain the Rail Lines at the Base Level of Utility without reimbursement from Amtrak. Amtrak agrees to reimburse CN for all costs above the cost of maintaining the Rail Lines at the Base Level of Utility, to the extent that those costs are attributable to the operation of Amtrak trains ("Incremental Maintenance Costs"), as shown in Appendix IV, Item 6. Amtrak's obligation to reimburse CN for Incremental Maintenance Costs shall be reflected in any compensation arrangement between Amtrak and CN, whether negotiated by the Parties or established by a third party pursuant to Section 5.1 of this Agreement.

C. Changes made by the FRA to the specifications for FRA Class of Track shall not result in a change to the Base Level of Utility obligation pursuant to this Section 4.2. Amtrak agrees to reimburse CN for any increased costs CN incurs to maintain the speeds specified in Appendix I due to a change in the applicable FRA specification. (For example, if FRA changes curve elevation requirements for various track speeds, thus

lowering the acceptable speed for existing elevations, CN may reduce the speed as required without penalty under this Agreement. If Amtrak desires to maintain the previous higher speed, then Amtrak shall compensate CN for the actual cost of the necessary elevation adjustments.)

D. If the authorized speeds are lawfully decreased by a governmental entity with authority to do so in a way that is likely to have a significant impact on the operation of an Amtrak train, then the Parties shall make such schedule changes, pursuant to Subsection 3.2.D., as may be necessary to comply with the modified law or regulation.

E. Amtrak agrees that CN may adjust speeds at various locations when conditions require; provided, however, that overall Pure Running Time (as defined in Subsection 3.2.A.) for the train in any Performance Segment will not be lengthened as a result of such changes.

#### Section 4.3 Additional Maintenance and Improvements

A. Upon the request of Amtrak, and at the sole expense of Amtrak for any additional cost not reimbursed under Appendix IV, CN shall as promptly as feasible modify its maintenance of the Rail Lines so as to increase the Level of Utility of any part of its Rail Lines above the Base Level of Utility, to the level specified in such request.

B. Amtrak shall have the right, at its sole expense, to require CN to improve the Rail Lines; provided, however, that any such improvement shall not unduly interfere with or unduly limit CN's scheduled railroad operations, that any such requested improvement shall be made by CN as promptly as feasible, and that any increase in maintenance cost occasioned by such improvement shall be paid by Amtrak, to the extent that such increased cost is not reimbursed under Appendix IV.

## ARTICLE V ACCOUNTS AND PAYMENTS

### Section 5.1 Basis of Payment

Amtrak shall pay CN amounts set forth or calculated in accordance with Subsections A, B, and C, below, and other adjustments provided in Subsection D, below, as compensation for the routine services and activities performed by CN and the Rail Lines and equipment and other items made available to Amtrak under this Agreement, and for CN's provision of management and corporate resources necessary to enable CN to provide the services, activities, and Rail Lines specified herein.

Amtrak may request that CN render for or provide to Amtrak non-routine services or items that are not otherwise covered by this Agreement. Any such request shall be made in writing (or, pursuant to Section 8.5, by e-mail to CN's Amtrak Operations Officer). Subject to CN's physical capabilities and resource limitations, CN agrees to provide Amtrak with such requested non-routine services. Amtrak will pay CN the Incremental Costs incurred by CN in performing non-routine services or providing such items. In addition to other applicable costs under this Section 5.1, costs for non-routine services and items for which CN is entitled to reimbursement under this Section shall include materials, wages (fringe benefits, overheads), and other incremental personnel costs. Such costs shall also include small tools and supplies as may be required by the project. Amtrak's Authorization Notice Procedures shall be utilized for the approval and billing authorization of these costs, and billings for such costs shall be subject to audit by Amtrak.

#### A. Initial Service

With respect to the operation of Amtrak trains by CN hereunder, and the services and Rail Lines provided by CN in connection therewith as of the effective date of this Agreement ("Initial Service"), Amtrak shall pay CN the amounts specified in Appendices IV and VI. The Parties agree that the amounts to be paid by Amtrak specified in Appendices IV and VI represent reimbursement to CN of CN's Incremental Costs

resulting from Amtrak's operation of trains over the Rail Lines and for the services and activities provided by CN in connection therewith and specified therein.

#### B. Modified or Additional Service

In response to any request by Amtrak for modified or additional services to be provided by CN pursuant to Section 3.2, compensation for such services shall correspond to that in Subsection 5.1.A. and Appendix IV. If either Party believes the modified or additional services requested differ in a manner from existing services that would affect compensation, that Party may propose to the other Party compensation which shall be calculated using the methodology employed in calculating the rates in Subsection 5.1.A. and Appendix IV and shall be designed to provide CN with payment as nearly as possible on the same basis as for comparable services being rendered at that time, taking into account, however, any relevant differences in such services. Performance Payments and Performance Penalties shall be consistent with those in Subsection 5.1.C. and Appendices V and VI in connection with the operation of such service or comparable services.

In the event that either Party believes that the basis used for developing compensation pursuant to this Subsection 5.1.B. differs significantly from the basis used for developing compensation for the Initial Service as provided in Subsections 5.1.A. and Subsection 5.1.C., taking into account, however, any relevant differences in such services, then that Party may apply to the National Arbitration Panel (the "Panel") pursuant to Article VI of this Agreement for an order prescribing the compensation to be paid for the modified services on the same basis used to establish compensation pursuant to Subsections 5.1.A. and 5.1.C., taking into account, however, any relevant differences in such services. Such order shall be effective on the date of the Panel's order or such other date as the Parties may agree to or, in the absence of such agreement, on the date set by the Panel. CN shall provide the services requested by Amtrak under the terms of this Agreement during the pendency of the proceeding, and Amtrak shall pay CN interim payments based on Subsection 5.1.A. and Appendix IV, and Subsection 5.1.C. and

Appendices V and VI of this Agreement. The Parties agree to adjust any such interim payments to the final compensation determination as established by the Panel, including retroactively to the date the interim payments commenced.

#### C. Performance Payments

In addition to the reimbursement paid to CN under this Section, CN shall be provided with the opportunity to earn additional payments for schedule adherence as set forth in Appendix V and in accordance with Section 5.2.

#### D. Payment Adjustment

The amount of payments stated to be payable by Amtrak under Subsection 5.1.A., and the amounts which become effective for payment under Subsection 5.1.B., shall be subject to further adjustments as follows:

1. For the purpose of keeping the cost provisions current with CN's labor, fringe benefit, and material costs, the fixed payments specified in Appendix IV shall be adjusted in accordance with the provisions set forth in that Appendix.
2. The basis or the amounts of payment shall be appropriately adjusted whenever:
  - (a) CN ceases to perform any service or activity;
  - (b) The provision of any service, activity, or facility hereunder is changed in accordance with this Agreement.
3. Amtrak may notify CN that it no longer desires CN to perform or furnish specific services, activities, or facilities for which Amtrak compensates CN, and CN shall cease to perform or provide the same on the date requested. Such notice shall include a schedule of the services, activities, or facilities to be terminated, and after the date requested for termination of performance, Amtrak shall no longer be required to pay CN with respect thereto. Amtrak agrees, however, to reimburse CN the costs associated with the service as specified in Appendix IV

until it ceases, and the incremental cost of removing facilities installed at Amtrak's request which are incurred as a consequence of CN's orderly termination of such services, activities, or facilities irrespective of the date incurred. For purposes of this Paragraph 3, Amtrak shall reimburse CN Incremental Costs and any directly related costs incurred by CN in removing facilities installed at Amtrak's request and which Amtrak no longer desires to have provided by CN.

4. If Amtrak and CN are unable to resolve any dispute regarding the amount of any change in the basis of payment which may be made pursuant to Paragraphs 1 through 3 of this Subsection 5.1.D., either Party may apply to the Panel pursuant to Article VI of this Agreement, for an order prescribing the amount or basis of payment consistent with such paragraphs. Such order shall be effective on the date agreed by the Parties or (in the absence of such agreement) upon the date set by the Panel. During the pendency of any such proceedings, CN shall provide the services requested by Amtrak under the terms of this Agreement and Amtrak shall pay CN the amount due for services provided by CN pursuant to the terms of this Agreement and not requested to be terminated in accordance with Paragraph 3, above, or shall, for additional services requested, pay the amount proposed by Amtrak or an interim amount set by the Panel. The Parties agree to adjust any interim payments to reflect the final compensation determination as established by the Panel.

#### E. Trackage Agreements

To the extent possible, CN shall not bill any other railroad in connection with the operation of Amtrak trains by CN or such other railroad. In the event that charges payable by or to CN under existing joint trackage agreements are affected by operation of Amtrak trains, CN shall credit to Amtrak the entire amount of increased payments received from another railroad (or reduced payments to another railroad) as a result of Amtrak operations, and Amtrak shall pay to CN any increase in the amount of payments

CN is required to make to another railroad (or reduced payments to CN) pursuant to such agreements as a result of Amtrak operations; provided, however, that the amount of any payments for incremental track maintenance payable pursuant to Appendix IV of this Agreement with respect to trackage or facilities also covered by this Subsection shall first be offset against any amount determined to be payable by Amtrak pursuant to this Subsection.

## Section 5.2 Billing and Payment

### A. Payment of Monthly Billing

Within thirty (30) days after the last day of each calendar month, CN shall submit a Statement of Charges to Amtrak calculated for such month in accordance with the provisions of Section 5.1. The Statement of Charges shall clearly and separately set forth Base Charges (defined as all amounts owed to CN pursuant to Section 5.1, excluding Performance Payments), Performance Payments earned by CN during such month pursuant to Part B of Appendix V, and Performance Penalties incurred by CN during such month pursuant to Part C of Appendix V. The Statement of Charges shall set forth Performance Payments and Performance Penalties for each category of train defined in Part D of Appendix V and shall be submitted in the form and contain such information as shown in Appendix VII. Amtrak may request revisions in the forms and methods of billing. If a requested revision would significantly change the amount of work required by CN in connection with billing Amtrak, then, prior to the implementation of that revision, the Parties will negotiate and determine what, if any, new basis of compensation is appropriate for such activity. If the Statement of Charges is in the form and includes the data and information specified in Appendix VII, or in another form as may be agreed to in writing by the Parties, then no payment shall be withheld and no adjustment shall be made on account of the form of the Statement of Charges or the absence of any data or information from the Statement of Charges. Further, no payment shall be withheld by Amtrak unless Amtrak provides a full and complete written

explanation of the basis on which it is withholding such payment, including, without limitation, the contractual reference and contractual basis.

Within thirty (30) days after receipt of such Statement, Amtrak shall wire transfer its payment to CN, according to such instructions as CN shall have provided for such payment (or with CN's concurrence mail its payment or make checks available at the Controller's office of Amtrak for CN's authorized agent).

Subject to the setoffs and adjustments otherwise provided for herein, Amtrak's payment to CN shall include (1) the Base Charges due in accordance with Section 5.1, plus (2) the Net Performance Charges, calculated in accordance with Part D of Appendix V, for each category of Amtrak trains listed in Part D of Appendix V for which the Net Performance Charges are greater than zero. To the extent that the Net Performance Charges for any category of Amtrak trains are less than zero and there is no good-faith dispute between CN and Amtrak as to the amount by which Performance Penalties exceed Performance Payments for that category of trains, Amtrak shall have the right to set off such negative Net Performance Charges up to the level of the Base Charges for that month, but only up to the amount of Performance Payments earned for all trains within that category of trains (*i.e.*, within the applicable one of the three categories defined in Part D of Appendix V) at all Checkpoints during the preceding 12 months, less any amounts by which those Performance Payments have previously been reduced by setoffs on a first in, first out basis. If there is a good-faith dispute between CN and Amtrak as to the amount by which Performance Penalties exceed Performance Payments for any category of trains, Amtrak's right to set off negative Net Performance Charges for that category of trains shall be limited as provided in Subsection 5.2.D.

#### B. Right of Review and Audit

Any payment by Amtrak or settlement between Amtrak and CN shall be subject to an audit and evaluation of operations, performance, and costs. The scope of such audit and evaluation shall be both financial and operational, and may include, in addition to costs and wages reimbursed by Amtrak, CN's controls, practices, and procedures and

their effect upon the efficiency and quality of performance provided by CN, and sources of information used to calculate Performance Payments and Performance Penalties. In the event that an audit of Amtrak payments proves that Amtrak has made payments in excess of its obligations under this Agreement, CN shall promptly refund such overpayments to Amtrak. In the event that an audit of operations indicates a deficiency in CN's performance under this Agreement, that finding shall not entitle Amtrak to any offset to its payment obligations or any reimbursement by CN, other than specifically provided for herein. Each Party and/or its representatives shall, upon reasonable notice, be given reasonable access during business hours to the other Party's records for inspection and/or copying and to its facilities and appropriate personnel.

#### C. Records

Both Parties shall maintain supporting accounting, operating, and mechanical department records and any other related data which may reasonably concern the performance of services for Amtrak, and such supporting documents shall be available for review and audit at points where such records are ordinarily kept. Where pertinent, such records shall include the designated train number and/or locomotive number and or car numbers, and shall be maintained and accumulated on a location-by-location basis. Such records shall be retained not less than 36 months and shall be available for inspection and copying during the regular business hours of the location where the record is retained. Specification of such minimum retention period shall not limit the right of review and audit of any records that exist.

#### D. Adjustments

In the event either Party believes it has made a payment which exceeds (or has received a payment which is less than) the amount required by the provisions of this Agreement or a settlement between the Parties of a matter covered by this Agreement, or in the event either Party proposes to pay an amount different than that billed by the other Party, such Party shall formally submit its claim in reasonable detail to the other Party, including the specific factual basis and contract references for any adjustment, in

the format and containing information as mutually agreed upon and shown in Appendix VII. (The Parties agree to develop jointly a format for presentation of the factual basis and contract references in support of claims for adjustment and to present any such claim in such format as may be developed, as provided in Appendix VII.)

If there is a dispute between CN and Amtrak as to any adjustment to the Statement of Charges, then that adjustment shall be regarded as a disputed adjustment for that month and all subsequent months until resolution of the dispute. If an adjustment related to Performance Penalties or Performance Payments is disputed, it shall not be included as a Performance Penalty or Performance Payment or in the determination of Net Performance Charges for purposes of Part D of Appendix V; such adjustments shall instead be resolved by the Parties in accordance with this Subsection 5.2.D.

Undisputed adjustments shall be paid promptly by the other Party. In the event that a Party disagrees with the proposed adjustment or lacks sufficient information to assess the adjustment, such Party shall provide a written statement of its need for information or the theory of its disagreement and the facts supporting that theory in a form which will permit the claiming Party to evaluate the merits of the other Party's position. Any adjustment which is unresolved ninety (90) days after having been formally presented shall, at the request of either Party, be submitted to arbitration for resolution in accordance with Article VI. If it is established by agreement or arbitration more than 90 days after a claim is initially submitted to a Party that an overpayment or underpayment has occurred, the amount of such excess or shortfall shall bear interest at the 90 day U.S. Treasury bill rate applicable on the date on which the claim was first presented to the other Party, as published in the Federal Reserve Bulletin, from such date, until the date the appropriate adjustment is made. Such interest rate shall be considered an annual percentage rate and shall be computed on a monthly basis.

#### E. Revision of Flat Rates

If the amount of compensation specified in Appendix IV for a flat-rated item varies clearly and substantially from the actual, Incremental Costs incurred by CN in

connection with such item, and if the flat rate is inaccurate because of the existence of a material mistake of fact, Appendix IV shall be amended so that the compensation with respect to such item shall reasonably reflect the Incremental Costs incurred by CN which are covered by that item. The effective date of any such amendment shall be retroactive to the date upon which notice of discovery of such mistake is given by either Party. If the Parties are unable to agree upon an amendment to Appendix IV in accordance with this Subsection, the question shall be referred, upon the request of either Party, to arbitration pursuant to Article VI. Any arbitration decision requiring adjustment of a flat rate in Appendix IV shall be applied retroactively to the date upon which notice of discovery of material mistake of fact is reported. For purposes of this provision, a material mistake of fact has occurred when there has been significant factual understanding which was incorrect and (1) was relied upon by both Parties without knowledge of its error, or (2) was relied upon by one Party, where that Party could not reasonably have known that it was incorrect, while the other Party either knew it was incorrect or failed to take reasonable steps to determine its accuracy. For purpose of this provision, a variance between actual, Incremental Costs and the agreed upon flat rate amount for that item which is less than 20% (unless such variance exceeds \$25,000 per year for the item) will normally be deemed not to be substantial.

### Section 5.3 Contract Advance

The contract advance in the sum of \$247,000, which is currently in CN's possession, shall be increased to \$800,000 effective with the execution of this agreement and shall be retained by CN until forty-five (45) days after the last day of the last month for which this Agreement provides for the basis of payment. At that time, such advance shall be credited against any amount then properly owing from Amtrak to CN under this Agreement and any remaining amount shall be refunded to Amtrak, or Amtrak shall pay CN the difference between the advance and the payments due and owing under the Agreement for the last month's operation, as the case may be. The amount of the advance shall be appropriately adjusted in the event of a deletion, addition, or substantial modification of Amtrak passenger operations over the Rail Lines.

ARTICLE VI ARBITRATION

Except as otherwise provided herein, any claim or controversy between Amtrak and CN concerning the interpretation, application, or implementation of this Agreement shall be submitted to binding arbitration in accordance with the provisions of the Amtrak Arbitration Agreement dated April 16, 1971, among Amtrak and certain of the railroads (the "Arbitration Agreement"). CN and Amtrak hereby agree to be bound by the provisions of the Arbitration Agreement. As between the Parties hereto, the term of said Arbitration Agreement shall be deemed to continue during the term hereof, and this Agreement shall be deemed the "Basic Agreement" for purposes of the Arbitration Agreement.

ARTICLE VII GENERAL

Section 7.1 [Reserved]

Section 7.2 Risk of Liability

■ [REDACTED]

■ [REDACTED]

- [REDACTED]

- [REDACTED]

Section 7.3 Information

Amtrak or its designated agents shall have the right upon reasonable conditions and notice to examine the Rail Lines. CN shall furnish, when reasonably requested by Amtrak, reports to Amtrak pertaining to the Base Level of Utility and operations on the Rail Lines, which reports shall set forth the speed and slow orders on each line segment

of the Rail Lines, the condition and capacity of stations and terminals (including any contractual limitations governing CN's use of such stations and terminals), the availability and capacity of maintenance facilities for the Rail Lines, and current maintenance procedures for the Rail Lines.

#### Section 7.4 Amtrak Operations Officer

CN shall appoint an individual of appropriate rank to be Amtrak Operations Officer and shall so notify Amtrak. The Amtrak Operations Officer shall have the responsibility within the CN organization for ensuring the performance by CN of its obligations under this Agreement.

#### Section 7.5 Transportation Privileges

Company mail of CN may be transported without charge on any Intercity Rail Passenger Train by Amtrak over the Rail Lines, provided that no extra or special personnel shall be required in connection with the handling thereof.

Business cars of CN and CN officials and administrative personnel transported therein may be handled on Intercity Rail Passenger Trains, provided that the same may be done consistently with the safe and efficient operation of such trains and shall not cause any material delays in the operation thereof and that any additional cost resulting therefrom will be borne by CN.

CN shall deadhead passenger cars in freight trains, at the request of Amtrak, provided that the same may be done consistent with the safe and efficient operation of such freight trains. Amtrak shall compensate CN for this service in accordance with Appendix IV, Table 1, Item 10(a).

Employees of CN shall be entitled to ride on Intercity Rail Passenger Trains, including locomotives, without charge, whenever necessary in connection with the inspection, maintenance or operation of such trains.

Transportation privileges, if any, with respect to business and personal travel of CN personnel shall be as determined by Amtrak.

## ARTICLE VIII MISCELLANEOUS

### Section 8.1 Force Majeure

The obligations of the Parties hereunder, other than payment, shall be subject to force majeure (which shall include war, strikes, riots, floods, accidents, acts of God, terrorism, and other causes or circumstances beyond the reasonable control of the Party claiming such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

### Section 8.2 Successors and Assigns

All the covenants and obligations of the Parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns. None of Amtrak's operating or use rights under this Agreement may be assigned to any other party, other than a party that is entitled by federal statute to access, operating, and use rights to the Rail Lines on the same terms and subject to the same conditions as Amtrak, without CN's written consent.

### Section 8.3 Interpretation

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof. This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia. All appendices

attached hereto are integral parts of this Agreement and the provisions set forth in the appendices shall bind the Parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm, or corporation other than Amtrak or CN any legal or equitable right, remedy, or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived, or modified orally, but only by an instrument in writing signed by Amtrak and CN, unless a provision hereof expressly permits either of said Parties to effect termination, amendment, supplementation, waiver, or modification hereunder, in which event such action shall be taken in accordance with the terms of such provision.

#### Section 8.4 Severability

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

#### Section 8.5 Notices

Except as provided below with respect to communications pursuant to Section 3.2, Subsection 3.4.E., and Section 5.1, any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one Party by the other Party, shall be in writing and shall be delivered by hand or by deposit in the mails of the United States postage prepaid, if to Amtrak, in an envelope addressed as follows:

National Railroad Passenger Corporation  
2955 Market Street  
Philadelphia, PA 19104  
Attention: Senior Director Host Railroads

and if to CN, in an envelope addressed as follows:

CN  
17641 Ashland Avenue  
Homewood, IL 60430-1345  
Attention: Amtrak Operations Officer

Each Party may change the address at which it shall receive notification hereunder by notifying the other of such change.

All notices, requests, and other written communications pursuant to Section 3.2, Subsection 3.4.E., and Section 5.1 shall be made, whenever feasible, by e-mail, addressed by Amtrak to the Amtrak Operations Officer of CN or by CN to the Director Scheduling of Amtrak. If such e-mail communication is not feasible, then such communications shall be by mail, to CN at the address provided above, and to Amtrak at the following address:

National Railroad Passenger Corporation  
525 West Van Buren Street, Suite 226  
Chicago, IL 60607  
Attention: Director Scheduling

#### Section 8.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original.

## Section 8.7 Relationship of Parties

In rendering any service or in furnishing any equipment, materials or supplies hereunder, CN is acting solely pursuant to this Agreement with Amtrak made pursuant to the Act and not in its capacity as a common carrier. Neither Party shall be deemed an agent of the other Party to this Agreement.

## Section 8.8 Term

A. This Agreement shall become effective on May 1, 2011 and, except as otherwise provided in Subsections B through D below, shall remain in effect for a period of two (2) years.

B. The provisions of Subsection 4.1.B., Section 4.2, Section 8.9, and Appendices I and IV with respect to the St. Charles Air Line Route and the Markham-to-Grand Crossing Route shall survive any termination of this Agreement. The provisions of Subsection 4.1.C., Appendix IV, Item 14, and Appendix IX with respect to the St. Charles Air Line Route shall survive any termination of this Agreement.

C. CN shall have the right to terminate this Agreement, with 60 days' written notice to Amtrak, at any time during the term of this Agreement in the event that legislation is enacted that terminates Amtrak's existence or fundamentally changes Amtrak in a manner that has or will have a material adverse impact on CN's rights and obligations under this Agreement.

D. On the effective date of this Agreement, the 1995 Agreement is terminated. Notwithstanding anything to the contrary in the Twenty-First Amendment to the 1995 Agreement, that Amendment is terminated as of the effective date of this Agreement. The termination of the 1995 Agreement shall not affect any claim arising under or

dispute resolution mechanism afforded by such Agreement or relieve either Party of any liability or obligation incurred prior to such termination.

#### Section 8.9 St. Charles Air Line and Markham to Grand Crossing Routes

A. CN's obligations and Amtrak's rights and costs to use the St. Charles Air Line Route, shall expire and have no further effect upon the earlier of (i) six (6) months after Amtrak begins to provide regularly scheduled passenger rail service over either the Grand Crossing Route or another route that provides an alternative to the St. Charles Air Line Route for passenger rail service to or from Union Station in Chicago acceptable to Amtrak, or (ii) such time as Amtrak ceases for a continuous period of one year to use the St. Charles Air Line Route to provide scheduled passenger rail service at least three (3) days per week to and from Union Station in Chicago.

B. Section 4.1 notwithstanding, if, at any time after expiration of Amtrak's rights to use the St. Charles Air Line Route provided in Subsection 8.9.A., CN or another carrier files an application, petition, or other request for regulatory authority for discontinuance of service on or abandonment of the St. Charles Air Line Route or any portion thereof, Amtrak shall not (i) protest or oppose, either directly or indirectly, such application, petition, or request, (ii) make or support any office of financial assistance or subsidy respecting any portion of the St. Charles Air Line Route; or (iii) request that the STB establish conditions or compensation regarding an acquisition of any portion of the St. Charles Air Line Route.

C. Section 4.1 shall expire with respect to and have no further effect with respect to the Markham-to-Grand Crossing Route if and when Amtrak ceases for a continuous period of one (1) year to use the Markham-to-Grand Crossing Route to provide scheduled passenger rail service at least three (3) days per week to and from Union Station in Chicago.

#### Section 8.10 Southport Junction Adjustments.

For the term of this Agreement, CN shall waive its charges to Amtrak for the Incremental Costs of operation and maintenance attributable to Amtrak train operations over the interlocking at Southport Junction, Louisiana. In consideration of that waiver, for the term of this Agreement, and notwithstanding the termination of the agreement between Amtrak and the City of New Orleans by and through the New Orleans Union Passenger Terminal Committee, dated June 1, 1977 ("New Orleans Agreement") and the termination of the Agreement Providing For The Construction And Use of a Union Passenger Terminal in the City of New Orleans, dated October 22, 1947 ("Terminal Agreement"), Amtrak shall continue to provide CN, free of charge, with the rights specified in Paragraph 8 of the New Orleans Agreement, including rights to use the trackage referenced in said Paragraph 8 (and the Sections of the Terminal Agreement incorporated by reference therein). To the extent that construction of any additional tracks or turnouts connecting to New Orleans Union Passenger Terminal trackage is required by CN solely for CN's freight operations, CN shall pay the cost of construction and maintenance of such additional tracks and turnouts.

#### Section 8.11 Equal Employment Opportunity.

CN shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CN will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

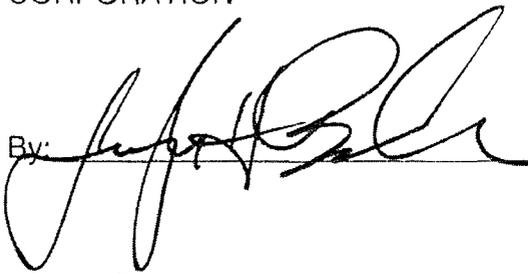
Section 8.12 Office of Inspector General

Nothing in this Agreement is intended to derogate any right, duty, or obligation of Amtrak's Office of Inspector General under the Inspector General Act of 1978, as amended.

IN WITNESS WHEREOF, Amtrak, GTW, and IC have caused this Agreement to be duly executed by their respective officers thereunto duly authorized.

NATIONAL RAILROAD PASSENGER CORPORATION

GRAND TRUNK WESTERN RAILROAD COMPANY

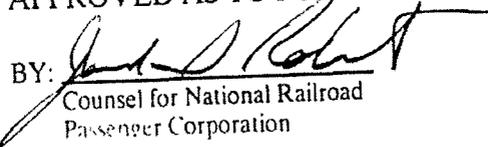
By: 

By: 

Title: President & CEO

Title: Region Director Contracts & Administration

APPROVED AS TO FORM:

BY:   
Counsel for National Railroad Passenger Corporation

ILLINOIS CENTRAL RAILROAD COMPANY

By: 

Title: Region Director Contracts & Administration

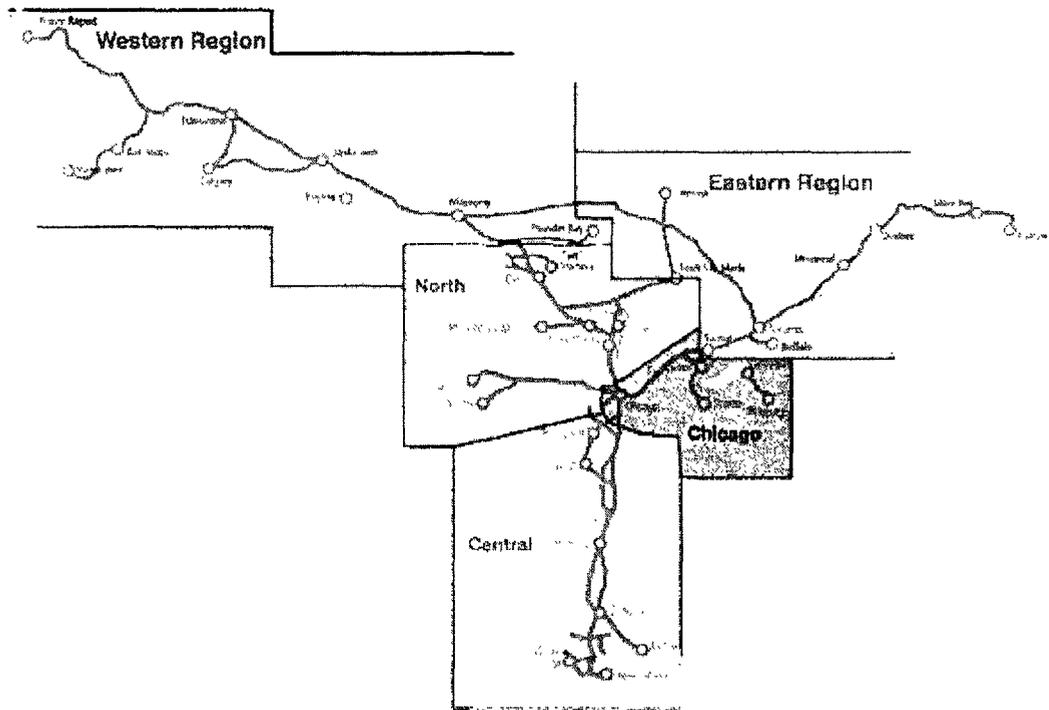
## **APPENDIX I**

### **Maximum Passenger Train Speeds**

(42 pages following)



# CHICAGO DIVISION

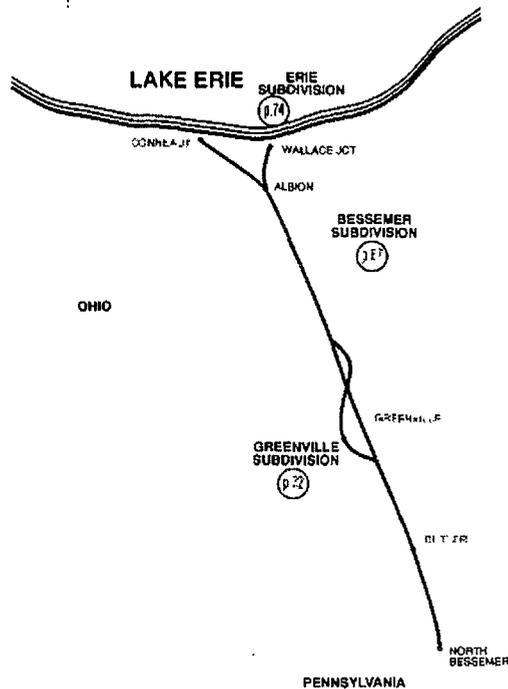
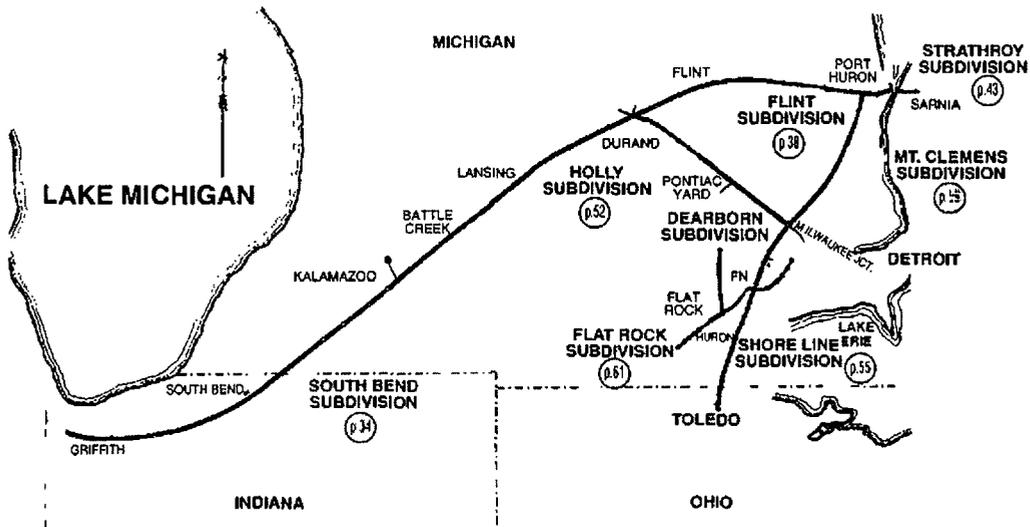
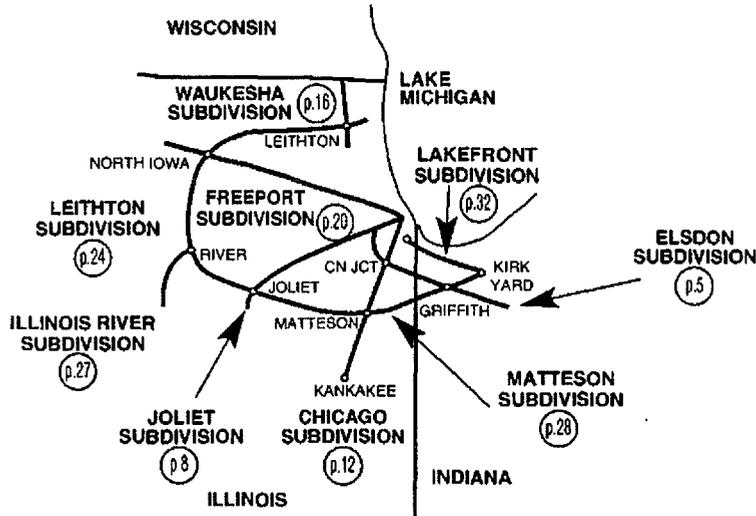


## TIMETABLE NO. 6

**EFFECTIVE 1200  
SUNDAY, FEBRUARY 21, 2010  
CENTRAL CONTINENTAL TIME  
WEST OF STILLWELL**

**EASTERN CONTINENTAL TIME  
EAST OF STILLWELL**

**Jim Vena - Senior Vice President  
Southern Region**



### CHICAGO TERMINAL ZONE

|                                |  |    |
|--------------------------------|--|----|
| Chicago Subdivision . . . . .  | 16th Street and Rane . . . . .         | 12 |
| Elsdon Subdivision . . . . .   | Griffith and Railport . . . . .        | 5  |
| Freeport Subdivision . . . . . | 16th Street and East Jay . . . . .     | 20 |
| Joliet Subdivision . . . . .   | Bridgeport and Plaines . . . . .       | 8  |
| Waukesha Subdivision . . . . . | Stateline and Madison Street . . . . . | 16 |

### EJ&E ZONE

|                                      |   |    |
|--------------------------------------|---|----|
| Illinois River Subdivision . . . . . | River and Divine . . . . .                    | 27 |
| Lakefront Subdivision . . . . .      | Kirk Yard Jct. and So. Chicago Yard . . . . . | 32 |
| Leithton Subdivision . . . . .       | Waukegan and E. Bridge Jct. . . . .           | 24 |
| Matteson Subdivision . . . . .       | Kirk Yard Jct. and E. Bridge Jct. . . . .     | 28 |

### MICHIGAN ZONE

|                                     |   |    |
|-------------------------------------|---|----|
| Dearborn Subdivision . . . . .      | Rouge Yard and D&i Jct. . . . .           | 64 |
| Flat Rock Subdivision . . . . .     | South Yard and Diann . . . . .            | 61 |
| Flint Subdivision . . . . .         | Tappan and Emmett St. . . . .             | 38 |
| Holly Subdivision . . . . .         | Durand and Milwaukee Jct. . . . .         | 52 |
| Mount Clemens Subdivision . . . . . | Tappan and Milwaukee Jct. . . . .         | 59 |
| Shore Line Subdivision . . . . .    | Milwaukee Jct. and Manhattan Jct. . . . . | 55 |
| South Bend Subdivision . . . . .    | Emmett St. and Griffith . . . . .         | 34 |
| Strathroy Subdivision . . . . .     | Blackwell and Tappan . . . . .            | 43 |

### BESSEMER ZONE

|                                  |                                    |    |
|----------------------------------|------------------------------------|----|
| Bessemer Subdivision . . . . .   | Conneaut and N. Bessemer . . . . . | 67 |
| Erie Subdivision . . . . .       | Wallace Jct. And CE . . . . .      | 74 |
| Greenville Subdivision . . . . . | Sandy and Kelsey . . . . .         | 72 |

Chicago Operating Rules Association (CORA) Operating Guide is required to be in the possession of CN train and engine service employees when operating on other railroads within the Chicago Terminal District. This replaces the requirement of carrying each railroad's timetable and operating rule book when on their property. Other carriers operating on CN within these limits will be required to have the CORA Operating Guide unless they will operate outside these limits, in which case, CN US Operating Rules and timetable are required.



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS           | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALLING  |
|-----------------------|---------------|-------------------------|--------------|--------------------|---------------------|------------------|---|
|                       |               |                         | 1.5          | 16TH STREET<br>3.3 | CTC                 | 45.7             | (72 72)<br>RTC<br>1-5<br>or<br>1<br>Diesel<br>Doctor<br>8-0-8 |
|                       |               |                         | 4.6          | 39TH STREET<br>3.5 |                     |                  |   |
|                       |               |                         | 8.1          | 67TH STREET<br>6.4 |                     |                  |   |
|                       |               |                         | 14.5         | KENSINGTON<br>1.0  |                     |                  |   |
|                       |               |                         | 15.5         | WILDWOOD<br>2.4    |                     |                  |   |
|                       |               |                         | 17.9         | HIGHLAWN<br>1.6    |                     |                  |   |
|                       |               |                         | 19.9         | NORTH JCT.<br>0.6  |                     |                  |   |
|                       |               |                         | 20.1         | SOUTH JCT.<br>3.4  |                     |                  |   |
|                       |               |                         | 23.5         | HOMEWOOD<br>2.5    |                     |                  |   |
|                       |               |                         | 26.0         | VOLLMER<br>3.7     |                     |                  |   |
|                       |               |                         | 29.7         | MATTESON<br>1.9    |                     |                  |   |
|                       |               |                         | 31.6         | STUENKEL<br>8.9    |                     |                  |   |
|                       | 10,519        | 41.2<br>43.2            | 40.5         | PEOTONE<br>6.2     |                     |                  |   |
|                       |               |                         | 46.7         | MANTENO<br>8.6     |                     |                  |   |
|                       | 29,528        | 49.5<br>55.4            | 55.3         | KANKAKEE<br>2.2    |                     |                  |   |
|                       |               |                         | 57.6         | GAR CREEK<br>2.8   |                     |                  |   |
|                       |               |                         | 60.3         | OTTO<br>1.3        |                     |                  |   |
|                       |               | 61.6                    | RANE         |                    |                     |                  |   |

Chicago Subdivision south of Rane is in Central Division Timetable.

Freight

**MAXIMUM SPEED**

|                         | MPH | MPH |
|-------------------------|-----|-----|
| 16th Street to Homewood | 65  | 50  |
| Homewood to Rane        | 79  | 60  |

Passenger

**SPEED RESTRICTIONS**

|  | Passenger<br>MPH | Freight<br>MPH |
|--|------------------|----------------|
| 16th Street to MP 2.2 - Mains 1 & 2 - curves                 | 10               | 10             |
| MP 2.2 to MP 2.7 - Mains 1 & 2                               | 25               | 25             |
| MP 4 - Curve - Mains 1 & 2                                   | 60               | 40             |
| Kensington Interlocking - Mains 1 & 2 - crossings            | 25               | 25             |
| Kensington Interlocking - Mains 1 & 2 - through all turnouts | 10               | 10             |
| Wildwood - through DCS turnouts                              | 25               | 25             |

|   |     |    |
|---|-----|----|
| Engine Thoroughfare between Harvey and Woodcrest . . . . .          | .20 | 20 |
| North Jct. - North Wye . . . . .                                    | .10 | 10 |
| South Jct. - Southeast Wye . . . . .                                | .20 | 20 |
| South Jct. - Southwest Wye . . . . .                                | .10 | 10 |
| Thoroughfare 3 between Homewood and Kensington (MP 14.8) . . . . .  | .20 | 20 |
| Thoroughfare 4 between Homewood and 95th Street (MP 12.5) . . . . . | .20 | 20 |
| Thoroughfare 7 between Harvey and Highlawn (MP 17.9) . . . . .      | .20 | 20 |
| MIT Lead between Homewood and Harvey Yard Office . . . . .          | .20 | 20 |
| Markham Yard -  |     |    |
| F Yard - Tracks 11-21 . . . . .                                     | .20 | 20 |
| A Yard - Tracks 17-21 . . . . .                                     | .20 | 20 |
| MIT - Tracks 1-4 and 6 . . . . .                                    | .20 | 20 |
| C Yard - Tracks 7-10 . . . . .                                      | .20 | 20 |
| CN Gateway - Tracks 1 & 2 . . . . .                                 | .20 | 20 |
| Homewood - through DCS turnouts . . . . .                           | .25 | 25 |
| MP 23.5 to MP 26 - Mains 3 & 4 . . . . .                            | .40 | 40 |
| Vollmer - through turnout DCS . . . . .                             | .25 | 25 |
| MP 26 to MP 31.6 - Main 3 . . . . .                                 | .40 | 40 |
| Connecting Track between Matteson Sub and Stuenkel between          |     |    |
| Matteson Sub and MP 29.5 . . . . .                                  | .10 | 10 |
| MP 29.5 and MP 31.3 . . . . .                                       | .25 | 25 |
| Stuenkel - through turnout Main 3/Connecting Track . . . . .        | .25 | 25 |
| Stuenkel - through turnout Main 1/Main 3 . . . . .                  | .40 | 40 |
| MP 55.2 to MP 56.3 - NS Crossing . . . . .                          | .50 | 30 |
| Otto to Lehigh Jct. - Herscher Spur . . . . .                       | .NA | 20 |

|                                       | Turnouts | Siding |
|---------------------------------------|----------|--------|
|                                       | MPH      | MPH    |
| <b>SIDING SPEEDS</b>                  |          |        |
| Peotone . . . . .                     | .40      | 40     |
| Kankakee - MP 49.5 to MP 54 . . . . . | .30      | 30     |
| Kankakee - MP 54 to MP 55.4 . . . . . | .20      | 20     |
| Gar Creek-Otto. . . . .               | .40      | 40     |

**OPERATING CHARACTERISTICS**

**DOB LIMITS -**

- Chicago Terminal DOB Joliet Subdivision between MP 3.5 and MP 41
- Chicago Subdivision between MP 1.5 and MP 33
- Freeport Subdivision between MP 2.1 and MP 38
- Leithton Subdivision between MP 72.8 and MP 101.8
- Waukesha Subdivision between MP 57.5 and MP 10.9
- Illinois River Subdivision between MP 9.8 and MP 27.0
- Matteson Subdivision between MP 45.4 and MP 101.8
- Lakefront Subdivision between MP 12.2 and MP 0.0
- South Bend Subdivision between MP 36.1 and MP 43
- Elsdon Subdivision between MP 8.7 and MP 36.1

**MULTIPLE MAIN TRACKS**

Between 16th Street and McCormick Place (MP 2.8) Main 1 is the west track, (nearest Southwest Transit Tracks) and Main 2 is the east track. Between McCormick Place MP 2.8 and Stuenkel, CN closely parallels the Metra Electric Line, which is identified by overhead catenary wires. CN Main 1 is the first track east of the Metra Electric Lines, with Main 2 located east of Main 1.

**SIGNAL RULES - in effect**

Rule 803-816

**ABS - in effect between**

- Wildwood and Harvey - Yard . . . . . Thoroughfare 3 & 4
- Thoroughfare 3 signaled south.
- Thoroughfare 4 signaled north.

**CTC - in effect between/at** **Controlled by**  
 MP 1.4 and Kensington - Mains 1 & 2 .....Desk 1 RTC  
 95th St. - Thoroughfare 4 .....Desk 1 RTC  
 Kensington and Wildwood - Mains 1 & 2 and  
 Yard Thoroughfare 3 & 4 .....Desk 1 RTC  
 Wildwood and Homewood - Mains 1 & 2 .....Desk 1 RTC  
 Homewood and Vollmer - Mains 1, 3 & 4 .....Desk 1 RTC  
 Vollmer and Stuenkel - Mains 1 & 3 .....Desk 1 RTC  
 Stuenkel and Rane .....Desk 2 RTC

**Rule 901 - Switches where trains must not clear the main track:**  
 Manteno - Farmers Grain .....MP 46.2  
 Kankakee - Nucor Steel .....MP 51.4  
 Kankakee - Security Lumber .....MP 54.2

**RAILROAD CROSSINGS AT GRADE** **Controlled by**  
 16th Street .....Metra Crossing .....16th Street Tower (32 32)  
(312) 808-0887  
 Kensington .....CSSSB Crossing .....Metra Dispatcher  
Monday through Saturday 0600 to 2200 (312) 322-2860  
All other times (312) 322-2868  
 Kankakee .....NS Crossing .....Desk 2 RTC

|                        |          |
|------------------------|----------|
| On-Track Safety        | Kankakee |
| Verbal Protection      | X        |
| Track Authority in CTC | X        |
| Train Approach Warning | X        |

**BULLETIN BOARDS**  
 Homewood .....A Yard Office and Yard Office/Carman's Bldg.  
 Kankakee .....Yard Office

**MEASURED MILES - between**  
 MP 36 and MP 37

**SPECIAL CONDITIONS**

**High Threat Urban Area - HTUA** is in effect on all trackage north of MP 27.3.

**Amtrak Trains** - Crew member of Amtrak Trains must report the time train passes 16th Street to the Homewood RTC.

**Metra Electric Line** - Between MP 2.8 and MP 31.5, in the event of an emergency application of the brakes, broadcast emergency message on Channel (72 72) as prescribed by Rule 208. Then immediately make the same broadcast on Metra Channel (61 61).

**Kensington - 95th St.** - Trains and engines must have permission of Desk 1 RTC to occupy Thoroughfare 4. Southward Trains receiving a controlled proceed signal at 95th St. and Northward Trains receiving a controlled proceed signal at Kensington will not be required to verbally contact the RTC. Roadway Workers may receive Track Authority in CTC to occupy Thoroughfare 4 between 95th St. and Kensington. Metra Dispatcher will provide blocking as directed by Desk 1 RTC.



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS      |        | METHOD OF OPERATION | DEFECT DETECTORS  | RADIO CHANNELS CALL IN'S |                         |
|-----------------------|---------------|-------------------------|--------------|---------------|--------|---------------------|---|--------------------------|-------------------------|
|                       |               |                         |              | ↓ WEST        | ↑ EAST |                     |   |                          |                         |
|                       |               |                         | 2.1          | 16TH STREET   |        | CTC                 | (54 54)<br>RTC<br>1<br>or<br>4-1<br><br>Diesel<br>Doctor<br>8-0-8 |                          |                         |
|                       |               |                         | 2.7          | 21ST STREET   | 0.6    |                     |   |                          |                         |
|                       |               |                         | 2.9          | CERMAK        | 0.2    |                     |   |                          |                         |
|                       |               |                         | 4.4          | BRIDGEPORT    | 1.5    |                     |   |                          |                         |
|                       |               |                         | 5.6          | ASH STREET    | 1.2    |                     |   |                          |                         |
|                       |               |                         | 7.1          | IN CROSSING   | 1.5    |                     |   | ABS<br>YL                | (43 43)<br><br>RTC<br>7 |
|                       |               |                         | 8.0          | CRAWFORD YARD | 0.9    |                     |   |                          |                         |
|                       |               |                         | 8.3          | BELT CROSSING | 0.3    |                     |   |                          |                         |
|                       |               |                         | 8.9          | HAWTHORNE     | 0.6    |                     |   |                          |                         |
|                       |               |                         | 14.7         | BROADVIEW     | 5.8    |                     |   |                          |                         |
|                       |               |                         | 29.6         | CAROL STREAM  | 14.9   | ABS<br>TA           | Diesel<br>Doctor<br>8-0-8   |                          |                         |
|                       | 6,125         | 34.3<br>35.5            | 34.3         | MUNGER        | 4.7    |                     |   |                          |                         |
|                       |               |                         | 35.7         | EAST JAY      | 1.4    | CTC                 | (43 43)<br>RTC 7<br>Diesel Dr.<br>8-0-8                           |                          |                         |

Freeport Subdivision west of East Jay is shown in North Division Timetable.

**MAXIMUM SPEED** ..... **MPH** ..... 50

| SPEED RESTRICTIONS                          | MPH       |         |
|---|-----------|---------|
|   | Passenger | Freight |
| 16th Street to 21st Street - Mains 1 & 2    | 10        | 10      |
| St. Charles Airline (16th St. - CSX Bridge) | 10        | 10      |
| 21st Street to Bridgeport                   | 30        | 25      |
| Bridgeport - over bridge                    | 25        | 25      |
| MP 5.3 - Main 3 - HER over switch           |           | 20      |
| MP 5.4 - Main 4 - HER over switch           |           | 20      |
| MP 4.4 to MP 14.7 (Mains 3 & 4)             |           | 25      |
| Ash Street - over diamonds                  |           | 15      |
| MP 7.6 - Pulaski Road (Note B)              |           | 20      |
| MP 14.7 - through turnout spring switch     |           | 25      |
| MP 14.7 to MP 35.7                          |           | 40      |

**OPERATING CHARACTERISTICS**
**DOB LIMITS -**

Chicago Terminal DOB Joliet Subdivision between MP 3.5 and MP 41  
 Chicago Subdivision between MP 1.5 and MP 33  
 Freeport Subdivision between MP 2.1 and MP 38  
 Leighton Subdivision between MP 72.8 and MP 101.8  
 Waukesha Subdivision between MP 57.5 and MP 10.9  
 Illinois River Subdivision between MP 9.8 and MP 27.0  
 Matteson Subdivision between MP 45.4 and MP 101.8  
 Lakefront Subdivision between MP 12.2 and MP 0.0  
 South Bend Subdivision between MP 36.1 and MP 43  
 Elsdon Subdivision between MP 8.7 and MP 36.1

**YARD LIMITS - in effect between**

MP 5.6 and MP 16 – Contact Desk 1 RTC between Ash Street and Belt Crossing, and contact Hawthorne Yardmaster between Belt Crossing and MP 16 for routing instructions before entering. (NOTE: Contacting Desk 1 is not required if entering the limits with a proceed indication at Ash Street or Belt Crossing.)

**SIGNAL RULES - In effect**

Rules 803-816

**CTC - in effect between/at**

**Controlled by**

16th Street and Ash Street .....Desk 1 RTC  
 East Jay .....Desk 7 RTC

**Track Authority Outside CTC - in effect between**

MP 16 and East Jay

**ABS - in effect between**

MP 5.6 and East Jay

In multiple main track territory, Main 3 is signaled for westward movement, and Main 4 is signaled for eastward movement.

**RAILROAD CROSSINGS AT GRADE**

**Controlled by**

16th Street .....Metra Crossing .....16th Street Tower (72 72)  
 (312) 808-0887  
 21st Street .....Amtrak Crossing .....Lumber St. Train Director(13 13)  
 (312) 655-3755  
 Ash Street .....CSX Crossing .....Desk 1 RTC  
 IN Crossing .....BNSF Crossing .....Automatic  
 Belt Crossing .....BRC Crossing .....BRC Train Dispatcher (39 39)  
 (708) 496-4104  
 Belt Crossing Wye Track ....CIW Crossing .....Rule 513

| On-Track Safety        | Ash Street | IN Crossing | Belt Crossing Wye Track |
|------------------------|------------|-------------|-------------------------|
| Verbal Protection      | X          |             |                         |
| Track Authority in CTC | X          |             |                         |
| Train Approach Warning | X          | X           | X                       |
| Lone Worker            |            | X           | X                       |
| Signal Maintainer      |            | X           |                         |
| Inaccessible Track     |            |             | X                       |



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN          | STATIONS                | METHOD OF OPERATION       | DEFECT DETECTORS | RADIO CHANNELS CALL INS   |            |          |
|-----------------------|---------------|-------------------------|-----------------------|-------------------------|---------------------------|------------------|---|------------|----------|
|                       |               |                         | 3.5                   | BRIDGEPORT<br>—1.6—     | CTC                       |                  | (54 54)<br>RTC<br>1-3<br>or<br>1<br><br>Diesel<br>Doctor<br>8-0-8 |            |          |
|                       |               |                         | 5.1                   | CP BRIGHTON<br>—0.2—    |                           |                  |   |            |          |
|                       |               |                         | 5.3                   | ROCKWELL<br>—0.2—       |                           |                  |   |            |          |
|                       |               |                         | 5.5                   | PARK YARD<br>—1.1—      |                           |                  |   |            |          |
|                       |               |                         | 6.6                   | CORWITH<br>—1.3—        |                           |                  |   |            |          |
|                       |               |                         | 7.9                   | LEMOYNE<br>—1.6—        |                           |                  |   |            |          |
|                       |               |                         | 9.5                   | 45 CROSSOVER<br>—1.8—   |                           |                  |   |            |          |
|                       |               |                         | 11.3                  | 47 CROSSOVER<br>—1.8—   |                           |                  |   |            |          |
|                       |               |                         | 13.1                  | CP CANAL<br>—2.3—       |                           |                  |   |            |          |
|                       |               |                         | 15.4                  | JUSTICE<br>—2.1—        |                           |                  |   |            |          |
|                       |               |                         | 17.5                  | WILLOW SPRINGS<br>—4.1— |                           |                  |   |            |          |
|                       |               |                         | 21.6                  | LAMBERT<br>—3.7—        |                           |                  |   |            |          |
|                       |               |                         | 25.3                  | LEMONT<br>—1.0—         |                           |                  |   |            |          |
|                       |               |                         | 26.3                  | FLAGSTONE<br>—6.6—      |                           |                  |   |            |          |
|                       |               |                         | 32.9                  | LOCKPORT<br>—2.7—       |                           |                  |   |            |          |
|                       |               |                         | 35.6                  | STATEVILLE<br>—1.0—     |                           |                  |   |            |          |
|                       |               |                         | 36.6                  | OHIO ST.<br>—0.1—       |                           |                  |   | Rule 512 B | (54 54)  |
|                       |               |                         | 36.7                  | JACKSON ST.<br>—0.6—    |                           |                  |   | B          | RTC<br>1 |
|                       |               | 37.3                    | UD TOWER<br>—1.6—     | UP                      | Diesel<br>Doctor<br>8-0-8 |                  |   |            |          |
|                       |               | 38.9                    | SOUTH JOLIET<br>—2.1— | ABS Rule 520            |                           |                  |   |            |          |
|                       |               | 41.0                    | PLAINES               |                         |                           |                  |   |            |          |

|                     | Passenger | Intermodal | Freight |
|---------------------|-----------|------------|---------|
|                     | MPH       | MPH        | MPH     |
| MAXIMUM SPEED ..... | 79        | 60         | 40      |

|   | <i>Passenger</i> | <i>Freight</i> |
|---|------------------|----------------|
| <b>SPEED RESTRICTIONS</b>                                 | <b>MPH</b>       | <b>MPH</b>     |
| Bridgeport - over bridge                                  | .25              | 25             |
| MP 3.5 to MP 7 - curves                                   | .30              | 30             |
| CP Brighton - NS/CSX crossing                             | .30              | 25             |
| Rockwell - through crossovers                             | .25              | 25             |
| LeMoyné - BRC crossing                                    | .50              | 30             |
| 45 Crossover - through crossovers                         | .40              | 40             |
| Glenn Yard - Inbound and Work Lead, Tracks 1-13 and 15-19 | .20              | 20             |
| 47 Crossover - through crossovers                         | .40              | 40             |
| CP Canal - IHB/CSX crossing                               | .50              | 30             |
| Justice - through crossovers                              | .40              | 40             |
| MP 18.5 - curve   | .60              | 40             |
| MP 25.3 - curve   | .60              | 40             |
| Flagstone - through crossovers                            | .40              | 40             |
| MP 27.5 - curve   | .60              | 40             |
| Stateville - through crossovers                           | .40              | 40             |
| Jackson St. to UD Tower (UP Main 2)                       | .10              | 10             |
| MP 39.4 to MP 41.1  | .10              | 10             |

**OPERATING CHARACTERISTICS**

**DOB LIMITS -**

- Chicago Terminal DOB
- Joliet Subdivision between MP 3.5 and MP 41
  - Chicago Subdivision between MP 1.5 and MP 33
  - Freeport Subdivision between MP 2.1 and MP 38
  - Leithton Subdivision between MP 72.8 and MP 101.8
  - Waukesha Subdivision between MP 57.5 and MP 10.9
  - Illinois River Subdivision between MP 9.8 and MP 27.0
  - Matteson Subdivision between MP 45.4 and MP 101.8
  - Lakefront Subdivision between MP 12.2 and MP 0.0
  - South Bend Subdivision between MP 36.1 and MP 43
  - Elsdon Subdivision between MP 8.7 and MP 36.1

**SIGNAL RULES - in effect**

Rules 803-816

**ABS - in effect between**

- MP 36.6 and MP 36.7
- MP 39.5 and MP 41.1

**CTC - in effect between**

- Bridgeport and Ohio St. . . . . **Controlled by** Desk 1 RTC
- CP Brighton . . . . . NS CJ Dispatcher
- Corwith . . . . . BNSF Corwith Terminal Dispatcher
- LeMoyné . . . . . BRC Dispatcher
- CP Canal . . . . . IHB Dispatcher

**Rule 901 - Switches where trains must not clear the main track:**

- Ceko Steel . . . . . MP 27.2
- Romeoville . . . . . MP 29.8

**RAILROAD CROSSINGS AT GRADE**

- CP Brighton . . . . . NS/CSX Crossing . . . . . NS CJ Dispatcher
- Corwith . . . . . BNSF Crossing . . . . . BNSF Corwith Terminal Dispatcher (85 85)  
(817) 234-1214
- LeMoyné . . . . . BRC Crossing . . . . . BRC Train Dispatcher (35 35)  
(708) 496-4104



CP Canal .....IHB/CSX Crossing .....IHB Train Dispatcher (58 58)  
 (708) 832-2165  
 UD Tower .....Metra/CSX Crossing .....UD Tower Operator (54 54)  
 (708) 957-6573

**Rule 520** - Trackage south of MP 38.9 is designated Non-Main Track. Contact Desk 1 RTC before entering.

**RADIO OPERATION**

Glenn Yard ..... (54 54)  
 (90 90)  
 (47 47)  
 (49 49)

**BULLETIN BOARDS**

Glenn ..... Yard Office

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**MEASURED MILES - between**

MP 16 and MP 17  
 MP 30 and MP 31

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**JOINT OPERATION OF MAIN TRACK**

Between Jackson St. and South Joliet, CN operates over Union Pacific Railroad. MP 36.7 to MP 36.8 is yard limits, contact UD Tower for information concerning UP track bulletins (GBOs) in effect.

Plaines Industrial Lead extends from UD Tower Interlocking Limits (MP 37.9) to South Joliet. ABS is in effect. UD Tower controls movement into and out of Plains Industrial Lead. Before initiating movement, crew member must contact Desk 11 RTC to determine if route is clear for movement. Movement on Non-Main Track applies regardless of signal indication, maximum speed 10 MPH.

CN operates on BNSF main track between Plains and Millsdale.

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**SPECIAL CONDITIONS**

**High Threat Urban Area** - HTUA is in effect on all trackage north of MP 22.8.

**Track Authority in CTC** - CN RTC may issue Track Authority in CTC that encompasses Railroad Crossings at Grade at CP Brighton, Corwith, LeMoyné, and CP Canal that are controlled by other railroads. The CN Track Authority does not give authority to occupy any track within the limits controlled by other railroads. Contact the control operator at each crossing to obtain authority.

**Justice** - Trains that will be delayed more than 30 minutes at CP Canal or LeMoyné must hold at MP 20 until movement may be made without further delay.

Trains enroute Glenn Yard must hold at MP 15.3 until they will be taken directly into the yard.

| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS                      | METHOD OF OPERATION     | DEFECT DETECTORS | RADIO CHANNELS CALL NS                      |  |
|-----------------------|---------------|-------------------------|--------------|-------------------------------|-------------------------|------------------|---|--|
|                       |               |                         | 36.1         | <b>GRIFFITH</b><br>—2.1—      | CTC                     |                  | End to End (32 32)                          |  |
|                       |               |                         | 34.0         | <b>HAYS</b><br>—3.0—          |                         |                  |   |  |
|                       |               |                         | 31.0         | <b>MUNSTER</b><br>—5.8—       |                         |                  |   |  |
|                       |               |                         | 25.2         | <b>THORNTON JCT.</b><br>—2.0— |                         |                  |   |  |
|                       |               |                         | 23.2         | <b>CN JCT.</b><br>—0.6—       |                         |                  |   |  |
|                       |               |                         | 22.6         | <b>CJ</b><br>—3.1—            |                         |                  |   |  |
|                       |               |                         | 19.5         | <b>BROADWAY</b><br>—0.2—      | ABS 512 A               |                  | RTC (28 28)<br>9-0 or 1 Diesel Doctor 6-0-1 |  |
|                       |               |                         | 19.3         | <b>BI JCT.</b><br>—6.5—       |                         |                  |   |  |
|                       |               |                         |              | 12.8                          | <b>ASHBURN</b><br>—1.0— | CTC              |   |  |
|                       |               |                         |              | 11.8                          | <b>HAYFORD</b><br>—3.1— |                  |   |  |
|                       |               |                         |              | 8.7                           | <b>ELSDON</b><br>—1.8—  | Rule 520         |   |  |
|                       |               |                         |              | 6.9                           | <b>RAILPORT</b>         |                  |   |  |

|                            |                          |                       |
|----------------------------|--------------------------|-----------------------|
| <b>MAXIMUM SPEED</b> ..... | <i>Intermodal</i><br>MPH | <i>Freight</i><br>MPH |
|                            | .60                      | 60                    |

| <b>SPEED RESTRICTIONS</b>                     | <i>Intermodal</i><br>MPH | <i>Freight</i><br>MPH |
|---|--------------------------|-----------------------|
| MP 36.1 - Matteson Sub Crossing .....         | .40                      | 40                    |
| MP 34 - NS Crossing .....                     | .30                      | 30                    |
| Thornton Jct. - UP Connection .....           | .15                      | 15                    |
| MP 25.2 - UP Crossing .....                   | .40                      | 30                    |
| CN Jct. - North Wye .....                     | .10                      | 10                    |
| CN Jct. - Southeast Wye .....                 | .20                      | 20                    |
| CN Jct. - Southwest Wye .....                 | .10                      | 10                    |
| MP 20.8 to MP 19.7 .....                      | .45                      | 45                    |
| MP 19.7 to MP 19.3 .....                      | .30                      | 30                    |
| MP 19.3 to MP 12.3 .....                      | .40                      | 40                    |
| MP 12.3 to MP 11.8 .....                      | .30                      | 30                    |
| Hayford - BRC Connection .....                | .15                      | 15                    |
| MP 11.8 to MP 8.7 .....                       | .40                      | 40                    |
| MP 11.5 - over switch (HER) .....             | .20                      | 20                    |
| MP 8.7 to MP 7.1 - Elsdon Running Track ..... | .20                      | 20                    |



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS      |        | METHOD OF OPERATION   | DEFECT DETECTORS  | RADIO CHANNELS CALL INS |   |
|-----------------------|---------------|-------------------------|--------------|---------------|--------|---|---|-------------------------|---|
|                       |               |                         |              | ← WEST        | → EAST |   |   |                         |   |
|                       |               |                         | 178.6        | EMMETT ST.    |        | 166.6   | (28 28)<br>RTC 9-2<br>or<br>TONE 1<br>Diesel<br>Doctor<br>6-0-5 |                         |   |
|                       |               |                         | 177.1        | MICHIGAN AVE. |        |   |   |                         |   |
|                       |               |                         | 176.7        | BARON         |        |   |   |                         |   |
|                       |               |                         | 175.9        | ROSE          |        |   |   |                         |   |
|                       |               |                         | 175.5        | GORD          |        |   |   |                         |   |
|                       |               |                         | 164.8        | MAX           |        |   |   |                         |   |
|                       |               |                         | 157.4        | PAVILION      |        |   |   |                         |   |
|                       |               |                         | 146.8        | SCHOOLCRAFT   |        |   |   |                         |   |
|                       | 10,300        | 138.1<br>135.9          | 135.9        | MARCELLUS     |        |   |   | 142.9                   | (28 28)<br>RTC 9-4<br>or<br>TONE 1<br>Diesel<br>Doctor<br>6-0-4 |
|                       |               |                         | 128.9        | PENN          |        |   |   |                         |   |
|                       |               |                         | 122.6        | CASSOPOLIS    |        |   |   |                         |   |
|                       |               |                         | 118.6        | MATA          |        |   |   |                         |   |
|                       |               |                         | 113.2        | EDWARDSBURG   |        |   |   |                         |   |
|                       |               |                         | 110.8        | GRANGER       |        |   |   |                         |   |
|                       |               |                         | 105.1        | MCKINLEY      |        |   |   |                         |   |
|                       |               |                         | 99.5         | SOUTH BEND    |        |   |   |                         |   |
|                       |               |                         | 95.5         | FLOWER        |        |   |   |                         |   |
|                       |               |                         | 84.6         | MILL CREEK    |        |   |   |                         |   |
|                       |               |                         | 80.2         | STILLWELL     |        | 93.3  | (28 28)<br>RTC 9-6<br>or<br>TONE 1<br>Diesel<br>Doctor<br>6-0-3 |                         |   |
|                       |               |                         | 71.1         | WELLSBORO     |        |   |   |                         |   |
|                       |               | 64.3                    | HASKELLS     |               | 67.5   | (28 28)<br>RTC 9-8<br>or<br>TONE 1<br>Diesel<br>Doctor<br>6-0-2<br>End to<br>End<br>(32 32) |   |                         |   |
|                       |               | 59.1                    | LINCOLN      |               |        |   |   |                         |   |
|                       |               | 57.3                    | VALPO        |               |        |   |   |                         |   |
|                       |               | 52.7                    | WAYNE        |               |        |   |   |                         |   |
|                       |               | 50.4                    | SEDLEY       |               |        |   |   |                         |   |
|                       |               | 43.3                    | SPRING LAKE  |               |        |   |   |                         |   |
|                       |               | 36.1                    | GRIFFITH     |               | 41.0   |   |   |                         |   |

EASTERN CONTINENTAL TIME FROM STILLWELL TO EMMETT ST.  
CENTRAL CONTINENTAL TIME FROM STILLWELL TO GRIFFITH.

MAXIMUM SPEED ..... 60 MPH

| <b>SPEED RESTRICTIONS</b>                           | <b>MPH</b> |
|---|------------|
| Battle Creek - Extension .....                      | .25        |
| MP 178.6 to MP 174.7 (Main 1) .....                 | .35        |
| MP 178.6 to MP 177.0 (Main 2) .....                 | .30        |
| MP 177.0 to MP 176.6 (Main 2) - curve .....         | .25        |
| MP 176.6 to MP 174.7 (Main 2) - curve .....         | .30        |
| MP 178.2 to MP 177.3 – Pick-up Tracks 1, 2, 3 ..... | .15        |
| Max - through crossovers .....                      | .40        |
| Kalamazoo Spur .....                                | .25        |
| Except MP 0 to MP 0.5 .....                         | .10        |
| MP 5.9 to MP 9.1 .....                              | .10        |
| MP 152.3 to MP 152.1 – Vicksburg curve .....        | .40        |
| Schoolcraft - through turnout DCS .....             | .40        |
| MP 146.8 – GDLK Crossing .....                      | .30        |
| MP 146.7 to MP 146.5 - curve .....                  | .40        |
| Penn - through turnout DCS .....                    | .40        |
| Mata – through crossovers .....                     | .40        |
| McKinley - through crossovers .....                 | .40        |
| MP 105 to MP 102.4 .....                            | .40        |
| MP 102.4 to MP 99.4 - curve .....                   | .30        |
| MP 99.1 to MP 98.5 (Main 2) HER .....               | .20        |
| Flower - through crossover .....                    | .40        |
| Mill Creek - through east crossover .....           | .25        |
| Mill Creek - through west crossover .....           | .40        |
| MP 71.1 – CSX Crossing .....                        | .40        |
| Haskells - through crossovers .....                 | .40        |
| Lincoln - through crossover .....                   | .10        |
| Valpo - through turnout DCS .....                   | .40        |
| MP 57 to MP 56 .....                                | .40        |
| MP 56 to MP 55.5 - curve .....                      | .35        |
| MP 55.5 to MP 54 - curve .....                      | .40        |
| MP 54 to MP 52.6 – Interlocking limits .....        | .45        |
| Sedley - through turnout DCS .....                  | .40        |
| Spring Lake - through crossover .....               | .40        |
| MP 36.1 – Matteson Sub Crossing .....               | .40        |
| <br><b>SIDING SPEEDS</b>                            |            |
| Marcellus .....                                     | .40        |

**OPERATING CHARACTERISTICS**
**DOB LIMITS -**

|                      |  |
|----------------------|--|
| Battle Creek DOB     | South Bend Sub between MP 178.6 and MP 160.1<br>Flint Sub between MP 189.5 and MP 178.6  |
| Chicago Terminal DOB | Joliet Subdivision between MP 3.5 and MP 41<br>Chicago Subdivision between MP 1.5 and MP 33<br>Freeport Subdivision between MP 2.1 and MP 38<br>Leithton Subdivision between MP 72.8 and MP 101.8<br>Waukesha Subdivision between MP 57.5 and MP 10.9<br>Illinois River Subdivision between MP 9.8 and MP 27.0<br>Matteson Subdivision between MP 45.4 and MP 101.8<br>Lakefront Subdivision between MP 12.2 and MP 0.0<br>South Bend Subdivision between MP 36.1 and MP 43<br>Elsdon Subdivision between MP 8.7 and MP 36.1 |



**SIGNAL RULES - in effect**

- MP 178.6 to MP 173.5 - Rules 817-832
- MP 173.5 to MP 144.9 - Rules 803-816
- MP 144.9 to MP 131.2 - Rules 817-832
- MP 131.2 to MP 41.1 - Rules 803-816 (Rules 823, 825, 831 for movement over NS at South Bend)
- MP 41.1 to MP 36.1 - Rules 817-832

**CTC - in effect between**

**Controlled by**

Emmett St. and Griffith .....Desk 10 RTC

**Rule 901 - Switches where trains must not clear the Main Track:**

- Max - Stub Track .....MP 164.9
- Harborlite .....MP 150.2
- Schoolcraft - Quality Film .....MP 146.5
- Marcellus - Stub Track & Co-op .....MP 136.1
- Cassopolis - Stub Track .....MP 122.7
- Cassopolis - Team Track .....MP 122.6
- Banks Lumber .....MP 113.7
- Midwest Lumber .....MP 113.1
- Tri-State Forest Products – Main 1 .....MP 112.6
- Granger - Universal Products .....MP 111.4 - MP 110.9
- Granger - Big C Lumber .....MP 110.8
- South Bend - West Storage Track - Main 1 .....MP 97.7
- Mill Creek - Stub Track .....MP 84.4
- Kingsbury Elevator .....MP 75.1
- Wellsboro - Storage Track .....MP 72.5 - MP 71.6
- Haskells - Stub Track .....MP 64.5
- Sedley - Storage Track .....MP 50.0 - MP 49.5
- Griffith - Stub .....MP 36.8

**RAILROAD CROSSINGS AT GRADE**

**Controlled by**

- Schoolcraft .....GDLK Crossing .....Desk 10 RTC
- Stillwell .....CSSSB Crossing .....Desk 10 RTC
- Wellsboro .....CSX Crossing .....Desk 10 RTC\*
- CSX Dispatcher Channel (12 12) Tone 4 or (708) 832-2262
- Wayne .....CSX/NS Crossing .....Desk 10 RTC
- Griffith .....Matteson Sub Crossing .....Desk 11 RTC\*\*

\*Unless relieved by the RTC, when signal displays STOP indication and no conflicting movement is evident, be governed as follows:

- After stopping, move at least 20 feet past the signal, but not foul of the crossing.
- Wait 5 minutes, then proceed at Restricted Speed.

\*\*Desk 10 RTC must contact Desk 11 RTC before applying blocking at Griffith.

| On-Track Safety        | Schoolcraft | Stillwell | Wellsboro* | Wayne | Griffith |
|------------------------|-------------|-----------|------------|-------|----------|
| Verbal Protection      | X           | X         |            | X     |          |
| Track Authority in CTC | X           | X         |            | X     | X        |
| Train Approach Warning | X           | X         | X          | X     | X        |
| Signal Maintainer      |             |           | X          |       |          |

\* Track Authority in CTC may be issued through the CSX Crossing Wellsboro, however apply OTS Rule 405C or 406C at the crossing.



| TRACK CHART & SIDINGS |        | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS    | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALL IN'S                                  |       |       |   |       |   |       |       |   |       |       |   |                        |
|-----------------------|--------|---------------|-------------------------|--------------|-------------|---------------------|------------------|---|-------|-------|---|-------|---|-------|-------|---|-------|-------|---|------------------------|
| MAIN 1                | MAIN 2 | 14,250        | 319.2<br>316.3          | 332.1        | TAPPAN      | CTC                 | 326.0            | (74 74)<br>RTC 7-0<br>TONE 2<br>Diesel<br>Doctor<br>6-0-9 |       |       |   |       |   |       |       |   |       |       |   |                        |
|                       |        |               |                         | 329.0        | WEST TAPPAN |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| MAIN 1                | MAIN 2 | 11,780        | 304.5<br>302.2          | 317.9        | EMMETT      |                     |                  |   | 308.3 | 283.0 | (74 74)<br>RTC 7-8<br>or<br>TONE 2<br>Diesel<br>Doctor<br>6-0-8 |       |   |       |       |   |       |       |   |                        |
|                       |        |               |                         | 302.2        | IMLAY CITY  |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| CSX                   | MAIN   | 10,630        | 289.2<br>287.0          | 290.0        | LAPEER      |                     |                  |   | 257.1 |       |   | 257.1 | (74 74)<br>RTC 7-6<br>or<br>TONE 2<br>Diesel<br>Doctor<br>6-0-7 |       |       |   |       |       |   |                        |
|                       |        |               |                         | 276.7        | EAST FLINT  |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| MAIN 1                | MAIN 2 | 27,984        | 241.2<br>235.7          | 273.9        | BELSAY      |                     |                  |   |       |       |   |       |   | 232.0 | 232.0 | (74 74)<br>RTC 7-4<br>or<br>TONE 2<br>Diesel<br>Doctor<br>6-0-6 |       |       |   |                        |
|                       |        |               |                         | 271.8        | KEARSLEY    |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| CSX                   | MAIN   | 27,984        | 241.2<br>235.7          | 270.0        | FLINT       |                     |                  |   |       |       |   |       |   |       |       |   | 206.3 | 206.3 | (74 74)<br>RTC 7-2<br>or<br>TONE 2<br>Diesel<br>Doctor<br>6-0-5 |                        |
|                       |        |               |                         | 263.8        | WEST FLINT  |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| HESR                  | MAIN 1 | 27,984        | 241.2<br>235.7          | 255.4        | EAST DURAND | 206.3               | 206.3            | End to<br>End<br>32 32                                    |       |       |   |       |   |       |       |   |       |       |   |                        |
|                       |        |               |                         | 253.3        | DURAND      |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| MAIN 1                | MAIN 2 | 27,984        | 241.2<br>235.7          | 250.6        | VERNON      |                     |                  |   |       | 206.3 | 206.3   |       |   |       |       |   |       |       |   | End to<br>End<br>32 32 |
|                       |        |               |                         | 248.7        | BANCROFT    |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| CSX                   | MAIN   | 27,984        | 241.2<br>235.7          | 235.7        | SHAFTSBURG  |                     |                  |   | 206.3 |       |   | 206.3 | End to<br>End<br>32 32  |       |       |   |       |       |   |                        |
|                       |        |               |                         | 227.5        | OKEMOS      |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| NS                    | MAIN   | 27,984        | 241.2<br>235.7          | 223.5        | TROWBRIDGE  |                     |                  |   |       |       |   |       |   | 206.3 | 206.3 | End to<br>End<br>32 32  |       |       |   |                        |
|                       |        |               |                         | 221.5        | CEDAR       |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| LANSING THOROUGHFARE  | MAIN   | 27,984        | 241.2<br>235.7          | 217.6        | HOPE        |                     |                  |   |       |       |   |       |   |       |       |   | 206.3 | 206.3 | End to<br>End<br>32 32  |                        |
|                       |        |               |                         | 215.0        | MILL        |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| MAIN 1                | MAIN 2 | 27,984        | 241.2<br>235.7          | 212.8        | CORYYARD    | 206.3               | 206.3            | End to<br>End<br>32 32                                    |       |       |   |       |   |       |       |   |       |       |   |                        |
|                       |        |               |                         | 210.4        | MAPLE       |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| MAIN 1                | MAIN 2 | 27,984        | 241.2<br>235.7          | 208.3        | POTTERVILLE |                     |                  |   |       | 206.3 | 206.3   |       |   |       |       |   |       |       |   | End to<br>End<br>32 32 |
|                       |        |               |                         | 202.4        | CHARLOTTE   |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| MAIN 1                | MAIN 2 | 27,984        | 241.2<br>235.7          | 197.0        | WALTON      |                     |                  |   | 206.3 |       |   | 206.3 | End to<br>End<br>32 32  |       |       |   |       |       |   |                        |
|                       |        |               |                         | 191.7        | LACEY       |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |
| MAIN 1                | MAIN 2 | 27,984        | 241.2<br>235.7          | 181.2        | McALLISTER  |                     |                  |   |       |       |   |       |   | 206.3 | 206.3 | End to<br>End<br>32 32  |       |       |   |                        |
|                       |        |               |                         | 178.6        | EMMETT ST.  |                     |                  |   |       |       |   |       |   |       |       |   |       |       |   |                        |

|                            | <i>Passenger</i><br>MPH | <i>Freight</i><br>MPH |
|----------------------------|-------------------------|-----------------------|
| <b>MAXIMUM SPEED</b> ..... | .79                     | 60                    |

| <b>SPEED RESTRICTIONS</b>                         | <i>Passenger</i><br>MPH | <i>Freight</i><br>MPH |
|---|-------------------------|-----------------------|
| MP 332.1 to MP 329.0 (Mains 2 & 3) .....          | .60                     | -                     |
| MP 329.0 to MP 326.0 .....                        | .70                     | -                     |
| MP 323.6 to MP 321.4 .....                        | .65                     | -                     |
| MP 314.2 to MP 312.5 .....                        | .65                     | -                     |
| MP 303.1 to MP 300.5 .....                        | .75                     | -                     |
| MP 299.5 .....                                    | .65                     | -                     |
| MP 299.5 to MP 295.0 .....                        | .70                     | -                     |
| MP 295.0 to MP 276.7 .....                        | .65                     | -                     |
| MP 276.7 - equilateral turnout .....              | .50                     | 50                    |
| MP 276.7 to MP 272.5 .....                        | .65                     | -                     |
| MP 272.5 to MP 271.8 .....                        | .55                     | 55                    |
| MP 271.8 - CSX Crossing .....                     | .55                     | 30                    |
| MP 271.8 to MP 267.0 .....                        | .65                     | -                     |
| MP 270.0 to MP 263.8 - Flint Thoroughfare .....   | .25                     | 25                    |
| MP 267.0 to MP 265.5 - curve .....                | .50                     | 45                    |
| MP 263.8 - equilateral turnout .....              | .50                     | 50                    |
| MP 263.8 to MP 259.8 .....                        | .65                     | -                     |
| MP 255.7 to MP 253.6 .....                        | .65                     | -                     |
| MP 255.4 - equilateral turnout .....              | .50                     | 50                    |
| MP 253.6 to MP 253.0 .....                        | .45                     | 45                    |
| Durand - High wye .....                           | .10                     | 10                    |
| Durand - Chicago Wye .....                        | .25                     | 25                    |
| MP 253.0 to MP 234.1 .....                        | .65                     | -                     |
| MP 234.1 to MP 233.8 - curve .....                | .55                     | 50                    |
| MP 233.8 to MP 226.4 .....                        | .65                     | -                     |
| MP 233.2 to MP 232.7 .....                        | -                       | 25                    |
| MP 226.4 to MP 225.7 - curve .....                | .50                     | 50                    |
| MP 225.7 to MP 223.5 .....                        | .65                     | -                     |
| MP 223.5 - CSX Crossing .....                     | .50                     | 40                    |
| MP 221.5 to MP 215.0 - Lansing Thoroughfare ..... | .25                     | 25                    |
| MP 221.5 to MP 218.5 - curve .....                | .45                     | 40                    |
| MP 218.5 to MP 202.5 .....                        | .65                     | -                     |
| MP 214.8 - Lansing Lead to Erickson Plant .....   | NA                      | 5                     |
| MP 202.5 to MP 201.8 - Charlotte Curve .....      | .45                     | 40                    |
| MP 201.8 to MP 193.5 .....                        | .65                     | -                     |
| MP 193.5 to MP 190.5 .....                        | .70                     | -                     |
| MP 190.5 to MP 179.2 .....                        | .65                     | -                     |
| MP 179.2 to MP 178.8 - fueling facility .....     | .25                     | 25                    |
| MP 178.8 to MP 178.6 (Main 1) .....               | .35                     | 35                    |
| MP 178.8 to MP 178.6 (Main 2) .....               | .30                     | 30                    |
| Battle Creek - Extension .....                    | .25                     | 25                    |
| Battle Creek - West Thoroughfare .....            | .25                     | 25                    |



|                      | <i>Passenger</i> | <i>Freight</i> |
|----------------------|------------------|----------------|
|                      | <b>MPH</b>       | <b>MPH</b>     |
| <b>SIDING SPEEDS</b> |                  |                |
| Emmett .....         | 30               | 30             |
| Imlay City .....     | 30               | 30             |
| Lapeer .....         | 30               | 30             |
| Shaftsburg .....     | 65               | 60             |

**OPERATING CHARACTERISTICS**

**DOB LIMITS -**

|                           |  |
|---------------------------|--|
| Detroit Terminal DOB      | Flint Sub between MP 332.4 and MP 329        |
|                           | Mount Clemens Sub between MP 14 and MP 4.6   |
|                           | Holly Sub between MP 4.1 and MP 40           |
|                           | Shore Line Sub between MP 54.8 and MP 31.2   |
|                           | Flat Rock Sub between MP 2.8 and MP 39.8     |
| Flint Terminal DOB        | Dearborn Sub between MP 13.6 and MP 0.1      |
|                           | Flint Sub between MP 290 and MP 250          |
| Battle Creek Terminal DOB | Holly Sub between MP 60 and MP 67            |
|                           | Flint Sub between MP 189.5 and MP 178.6      |
|                           | South Bend Sub between MP 178.6 and MP 160.1 |

**SIGNAL RULES - in effect**

Rules 817-832

**CTC - In effect between**

**Controlled by**

Tappan and Emmett St. ....Desk 9 RTC

**Rule 901 - Switches where trains must not clear the Main Track:**

|  |                              |
|--|------------------------------|
| Capac .....                            | MP 309.2                     |
| Pete Siding Stub Track .....           | MP 305.9                     |
| Imlay City - Lapeer Grain .....        | MP 302.1                     |
| Davison Stub Track .....               | MP 278.9                     |
| Belsay - Stone Dock .....              | MP 275.7 Main 2              |
| Belsay - Star of the West .....        | MP 275.5 and MP 275.2 Main 2 |
| East Flint - 84 Lumber .....           | MP 275.1 Main 2              |
| Belsay - No. 1 Track .....             | MP 274.2 Main 2              |
| Kearsley - Mid-Michigan Truss Co. .... | MP 272.4 Main 2              |
| Durand - East Storage .....            | MP 252.9 Main 2              |
| Durand - West Storage .....            | MP 254.7 Main 1              |
| Morrice - Elevator Track .....         | MP 242.1                     |
| Shaftsburg .....                       | MP 235.6                     |
| Potterville - Alro Steel .....         | MP 209.5                     |
| Potterville - Citizens Grain .....     | MP 208.9                     |
| Bellevue - Storage Track .....         | MP 190.4 Main 2              |

**RAILROAD CROSSINGS AT GRADE**

**Controlled by**

|                  |   |             |
|------------------|---|-------------|
| Kearsley .....   | CSX Crossing .....                                      | Desk 9 RTC* |
|                  | CSX Dispatcher Channel (84 84) Tone 4 or (800) 435-2219 |             |
| Durand .....     | Holly Subdivision Crossing .....                        | Desk 9 RTC  |
| Trowbridge ..... | CSX Crossing .....                                      | Desk 9 RTC* |
|                  | CSX Dispatcher Channel (14 14) Tone 6 or (800) 220-4259 |             |
| Cedar .....      | NS Crossing .....                                       | Desk 9 RTC  |

\*Unless relieved by the RTC, when signal displays STOP indication and no conflicting movement is evident, be governed as follows:

- After stopping, move at least 20 feet past the signal, but not foul of the crossing.
- Wait 5 minutes, then proceed at Restricted Speed.





# SHORE LINE SUBDIVISION

55

| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN     | STATIONS<br>↓ SOUTH ↑ NORTH | METHOD OF OPERATION      | DEFECT DETECTORS | RADIO CHANNELS CALL IN'S |  |
|-----------------------|---------------|-------------------------|------------------|-----------------------------|--------------------------|------------------|--------------------------|--|
|                       |               |                         | 54.8             | MILWAUKEE JCT.<br>0.7       | ABS<br>512 B             |                  |                          |  |
|                       |               |                         | 54.1             | GRAND<br>0.1                | C<br>T<br>C              | (28 28)          |                          |  |
|                       |               |                         | 54.0             | BEAUBIEN ST.<br>0.3         |                          | RTC 3-1          |                          |  |
|                       |               |                         | 53.7             | WOODWARD<br>0.9             |                          | or               |                          |  |
|                       |               |                         | 52.8             | COMMONWEALTH<br>1.6         | Y<br>L                   | TONE 1           |                          |  |
|                       |               |                         | 51.2             | VINEWOOD<br>1.0             |                          | Diesel           |                          |  |
|                       |               |                         | 50.2             | WEST DETROIT<br>0.5         |                          | Doctor           |                          |  |
|                       |               |                         | 49.7             | DIX<br>2.0                  | Y<br>L                   | 6-1-1            |                          |  |
|                       |               |                         | 47.7             | DELRAY<br>0.7               |                          |                  |                          |  |
|                       |               |                         | 47.0             | RIVER ROUGE<br>0.2          |                          |                  |                          |  |
|                       |               |                         | 46.8             | VICTORIA AVE.<br>0.9        | C<br>T<br>C              | (28 28)          |                          |  |
|                       |               |                         | 45.9             | COOLIDGE<br>2.7             |                          | RTC 3-7          |                          |  |
|                       |               |                         | 43.2             | ECORSE<br>5.9               |                          | or               |                          |  |
|                       |               |                         | 37.3             | FN<br>0.5                   | C<br>T<br>C              | TONE 1           |                          |  |
|                       |               |                         | 36.8             | TRENTON<br>1.3              |                          | Diese            |                          |  |
|                       |               |                         | 35.5             | SLOCUM<br>0.8               |                          | Doctor           |                          |  |
|                       |               |                         | 34.7             | EDISON<br>6.2               | C<br>T<br>C              | 6-1-1            |                          |  |
|                       | 7,840         | 30.1<br>28.5            | 28.5             | CHAPMAN<br>9.8              |                          | 23.3             |                          |  |
|                       |               |                         | 18.7             | WARNER<br>1.3               |                          |                  |                          |  |
|                       |               |                         | 17.4             | MONROE<br>0.6               |                          |                  |                          |  |
|                       |               |                         | 16.8             | PLUM CREEK<br>0.6           | C<br>T<br>C              | (28 28)          |                          |  |
|                       | 11,550        | 16.2<br>13.9            | 16.2             | GREENINGS<br>8.5            |                          | RTC 3-8          |                          |  |
|                       |               |                         | 7.7              | VIENNA<br>1.1               |                          | or               |                          |  |
|                       |               | 6.6                     | WHITING<br>2.8   | C<br>T<br>C                 | TONE 1                   |                  |                          |  |
|                       |               | 3.8                     | LOTUS<br>1.8     |                             | Diesel                   |                  |                          |  |
|                       |               | 2.0                     | LANG<br>1.0      |                             | Doctor                   |                  |                          |  |
|                       |               | 1.0                     | BOULEVARD<br>1.0 | Rule<br>520                 | 6-1-3                    |                  |                          |  |
|                       |               | 0.0                     | MANHATTAN JCT.   |                             | End to<br>End<br>(28 28) |                  |                          |  |



|  | <i>Passenger</i> | <i>Freight</i> |
|--|------------------|----------------|
|  | MPH              | MPH            |
| <b>MAXIMUM SPEED</b> .....                                   | 40               | 40             |
| <hr/>  |                  |                |
|  | <i>Passenger</i> | <i>Freight</i> |
|  | MPH              | MPH            |
| <b>SPEED RESTRICTIONS</b>                                    |                  |                |
| MP 54.8 to MP 51.2 (Main 1) .....                            | 35               | 25             |
| MP 54.8 to MP 51.2 (Main 2) .....                            | 25               | 25             |
| MP 54.7 - through turnout spring switch .....                | 10               | 10             |
| Vinewood - Connection Track to CR .....                      | 10               | 10             |
| MP 51.2 to MP 50.2 .....                                     | 25               |                |
| MP 50.2 to MP 47 .....                                       | 10               |                |
| MP 47 to MP 45.9 .....                                       | 20               |                |
| MP 45.9 - Connection CN to CR #1 (Northward movements) ..... | 20               |                |
| MP 45.9 - Connection CN to CR #1 (Southward movements) ..... | 30               |                |
| MP 45.9 to MP 43.1 .....                                     | 30               |                |
| FN - Connection to Flat Rock Sub .....                       | 30               |                |
| MP 37.5 to MP 37.3 .....                                     | 20               |                |
| MP 37.3 to MP 34.3 .....                                     | 25               |                |
| MP 17.8 to MP 17.3 .....                                     | 25               |                |
| Vienna to Lotus - Lang - Vienna Industrial Track .....       | 25               |                |
| Lang - Track 91 Lotus MP 2.4 .....                           | 20               |                |

**OPERATING CHARACTERISTICS**

**DOB LIMITS -**

|                      |  |
|----------------------|--|
| Detroit Terminal DOB | Flint Sub between MP 332.4 and MP 329<br>Mount Clemens Sub between MP 14 and MP 4.6<br>Holly Sub between MP 4.1 and MP 40<br>Shore Line Sub between MP 54.8 and MP 31.2<br>Flat Rock Sub between MP 2.8 and MP 39.8<br>Dearborn Sub between MP 13.6 and MP 0.1 |
| Toledo Terminal DOB  | Shore Line Sub between MP 7.7 and MP 3.8   |

**SIGNAL RULES - in effect**

Rules 817-832

**ABS - in effect between**

Milwaukee Jct. and West Detroit - Main 1 and Main Track

**CTC - in effect between**

|                                   |            |
|-----------------------------------|------------|
| Grand and Vinewood - Main 2 ..... | Desk 8 RTC |
| Victoria Ave. and Lotus .....     | Desk 8 RTC |

**Rule 512 B - in effect between**

Milwaukee Jct. and West Detroit - Main 1 and Main Track

**RAILROAD CROSSINGS AT GRADE**

|                                     |  |
|-------------------------------------|--|
| Beaubien St. ....CR Crossing .....  | CR Mt. Laurel Train Dispatcher                                 |
| West Detroit .....                  | CR Mt. Laurel Train Dispatcher                                 |
| Dix .....                           | CR Mt. Laurel Train Dispatcher                                 |
| Delray .....                        | CSX Train Dispatcher Channel (64 64) DTMF 5# or (856) 231-2326 |
| Victoria Ave. ....CR Crossing ..... | NS Operator River Rouge  |
|                                     | NS Operator Channel (22 22) or (313) 842-1081                  |



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN   | STATIONS      |         | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALL INS                                      |  |   |
|-----------------------|---------------|-------------------------|----------------|---------------|---------|---------------------|------------------|--|--|---|
|                       |               |                         |                | ↓ SOUTH       | ↑ NORTH |                     |                  |  |  |   |
|                       |               |                         | 67.0           | DURAND        |         | CTC                 | 59.9             | (74 74)<br>RTC 7-6<br>or TONE 2<br>Diesel<br>Doctor<br>6-0-7 |  |   |
|                       | 6,370         | 66.8<br>65.6            | 65.5           | PITT          | 1.5     |                     |                  |  | (28 28)<br>RTC 3-2<br>or TONE 1<br>Diesel<br>Doctor<br>6-0-7 |   |
|                       | 6,150         | 63.8<br>62.4            | 62.6           | GAINES        | 2.9     |                     |                  |  | (28 28)<br>RTC 3-4<br>or TONE 1<br>Diesel<br>Doctor<br>6-0-7 |   |
|                       | 7,110         | 46.3<br>44.8            | 46.5           | HOLLY         | 16.1    |                     |                  |  |  |   |
|                       | 6,830         | 39.0<br>37.5            | 38.5           | ANDERSONVILLE | 8.0     |                     |                  |  | 34.2   |   |
|                       |               |                         |                | WATERFORD     | 5.2     |                     |                  |  |  |   |
|                       |               |                         | 33.3           | WEST PONTIAC  | 3.0     |                     |                  |  |  |   |
|                       |               |                         | 30.3           | AUBURN        | 1.1     |                     |                  |  |  | (28 28)<br>RTC 3-2<br>or<br>TONE 1<br>Diesel<br>Doctor<br>6-1-4 |
|                       |               |                         | 29.2           | WEST BLVD.    | 0.5     |                     |                  |  |  |   |
|                       |               |                         | 28.7           | JOHNSON AVE.  | 1.8     |                     |                  |  |  |   |
|                       |               |                         | 26.9           | PONTIAC       | 1.1     |                     |                  |  |  |   |
|                       |               |                         | 25.8           | M.A.L. JCT.   | 0.3     |                     |                  |  |  |   |
|                       |               |                         | 25.5           | YELLOW CAB    | 1.5     |                     |                  |  |  |   |
|                       |               |                         | 24.0           | BIRMINGHAM    | 6.3     |                     |                  |  |  |   |
|                       |               |                         | 17.7           | ROYAL OAK     | 4.5     |                     |                  |  |  | (28 28)<br>RTC 3-1<br>or<br>TONE 1<br>End to<br>End<br>(32 32)  |
|                       |               |                         | 13.2           | MOTERM        | 2.1     |                     |                  |  |  |   |
|                       |               | 11.1                    | MILWAUKEE JCT. | 7.0           |         | ABS<br>512A         |                  |  |  |   |
|                       |               | 4.1                     |                |               |         |                     |                  |  |  |   |

|                            | Passenger | Freight |
|----------------------------|-----------|---------|
|                            | MPH       | MPH     |
| <b>MAXIMUM SPEED</b> ..... | .70       | 60      |

|                            | Passenger | Freight |
|----------------------------|-----------|---------|
|                            | MPH       | MPH     |
| <b>SPEED RESTRICTIONS</b>  |           |         |
| MP 67 to MP 66.7 .....     | .25       | 25      |
| Durand - Chicago Wye ..... | .25       | 25      |
| Durand - High Wye .....    | .10       | 10      |
| MP 66.7 to MP 53.2 .....   | .60       | —       |
| MP 53.2 to MP 49.9 .....   | .55       | 55      |

|                                 |     |    |
|---------------------------------|-----|----|
| MP 49.9 to MP 47.3              | .60 | —  |
| MP 47.3 to MP 45.9              | .40 | 40 |
| MP 45.9 to MP 26.9              | .60 | —  |
| MP 24.5 to MP 23.5 (Main 1)     | .65 | —  |
| MP 24.5 to MP 23.5 (Main 2)     | .60 | —  |
| MP 24 – through crossover       | .40 | 40 |
| MP 23.5 to MP 21.5 (Both Mains) | .50 | 50 |
| MP 21.5 to MP 13.2 (Main 1)     | .60 | —  |
| MP 21.5 to MP 13.2 (Main 2)     | .40 | 40 |
| MP 13.2 to MP 12.0 (Both Mains) | .45 | 45 |
| MP 12.0 to MP 10.7 (Both Mains) | .50 | 50 |
| Moterm – through crossovers     | .40 | 40 |
| MP 10.7 to MP 8.5 (Both Mains)  | .60 | —  |
| MP 8.5 to MP 5.9 (Both Mains)   | .40 | 40 |
| MP 5.9 to MP 4.3 (Both Mains)   | .30 | 30 |

**OPERATING CHARACTERISTICS**
**DOB LIMITS -**

|                      |  |
|----------------------|--|
| Detroit Terminal DOB | Flint Sub between MP 332.4 and MP 329      |
|                      | Mount Clemens Sub between MP 14 and MP 4.6 |
|                      | Holly Sub between MP 4.1 and MP 40         |
|                      | Shore Line Sub between MP 54.8 and MP 31.2 |
|                      | Flat Rock Sub between MP 2.8 and MP 39.8   |
| Flint Terminal DOB   | Dearborn Sub between MP 13.6 and MP 0.1    |
|                      | Flint Sub between MP 290 and MP 250        |
|                      | Holly Sub between MP 60 and MP 67          |

**SIGNAL RULES - in effect**

Rules 817-832

**ABS - in effect between**

Moterm and Milwaukee Jct.

Main 1 is signaled southward, and Main 2 is signaled northward.

**CTC - in effect between**

|                   |   |
|-------------------|---|
| Durand and Moterm | Controlled by<br>Desk 9 RTC Durand to Pitt<br>Desk 8 RTC Pitt to Moterm |
|-------------------|---|

**Rule 901 - Switches where trains must not clear the Main Track:**

|           |         |
|-----------|---------|
| Waterford | MP 33.3 |
|-----------|---------|

**Rule 512 A - in effect between**

Moterm and Milwaukee Jct.

**EXCEPTION:**

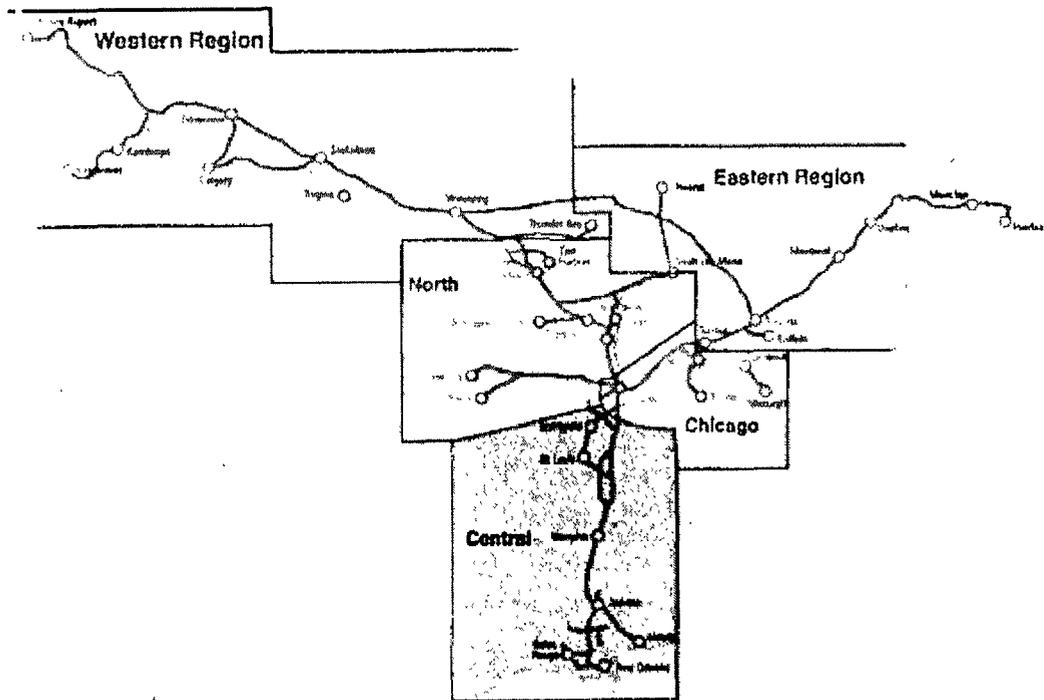
Trains and engines crossing over from Main 2 to MP 9.2 into Moterm and from Main 1 at MP 4.3 to Sugar House Wye at Milwaukee Jct. will not require a Track Authority outside CTC when protected by RTC placing restrictive tag on control panel.

**RAILROAD CROSSINGS AT GRADE**

|                |                    |  |
|----------------|--------------------|--|
| Durand         | Flint Sub Crossing | Controlled by<br>Desk 9 RTC  |
| Holly          | CSX Crossing       | Desk 8 RTC   |
| Belt Jct.      | Pontiac Spur       | Rule 513   |
| Milwaukee Jct. | CR Crossing        | CR Train Dispatcher<br>CR Train Dispatcher Channel (64 64) DTMF 5# or (856) 231-2326 |



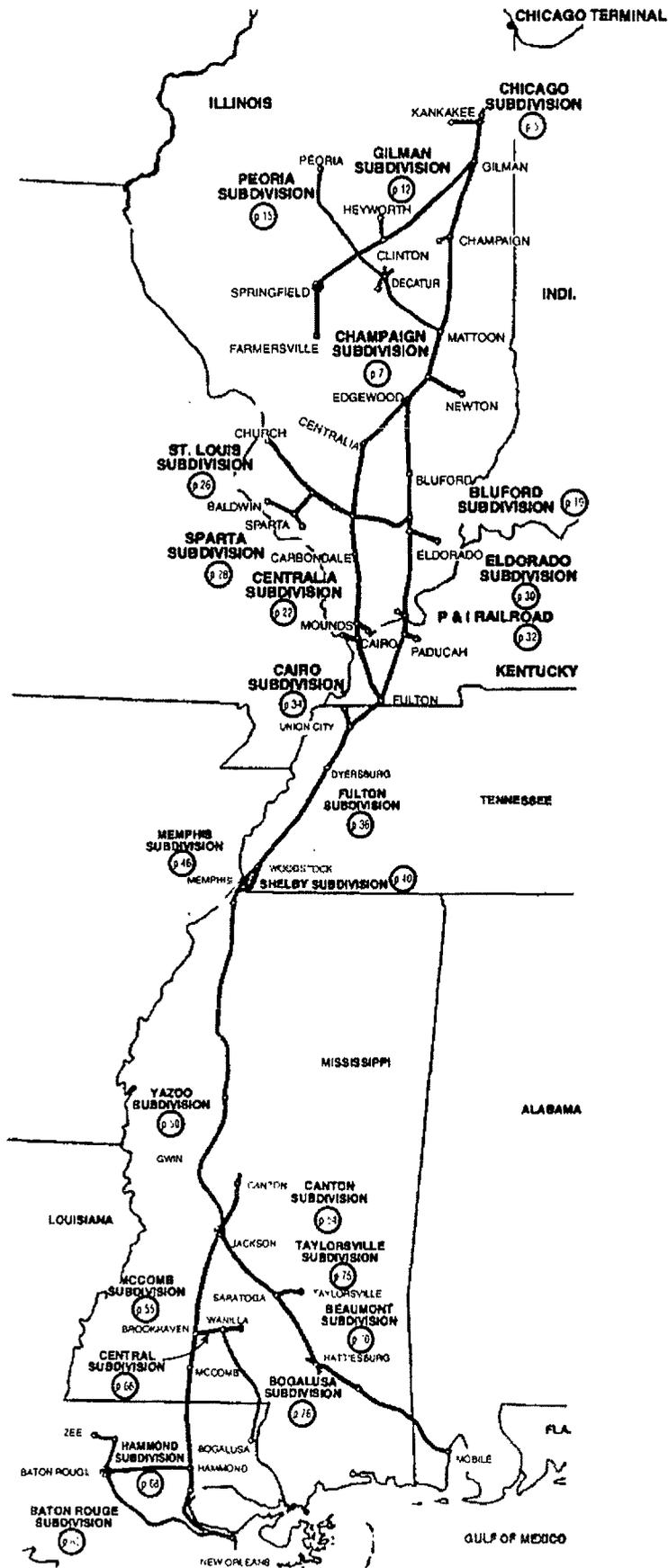
# CENTRAL DIVISION



## TIMETABLE NO. 5

**EFFECTIVE 1200  
CENTRAL CONTINENTAL TIME  
SUNDAY, SEPTEMBER 19, 2010**

**Jim Vena - Senior Vice President  
Southern Region**



**MIDWEST ZONE**

|                                 |  |    |
|---------------------------------|--|----|
| Bluford Subdivision . . . . .   | Edgewood Jct. and North Siding . . . . . | 19 |
| Cairo Subdivision . . . . .     | Illinois and Cairo Jct. . . . .          | 34 |
| Centralia Subdivision . . . . . | Sandoval Jct. and Illinois . . . . .     | 22 |
| Champaign Subdivision . . . . . | Leverett Jct. and Sandoval Jct.. . . . . | 7  |
| Chicago Subdivision . . . . .   | Rane and Leverett Jct. . . . .           | 5  |
| Effingham Subdivision . . . . . | INRD Jct. and Effingham . . . . .        | 18 |
| Eldorado Subdivision . . . . .  | Eldorado Jct. and Eldorado . . . . .     | 30 |
| Gilman Subdivision . . . . .    | Gilman and Farmersville . . . . .        | 12 |
| P & I Railroad . . . . .        | Burlington Jct. and P & I Jct. . . . .   | 32 |
| Peoria Subdivision . . . . .    | IC Jct. and Mattoon . . . . .            | 15 |
| Sparta Subdivision . . . . .    | Baldwin and Percy . . . . .              | 28 |
| St. Louis Subdivision . . . . . | Church and Duquoin . . . . .             | 26 |

**MEMPHIS ZONE**

|                               |                                     |    |
|-------------------------------|-------------------------------------|----|
| Fulton Subdivision . . . . .  | North Siding and Leewood . . . . .  | 36 |
| Canton Subdivision . . . . .  | Canton and Jackson . . . . .        | 54 |
| Memphis Subdivision . . . . . | Woodstock and Grenada Wye . . . . . | 46 |
| Shelby Subdivision . . . . .  | Leewood and Lakeview . . . . .      | 40 |
| Yazoo Subdivision . . . . .   | Lakeview and Jackson . . . . .      | 50 |

**GULF COAST ZONE**

|                                   |                                      |    |
|-----------------------------------|--------------------------------------|----|
| Baton Rouge Subdivision . . . . . | Slaughter and Orleans Jct. . . . .   | 62 |
| Beaumont Subdivision . . . . .    | Switchtender and Mobile . . . . .    | 70 |
| Bogalusa Subdivision . . . . .    | Vanilla and Bogalusa . . . . .       | 76 |
| Central Subdivision . . . . .     | Ferguson and Central Jct. . . . .    | 66 |
| Hammond Subdivision . . . . .     | Hammond and Baton Rouge Jct. . . . . | 68 |
| McComb Subdivision . . . . .      | Jackson and Southport Jct. . . . .   | 55 |
| Taylorville Subdivision . . . . . | Saratoga and Taylorville . . . . .   | 75 |



# CHICAGO SUBDIVISION

5

| TRACK CHART & SIDINGS | SIDING LENGTH  | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS      |         | METHOD OF OPERATION | DEFECT DETECTORS                        | RADIO CHANNELS CALL INS                 |
|-----------------------|----------------|-------------------------|--------------|---------------|---------|---------------------|---|---|
|                       |                |                         |              | ↓ SOUTH       | ↑ NORTH |                     |   |   |
|                       |                |                         | 61.6         | RANE          |         | CTC                 | 68.7                                    | (72 72)<br>RTC 2<br>Diesel Doctor 8-0-8 |
|                       |                |                         |              | 2.7           |         |                     |   |   |
|                       |                |                         | 64.3         | CHEBANSE      |         |                     |   |   |
|                       |                |                         |              | 4.8           |         |                     |   |   |
|                       |                |                         | 69.1         | CLIFTON       |         |                     |   |   |
|                       |                |                         |              | 4.0           |         |                     |   |   |
|                       | 11,025         | 70.6<br>72.9            | 73.1         | ASHKUM        |         |                     |   |   |
|                       |                |                         |              | 5.3           |         |                     |   |   |
|                       |                |                         | 78.4         | N. GILMAN     |         |                     |   |   |
|                       |                |                         |              | 2.7           |         |                     |   |   |
|                       |                | 81.1                    | GILMAN       |               |         |                     |   |   |
|                       |                |                         | 6.2          |               |         |                     |   |   |
|                       |                | 87.3                    | DELREY       |               |         |                     |   |   |
|                       |                |                         | 15.5         |               |         |                     |   |   |
| 14,518                | 100.7<br>103.6 | 102.8                   | PAXTON       |               |         |                     |   |   |
|                       |                |                         | 11.0         |               |         |                     |   |   |
| 14,208                | 113.0<br>115.8 | 113.8                   | RANTOUL      |               |         |                     |   |   |
|                       |                |                         | 10.3         |               |         |                     |   |   |
|                       |                |                         | 124.1        | LEVERETT JCT. |         |                     |   |   |
|                       |                |                         |              |               |         | 89.6                | (72 72)<br>RTC 2<br>Diesel Doctor 8-0-8 |   |
|                       |                |                         |              |               |         | 106.2               | (72 72)<br>RTC 2<br>Diesel Doctor 8-0-8 |   |

Chicago Subdivision north of Rane is in the Chicago Division Timetable.

|                            | Passenger<br>MPH | Freight<br>MPH |
|----------------------------|------------------|----------------|
| <b>MAXIMUM SPEED</b> ..... | 79               | 60             |

|   | Passenger<br>MPH | Freight<br>MPH |
|---|------------------|----------------|
| <b>SPEED RESTRICTIONS</b>                       |                  |                |
| MP 81.1 - TP&W Crossing .....                   | .50              | 30             |
| Gilman - through turnout North end Main 2 ..... | .40              | 40             |
| Delrey - through turnout South end Main 2 ..... | .40              | 40             |
| MP 113 to MP 114 .....                          | .60              | —              |

|                                  | Turnouts<br>MPH | Siding<br>MPH |
|----------------------------------|-----------------|---------------|
| <b>SIDING SPEEDS</b>             |                 |               |
| Ashkum .....                     | .40             | 40            |
| Paxton .....                     | .40             | 40            |
| Rantoul - Freight Trains .....   | .40             | 40            |
| Rantoul - Passenger Trains ..... | .40             | 60            |



# CHAMPAIGN SUBDIVISION

7

| TRACK CHART & SIDINGS | SIDING LENGTH  | SIDING SWITCH LOCATIONS | STATION SIGN         | STATIONS             | METHOD OF OPERATION                           | DEFECT DETECTORS | RADIO CHANNELS CALL IN'S                      |
|-----------------------|----------------|-------------------------|----------------------|----------------------|---|------------------|---|
|                       | 15,928         | 124.2<br>127.4          | 124.1                | LEVERETT JCT.<br>3.7 | CTC   | 135.1            | (72 72)<br>RTC 2<br>Diesel<br>Doctor<br>8-0-8 |
|                       |                |                         | 127.8                | CHAMPAIGN<br>1.8     |   |                  |   |
|                       |                |                         | 129.6                | HILLCREST<br>7.5     |   |                  |   |
|                       | 9,984          | 137.1<br>139.3          | 137.1                | TOLONO<br>4.8        |   |                  |   |
|                       |                |                         | 141.9                | PESOTUM<br>6.4       |   |                  |   |
|                       |                |                         | 148.3                | NORTH TUSCOLA<br>1.5 |   |                  |   |
|                       |                |                         | 149.8                | TUSCOLA<br>2.8       |   |                  |   |
|                       |                |                         | 152.6                | SOUTH TUSCOLA<br>5.3 |   |                  |   |
|                       |                |                         | 157.9                | ARCOLA<br>5.7        |   |                  |   |
|                       | 11,193         | 161.2<br>163.5          | 163.6                | HUMBOLDT<br>7.2      |   |                  |   |
|                       |                |                         | 170.8                | NORTH MATTOON<br>1.6 |   |                  |   |
|                       |                |                         | 172.4                | MATTOON<br>2.2       |   |                  |   |
|                       |                |                         | 174.6                | SOUTH MATTOON<br>9.7 |   |                  |   |
|                       | 11,246         | 184.4<br>186.7          | 184.3                | NEOGA<br>12.5        |   |                  |   |
|                       |                |                         | 196.8                | N. EFFINGHAM<br>2.4  |   |                  |   |
| 17,793                | 199.5<br>203.1 | 199.2                   | EFFINGHAM<br>6.5     | 206.1                | (72 72)<br>RTC 2<br>Diesel<br>Doctor<br>8-0-8 |                  |   |
|                       |                | 205.7                   | WATSON<br>9.1        |                      |   |                  |   |
| 19,166                | 214.8<br>218.6 | 214.8                   | EDGEWOOD JCT.<br>3.8 | 238.8                | (72 72)<br>RTC 2<br>Diesel<br>Doctor<br>8-0-8 |                  |   |
|                       |                | 218.6                   | LACLEDE<br>4.5       |                      |   |                  |   |
|                       |                | 223.1                   | FARINA<br>6.3        |                      |   |                  |   |
|                       |                | 229.4                   | KINMUNDY<br>9.6      |                      |   |                  |   |
| 15,470                | 234.9<br>238.0 | 239.0                   | TONTI<br>5.2         |                      |   |                  |   |
|                       |                | 244.2                   | ODIN<br>3.0          |                      |   |                  |   |
|                       |                | 247.2                   | SANDOVAL JCT.        |                      |   |                  |   |

|                     |           |         |
|---------------------|-----------|---------|
|                     | Passenger | Freight |
|                     | MPH       | MPH     |
| MAXIMUM SPEED ..... | 79        | 60      |

| SPEED RESTRICTIONS                                 | <i>Passenger</i> | <i>Freight</i> |
|--|------------------|----------------|
|  | MPH              | MPH            |
| MP 124.2 - through turnout to Outbound Lead        | .20              | 20             |
| MP 125.9 to MP 127.3                               | .60              | —              |
| Champaign - Outbound Lead                          | .20              | 20             |
| MP 127.4 - through turnout to Yard Lead            | .10              | 10             |
| Champaign - NS Crossing                            | .60              | —              |
| Tolono - NS Crossing                               | .50              | 30             |
| MP 148 to MP 149 (Southward Trains only)           | —                | 50             |
| MP 148.3 - through turnout DCS                     | .40              | 40             |
| MP 148.3 to MP 152.6 - (Main 2)                    | .60              | —              |
| MP 152.6 - through turnout DCS                     | .40              | 40             |
| Tuscola - UP/CSX Crossing                          | .50              | 30             |
| MP 170.9 - through turnout DCS                     | .40              | 40             |
| MP 170.9 to MP 174.6 (Main 1)                      | .60              | —              |
| MP 172 to MP 174.6 (Main 2)                        | .60              | —              |
| MP 174.6 - through turnout DCS                     | .40              | 40             |
| MP 198 to MP 199.3                                 | .60              | —              |
| MP 199.3 - CSX Crossing                            | .40              | 30             |
| MP 199.3 to MP 202                                 | .60              | —              |
| MP 214.6 - turnouts to Bluford Subdivision         | .25              | 25             |
| Kinmundy - through turnout and UP Connection Track | .25              | 25             |
| MP 229.4 - UP Crossing                             | .60              | 40             |
| MP 244.3 - CSX Crossing                            | .60              | 40             |
| Sandoval Jct. - through turnout DCS                | .40              | 40             |

| SIDING SPEEDS                    | <i>Turnouts</i> | <i>Siding</i> |
|----------------------------------|-----------------|---------------|
|                                  | MPH             | MPH           |
| Champaign (MP 124.2 to MP 127.1) | .40             | 40            |
| Champaign (MP 127.1 to MP 127.4) | .25             | 25            |
| Tolono                           | SSS 40 NSS 25   | 40            |
| Humboldt                         | .40             | 40            |
| Neoga                            | .40             | 40            |
| Effingham                        | .25             | 25            |
| Laclede                          | .25             | 25            |
| Tonti                            | .40             | 40            |

## OPERATING CHARACTERISTICS

### DOB LIMITS-

Champaign DOB Chicago Sub between MP 122 and MP 124.1  
Champaign Sub between MP 124.1 and MP 129.6

### SIGNAL RULES - in effect

Rules 803-816

### CTC - in effect between

Leverett Jct. and MP 247.2 . . . . . Desk 2 RTC

### Controlled by

### Rule 901 - Switches where trains must not clear the main track:

Tuscola - North Intermediate . . . . . MP 148.6  
Tuscola - South Intermediate . . . . . MP 149.6  
Tuscola - Interchange Track - Main 2 . . . . . MP 150.3  
Galton Grain . . . . . MP 154.2  
Arcola - North Switch Arcola Grain . . . . . MP 157.1  
Arcola - South Switch Arcola Grain . . . . . MP 157.6  
Humboldt Fertilizer . . . . . MP 163.1  
Dorans - North Switch Dorans Grain . . . . . MP 167.2



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS<br>↓ SOUTH ↑ NORTH | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALL INS                       |
|-----------------------|---------------|-------------------------|--------------|-----------------------------|---------------------|------------------|---|
|                       |               |                         | 247.2        | SANDOVAL JCT.<br>6.0        | CTC                 | 273.5            | (72 72)                                       |
|                       |               |                         | 253.2        | CENTRALIA<br>1.0            |                     |                  | RTC<br>3                                      |
|                       |               |                         | 254.2        | 31 SWITCH<br>2.9            |                     |                  | Diesel Doctor<br>8-1-8                        |
|                       |               |                         | 257.1        | F YARD LEAD<br>1.5          |                     |                  |   |
|                       |               |                         | 258.6        | IRVINGTON<br>7.7            |                     |                  |   |
|                       |               |                         | 266.3        | ASHLEY<br>7.5               |                     |                  |   |
|                       | 13,760        | 273.6<br>276.3          | 273.8        | BOIS<br>6.0                 |                     |                  |   |
|                       |               |                         | 279.8        | TAMAROA<br>5.7              |                     |                  | (72 72)<br>RTC<br>3                           |
|                       |               |                         | 285.5        | ST JOHNS<br>2.0             |                     |                  | Diesel Doctor<br>8-1-8                        |
|                       |               |                         | 287.5        | DUQUOIN<br>1.3              |                     |                  |   |
|                       |               |                         | 288.8        | ELDORADO JCT.<br>1.6        |                     |                  |   |
|                       |               |                         | 290.4        | DOWELL JCT.<br>15.3         |                     |                  | 293.4   |
|                       |               |                         | 305.7        | N. CARBONDALE<br>3.1        |                     |                  | (72 72)<br>RTC<br>3<br>Diesel Doctor<br>8-1-8 |
|                       |               |                         | 308.8        | S. CARBONDALE<br>14.6       |                     |                  | 311.9   |
|                       |               |                         | 323.4        | COBDEN<br>5.3               |                     |                  | (72 72)<br>RTC<br>3                           |
|                       | 9,860         | 325.8<br>327.8          | 328.7        | ANNA<br>12.1                |                     |                  | 328.6   |
|                       | 13,664        | 340.9<br>343.5          | 340.8        | WETAUG<br>11.3              |                     |                  | 340.2   |
|                       |               |                         | 352.1        | VILLA RIDGE<br>3.6          |                     |                  | 352.0   |
|                       |               |                         | 355.7        | MOUNDS JCT.<br>0.6          |                     |                  | (72 72)<br>RTC<br>3                           |
|                       |               |                         | 356.3        | MOUNDS<br>5.1               |                     |                  | Diesel Doctor<br>8-1-8                        |
|                       |               | 361.4                   | CAIRO<br>1.7 |                             |                     |                  |   |
|                       |               | 363.1                   | ILLINOIS     |                             |                     |                  |   |



|                            | <i>Passenger</i> | <i>Freight</i> |
|----------------------------|------------------|----------------|
|                            | MPH              | MPH            |
| <b>MAXIMUM SPEED</b> ..... | 79               | 60             |

| <b>SPEED RESTRICTIONS</b>                      | <i>Passenger</i> | <i>Freight</i> |
|--|------------------|----------------|
|  | MPH              | MPH            |
| Sandoval Jct. - through turnout DCS .....      | 40               | 40             |
| MP 249 to MP 252.2 (Both Mains) .....          | 50               | 50             |
| MP 252.2 to MP 254.2 (Both Mains) .....        | 35               | 35             |
| Irvington - through turnout DCS .....          | 40               | 40             |
| Ashley - CSX Crossing .....                    | 50               | 30             |
| Rend Lake Mine Lead - Bois to MP 7.5 .....     | NA               | 10             |
| St. Johns - through turnout DCS .....          | 40               | 40             |
| Duquoin - through turnouts DCS .....           | 25               | 25             |
| Dowell Jct. - through turnout DCS .....        | 40               | 40             |
| MP 287.2 to MP 288.7 (HER) (Mains 1 & 2) ..... | 40               | 40             |
| N. Carbondale - through turnout DCS .....      | 40               | 40             |
| MP 306.8 to MP 308.5 (Both Mains) (HER) .....  | 20               | 20             |
| MP 308.5 to MP 308.8 (Main 2) .....            | 40               | 40             |
| MP 308.5 to MP 308.8 (Main 1) .....            | 40               | 40             |
| S. Carbondale - through turnout DCS .....      | 40               | 40             |
| MP 311 to MP 326.2 .....                       | 45               | 40             |
| MP 326.2 to MP 337.5 .....                     | 50               | 40             |
| MP 337.5 to MP 338.1 .....                     | 45               | 40             |
| MP 338.1 to MP 339.2 .....                     | 50               | 40             |
| MP 342 - curve .....                           | 60               | —              |
| MP 353.4 to MP 354.4 - curves .....            | 65               | —              |
| Mounds Jct. - through turnout DCS .....        | 40               | 40             |
| MP 361.4 to MP 363.1(Mains 1 & 2) .....        | 40               | 40             |

| <b>SIDING SPEEDS</b> | <i>Turnouts</i> | <i>Siding</i> |
|----------------------|-----------------|---------------|
|                      | MPH             | MPH           |
| Bois .....           | 30              | 30            |
| Anna .....           | 25              | 25            |
| Wetaug .....         | 25              | 25            |

**OPERATING CHARACTERISTICS**

**SIGNAL RULES - in effect**

Rules 803-816

**CTC - in effect between**

**Controlled by**

Sandoval Jct. and Illinois .....Desk 3 RTC

**Rule 901 - Switches where trains must not clear the main track:**

|                             |          |
|-----------------------------|----------|
| General Contractors .....   | MP 249.9 |
| Maco Elevator .....         | MP 251.1 |
| Irvington House Track ..... | MP 258.9 |
| Richview House Track .....  | MP 262.8 |
| Radom House Track .....     | MP 269.3 |
| Bois House Track .....      | MP 273.9 |
| Tamaroa House Track .....   | MP 279.8 |
| Old St. Louis Main .....    | MP 288.4 |



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS              | METHOD OF OPERATION | DEFECT DETECTORS          | RADIO CHANNELS CALL IN'S  |          |
|-----------------------|---------------|-------------------------|--------------|-----------------------|---------------------|---------------------------|---------------------------|----------|
|                       |               |                         | 363.1        | ILLINOIS<br>— 5.4 —   | CTC                 | 369.7                     | (54 54)                   |          |
|                       | 11,815        | 366.2<br>368.5          | 368.5        | FILLMORE<br>— 1.4 —   |                     |                           | RTC<br>3                  |          |
|                       |               |                         | 369.9        | WICKLIFFE<br>— 2.6 —  |                     |                           | Diesel<br>Doctor<br>8-1-8 |          |
|                       |               |                         | 372.5        | WESTVACO<br>— 5.6 —   |                     |                           |                           |          |
|                       | 10,243        | 375.1<br>377.2          | 378.1        | BARDWELL<br>— 14.0 —  |                     |                           | 384.6                     | (54 54)  |
|                       | 10,210        | 390.1<br>392.1          | 392.1        | CLINTON<br>— 10.5 —   |                     |                           |                           | RTC<br>3 |
|                       |               |                         | 402.6        | BUDA<br>— 2.2 —       | ABS<br>YL           | Diesel<br>Doctor<br>8-1-8 |                           |          |
|                       |               |                         | 404.8        | SOUTH BUDA<br>— 0.6 — |                     |                           |                           |          |
|                       |               |                         | 405.4        | CAIRO JCT             | YL                  |                           |                           |          |

|                     | Passenger<br>MPH | Freight<br>MPH |
|---------------------|------------------|----------------|
| MAXIMUM SPEED ..... | 79               | 60             |

| SPEED RESTRICTIONS                             | Passenger<br>MPH | Freight<br>MPH |
|--|------------------|----------------|
| MP 363.1 - through turnout DCS .....           | 20               | 20             |
| MP 363.1 to MP 364.2 .....                     | 20               | 20             |
| MP 364.2 to MP 366.2 .....                     | 40               | 40             |
| MP 366.2 - through turnout to Main Track ..... | 20               | 20             |
| MP 366.2 to MP 371 .....                       | 70               | —              |
| MP 371 - curve .....                           | 40               | 40             |
| MP 371.3 - curve .....                         | 70               | —              |
| MP 373 - curve .....                           | 70               | —              |
| MP 378.5 - curve .....                         | 70               | —              |
| MP 379.5 to MP 381.2 - curve .....             | 40               | 40             |
| MP 381.7 - curve .....                         | 70               | —              |
| MP 390.5 to MP 398.3 - curves .....            | 70               | —              |
| MP 402.6 - through turnout DCS .....           | 40               | 40             |
| MP 404.8 - turnout to Main 2 .....             | 20               | 20             |
| MP 405.4 - turnout to Fulton Subdivision ..... | 20               | 20             |

**SIDING SPEEDS**

All sidings and turnouts from the main track to the sidings are 20 MPH.



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS  | STATION SIGN | STATIONS              | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALL IN'S                        |
|-----------------------|---------------|--------------------------|--------------|-----------------------|---------------------|------------------|---|
|                       |               |                          | 40.7         | NORTH SIDING<br>1.6   | CTC                 |                  |   |
|                       |               |                          | 269.2        | CAIRO JCT.<br>0.2     | YL                  |                  | (72 72)   |
|                       |               |                          | 269.4        | FULTON<br>1.4         |                     |                  | RTC<br>4  |
|                       |               |                          | 270.8        | OAKS<br>1.8           |                     |                  | Desel<br>Doctor<br>8-1-8                        |
|                       |               |                          | 272.6        | S. OAKS<br>10.9       |                     | 276.9            |   |
|                       | 15,282        | 282.6<br>285.7           | 283.5        | RIVES<br>14.5         |                     | 289.7            |   |
|                       | 11,743        | 298.1<br>300.7           | 298.0        | TRIMBLE<br>7.2        |                     | 303.7            | (72 72)<br>RTC<br>4<br>Desel<br>Doctor<br>8-1-8 |
|                       |               |                          | 305.2        | NEWBERN<br>9.0        |                     |                  |   |
|                       |               |                          | 314.2        | DYERSBURG<br>16.1     |                     | 322.5            |   |
|                       | 10,930        | 330.0<br>332.2           | 330.3        | CURVE<br>7.2          |                     | 333.7            | (72 72) RTC 4<br>Desel Doctor<br>8-1-8          |
|                       |               |                          | 337.5        | RIPLEY<br>10.0        |                     |                  | (72 72)   |
|                       | 10,773        | 347.6<br>349.8           | 347.5        | RIALTO<br>4.8         | CTC                 | 341.3            | RTC<br>4<br>Desel<br>Doctor<br>8-1-8            |
|                       |               |                          | 352.3        | COVINGTON<br>14.8     |                     |                  |   |
|                       | 9,885         | 365.1<br>367.2           | 367.1        | TIPTON<br>6.9         |                     | 353.5<br>364.0   |   |
|                       |               |                          | 374.0        | MILLINGTON<br>4.6     |                     | 376.6            | (72 72)   |
|                       |               |                          | 378.6        | LUCY JCT.<br>1.8      |                     |                  | RTC<br>4  |
|                       |               |                          | 380.4        | WOODSTOCK<br>3.6      |                     |                  | Desel<br>Doctor<br>8-1-8                        |
|                       |               |                          | 384.0        | DENIE<br>2.6          |                     |                  |   |
|                       |               |                          | 386.6        | WOLF RIVER<br>0.8     |                     |                  | (72 72) RTC 4<br>Desel<br>Doctor<br>8-1-8       |
|                       |               |                          | 387.4        | HOLLYWOOD YARD<br>0.5 |                     |                  |   |
|                       |               | CN 387.9<br>CSX<br>371.3 | LEEWOOD      | CSX<br>CTC            |                     | CSX<br>(94 94)   |   |

|                     |           |         |
|---------------------|-----------|---------|
|                     | Passenger | Freight |
|                     | MPH       | MPH     |
| MAXIMUM SPEED ..... | 79        | 60      |

| <b>SPEED RESTRICTIONS</b>                | <i>Passenger</i> | <i>Freight</i> |
|--|------------------|----------------|
|  | <b>MPH</b>       | <b>MPH</b>     |
| MP 41 - curve                            | .40              | 40             |
| MP 269.2 - turnout to Cairo Subdivision  | .20              | 20             |
| MP 270.8 - curve (Main 1 & 2)            | .30              | 25             |
| MP 272.6 - through turnout DCS           | .40              | 40             |
| MP 283.1 to MP 284.1 - curves            | .70              | —              |
| MP 294.3 - curve                         | .70              | —              |
| MP 297.6 - curve                         | .70              | —              |
| MP 299.8 - curve                         | .70              | —              |
| MP 303.1 - curve                         | .50              | 50             |
| MP 304.4 - curve                         | .50              | 50             |
| MP 305.6 - curve                         | .50              | 50             |
| MP 310 to MP 314.8 (Main 1 & 2)          | .40              | 40             |
| Dyersburg - through turnouts DCS         | .40              | 40             |
| MP 326.2 - curve                         | .70              | —              |
| MP 328.2 - curve                         | .50              | 50             |
| MP 329.1 - curve                         | .40              | 40             |
| MP 330.6 - curve                         | .70              | —              |
| MP 331.9 - curve                         | .70              | —              |
| MP 332.5 - curve                         | .40              | 40             |
| MP 333.3 - curve                         | .70              | —              |
| MP 336 - curve                           | .50              | 50             |
| MP 337.1 to MP 338.8 - curves            | .40              | 40             |
| MP 339.5 - curve                         | .50              | 50             |
| MP 340.2 - curve                         | .50              | 50             |
| MP 343.4 - curve                         | .70              | —              |
| MP 347.5 to MP 346.6 - bridges and curve | .40              | 40             |
| MP 347.8 - curve                         | .50              | 50             |
| MP 349.6 - curve                         | .50              | 50             |
| MP 350.1 to MP 350.8 - curves            | .70              | —              |
| MP 352.5 - curve                         | .70              | —              |
| MP 353 - curve                           | .70              | —              |
| MP 354.9 - curve                         | .70              | —              |
| MP 355.8 - curve                         | .70              | —              |
| MP 357.7 - curve                         | .70              | —              |
| MP 358.8 to MP 360.2 - curves            | .40              | 40             |
| MP 370.8 - curve                         | .70              | —              |
| MP 378.6 - through turnout DCS           | .40              | 40             |
| MP 380.3 to MP 387                       | .40              | 40             |
| MP 380.5 - through turnout DCS (Main 1)  | .20              | 20             |
| Denie - through crossovers               | .30              | 30             |
| MP 386.7 to MP 387.8 (Main 1 & 2) (HER)  | .20              | 20             |
| <br>                                     |                  |                |
| <b>SIDING SPEEDS</b>                     | <i>Turnouts</i>  | <i>Siding</i>  |
|  | <b>MPH</b>       | <b>MPH</b>     |
| Rives                                    | .30              | 30             |
| Trimble                                  | .25              | 25             |
| Curve                                    | .30              | 30             |
| Rialto                                   | .30              | 30             |
| Tipton                                   | .25              | 25             |





| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN          | STATIONS         |         | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALL IN'S |
|-----------------------|---------------|-------------------------|-----------------------|------------------|---------|---------------------|------------------|--------------------------|
|                       |               |                         |                       | ↓ SOUTH          | ↑ NORTH |                     |                  |                          |
|                       |               |                         | CN 387.9<br>CSX 371.3 | LEEWOOD          |         | CSX                 |                  | CSX<br>(94 94)           |
|                       |               |                         | CSX 373.4<br>CN 390.0 | 2.1<br>AULON     |         | CTC                 |                  |                          |
|                       |               |                         | 392.1                 | 1.3<br>LAMAR     |         | ABS<br>YL           |                  |                          |
|                       |               |                         | 393.4                 | 2.0<br>KYLE      |         |                     |                  |                          |
|                       |               |                         | 395.4                 | 0.2<br>PROSPECT  |         | YL                  |                  |                          |
|                       |               |                         | 395.6                 | 0.2<br>NONCONNAH |         |                     |                  |                          |
|                       |               |                         | 395.8                 | 0.2<br>RIVIANNA  |         |                     |                  |                          |
|                       |               |                         | 396.0                 | 0.4<br>WAREHOUSE |         | YL                  |                  |                          |
|                       |               |                         | 396.4                 | 0.4<br>T FARE    |         | 520                 |                  |                          |
|                       |               |                         | 396.8                 | 2.3<br>"A" YARD  |         |                     |                  |                          |
|                       |               |                         | 5.4                   | 1.7<br>WEST JCT. |         | Y L                 |                  |                          |
|                       |               |                         | 7.1                   | 1.5<br>HULET     |         | A B S               |                  |                          |
|                       |               |                         | 8.6                   | 2.3<br>SHELBY    |         | C Y L               |                  |                          |
|                       |               | 10.9                    | 2.2<br>B. HALL        |                  | C T C   |                     |                  |                          |
|                       |               | 13.1                    | LAKEVIEW              |                  |         |                     |                  |                          |

**MAXIMUM SPEED** ..... MPH  
 ..... .60

- SPEED RESTRICTIONS** ..... MPH
- Prospect – through crossovers ..... .30
  - MP 395.6 (Main 2)- through turnout to Nonconnah Thoroughfare ..... .20
  - T FARE – through crossovers ..... .25
  - Nonconnah Thoroughfare ..... .20
  - MP 396.9 (Main 1) – through turnout to Cypress Thoroughfare ..... .20
  - Cypress Thoroughfare ..... .20
  - Departure Tracks MD01, MD02, MD03, MD04, and North & South turnouts ..... .20
  - MR01-MR08 Receiving Tracks ..... .20
  - Receiving Tracks MR01- MR08 — North & South turnouts ..... .20
  - MP 387.9 to MP 395.4 (Main 1&2) ..... .30
  - Y&MV Main ..... .20
  - MP 4.8 – through turnout Cypress to Y&MV Main ..... .20
  - MP 5.3 – through turnout Main 1 to Y&MV Main ..... .20
  - MP 5.4 – through turnout Main 1 to Y&MV Extension ..... .20
  - Y&MV Extension – West Jct. to Hulet ..... .20
  - MP 6.7 – through turnout Y&MV Ext. to Main 2 ..... .20





| TRACK CHART & SIDINGS |        | SIDING LENGTH  | SIDING SWITCH LOCATIONS | STATION SIGN         | STATIONS               | METHOD OF OPERATION | DEFECT DETECTORS               | RADIO CHANNELS CALL INS                    |                                |
|-----------------------|--------|----------------|-------------------------|----------------------|------------------------|---------------------|--------------------------------|--|--------------------------------|
|                       | MAIN 1 |                |                         | 13.1                 | LAKEVIEW<br>7.4        | CTC                 | 15.2                           | (54 54)<br>RTC 4<br>Diesel Doctor<br>8-2-8 |                                |
|                       | MAIN 2 | 10,058         | 18.3<br>20.4            | 20.5                 | LAKE CORMORANT<br>9.7  |                     |                                | (72 72)<br>RTC<br>4                        |                                |
|                       |        | 10,126         | 29.8<br>31.8            | 30.2                 | RIALS<br>18.6          |                     |                                | 34.2                                       | 4<br>Diesel<br>Doctor<br>8-2-8 |
|                       |        | 9,737          | 46.8<br>48.7            | 48.8                 | CRENSHAW<br>13.6       |                     |                                | 52.4                                       |                                |
|                       |        | 10,098         | 60.4<br>62.4            | 62.4                 | DARLING<br>4.0         |                     |                                |  |                                |
|                       |        |                |                         | 66.4                 | MARKS<br>4.8           |                     |                                | 69.2                                       | (72 72)<br>RTC<br>4            |
|                       |        | 9,533          | 71.1<br>73.1            | 71.2                 | LAMBERT<br>12.1        |                     |                                | 78.6                                       | 4<br>Diesel<br>Doctor<br>8-2-8 |
|                       |        | 10,134         | 81.3<br>83.3            | 83.3                 | BRAZIL<br>10.4         |                     |                                |  |                                |
|                       |        | 10,729         | 92.7<br>94.3            | 93.7                 | SWAN LAKE<br>11.3      |                     |                                | 95.7                                       |                                |
|                       |        |                |                         | 105.0                | PHILIPP<br>7.8         |                     |                                | 107.2                                      |                                |
|                       |        | 9,440          | 112.3<br>114.2          | 112.8                | MONEY<br>7.8           |                     |                                |  |                                |
|                       |        |                |                         | 120.6                | HUNTER<br>1.3          |                     |                                |  | (72 72)<br>RTC<br>4            |
|                       |        |                |                         | 121.9                | YALOBUSHA<br>0.8       |                     |                                |  | 4<br>Diesel<br>Doctor<br>8-2-8 |
|                       |        |                |                         | 122.7                | GREENWOOD<br>2.4       |                     |                                |  |                                |
|                       |        |                |                         | 125.1                | SOUTH GREENWOOD<br>5.9 |                     |                                | 126.4                                      |                                |
|                       |        | 10,207         | 128.8<br>130.9          | 131.0                | SIDON<br>6.8           |                     |                                |  |                                |
|                       |        | 11,340         | 136.9<br>139.2          | 137.8                | CRUGER<br>10.5         |                     |                                | 142.2                                      | (72 72)<br>RTC<br>4            |
|                       |        | 9,514          | 148.0<br>149.9          | 148.3                | GWIN<br>20.9           |                     |                                | 163.3                                      | 4<br>Diesel<br>Doctor<br>8-2-8 |
|                       |        | 10,760         | 167.7<br>169.9          | 169.2                | DELTA<br>6.0           |                     |                                |  |                                |
|                       |        |                |                         | 175.2                | YAZOO CITY<br>5.0      |                     |                                | 177.6                                      | (72 72)<br>RTC<br>4            |
|                       | 11,800 | 180.1<br>182.5 | 180.2                   | VALLEY<br>9.5        |                        |                     | 4<br>Diesel<br>Doctor<br>8-2-8 |  |                                |
|                       | 8,960  | 189.9<br>191.8 | 189.7                   | ANDING<br>7.9        |                        | 192.7               |                                |  |                                |
|                       |        |                | 197.6                   | RAGIN<br>7.4         |                        |                     |                                |  |                                |
|                       | 9,741  | 203.7<br>205.7 | 205.0                   | FLORA<br>6.3         |                        | 209.3               | (72 72)<br>RTC<br>4            |  |                                |
|                       | 8,750  | 211.0<br>212.8 | 211.3                   | CYNTHIA<br>5.9       |                        |                     | 4<br>Diesel<br>Doctor<br>8-2-8 |  |                                |
|                       |        |                | 217.2                   | NORTH JACKSON<br>1.4 |                        |                     |                                |  |                                |
|                       |        |                | 218.6                   | JACKSON              | YL                     |                     |                                |  |                                |



|                            | <i>Passenger</i><br>MPH | <i>Freight</i><br>MPH |
|----------------------------|-------------------------|-----------------------|
| <b>MAXIMUM SPEED</b> ..... | 79                      | 60                    |

| <b>SPEED RESTRICTIONS</b>                             | <i>Passenger</i><br>MPH | <i>Freight</i><br>MPH |
|---|-------------------------|-----------------------|
| Lakeview - through turnout DCS .....                  | 40                      | 40                    |
| MP 15.7 to MP 16.1 - curve .....                      | 70                      | —                     |
| MP 20.3 to MP 21.1 - curve .....                      | 60                      | —                     |
| MP 38.5 to MP 40 - curves .....                       | 70                      | —                     |
| MP 43 to MP 45.3 - curves .....                       | 40                      | 40                    |
| MP 45.3 to MP 46.5 - curve .....                      | 70                      | —                     |
| MP 51.1 to MP 51.3 - curve .....                      | 70                      | —                     |
| MP 59 to MP 59.3 - curve .....                        | 70                      | —                     |
| MP 63.3 to MP 64.3 - curves .....                     | 70                      | —                     |
| MP 67 to MP 68.5 .....                                | 60                      | —                     |
| MP 71 to MP 72 .....                                  | 60                      | —                     |
| MP 72.1 to MP 72.3 - curves .....                     | 70                      | —                     |
| MP 81.9 to MP 82.1 - curve .....                      | 70                      | —                     |
| MP 90.8 to MP 91.5 - curves .....                     | 70                      | —                     |
| MP 94.5 to MP 95 - curve .....                        | 60                      | —                     |
| MP 95.9 to MP 96.5 - curve .....                      | 70                      | —                     |
| MP 96.6 to MP 97.1 - curves .....                     | 40                      | 40                    |
| MP 97.1 to MP 97.7 - curve .....                      | 70                      | —                     |
| MP 100.5 to MP 100.8 - curves .....                   | 70                      | —                     |
| MP 102.5 to MP 102.7 - curve .....                    | 70                      | —                     |
| MP 104 to MP 105 - curves .....                       | 25                      | 25                    |
| MP 107.6 to MP 108 - curve .....                      | 70                      | —                     |
| MP 111.5 to MP 111.8 - curve .....                    | 70                      | —                     |
| MP 114.5 to MP 115.3 - curves .....                   | 70                      | —                     |
| MP 120.5 to MP 121.5 - curves .....                   | 70                      | —                     |
| MP 121.7 to MP 124.4 .....                            | 40                      | 40                    |
| MP 125.7 to MP 127.1 - curves .....                   | 70                      | —                     |
| MP 135.6 to MP 136.7 - curve .....                    | 70                      | —                     |
| MP 143.1 to MP 143.7 - curves .....                   | 70                      | —                     |
| MP 143.7 to MP 144.2 - curves .....                   | 50                      | 50                    |
| MP 147.7 to MP 148 - curve .....                      | 60                      | —                     |
| MP 154.4 to MP 154.7 - curve .....                    | 70                      | —                     |
| MP 160.1 - bridge .....                               | 70                      | —                     |
| MP 163.6 to MP 164 - curve .....                      | 70                      | —                     |
| MP 168.1 to MP 168.3 - curve .....                    | 70                      | —                     |
| MP 173.5 to MP 175.8 - curves .....                   | 40                      | 40                    |
| MP 175.8 to MP 177 - curves .....                     | 60                      | —                     |
| MP 178.1 to MP 182.5 .....                            | 70                      | —                     |
| MP 182.5 to MP 185 .....                              | 40                      | 40                    |
| MP 185 to MP 189.8 .....                              | 50                      | 40                    |
| MP 195.7 to MP 195.8 - curve .....                    | 60                      | 50                    |
| MP 201.5 to MP 201.6 - curve .....                    | 70                      | —                     |
| MP 205 to MP 211 - curves .....                       | 70                      | —                     |
| MP 212.2 to MP 215.0 .....                            | 60                      | —                     |
| MP 215.0 to MP 217.2 .....                            | 40                      | 40                    |
| MP 217.2 - through turnout DCS .....                  | 25                      | 25                    |
| MP 218.6 - Main 2 through turnout to Canton Sub ..... | 20                      | 20                    |



**SIDING SPEEDS** - All sidings are 30 MPH. The turnouts from the main track to all sidings are 25 MPH.

Trains approach the following block signals not exceeding 55 MPH, unless aspect can be clearly seen to be displaying CLEAR indication:

|                  |                  |
|------------------|------------------|
| <i>Southward</i> | <i>Northward</i> |
| 112.1            | 114.3            |
| 189.7            | 128.8            |
|                  | 191.8            |

**OPERATING CHARACTERISTICS**

**DOB LIMITS -**

|                      |  |
|----------------------|--|
| Memphis Terminal DOB | Fulton Sub between MP 377 and MP 387.9   |
|                      | Shelby Sub between MP 387.9 and MP 13.1  |
|                      | Memphis Sub between MP 380.4 and MP 403  |
|                      | Yazoo Sub between MP 13.1 and MP 18.5    |
| Jackson Terminal DOB | Canton Sub between MP 724.9 and MP 727.2 |
|                      | Yazoo Sub between MP 211 and MP 218.6    |
|                      | McComb Sub between MP 727.2 and MP 737   |
|                      | Beaumont Sub between MP 185 and MP 181.6 |

**YARD LIMITS - in effect between** **Controlled by**  
 MP 217.2 and MP 218.6 ..... Jackson Yardmaster

**SIGNAL RULES - in effect**  
 Rules 803-816

**CTC - in effect between** **Controlled by**  
 Lakeview and North Jackson ..... Desk 4 RTC

**Rule 901 - Switches where trains must not clear the Main Track:**

|  |          |
|--|----------|
| Lake Cormorant House Track               | MP 20.4  |
| Banks House Track                        | MP 26    |
| Prichard House Track                     | MP 34.7  |
| Crenshaw House Track                     | MP 49.9  |
| KT Clay North Track                      | MP 52.1  |
| KT Clay South Track                      | MP 52.2  |
| Graeber Bros.                            | MP 53.4  |
| Sledge - North Storage Track             | MP 54.4  |
| Sledge - South Storage Track             | MP 54.8  |
| Marks - Graeber Bros                     | MP 68.1  |
| Lambert North Storage                    | MP 70.8  |
| Brazil House Track                       | MP 83.3  |
| Money House Track                        | MP 112.7 |
| Greenwood - North Switch Yalobusha Track | MP 120.9 |
| Industrial Spur                          | MP 121.0 |
| Greenwood - South Switch Yalobusha Track | MP 121.8 |
| Industry Park                            | MP 124.5 |
| Staple Cotton                            | MP 126.9 |
| Farmers Supply                           | MP 127.1 |
| Sidon House Track                        | MP 131.1 |
| Eden House Track                         | MP 164.0 |
| Yazoo City - North Switch Old Siding     | MP 175.6 |
| Yazoo City - South Switch Old Siding     | MP 175.8 |
| Bentonina Sawmill                        | MP 194.2 |
| MP&L                                     | MP 214.2 |
| Tri-State                                | MP 214.2 |



# MCCOMB SUBDIVISION

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| TRACK CHART & SIDINGS |                | SIDING LENGTH  | SIDING SWITCH LOCATIONS | STATION SIGN    | STATIONS     | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALL IN'S |
|-----------------------|----------------|----------------|-------------------------|-----------------|--------------|---------------------|------------------|--------------------------|
|                       | CANTON SUB     |                |                         | 727.2           | JACKSON      | ABS<br>YL           |                  |                          |
|                       |                |                |                         |                 | 2.0          |                     |                  |                          |
|                       |                |                |                         | 729.2           | SWICHTENDER  |                     |                  | (72 72)                  |
|                       |                |                |                         |                 | 2.6          |                     |                  | RTC 5                    |
|                       |                |                |                         | 731.8           | MCDOWELL     |                     |                  | Diesel                   |
|                       |                |                |                         |                 | 4.2          |                     |                  | Doctor                   |
|                       |                |                |                         | 736.0           | ELTON JCT.   |                     | 738.3            | 8-0-8                    |
|                       |                |                |                         |                 | 17.4         |                     |                  |                          |
|                       | 13,842         | 753.5<br>756.3 | 753.4                   | CRYSTAL SPRINGS |              |                     |                  |                          |
|                       |                |                |                         |                 | 9.1          |                     | 757.6            |                          |
|                       |                |                |                         | 762.5           | HAZLEHURST   |                     |                  |                          |
|                       |                |                |                         |                 | 1.1          |                     |                  |                          |
|                       |                |                |                         | 763.6           | J. PAUL      |                     |                  |                          |
|                       |                |                |                         |                 | 11.8         |                     |                  |                          |
|                       |                |                |                         | 775.4           | WESSON JCT.  |                     | 772.6            |                          |
|                       |                |                |                         |                 | 3.3          |                     |                  |                          |
|                       |                |                |                         | 778.7           | MONTGOMERY   |                     |                  |                          |
|                       |                |                |                         |                 | 3.5          |                     |                  |                          |
|                       |                |                |                         | 782.2           | CENTRAL JCT. |                     |                  | (54 54)                  |
|                       |                |                |                         |                 | 0.9          |                     |                  | RTC 5                    |
|                       |                |                | 783.1                   | BROOKHAVEN      |              |                     | Diesel           |                          |
|                       |                |                |                         | 10.2            |              |                     | Doctor           |                          |
|                       |                |                | 793.3                   | BOGUE CHITTO    |              |                     | 8-0-8            |                          |
|                       |                |                |                         | 8.4             |              | 795.7               |                  |                          |
|                       |                |                | 801.7                   | SUMMIT JCT.     |              |                     |                  |                          |
|                       |                |                |                         | 4.1             |              |                     |                  |                          |
|                       |                |                | 805.8                   | KYZAR           |              | CTC                 |                  |                          |
|                       |                |                |                         | 1.1             |              |                     |                  |                          |
|                       |                |                | 806.9                   | McCOMB          |              |                     |                  |                          |
|                       |                |                |                         | 1.8             |              |                     |                  |                          |
|                       |                |                | 808.7                   | SOUTH YARD      |              |                     |                  |                          |
|                       |                |                |                         | 3.4             |              |                     |                  |                          |
|                       |                |                | 812.1                   | FERNWOOD JCT.   |              |                     |                  |                          |
|                       |                |                |                         | 11.8            |              |                     |                  |                          |
| 9,290                 | 823.5<br>825.5 | 823.9          | OSYKA                   |                 |              | 820.0               |                  |                          |
|                       |                |                |                         | 5.0             |              |                     |                  |                          |
|                       |                |                | 828.9                   | KENTWOOD        |              |                     |                  |                          |
|                       |                |                |                         | 11.1            |              | 833.4               |                  |                          |
| 13,046                | 837.4<br>840.0 | 840.0          | ARCOLA                  |                 |              |                     |                  |                          |
|                       |                |                |                         | 16.3            |              | 844.2               |                  |                          |
|                       |                | 856.3          | 856.3                   | NATALBANY       |              | 855.2               | (72 72)          |                          |
| 12,240                |                |                |                         | 2.7             |              |                     | RTC 5            |                          |
|                       |                | 858.8          | 858.8                   | HAMMOND         |              | 867.5               | Diesel           |                          |
|                       |                |                |                         | 16.2            |              |                     | Doctor           |                          |
| 10,180                | 875.2<br>877.2 | 875.2          | 875.2                   | MANCHAC         |              |                     | 8-1-8            |                          |
|                       |                |                |                         | 12.4            |              | 879.5               |                  |                          |
| 11,211                | 887.3<br>889.6 | 887.6          | 887.6                   | FRENIER         |              |                     |                  |                          |
|                       |                |                |                         | 11.0            |              | 892.5               |                  |                          |
|                       |                |                | 898.6                   | SKIP            |              |                     |                  |                          |
|                       |                |                |                         | 2.2             |              |                     |                  |                          |
|                       |                |                | 900.8                   | ORLEANS JCT.    |              |                     |                  |                          |
|                       |                |                |                         | 2.7             |              |                     |                  |                          |

Continued on next page



| TRACK CHART & SIDINGS | SIDING LENGTH | SIDING SWITCH LOCATIONS | STATION SIGN | STATIONS                | METHOD OF OPERATION | DEFECT DETECTORS | RADIO CHANNELS CALL IN'S                      |
|-----------------------|---------------|-------------------------|--------------|-------------------------|---------------------|------------------|---|
|                       |               |                         | 903.5        | NORTH MAYS<br>0.6       | CTC                 |                  | (54 54)<br>RTC 5<br>Diesel<br>Doctor<br>8-1-8 |
|                       |               |                         | 904.1        | HICKORY ST.<br>0.3      |                     |                  |   |
|                       |               |                         | 904.4        | MAYS YARD<br>2.0        |                     |                  |   |
|                       |               |                         | 906.4        | EAST BRIDGE JCT.<br>2.2 | Man.                |                  |   |
|                       |               |                         | 908.6        | SOUTHPORT JCT.          | Intlkg              |                  |   |

**MAXIMUM SPEEDS**

|                                 | Passenger<br>MPH | Freight<br>MPH |
|---------------------------------|------------------|----------------|
| Jackson to Skip . . . . .       | .79              | 60             |
| Skip to Southport Jct . . . . . | .60              | 40             |

**SPEED RESTRICTIONS**

|   | Passenger<br>MPH | Freight<br>MPH |
|---|------------------|----------------|
| MP 727.2 to MP 729.3 . . . . .                                      | .30              | 30             |
| MP 729.3 to MP 731.5 - (Both Tracks) . . . . .                      | .30              | 30             |
| McDowell - through crossovers . . . . .                             | .25              | 25             |
| Elton Jct. - through turnout DCS . . . . .                          | .40              | 40             |
| MP 748.2 to MP 750.3 . . . . .                                      | .75              | —              |
| MP 765.5 to MP 767.6 - curve . . . . .                              | .75              | —              |
| Wesson Jct. - through turnout DCS . . . . .                         | .25              | 25             |
| Central Jct. - through turnout DCS . . . . .                        | .40              | 40             |
| Summit Jct. - through turnout DCS . . . . .                         | .40              | 40             |
| MP 806.3 to MP 810 (Both Tracks) . . . . .                          | .60              | 40             |
| Fernwood Jct. - through turnout DCS . . . . .                       | .25              | 25             |
| MP 858.2 to MP 859.5 (HER) . . . . .                                | .40              | 40             |
| MP 863.9 - Pine Street (HER) . . . . .                              | .35              | 35             |
| Manchac Bridge - MP 874.6 (Movable Span Only) . . . . .             | .40              | 40             |
| MP 890.2 to MP 892.5 - Spillway Bridge . . . . .                    | .40              | 40             |
| Skip - through turnout DCS . . . . .                                | .40              | 40             |
| Orleans Jct. - Martin Switch to James Switch . . . . .              | .10              | 10             |
| Orleans Jct. - through turnout to Baton Rouge Subdivision . . . . . | .25              | 25             |
| Track A1 Mays Yard . . . . .  | .20              | 20             |

**SIDING SPEEDS:** All sidings are 30 MPH. The turnouts from the Main Track to all sidings are 25 MPH.

**OPERATING CHARACTERISTICS**

**DOB LIMITS -**

|                                      |   |
|--------------------------------------|---|
| Jackson Terminal DOB                 | Canton Sub between MP 724.9 and MP 727.2<br>Yazoo Sub between MP 211 and MP 218.6<br>McComb Sub between MP 727.2 and MP 737<br>Beaumont Sub between MP 181.6 and MP 185 |
| New Orleans/Baton Rouge Terminal DOB | McComb Sub between MP 898 and MP 908.8<br>Hammond Sub between MP 9 and MP 0.0<br>Baton Rouge Sub between MP 347.3 and MP 444.2  |

**APPENDIX II**

**Amtrak Passenger Schedules**

(30 pages following)

The Schedule Skeletons in this Appendix II have been agreed upon by the Parties (with respect to that portion of the schedule which governs the operation of Amtrak Trains over the Rail Lines only). The Parties agree that the Schedule Skeletons in this Appendix II shall be consistent with Amtrak's published timetables and the schedule parameters for corresponding trains in Appendix V, Table 1 (with respect to schedules of trains operating on the IC Lines), and Appendix VI, Table 1 (with respect to schedules of trains operating on the GTW Lines), except as may be otherwise agreed by the Parties by written amendment to this Agreement. As of the effective date of this Agreement, there are differences between Appendix V, Table 1 and Schedule Skeletons for train nos. 21, 59, 301, 303, 305, 307, 390, and 392, and between Appendix VI, Table 1 and Schedule Skeletons for train nos. 350 (Gord to Baron), 351 (Baron to Gord), 352 (Gord to Baron), 353 (Baron to Gord), 354 (Gord to Baron), 355 (Baron to Gord), 364, and 365. These differences are shown in the following Appendix II, Table 1:

**APPENDIX II, TABLE 1**  
**Differences between Schedule Skeletons and Appendices V and VI**

| Train Number        | Appendix II Skeleton Total Schedule Time on IC | Appendix II Skeleton Schedule Dwell Time | Appendix V Contract Schedule Run Time on IC | Appendix VI Contract Dwell Time |
|---------------------|--|--|---|---------------------------------|
| 21                  | 45   |  | 50  |                                 |
| 59                  | 1131   |  | 1140  |                                 |
| 301                 | 48   |  | 54  |                                 |
| 303                 | 42   |  | 50  |                                 |
| 305                 | 41   |  | 50  |                                 |
| 307                 | 41   |  | 50  |                                 |
| 390                 | 308  |  | 317   |                                 |
| 392                 | 308  |  | 318   |                                 |
| 350 (Gord to Baron) |  | 4  |   | 0                               |
| 351 (Baron to Gord) |  | 4  |   | 0                               |
| 352 (Gord to Baron) |  | 4  |   | 0                               |
| 353 (Baron to Gord) |  | 4  |   | 0                               |
| 354 (Gord to Baron) |  | 4  |   | 0                               |
| 355 (Baron to Gord) |  | 4  |   | 0                               |
| 364                 |  | 10                                       |   | 6                               |
| 365                 |  | 10                                       |   | 6                               |

Notwithstanding anything in this Appendix II, where there are differences between Schedule Skeletons and Appendix V or VI, payments and penalties as provided in Appendix V or VI, as applicable, shall be calculated in accordance with the times set forth in Appendix V or VI, as applicable.









| City of New Orleans<br>Train 58 |                   |                               | Remarks and Changes | Schedule Skeleton - City of New Orleans/Train 58 |          |          |         |                     |                  |                  | November 8, 2010 |          |                          |                     |
|---------------------------------|-------------------|-------------------------------|---------------------|--|----------|----------|---------|---------------------|------------------|------------------|------------------|----------|--------------------------|---------------------|
| Effective<br>5/10/10<br>Daily   | Days of Operation | Effective<br>11/8/10<br>Daily |                     | RR   | Mileage  | Services | PRT     | Recovery<br>Minutes | Misc.<br>Adjust. | Dwell<br>Minutes | Arrive           | Depart   | Station                  | Check<br>Point      |
| 01:45 PM                        | Dp                | New Orleans, LA               |                     | CT   | 01:45 PM | CNIC     | 3.7     |                     |                  |                  |                  |          | 01:55 PM                 | XSU - Southport Jct |
| 02:45 PM                        | Dp                | Hammond, LA                   |                     | 02:45 PM   | CNIC     | 11.5     | 10      |                     |                  |                  | 02:05 PM         | 02:05 PM | Orleans Jct.             |                     |
| F 03:32 PM                      | Dp                | McComb, MS                    | F                   | 03:32 PM   | CNIC     | 13.7     | 3       |                     |                  |                  | 02:08 PM         | 02:08 PM | Skip                     |                     |
| F 03:56 PM                      | Dp                | Brookhaven, MS                | F                   | 03:56 PM   | CNIC     | 24.7     | 10      |                     |                  |                  | 02:18 PM         | 02:18 PM | Frenier                  |                     |
| F 04:17 PM                      | Dp                | Hazlehurst, MS                | F                   | 04:17 PM   | CNIC     | 37.8     | 10      |                     |                  |                  | 02:28 PM         | 02:28 PM | Manchac                  |                     |
| 05:44 PM                        | Dp                | Jackson, MS                   |                     | 05:44 PM   | CNIC     | 53.3     | 14      |                     |                  | 3                | 02:42 PM         | 02:45 PM | Hammond, LA              |                     |
| F 06:42 PM                      | Dp                | Yazoo City, MS                | F                   | 06:42 PM   | CNIC     | 105.4    | 45      |                     |                  | 2                | 03:30 PM         | 03:32 PM | McComb, MS               |                     |
| 07:37 PM                        | Dp                | Greenwood, MS                 |                     | 07:37 PM   | CNIC     | 129.2    | 22      |                     |                  | 2                | 03:54 PM         | 03:56 PM | Brookhaven, MS           |                     |
| 10:00 PM                        | Ar                | Memphis, TN                   |                     | 10:00 PM   | CNIC     | 149.8    | 19      |                     |                  | 2                | 04:15 PM         | 04:17 PM | Hazlehurst, MS           |                     |
| 10:40 PM                        | Dp                | Newbern-Dyersburg, TN         | F                   | 12:22 AM   | CNIC     | 183.3    | e 42    | 18                  | 11               | 16               | 05:28 PM         | 05:44 PM | Jackson, MS              |                     |
| F 01:04 AM                      | Dp                | Fulton, KY                    | F                   | 01:04 AM   | CNIC     | 227.7    | 54      | 2                   |                  | 2                | 06:40 PM         | 06:42 PM | Yazoo City, MS           |                     |
| 03:11 AM                        | Ar                | Carbondale, IL                |                     | 03:11 AM   | CNIC     | 280.2    | t 48    | 2                   |                  | 5                | 07:32 PM         | 07:37 PM | Greenwood, MS            |                     |
| 03:16 AM                        | Dp                | Centralia, IL                 | F                   | 03:16 AM   | CNIC     | 405.4    | E,e 125 | 28                  | 0                | 30               | 10:10 PM         | 10:40 PM | Memphis, TN              | X                   |
| F 04:10 AM                      | Dp                | Effingham, IL                 | F                   | 04:10 AM   | CNIC     | 491.6    | 98      | 2                   |                  | 2                | 12:20 AM         | 12:22 AM | Newbern-Dyersburg, TN    |                     |
| F 04:57 AM                      | Dp                | Mattoon, IL                   | F                   | 04:57 AM   | CNIC     | 527.4    | 37      | 3                   |                  | 2                | 01:02 AM         | 01:04 AM | Fulton, KY               |                     |
| F 05:23 AM                      | Dp                | Champaign-Urbana, IL          | F                   | 05:23 AM   | CNIC     | 577.3    | 51      |                     |                  |                  | 01:55 AM         | 01:55 AM | Mounds Jct.              |                     |
| 06:10 AM                        | Dp                | Kankakee, IL                  |                     | 06:10 AM   | CNIC     | 592.2    | 11      | 5                   |                  |                  | 02:11 AM         | 02:11 AM | Wetaugh                  |                     |
| F 07:13 AM                      | Dp                | Homewood, IL                  | 19                  | 07:44 AM   | CNIC     | 604.3    | 18      |                     |                  |                  | 02:29 AM         | 02:29 AM | Anna                     |                     |
| 09:00 AM                        | Ar                | Chicago, IL                   | CT                  | 09:00 AM   | CNIC     | 624.9    | T,E 24  | 18                  | 0                | 5                | 03:11 AM         | 03:16 AM | Carbondale, IL           |                     |
|                                 |                   |                               |                     |  | CNIC     | 680.6    | 52      | 0                   |                  | 2                | 04:08 AM         | 04:10 AM | Centralia, IL            |                     |
|                                 |                   |                               |                     |  | CNIC     | 733.8    | 45      | 1                   |                  | 1                | 04:56 AM         | 04:57 AM | Effingham, IL            |                     |
|                                 |                   |                               |                     |  | CNIC     | 760.6    | 23      | 1                   |                  | 2                | 05:21 AM         | 05:23 AM | Mattoon, IL (Charleston) |                     |
|                                 |                   |                               |                     |  | CNIC     | 805.2    | 37      | 5                   |                  | 5                | 06:05 AM         | 06:10 AM | Champaign-Urbana, IL     |                     |
|                                 |                   |                               |                     |  | CNIC     | 877.1    | 59      | 2                   | 0                | 2                | 07:11 AM         | 07:13 AM | Kankakee, IL             |                     |
|                                 |                   |                               |                     |  | CNIC     | 909.5    | 27      | 1                   |                  | 3                | 07:41 AM         | 07:44 AM | Homewood, IL             |                     |
|                                 |                   |                               |                     |  | AMT      | 931.6    | 30      | 39                  |                  |                  | 08:53 AM         |          | XCS - Clark St.          | X                   |

1 - P42, 9 cars

|    |         | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |
|----|---------|----------------------|------------------------------|------------------------|----------------|---------------------------|
| CN | XSU-MEM | 402                  | 50                           | 11                     | 32             | 495                       |
| CN | MEM-XCS | 512                  | 77                           | 0                      | 54             | 643                       |
|    |         |                      |                              |                        |                |                           |
|    |         |                      |                              |                        |                |                           |

| City of New Orleans<br>Train 59 |                   |                               | Remarks and Changes | Schedule Skeleton - City of New Orleans/Train 59 |         |          |       |                     |                  |                  | November 8, 2010 |          |                       |                |   |
|---------------------------------|-------------------|-------------------------------|---------------------|--|---------|----------|-------|---------------------|------------------|------------------|------------------|----------|-----------------------|----------------|---|
| Effective<br>5/10/10<br>Daily   | Days of Operation | Effective<br>11/8/10<br>Daily |                     | RR   | Mileage | Services | PRT   | Recovery<br>Minutes | Misc.<br>Adjust. | Dwell<br>Minutes | Arrive           | Depart   | Station               | Check<br>Point |   |
| 08:00 PM                        | Dp                | Chicago, IL                   | CT                  | 08:00 PM   | CNIC    | 2.2      |       |                     |                  |                  |                  | 08:22 PM | XCS - Clark St        | X              |   |
| 08:54 PM                        | Dp                | Homewood, IL                  |                     | 08:54 PM   | CNIC    | 24.3     | 28    | 1                   |                  | 3                | 08:51 PM         | 08:54 PM | Homewood, IL          |                |   |
| 09:23 PM                        | Dp                | Kankakee, IL                  |                     | 09:23 PM   | CNIC    | 56.7     | 27    | 0                   |                  | 2                | 09:21 PM         | 09:23 PM | Kankakee, IL          |                |   |
| 10:34 PM                        | Dp                | Champaign-Urbana, IL          |                     | 10:34 PM   | CNIC    | 128.6    | 63    | 3                   | 0                | 5                | 10:29 PM         | 10:34 PM | Champaign-Urbana, IL  |                |   |
| 11:13 PM                        | Dp                | Mattoon, IL                   |                     | 11:13 PM   | CNIC    | 173.2    | 37    | 0                   |                  | 2                | 11:11 PM         | 11:13 PM | Mattoon, IL           |                |   |
| 11:37 PM                        | Dp                | Effingham, IL                 |                     | 11:37 PM   | CNIC    | 200.0    | 23    | 0                   |                  | 1                | 11:36 PM         | 11:37 PM | Effingham, IL         |                |   |
| 12:25 AM                        | Dp                | Centralia, IL                 |                     | 12:25 AM   | CNIC    | 253.2    | 44    | 2                   |                  | 2                | 12:23 AM         | 12:25 AM | Centralia, IL         |                |   |
| 01:21 AM                        | Ar                | Carbondale, IL                |                     | 01:21 AM   | CNIC    | 308.9    | T,E   | 51                  | 5                | 5                | 01:21 AM         | 01:26 AM | Carbondale, IL        |                |   |
| 01:26 AM                        | Dp                | Fulton, KY                    |                     | 01:26 AM   | CNIC    | 329.5    |       | 24                  |                  |                  | 01:50 AM         | 01:50 AM | Anna                  |                |   |
| 03:14 AM                        | Dp                | Newbern-Dyersburg, TN         |                     | 03:14 AM   | CNIC    | 341.6    |       | 18                  |                  |                  | 02:08 AM         | 02:08 AM | Wetaugh               |                |   |
| 03:56 AM                        | Dp                | Memphis, TN                   |                     | 03:56 AM   | CNIC    | 356.5    |       | 10                  |                  |                  | 02:18 AM         | 02:18 AM | Mounds Jct.           |                |   |
| 06:27 AM                        | Ar                | Greenwood, MS                 |                     | 06:27 AM   | CNIC    | 406.4    | E,e,M | 50                  | 4                | 2                | 03:12 AM         | 03:14 AM | Fulton, KY            |                |   |
| 06:50 AM                        | Dp                | Yazoo City, MS                |                     | 06:50 AM   | CNIC    | 442.2    |       | 38                  | 2                | 2                | 03:54 AM         | 03:56 AM | Newbern-Dyersburg, TN |                |   |
| 09:00 AM                        | Dp                | Jackson, MS                   |                     | 09:00 AM   | CNIC    | 528.4    | t     | 95                  | 56               | 0                | 23               | 06:27 AM | 06:50 AM              | Memphis, TN    | X |
| 09:51 AM                        | Dp                | Hazlehurst, MS                |                     | 09:51 AM   | CNIC    | 653.6    |       | 122                 | 3                | 5                | 08:55 AM         | 09:00 AM | Greenwood, MS         |                |   |
| 11:20 AM                        | Dp                | Brookhaven, MS                |                     | 11:20 AM   | CNIC    | 706.1    |       | 47                  | 2                | 2                | 09:49 AM         | 09:51 AM | Yazoo City, MS        |                |   |
| 11:55 AM                        | Dp                | McComb, MS                    |                     | 11:55 AM   | CNIC    | 750.5    | e     | 53                  | 18               | 9                | 11:11 AM         | 11:20 AM | Jackson, MS           |                |   |
| 12:16 PM                        | Dp                | Hammond, LA                   |                     | 12:16 PM   | CNIC    | 784.0    |       | 32                  | 1                | 2                | 11:53 AM         | 11:55 AM | Hazlehurst, MS        |                |   |
| 12:40 PM                        | Dp                | New Orleans, LA               | CT                  | 12:40 PM   | CNIC    | 804.6    |       | 18                  | 1                | 2                | 12:14 PM         | 12:16 PM | Brookhaven, MS        |                |   |
| 01:28 PM                        | Dp                |                               |                     | 01:28 PM   | CNIC    | 828.4    |       | 20                  | 2                | 2                | 12:38 PM         | 12:40 PM | McComb, MS            |                |   |
| 03:32 PM                        | Ar                |                               |                     | 03:32 PM   | CNIC    | 880.5    |       | 42                  | 3                | 3                | 01:25 PM         | 01:28 PM | Hammond, LA           |                |   |
|                                 |                   |                               |                     |  | CNIC    | 896.0    |       | 17                  |                  |                  | 01:45 PM         | 01:45 PM | Manhac                |                |   |
|                                 |                   |                               |                     |  | CNIC    | 909.1    |       | 10                  |                  |                  | 01:55 PM         | 01:55 PM | Frenier               |                |   |
|                                 |                   |                               |                     |  | CNIC    | 920.1    |       | 10                  |                  |                  | 02:05 PM         | 02:05 PM | Skip                  |                |   |
|                                 |                   |                               |                     |  | CNIC    | 922.3    |       | 3                   |                  |                  | 02:08 PM         | 02:08 PM | Orleans Jct.          |                |   |
|                                 |                   |                               |                     |  | CNIC    | 930.1    |       | 10                  | 48               | 7                | 03:13 PM         |          | XSU - Southport Jct   | X              |   |

1 - P42, 9 cars

|    |         | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |
|----|---------|----------------------|------------------------------|------------------------|----------------|---------------------------|
| CN | XCS-MEM | 508                  | 73                           | 0                      | 24             | 605                       |
| CN | MEM-XSU | 384                  | 78                           | 16                     | 48             | 526                       |
|    |         |                      |                              |                        |                |                           |
|    |         |                      |                              |                        |                |                           |































| Blue Water<br>Train 365       |                         |                               | Remarks and Changes | Schedule Skeleton - Blue Water/Train 365 (Daily) |         |               |                      |                              |                        |                  | November 8, 2010          |                  |                  |    |                |
|-------------------------------|-------------------------|-------------------------------|---------------------|--|---------|---------------|----------------------|------------------------------|------------------------|------------------|---------------------------|------------------|------------------|----|----------------|
| Effective<br>5/10/10<br>Daily | Daily Days of Operation | Effective<br>11/8/10<br>Daily |                     | RR   | Mileage | Services      | PRT                  | Recovery<br>Minutes          | Misc.<br>Adjust.       | Dwell<br>Minutes | Arrive                    | Depart           | Station          | ET | Check<br>Point |
| 06:00 AM                      | Dp                      | Port Huron, MI                | 06:00 AM            | CN   | 0.0     | T,E (PON),I,W |                      |                              |                        |                  | 06:00 AM                  | 06:00 AM         | Port Huron, MI   | ET | X              |
| 06:45 AM                      | Dp                      | Lapeer, MI                    | 06:45 AM            | CN   | 5.2     |               | 8                    |                              |                        | 06:08 AM         | 06:08 AM                  | West Tappan      |                  |    |                |
| 07:11 AM                      | Dp                      | Flint, MI                     | 07:11 AM            | CN   | 15.0    |               | 8                    |                              |                        | 06:16 AM         | 06:16 AM                  | E.E. Emmett      |                  |    |                |
| 07:47 AM                      | Dp                      | Durand, MI                    | 07:47 AM            | CN   | 17.8    |               | 2                    |                              |                        | 06:18 AM         | 06:18 AM                  | W.E. Emmett      |                  |    |                |
| 08:28 AM                      | Dp                      | East Lansing, MI              | 08:28 AM            | CN   | 29.7    |               | 10                   |                              |                        | 06:28 AM         | 06:28 AM                  | E.E. Imlay       |                  |    |                |
| 09:54 AM                      | Dp                      | Battle Creek, MI              | 09:54 AM            | CN   | 31.9    |               | 2                    |                              |                        | 06:30 AM         | 06:30 AM                  | W.E. Imlay       |                  |    |                |
|                               |                         |                               |                     | CN   | 44.2    |               | 12                   | 2                            | 1                      | 06:44 AM         | 06:45 AM                  | Lapeer, MI       |                  |    |                |
|                               |                         |                               |                     | CN   | 45.2    |               | 2                    |                              |                        | 06:47 AM         | 06:47 AM                  | E.E. Lapeer      |                  |    |                |
|                               |                         |                               |                     | CN   | 47.2    |               | 2                    |                              |                        | 06:49 AM         | 06:49 AM                  | W.E. Lapeer      |                  |    |                |
|                               |                         |                               |                     | CN   | 57.5    |               | 8                    |                              |                        | 06:57 AM         | 06:57 AM                  | East Flint       |                  |    |                |
|                               |                         |                               |                     | CN   | 62.4    |               | 4                    | 8                            | 2                      | 07:09 AM         | 07:11 AM                  | Flint, MI        |                  |    |                |
|                               |                         |                               |                     | CN   | 70.4    |               | 5                    |                              |                        | 07:16 AM         | 07:16 AM                  | West Flint       |                  |    |                |
|                               |                         |                               |                     | CN   | 78.8    |               | 16                   |                              |                        | 07:32 AM         | 07:32 AM                  | East Durand      |                  |    |                |
|                               |                         |                               |                     | CN   | 80.9    |               | 3                    | 11                           | 1                      | 07:46 AM         | 07:47 AM                  | Durand, MI       |                  |    |                |
|                               |                         |                               |                     | CN   | 110.3   |               | 33                   | 6                            | 2                      | 08:26 AM         | 08:28 AM                  | East Lansing, MI |                  |    |                |
|                               |                         |                               |                     | CN   | 112.7   |               | 4                    |                              |                        | 08:32 AM         | 08:32 AM                  | CP-Cedar         |                  |    |                |
|                               |                         |                               |                     | CN   | 119.4   |               | 9                    |                              |                        | 08:41 AM         | 08:41 AM                  | CP-Mill          |                  |    |                |
|                               |                         |                               |                     | CN   | 157.5   |               | 37                   |                              |                        | 09:18 AM         | 09:18 AM                  | XB0 - Baron      |                  |    |                |
|                               |                         |                               |                     | CN   | 158.4   | e             | 3                    | 19                           | 10                     | 4                | 09:50 AM                  | 09:54 AM         | Battle Creek, MI |    | X              |
|                               |                         |                               |                     | NS   | 158.7   |               | 1                    |                              |                        |                  | 09:55 AM                  |                  | XGO - Gord       |    | X              |
|                               |                         |                               |                     |  |         |               | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell   | Total<br>Schedule<br>Time |                  |                  |    |                |
| CN PTH-XGO                    |                         |                               |                     |  |         |               | 169                  | 46                           | 10                     | 10               | 235                       |                  |                  |    |                |

| Saluki<br>Train 390           |                   |                               | Remarks and Changes | Schedule Skeleton - Illini/Train 390 (Daily) |         |          |       |                     |                  |                  | November 8, 2010 |          |                          |                |
|-------------------------------|-------------------|-------------------------------|---------------------|--|---------|----------|-------|---------------------|------------------|------------------|------------------|----------|--------------------------|----------------|
| Effective<br>5/10/10<br>Daily | Days of Operation | Effective<br>11/8/10<br>Daily |                     | RR   | Mileage | Services | PRT   | Recovery<br>Minutes | Misc.<br>Adjust. | Dwell<br>Minutes | Arrive           | Depart   | Station                  | Check<br>Point |
| 07:30 AM                      | Dp                | Carbondale, IL                | CT                  | 07:30 AM                                     | CNIC    | 0.0      | T,E,I |                     |                  |                  | 07:30 AM         | 07:30 AM | Carbondale,IL CT         | X              |
| 07:51 AM                      | Dp                | Du Quoin, IL                  |                     | 07:51 AM                                     | CNIC    | 20.3     |       | 20                  | 0                |                  | 07:50 AM         | 07:51 AM | Du Quoin, IL             |                |
| 08:23 AM                      | Dp                | Centralia, IL                 |                     | 08:23 AM                                     | CNIC    | 55.7     |       | 31                  | 0                |                  | 08:22 AM         | 08:23 AM | Centralia, IL            |                |
| 09:07 AM                      | Dp                | Effingham, IL                 |                     | 09:07 AM                                     | CNIC    | 108.9    |       | 43                  | 0                |                  | 09:06 AM         | 09:07 AM | Effingham, IL            |                |
| 09:31 AM                      | Dp                | Mattoon, IL                   |                     | 09:31 AM                                     | CNIC    | 135.7    |       | 23                  | 0                |                  | 09:30 AM         | 09:31 AM | Mattoon, IL (Charleston) |                |
| 10:14 AM                      | Dp                | Champaign-Urbana, IL          |                     | 10:14 AM                                     | CNIC    |          |       | 27                  |                  | 5                | 10:03 AM         | 10:03 AM | XTI - Tolono             |                |
| 10:27 AM                      | Dp                | Rantoul, IL                   |                     | 10:27 AM                                     | CNIC    | 180.3    |       | 8                   | 0                |                  | 10:11 AM         | 10:14 AM | Champaign-Urbana, IL     |                |
| 10:53 AM                      | Dp                | Gilman, IL                    |                     | 10:53 AM                                     | CNIC    | 194.3    |       | 12                  | 0                |                  | 10:26 AM         | 10:27 AM | Rantoul, IL              |                |
| 11:15 AM                      | Dp                | Kankakee, IL                  |                     | 11:15 AM                                     | CNIC    | 227.0    |       | 25                  | 0                |                  | 10:52 AM         | 10:53 AM | Gilman, IL               |                |
| 11:44 AM                      | Dp                | Homewood, IL                  |                     | 11:44 AM                                     | CNIC    | 252.2    |       | 21                  | 0                |                  | 11:14 AM         | 11:15 AM | Kankakee, IL             |                |
| 01:00 PM                      | Ar                | Chicago, IL                   | CT                  | 01:00 PM                                     | CNIC    | 284.6    |       | 27                  | 0                |                  | 11:42 AM         | 11:44 AM | Homewood, IL             |                |
|                               |                   |                               |                     |  | AMT     | 306.7    |       | 28                  | 26               |                  | 12:38 PM         |          | XCS - Clark St.          | X              |

|    |         | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |
|----|---------|----------------------|------------------------------|------------------------|----------------|---------------------------|
| CN | CDL-XCS | 265                  | 26                           | 5                      | 12             | 308                       |

| Saluki<br>Train 391           |                         |                               | Remarks and Changes  | Schedule Skeleton - Illini/Train 391 (Daily) |         |          |                      |                              |                        |                  | November 8, 2010          |                                 |                      |                |
|-------------------------------|-------------------------|-------------------------------|----------------------|--|---------|----------|----------------------|------------------------------|------------------------|------------------|---------------------------|---------------------------------|----------------------|----------------|
| Effective<br>5/10/10<br>Daily | Days of Operation       | Effective<br>11/8/10<br>Daily |                      | RR   | Mileage | Services | PRT                  | Recovery<br>Minutes          | Misc.<br>Adjust.       | Dwell<br>Minutes | Arrive                    | Depart                          | Station              | Check<br>Point |
| 08:15 AM                      | Dp Chicago, IL          | CT 08:15 AM                   | No schedule changes. | CNIC   | 2.2     |          |                      |                              |                        |                  | 08:28 AM                  | XCS - Clark St. (CNIC Contract) | X                    |                |
| 08:56 AM                      | Dp Homewood, IL         | 19 08:56 AM                   |                      | CNIC   | 24.3    |          | 26                   | 0                            |                        | 2                | 08:54 AM                  | 08:56 AM                        | Homewood, IL         |                |
| 09:22 AM                      | Dp Kankakee, IL         | 09:22 AM                      |                      | CNIC   | 56.7    |          | 25                   | 0                            |                        | 1                | 09:21 AM                  | 09:22 AM                        | Kankakee, IL         |                |
| 09:44 AM                      | Dp Gilman, IL           | 09:44 AM                      |                      | CNIC   | 81.9    |          | 21                   | 0                            |                        | 1                | 09:43 AM                  | 09:44 AM                        | Gilman, IL           |                |
| 10:10 AM                      | Dp Rantoul, IL          | 10:10 AM                      |                      | CNIC   | 114.6   |          | 25                   | 0                            |                        | 1                | 10:09 AM                  | 10:10 AM                        | Rantoul, IL          |                |
| 10:25 AM                      | Dp Champaign-Urbana, IL | 10:25 AM                      |                      | CNIC   | 128.6   |          | 12                   | 0                            |                        | 3                | 10:22 AM                  | 10:25 AM                        | Champaign-Urbana, IL |                |
| 11:05 AM                      | Dp Mattoon, IL          | 11:05 AM                      |                      | CNIC   |         |          | 10                   |                              | 5                      |                  | 10:40 AM                  | 10:40 AM                        | XTI - Tolono         |                |
| 11:29 AM                      | Dp Effingham, IL        | 11:29 AM                      |                      | CNIC   | 173.2   |          | 24                   | 0                            |                        | 1                | 11:04 AM                  | 11:05 AM                        | Mattoon, IL          |                |
| 12:16 PM                      | Dp Centralia, IL        | 12:16 PM                      |                      | CNIC   | 200.0   |          | 23                   | 0                            |                        | 1                | 11:28 AM                  | 11:29 AM                        | Effingham, IL        |                |
| 12:49 PM                      | Dp Du Quoin, IL         | 12:49 PM                      |                      | CNIC   | 253.2   |          | 46                   | 0                            |                        | 1                | 12:15 PM                  | 12:16 PM                        | Centralia, IL        |                |
| 01:45 PM                      | Ar Carbondale, IL       | CT 01:45 PM                   |                      | CNIC   | 288.6   |          | 32                   | 0                            |                        | 1                | 12:48 PM                  | 12:49 PM                        | Du Quoin, IL         |                |
|                               |                         |                               |                      | CNIC   | 308.9   |          | 21                   | 26                           | 9                      |                  | 01:45 PM                  |                                 | Carbondale, IL       | X              |
|                               |                         |                               |                      |  |         |          | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell   | Total<br>Schedule<br>Time |                                 |                      |                |
|                               |                         |                               |                      |  | CN      | XCS-GDL  | 265                  | 26                           | 14                     | 12               | 317                       |                                 |                      |                |

| Illini<br>Train 392           |                   |                               | Remarks and Changes  | Schedule Skeleton - Illini/Train 392 (Daily) |         |          |     |                     |                  |                  | November 8, 2010 |          |                                 |                |
|-------------------------------|-------------------|-------------------------------|----------------------|--|---------|----------|-----|---------------------|------------------|------------------|------------------|----------|---------------------------------|----------------|
| Effective<br>5/10/10<br>Daily | Days of Operation | Effective<br>11/8/10<br>Daily |                      | RR   | Mileage | Services | PRT | Recovery<br>Minutes | Misc.<br>Adjust. | Dwell<br>Minutes | Arrive           | Depart   | Station                         | Check<br>Point |
|                               |                   |                               |                      | CNIC   | 0.0     | T,E,I    |     |                     |                  |                  |                  | 05:15 PM | Carbondale, IL CT               | X              |
| 05:15 PM                      | Dp                | 05:15 PM                      | No schedule changes. | CNIC   | 20.3    |          | 20  | 0                   |                  | 1                | 05:35 PM         | 05:36 PM | Du Quoin, IL                    |                |
| 05:36 PM                      | Dp                | 05:36 PM                      |                      | CNIC   | 55.7    |          | 31  | 0                   |                  | 1                | 06:07 PM         | 06:08 PM | Centralia, IL                   |                |
| 06:08 PM                      | Dp                | 06:08 PM                      |                      | CNIC   | 108.9   |          | 43  | 0                   |                  | 1                | 06:51 PM         | 06:52 PM | Effingham, IL                   |                |
| 06:52 PM                      | Dp                | 06:52 PM                      |                      | CNIC   | 135.7   |          | 23  | 0                   |                  | 1                | 07:15 PM         | 07:16 PM | Mattoon, IL (Charleston)        |                |
| 07:16 PM                      | Dp                | 07:16 PM                      |                      | CNIC   |         |          | 27  |                     | 5                |                  | 07:48 PM         | 07:48 PM | XTI - Tolono                    |                |
| 07:59 PM                      | Dp                | 07:59 PM                      |                      | CNIC   | 180.3   |          | 8   | 0                   |                  | 3                | 07:56 PM         | 07:59 PM | Champaign-Urbana, IL            |                |
| 08:12 PM                      | Dp                | 08:12 PM                      |                      | CNIC   | 194.3   |          | 12  | 0                   |                  | 1                | 08:11 PM         | 08:12 PM | Rantoul, IL                     |                |
| 08:38 PM                      | Dp                | 08:38 PM                      |                      | CNIC   | 227.0   |          | 25  | 0                   |                  | 1                | 08:37 PM         | 08:38 PM | Gilman, IL                      |                |
| 09:00 PM                      | Dp                | 09:00 PM                      |                      | CNIC   | 252.2   |          | 21  | 0                   |                  | 1                | 08:59 PM         | 09:00 PM | Kankakee, IL                    |                |
| 09:27 PM                      | Dp                | 09:27 PM                      |                      | CNIC   | 284.6   |          | 27  | 0                   |                  | 2                | 09:27 PM         | 09:29 PM | Homewood, IL                    |                |
| 10:45 PM                      | Ar                | 10:45 PM                      |                      | AMT  | 306.7   |          | 28  | 26                  |                  |                  | 10:23 PM         |          | XCS - Clark St. (CNIC Contract) | X              |

|    |         | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |
|----|---------|----------------------|------------------------------|------------------------|----------------|---------------------------|
| CN | CDL-XCS | 265                  | 26                           | 5                      | 12             | 308                       |

| Illini<br>Train 393           |                         |                               | Remarks and Changes  | Schedule Skeleton - Illini/Train 393 (Daily) |         |                      |                              |                        |                  |                           | November 8, 2010 |          |                                 |                |
|-------------------------------|-------------------------|-------------------------------|----------------------|--|---------|----------------------|------------------------------|------------------------|------------------|---------------------------|------------------|----------|---------------------------------|----------------|
| Effective<br>5/10/10<br>Daily | Days of Operation       | Effective<br>11/8/10<br>Daily |                      | RR   | Mileage | Services             | PRT                          | Recovery<br>Minutes    | Misc.<br>Adjust. | Dwell<br>Minutes          | Arrive           | Depart   | Station                         | Check<br>Point |
| 04:05 PM                      | Dp Chicago, IL          | CT 04:05 PM                   | No schedule changes. | CNIC   | 2.2     |                      |                              |                        |                  |                           |                  | 04:18 PM | XCS - Clark St. (CNIC Contract) | X              |
| 04:46 PM                      | Dp Homewood, IL         | 19 04:46 PM                   |                      | CNIC   | 24.3    |                      | 26                           | 0                      |                  | 2                         | 04:44 PM         | 04:46 PM | Homewood, IL                    |                |
| 05:12 PM                      | Dp Kankakee, IL         | 05:12 PM                      |                      | CNIC   | 56.7    |                      | 25                           | 0                      |                  | 1                         | 05:11 PM         | 05:12 PM | Kankakee, IL                    |                |
| 05:34 PM                      | Dp Gilman, IL           | 05:34 PM                      |                      | CNIC   | 81.9    |                      | 21                           | 0                      |                  | 1                         | 05:33 PM         | 05:34 PM | Gilman, IL                      |                |
| 06:00 PM                      | Dp Rantoul, IL          | 06:00 PM                      |                      | CNIC   | 114.6   |                      | 25                           | 0                      |                  | 1                         | 05:59 PM         | 06:00 PM | Rantoul, IL                     |                |
| 06:15 PM                      | Dp Champaign-Urbana, IL | 06:15 PM                      |                      | CNIC   | 128.6   |                      | 12                           | 0                      |                  | 3                         | 06:12 PM         | 06:15 PM | Champaign-Urbana, IL            |                |
| 06:55 PM                      | Dp Mattoon, IL          | 06:55 PM                      |                      | CNIC   |         |                      | 10                           |                        | 5                |                           | 06:30 PM         | 06:30 PM | XTI - Tolono                    |                |
| 07:19 PM                      | Dp Effingham, IL        | 07:19 PM                      |                      | CNIC   | 173.2   |                      | 24                           | 0                      |                  | 1                         | 06:54 PM         | 06:55 PM | Mattoon, IL                     |                |
| 08:06 PM                      | Dp Centralia, IL        | 08:06 PM                      |                      | CNIC   | 200.0   |                      | 23                           | 0                      |                  | 1                         | 07:18 PM         | 07:19 PM | Effingham, IL                   |                |
| 08:39 PM                      | Dp Du Quoin, IL         | 08:39 PM                      |                      | CNIC   | 253.2   |                      | 46                           | 0                      |                  | 1                         | 08:05 PM         | 08:06 PM | Centralia, IL                   |                |
| 09:35 PM                      | Ar Carbondale, IL       | CT 09:35 PM                   |                      | CNIC   | 288.6   |                      | 32                           | 0                      |                  | 1                         | 08:38 PM         | 08:39 PM | Du Quoin, IL                    |                |
|                               |                         |                               |                      | CNIC   | 308.9   |                      | 21                           | 26                     | 9                |                           | 09:35 PM         |          | Carbondale, IL                  | X              |
|                               |                         |                               |                      |  |         | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell   | Total<br>Schedule<br>Time |                  |          |                                 |                |
|                               |                         |                               |                      | CN   | XCS-CDL | 265                  | 26                           | 14                     | 12               | 317                       |                  |          |                                 |                |





## APPENDIX III

[Reserved]

## **APPENDIX IV**

### **Current Costs and Price Level Adjustments**

(15 pages following)

**[REDACTED]**

**APPENDIX V**

**Performance Payments and Penalties**

(18 pages following)

**[REDACTED]**

**APPENDIX VI**

**Payment for Operations of Amtrak Trains on GTW Lines**

(8 pages following)

**[REDACTED]**

**APPENDIX VII**

**Statement of Charges Format**

(10 pages following)

National Railroad Passenger Corporation:  
 Railroad Billing = CN/Illinois Central Railroad

Month of

January-11

FLAT RATED COSTS

SAP Invoice Number

| Item Number | Description                    | No of Units | Unit of Measure | Unit Cost | Total Cost | Remarks |
|-------------|--------------------------------|-------------|-----------------|-----------|------------|---------|
| 1 c         | Fuel Handling                  |             | Gallons         |           | \$ -       |         |
| 3           | Locomotive Rentals:            |             |                 |           |            |         |
|             | 0 - 1999 HP                    |             | Per Hour        |           | \$ -       |         |
|             | 2000 - 2999 HP                 |             | Per Hour        |           | \$ -       |         |
|             | over 2999 HP                   |             | Per Hour        |           | \$ -       |         |
| 5           | Station Utilities              |             | Month           |           | \$ -       |         |
| 6           | Incremental Track Maint.       |             | Train Miles     |           | \$ -       |         |
|             | (4.3 miles No Sunday moves)    |             | Moves           |           | \$ -       |         |
| 7           | Non Routine Switching/Hostling |             | Per Hour        |           | \$ -       |         |
|             | Hostling                       |             | Per Hour        |           | \$ -       |         |
| 10          | Transporting Amtrak Stock      |             | Car Unit Mile   |           | \$ -       |         |
|             |                                |             | Loco Unit Mile  |           | \$ -       |         |
| 11          | Communications                 |             | Month           |           | \$ -       |         |
| 13 c        | Avoidable Track Facilities     |             | Month           |           | \$ -       |         |
| 14          | Joint Trackage/ Facilities     |             | Per Trip        |           | \$ -       |         |
|             | St Charles Air Line            |             |                 |           |            |         |
| 15          | Other Train Costs              |             | Per Mile        |           | \$ -       |         |
| 17          | Special Trains                 |             | Train Mile      |           | \$ -       |         |
|             |                                |             |                 |           | \$ -       |         |

National Railroad Passenger Corporation:  
 Railroad Billing = CN/Illinois Central Railroad

January-11

Actual Costs

| Item Number | Description   | Labor | Material | Other | Total |
|-------------|---|-------|----------|-------|-------|
| 1 (a)       | Train and Engine Piloting and<br>Emergency Crew Wages |       |          |       | \$ -  |
| 1(b)        | Diesel Fuel   |       |          |       | \$ -  |
| 2(b)        | Non-Routine Servicing                                 |       |          |       | \$ -  |
| 4 (a)       | Station Maintenance                                   |       |          |       |       |
| 4(b)        | Snow Removal  |       |          |       | \$ -  |
| 8 (a)       | Material & Train Supplies                             |       |          |       | \$ -  |
| 8 (b)       | Materials Handling 10%                                |       |          |       | \$ -  |
|             | Amtrak-owned 5%                                       |       | \$ -     |       | \$ -  |
| 9           | Clearing Wrecks<br>AN #                               |       |          |       | \$ -  |
| 12          | Timetable Printing                                    |       |          |       | \$ -  |
| 13 (a)(b)   | Avoidable Track Facilities                            |       |          |       | \$ -  |
| 16          | Amtrak Operations Officer                             |       | \$ -     | \$ -  | \$ -  |
|             |   | -     | \$ -     | \$ -  | \$ -  |

National Railroad Passenger Corporation:  
 Railroad Billing = CN/Illinois Central Railroad

January-11

Authorization Notices

| Item Number | Description                   | Labor | Material | Other | Total |
|-------------|-------------------------------|-------|----------|-------|-------|
| IC -7A-0799 | Service Printer Carbondale,IL |       |          |       | \$ -  |
|             | Jan-11                        |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |
|             |                               |       |          |       | \$ -  |

National Railroad Passenger Corporation:  
Railroad Billing = CN/Illinois Central Railroad

January-11

Amtrak Audit Adjustment:

| Item Number | Description | Labor | Material | Other | Total |
|-------------|-------------|-------|----------|-------|-------|
|             |             |       |          |       | \$ -  |
|             |             | -     | \$ -     | \$ -  | \$ -  |

**National Railroad Passenger Corporation:  
Railroad Billing = CN/Illinois Central Railroad**

**January-11**

**Revenue Expense Summary Statement**

| Description  | Amount | <p>The above named Railroad hereby certifies to NRPC that this monthly report is complete and correct. furthermore, all statistics shown herein are appropriately related to NRPC activities, and all costs shown herein are properly chargeable to NRPC under the National Railroad Passenger Corporation agreement dated _____ and subsequent amending agreements.</p> |
|--|--------|--|
| Flat Rated Costs   | -      |  |
| Actual Costs   | -      |  |
| Authorization Notice Costs                               | -      |  |
| Adjustments to Prior Months IC                           |        |  |
| Adjustments to Prior Months GTW                          |        |  |
| Sub Total  | -      |  |
| Amtrak OTP Report, IC Operations<br>Statements Attached  | -      |  |
| Amtrak OTP Report, GTW Operations<br>Statements Attached |        |  |
| Total Expenses   | -      |  |
| Less: Deadheading Allowance                              | -      | Manager Receivables  |
| Less: Revenues   | -      |  |
| Total Due Railroad (Payable to NRPC)                     | -      |  |

TRACKAGE FOR AMTRAK PASSENGER TRAINS

2011

MONTH **January 2011**

MAINTENANCE

DAYS IN MONTH **31**

SUNDAYS **4**

SATURDAYS **4**

**TUESDAYS 4**

| Mo. | Days | Sat | Sun | Tue |
|-----|------|-----|-----|-----|
| Jan | 31   | 4   | 4   | 5   |
| Feb | 28   | 4   | 4   | 4   |
| Mar | 31   | 5   | 5   | 4   |
| Apr | 30   | 4   | 4   | 4   |
| May | 31   | 5   | 4   | 4   |
| Jun | 30   | 4   | 5   | 4   |
| Jul | 31   | 4   | 4   | 5   |
| Aug | 31   | 5   | 5   | 4   |
| Sep | 30   | 4   | 4   | 5   |
| Oct | 31   | 4   | 4   | 4   |
| Nov | 30   | 5   | 5   | 4   |
| Dec | 31   | 4   | 4   | 5   |

| TRAIN NO. | DAYS | MILES          | TOTAL      |
|-----------|------|----------------|------------|
| 21        |      | 34.9           | 0          |
| 22        |      | 34.9           | 0          |
| 300       |      | 34.9           | 0          |
| 301       |      | 34.9           | 0          |
| 302       |      | 34.9           | 0          |
| 303       |      | 34.9           | 0          |
| 304       |      | 34.9           | 0          |
| 305       |      | 34.9           | 0          |
| 306       |      | 34.9           | 0          |
| 307       |      | 34.9           | 0          |
| 58        |      | 927.8          | 0          |
| 59        |      | 927.8          | 0          |
| 390       |      | 306.7          | 0          |
| 391       |      | 306.7          | 0          |
| 392       |      | 306.7          | 0          |
| 393       |      | 306.7          | 0          |
|           |      | <u>3,431.4</u> | <u>0.0</u> |

|                  |   |     |   |        |
|------------------|---|-----|---|--------|
| MAINTENANCE      | X | 0.0 | = | \$0.00 |
| OTHER TRAIN COST | X | 0.0 | = | \$0.00 |

\* The numbers in the days columns must correspond with the TRN OPS column on the MTD Performance sheet provided. The miles columns has been confirmed with Amtrak .

|   |       |       |   |          |            |
|---|-------|-------|---|----------|------------|
|   | MOVES | MILES |   | TOTAL    |            |
| <b>BRIGHTON</b>   | -     | 4.3   | = | 0        |            |
| <b>OTHER TRAIN COSTS</b>  |       |       | X | <u>0</u> | = <u>0</u> |
| <b>OTHER TRAIN COST W/BRIGHTON PARK MILEAGE AND SPECIAL TRAIN MILES</b> |       |       |   | 0.0      | \$0.00     |

| Payment Summary - GTW Operations |                     |          |          |          |      |             |
|----------------------------------|---------------------|----------|----------|----------|------|-------------|
| January, 2010                    |                     |          |          |          |      |             |
|                                  | Train               | Ontime   | Late     | OPS      | % OT | Incentive   |
|                                  | 364                 | 0        | 0        | 0        |      | \$ -        |
|                                  | 365                 | 0        | 0        | 0        |      | \$ -        |
|                                  | <b>Group Total</b>  | <b>0</b> | <b>0</b> | <b>0</b> |      | <b>\$ -</b> |
| PNT-VWD                          | 350                 | 0        | 0        | 0        |      | \$ -        |
|                                  | 351                 | 0        | 0        | 0        |      | \$ -        |
|                                  | 352                 | 0        | 0        | 0        |      | \$ -        |
|                                  | 353                 | 0        | 0        | 0        |      | \$ -        |
|                                  | 354                 | 0        | 0        | 0        |      | \$ -        |
|                                  | 355                 | 0        | 0        | 0        |      | \$ -        |
|                                  | <b>Group Total</b>  | <b>0</b> | <b>0</b> | <b>0</b> |      | <b>\$ -</b> |
| GORD-BARON                       | 350                 | 0        | 0        | 0        |      |             |
|                                  | 351                 | 0        | 0        | 0        |      |             |
|                                  | 352                 | 0        | 0        | 0        |      |             |
|                                  | 353                 | 0        | 0        | 0        |      |             |
|                                  | 354                 | 0        | 0        | 0        |      |             |
|                                  | 355                 | 0        | 0        | 0        |      |             |
|                                  | <b>Group Total</b>  | <b>0</b> | <b>0</b> | <b>0</b> |      | <b>\$ -</b> |
|                                  | 317/51              | 0        | 0        | 0        |      | \$ -        |
|                                  | 318/50              | 0        | 0        | 0        |      | \$ -        |
|                                  | <b>Group Total</b>  |          |          |          |      | <b>\$ -</b> |
|                                  | <b>Grand Totals</b> |          |          |          |      | <b>\$ -</b> |

| AMTRAK 851 & 51 Munster - Thorton JCT (To Chicago) |     |       |         |                       |     |     |     |     |     |         |      |     |     | CN MIN | EARN STAT | Relief Minutes Claimed (CN) | Relief Minutes Denied (AMT) | Relief Minutes Allowed (AMT) | CN Relief Claim remarks | CN Basis for Requested Relief | Amtrak Basis for Relief Denied |
|--|-----|-------|---------|-----------------------|-----|-----|-----|-----|-----|---------|------|-----|-----|--------|-----------|-----------------------------|-----------------------------|------------------------------|-------------------------|-------------------------------|--------------------------------|
| Date   | TRN | OP TR | ARR XTJ | CN RESPONSIBLE DELAYS |     |     |     |     |     |         |      |     |     |        |           |                             |                             |                              |                         |                               |                                |
|  |     |       |         | RCM                   | DCS | DMW | RCD | DSR | FTI | PTI     | MBO  | RTE | OCN |        |           |                             |                             |                              |                         |                               |                                |
| 01-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 02-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 03-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 04-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 05-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 06-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 07-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 08-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 09-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 10-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 11-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 12-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 13-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 14-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 15-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 16-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 17-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 18-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 19-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 20-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 21-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 22-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 23-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 24-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 25-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 26-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 27-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 28-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 29-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 30-Jan   | 851 |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| 31-Jan   | 51  |       |         | 0                     |     |     |     |     |     |         |      |     |     | 0      | NC        |                             |                             | 0                            |                         |                               |                                |
| <b>Averages</b>                                    |     |       |         | 0.0                   | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0     | 0.0  | 0.0 | 0.0 | 0.0    |           |                             | 0.0                         |                              |                         |                               |                                |
| Train OTP Stats                                    |     |       |         | OT                    | 0   | LT  | 0   | NC  | 31  | MTD OTP | 0.0% |     |     |        |           |                             |                             |                              |                         |                               |                                |
| <b>Amount Due:</b>                                 |     |       |         |                       |     |     |     |     |     |         |      |     |     | \$0.00 |           |                             |                             |                              |                         |                               |                                |

**Month-to-Date Incentive Performance - IC Amtrak Operations**

January 1, 2011

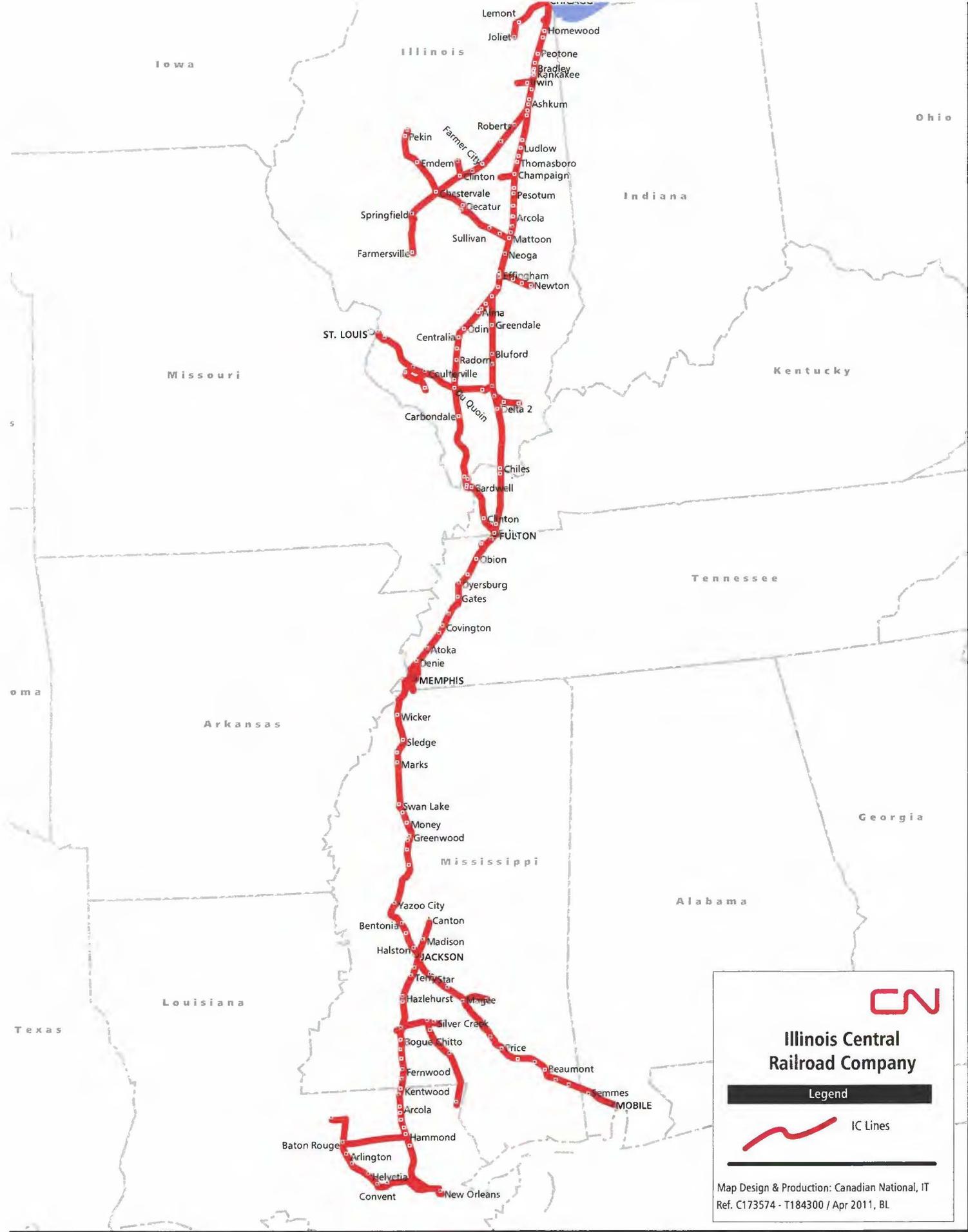
| Trn Miles      | TRAIN | WINS | LOSS | NOCOUNT | MTD OTP | TRNS OP            | INC RTE | Earn/Loss |
|----------------|-------|------|------|---------|---------|--------------------|---------|-----------|
| 401.6          | 58-1  | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 526.2          | 58-2  | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 526.2          | 59-1  | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 401.6          | 59-2  | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| <b>58-59</b>   |       | 0    | 0    | 0       |         | <b>Group Total</b> |         | \$ -      |
| 306.7          | 390   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 306.7          | 391   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 306.7          | 392   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 306.7          | 393   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| <b>391-392</b> |       | 0    | 0    | 0       |         | <b>Group Total</b> |         | \$ -      |
| 34.9           | 300   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 301   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 302   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 303   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 304   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 305   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 306   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 307   | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 21    | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| 34.9           | 22    | 0    | 0    | 0       |         | 0                  |         | \$ -      |
| <b>300-22</b>  |       | 0    | 0    | 0       |         | <b>Group Total</b> |         | \$ -      |
| <b>Totals</b>  |       |      |      |         |         | <b>Incentive</b>   |         |           |



**APPENDIX VIII**

**Maps of Rail Lines**

(2 pages following)





### Illinois Central Railroad Company

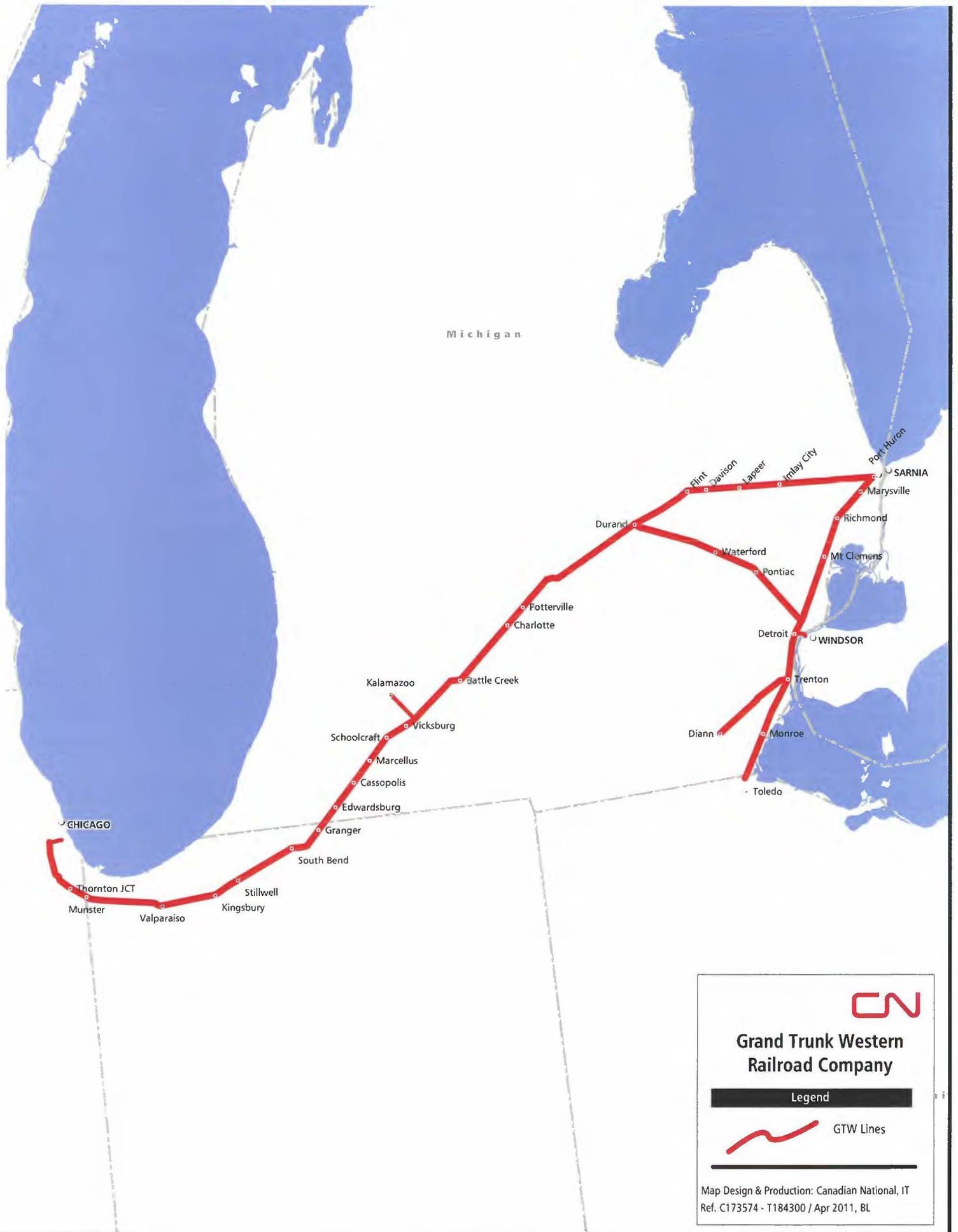
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Legend

IC Lines

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Map Design & Production: Canadian National, IT  
Ref. C173574 - T184300 / Apr 2011, BL





**Grand Trunk Western  
Railroad Company**

Legend

 GTW Lines

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Map Design & Production: Canadian National, IT  
Ref. C173574 - T184300 / Apr 2011, BL

**APPENDIX IX**

**Payment for Amtrak Operations over the St. Charles Air Line Route**

(7 pages following)

[REDACTED]

Amendment Agreement  
Change Records 1 - 50

**[REDACTED]**

# EXHIBIT 2

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER  
49 U.S.C. § 24308(a)—CANADIAN NATIONAL RAILWAY COMPANY

Digest:<sup>1</sup> In this decision, the Board issues interim findings and guidance to the National Railroad Passenger Corporation (Amtrak) and Illinois Central Railroad Company and Grand Trunk Western Railroad Company (subsidiaries of Canadian National Railway Company) and initiates Board-sponsored mediation in an effort to establish reasonable terms and compensation for Amtrak's use of the carriers' facilities (including rail lines) and services.

Decided: August 8, 2019

The National Railroad Passenger Corporation (Amtrak) operates passenger trains over thousands of route miles across the United States. Most of these trains operate over rail lines owned by private freight railroads (referred to as "host railroads") under agreements negotiated between Amtrak and the relevant host railroad. Since the 1970s, Amtrak has operated passenger trains over rail lines now owned by Illinois Central Railroad Company (IC) and Grand Trunk Western Railroad Company (GTW),<sup>2</sup> pursuant to such agreements. When the most recent agreement (the 2011 Operating Agreement) expired, however, the parties were unable to reach a new operating agreement.

Amtrak asks the Board to set reasonable terms and compensation for Amtrak's use of CN's facilities (including rail lines) and services. The parties dispute numerous issues, including on-time performance (OTP) calculations, Amtrak's penalty and incentive payments to CN, the components of CN's base compensation, and other contract terms such as the term of the agreement.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> IC and GTW are both indirect subsidiaries of Canadian National Railway Company and direct parties to the agreement with Amtrak at issue in this proceeding. For purposes of this proceeding, "CN" refers collectively to IC and GTW, but not their parent company. (See CN Reply 1 n.1, Aug. 1, 2013; Amtrak Reply 1, Aug. 2, 2013.)

In this decision, the Board issues interim findings and guidance on the main disputed issues and directs the parties to engage in Board-sponsored mediation in an effort to reach a final agreement. If, in light of the interim findings and guidance given in this decision, the parties reach an agreement, the Board will dismiss this proceeding; otherwise, the Board will issue a subsequent decision with its final determinations on any remaining unresolved issues.<sup>3</sup>

## I. BACKGROUND AND PRELIMINARY MATTERS<sup>4</sup>

### A. Historical Background

Historically, railroads had a common carrier obligation to carry both freight and passenger traffic on their lines. See Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry., 470 U.S. 451, 453-54 (1985). Beginning in 1920, railroads could not abandon their lines without permission from the Board's predecessor, the Interstate Commerce Commission (ICC). See Transportation Act of 1920, ch. 91, § 402, 41 Stat. 456, 477-78. In the ensuing decades, the rise of alternative modes of transportation—automobiles, buses, and airplanes—cut into the railroads' revenues. See Atchison, Topeka & Santa Fe Ry., 470 U.S. at 454. By the 1960s, major railroads were in serious financial trouble, passenger rail services were incurring operating losses, and railroads were seeking to abandon lines at an increased rate. See id.

Finding that modern, efficient intercity rail passenger service is a necessary part of a balanced transportation system, Congress enacted the Rail Passenger Service Act of 1970 (RPSA), Pub. L. No. 91-518, 84 Stat. 1327 (current version at 49 U.S.C. §§ 24301-24322). RPSA created Amtrak, RPSA § 301, and allowed the railroads to enter into agreements with Amtrak, relieving the railroads of their common carrier obligation to carry passengers, in exchange for a statutorily prescribed payment, RPSA, § 401(a). RPSA also required the railroads to allow Amtrak to use their rail lines to provide passenger rail service on negotiated terms, or, absent an agreement, for ICC-imposed "just and reasonable" terms and compensation, id. § 402, which Congress later changed to "reasonable terms and compensation," Act of Jan. 25, 1994, Pub. L. No. 103-272, § 1(e), 108 Stat. 745, 862 (codified at 49 U.S.C. § 24308(a)(2)(A)(ii)).

In 1973, Congress enacted the Amtrak Improvement Act of 1973, Pub. L. No. 93-146, 87 Stat. 548 (current version at 49 U.S.C. §§ 24301-24322). As relevant here, the Amtrak Improvement Act does two things. First, it requires that, when setting reasonable compensation,

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<sup>3</sup> The Board has considered every argument made by the parties but need not address each argument in this decision. Arguments not addressed herein will be addressed by the Board in a subsequent decision, if necessary.

<sup>4</sup> The parties designated certain information contained in this decision as confidential or highly confidential in their pleadings. While attempting to avoid references to confidential or highly confidential information in Board decisions, the Board reserves the right to rely upon and disclose such information in decisions when necessary. In this case, the Board determined that it could not present its interim findings and guidance with respect to particular issues without disclosing certain information.

the Board is to consider “quality of service” as “a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than . . . incremental costs.” *Id.* § 24308(a)(2)(B). Second, it establishes in statute a preference for transportation provided by Amtrak over freight transportation with respect to the use of rail lines, and it allows any railroad affected by that preference to seek relief from the Board from the preference requirement. *Id.* § 24308(c). In 1981, Congress amended section 402(a) of RPSA by inserting language requiring that any agreement between Amtrak and a host railroad for use of that host’s facilities and its provision of services must “include a penalty for untimely performance.” *See Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 1181, 95 Stat. 357, 693.*

## **B. Amtrak Service on CN Lines**

As noted earlier, Amtrak has been using CN’s facilities (including rail lines) and services under agreements negotiated by the parties since the early 1970s. (CN Opening Br. 9-10, Jan. 19, 2018.) In 1995, Amtrak and IC entered into an operating agreement for Amtrak’s use of IC’s facilities and services, which was extended by the parties until May 1, 2011. (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at 1, Dec. 6, 2018.<sup>5</sup>) Effective May 1, 2011, the 1995 agreement was replaced with the 2011 Operating Agreement, which restated the 1995 agreement and extended its application to GTW’s facilities and services as well.<sup>6</sup> (*Id.*, V.S. Ladue & Kuxmann, Ex. 1 at 1.) The 2011 Operating Agreement was for a term of two years and was extended twice for short periods through August 11, 2013. (Amtrak Appl. 2 n.2, July 30, 2013.) Both parties propose that their next operating agreement cover Amtrak’s operations over both the IC and GTW<sup>7</sup> facilities and services. (CN Opening Evid. 50, Dec. 6, 2018; Amtrak Opening Statement V.S. Vilter 5 n.9, Sept. 8, 2015.)

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<sup>5</sup> On December 6, 2018, pursuant to a request from the Board, CN filed revised versions of its September 5, 2015 opening evidence, correcting pagination and footnote numbering errors and incorporating its September 23, 2015 errata into both the confidential and public versions of this filing. Also, on December 6, 2018, Amtrak filed a revised public version of its October 30, 2017 surrebuttal submission, correcting pagination errors.

<sup>6</sup> Both parties submitted a copy of their 2011 Operating Agreement as part of their opening evidence. (*See* CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1, Dec. 6, 2018; Amtrak Opening Statement, V.S. Vilter, Attach. 2, Sept. 8, 2015.) These copies of the 2011 Operating Agreement appear to contain the same information, but Amtrak appears to have submitted the attachments to the 2011 Operating Agreement out of order. The Board will therefore reference CN’s submission of the 2011 Operating Agreement in this decision, for ease of reference for the reader. In addition, both parties designated the 2011 Operating Agreement confidential in their submissions. The Board is not making the parties’ 2011 Operating Agreement public, but, as noted *supra* note 4, finds it necessary to disclose certain information in order to present the Board’s interim findings and guidance here.

<sup>7</sup> The parties agree that the IC and GTW lines should be subject to the same contract terms going forward. (*See* Amtrak Opening Br. 15-16, Jan. 19, 2018; CN Opening Evid. 13, Dec. 6, 2018.)

Six of Amtrak's routes include service over CN lines: the Wolverine, Texas Eagle, Lincoln, Blue Water, Illini/Saluki, and City of New Orleans routes. (Amtrak Opening Statement, V.S. Sacks 2-3, Sept. 8, 2015; CN Opening Evid., V.S. Ladue & Kuxmann 3-4, Dec. 6, 2018.)

Wolverine Service. Amtrak's Wolverine service operates six trains daily over a total of 304.1 route miles between Chicago, Ill., and Pontiac, Mich. On that route, 26.5 route miles are over CN lines in two segments: one between Pontiac and Vinewood, Mich., and one between Gord and Baron in Battle Creek, Mich. (CN Opening Evid., V.S. Ladue & Kuxmann 5, Table 1, Dec. 6, 2018; see also id., V.S. Ladue & Kuxmann, Ex. 2 at 3.)

Texas Eagle Service. Amtrak's Texas Eagle service operates two trains daily over 1,305.4 route miles between Chicago and San Antonio, Tex. The Texas Eagle service operates over CN lines for a segment of 35.7 route miles between Chicago and Joliet, Ill. (Id., V.S. Ladue & Kuxmann 5, Table 1, Dec. 6, 2018; see also id., V.S. Ladue & Kuxmann, Ex. 2 at 2.)

Lincoln Service. Amtrak's Lincoln service operates eight trains daily over 284.1 route miles between Chicago and St. Louis, Mo., of which 35.7 route miles are on CN lines between downtown Chicago and Joliet. (Id., V.S. Ladue & Kuxmann 5, Table 1, Dec. 6, 2018; see also id., V.S. Ladue & Kuxmann, Ex. 2 at 2.)

Blue Water Service. Amtrak's Blue Water service operates two trains daily over a total of 318.5 route miles between Chicago and Port Huron, Mich., with 158.7 route miles over CN lines between Gord, in Battle Creek, and Port Huron. (Id., V.S. Ladue & Kuxmann 5, Table 1, Dec. 6, 2018; see also id., V.S. Ladue & Kuxmann, Ex. 2 at 3.)

Illini/Saluki Service. Amtrak's Illini/Saluki service operates four trains daily over a total of 308.9 route miles between Chicago and Carbondale, Ill. On that route, 306.7 route miles are over CN lines. (Id., V.S. Ladue & Kuxmann 5, Table 1, Dec. 6, 2018; see also id., V.S. Ladue & Kuxmann, Ex. 2 at 1.)

City of New Orleans Service. Amtrak's City of New Orleans service operates two trains daily over a total of 933.8 route miles between Chicago and New Orleans, La., of which 927.9 route miles are over CN lines between Chicago and Southport Junction in suburban New Orleans. (Id., V.S. Ladue & Kuxmann 5, Table 1, Dec. 6, 2018; see also id., V.S. Ladue & Kuxmann, Ex. 2 at 1.)

### **C. Procedural History**

On July 30, 2013, Amtrak filed an application under 49 U.S.C. § 24308(a)(2), requesting that the Board institute a proceeding to establish reasonable terms and compensation for Amtrak's use of the facilities and services of CN and to make those terms retroactive to August 12, 2013. In its application, Amtrak also requested that the Board order CN to continue to make its facilities and services available to Amtrak on an interim basis under the terms of the 2011 Operating Agreement between the parties that was scheduled to expire on August 11, 2013. At the same time, Amtrak also proposed a procedural schedule. On August 1, 2013, CN filed a

letter replying to Amtrak's request for interim relief, stating it did not object to continuing to make its facilities and services available to Amtrak under the terms of the 2011 Operating Agreement on an interim basis. On August 9, 2013, the Board instituted a proceeding and ordered CN to continue to provide interim service under the terms of the expiring 2011 Operating Agreement.

The parties engaged in initial discovery over the next two years.<sup>8</sup> In September 2015, both parties submitted opening arguments,<sup>9</sup> after which they twice requested, and the Board twice granted, an extension of the procedural schedule to allow for additional discovery. On December 11, 2015, the Board granted a request by CN to require Amtrak to file a revised public version of its opening submission with the confidentiality designation removed from certain portions. Amtrak filed that document on December 17, 2015.

Upon the final completion of discovery, both parties filed rebuttal evidentiary submissions on September 14, 2017.<sup>10</sup> The parties jointly requested the opportunity to file limited surrebuttals, which the Board granted on October 11, 2017. On October 30, 2017, both parties filed their surrebuttal submissions.<sup>11</sup>

On November 20, 2017, CN filed a motion to strike a portion of Amtrak's surrebuttal evidentiary submission regarding an issue the parties refer to as the "short shunt" issue as exceeding the proper scope of surrebuttal, or, in the alternative, for leave to supplement the record. On December 7, 2017, Amtrak filed a reply to CN's motion to strike, as well as its own supplemental evidence on the issue. CN's motion to strike is addressed infra in this section, and the substantive issue subject to the motion to strike is discussed infra in the Performance Measurement and Delays section of this decision.

On January 19, 2018, after an additional extension of the procedural schedule at the request of the parties, both parties filed their opening briefs. On March 5, 2018, after an extension of time granted by the Board on February 13, 2018, both parties filed their reply briefs. The Board also received three comments from outside parties: Norfolk Southern Railway Company (NSR), CSX Transportation, Inc. (CSXT), and the National Industrial Transportation League (NITL).<sup>12</sup> Broadly, NSR and CSXT support CN's proposals and raise objections to

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<sup>8</sup> On December 16, 2013, the Board granted a joint motion for protective order. The Board amended the protective order on November 5, 2015, pursuant to a joint motion from the parties.

<sup>9</sup> On September 23, 2015, CN filed errata to its opening evidence. On December 6, 2018, CN filed a revised version of its opening evidence, discussed supra note 5, in this section.

<sup>10</sup> On September 21, 2017, Amtrak filed corrections to its rebuttal submission.

<sup>11</sup> On December 6, 2018, Amtrak filed a revised version of its surrebuttal submission, discussed supra note 5, in this section.

<sup>12</sup> Both NSR and CSXT submitted their comments along with motions for leave to file those comments as *amicus curiae*. Those motions will be granted and NSR's and CSXT's

(continued . . .)

Amtrak's arguments, and NITL asks the Board to take into account the interests of the freight rail shipping community in considering this proceeding. On March 22, 2018, Amtrak replied to the comments from NSR, CSXT, and NITL. Also, on that date, CN replied to Amtrak's reply brief responding to what CN argues are "incorrect and misleading" arguments contained in Amtrak's pleading with regard to the short shunt issue. (CN Reply 1, Mar. 22, 2018.) On March 23, 2018, the Rail Passengers Association (RPA), also known as the National Association of Railroad Passengers, filed a comment in response to NITL's comment and in support of Amtrak. And, on March 28, 2018, the States for Passenger Rail Coalition (SPRC) commented asking the Board to "ensure due regard for the interests of [SPRC's] members, their communities, and their passengers." (SPRC Comment 2, Mar. 28, 2018.)<sup>13</sup>

On March 22, 2019, CN filed a petition for leave to file supplemental arguments regarding the Illini/Saluki schedule and the short shunt issue and included those arguments within its filing. Amtrak filed a reply on April 11, 2019, stating that it does not oppose CN's petition for leave to file provided that the Board accept Amtrak's attached "clarifying reply." In the interest of a full and complete record, the Board will grant CN's request and accept CN's supplemental arguments and Amtrak's reply into the record.

#### **D. Motion to Strike<sup>14</sup>**

As noted above, CN has filed a motion to strike. CN argues that Amtrak, in its October 30, 2017 surrebuttal, exceeded the scope of arguments permitted by the Board's October 11, 2017 modified scheduling order, (CN Mot. to Strike 1-5, Nov. 20, 2017), which allowed Amtrak to submit "additional evidence responsive to the Train Performance Calculator [(TPC)] runs and the schedule adjustment proposal discussed in section I of the rebuttal verified statement of Harald Krueger," Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry., FD 35743, slip op. at 1 (STB served Oct. 11, 2017). As a result, CN contends, section I.C.1 of Amtrak's surrebuttal verified statement of Jason Maga concerning the short shunt issue should be stricken. (CN Mot. to Strike 1, Nov. 20, 2017.)

In section I of the Rebuttal verified statement of Harald Krueger, Mr. Krueger states that he used "CN's TPC to calculate the schedule adjustment necessary to account for the speed restriction on [the Horizon/Amfleet] equipment," and that "the nature of the equipment is limiting the train's maximum authorized speed." (CN Rebuttal, V.S. Krueger 12, Sept. 14, 2017; see also id., V.S. Krueger 5 ("[D]ue to safety issues with the Horizon/Amfleet cars used by

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( . . . continued)

comments accepted into the record. Likewise, notwithstanding the absence of a request for leave to file, the Board will accept NITL's comment into the record.

<sup>13</sup> In the interest of a full and complete record, the Board will accept SPRC's and the RPA's response comments.

<sup>14</sup> A description of the short shunt issue and the parties' substantive arguments on the issue are addressed in the Short Shunt subsection of the Performance Measurement and Delays section, infra.

Amtrak for [the City of New Orleans] service, Amtrak is required to use an additional car.”); *id.*, V.S. Krueger 6 (“[T]he Illini/Saluki schedules do not account for the slower operating speeds required for safety reasons due to Amtrak’s use of Amfleet/Horizon equipment (the so-called ‘short shunt’ issue.”); *id.*, V.S. Krueger 12 (“The Illini/Saluki Schedule should be adjusted to account for speed restrictions required to address the unsafe short shunting of certain Amtrak equipment.”).)

The Board may strike “any redundant, irrelevant, immaterial, impertinent, or scandalous matter.” 49 C.F.R. § 1104.8; see also Total Petrochems. & Ref. USA, Inc. v. CSX Transp., Inc., NOR 42121, slip op. at 9 (STB served May 31, 2013). However, section I.C.1 of Amtrak’s surrebuttal verified statement of Jason Maga that CN seeks to strike is focused on rebutting CN’s claims via Mr. Krueger that the short shunting is Amtrak’s fault. (Amtrak Surrebuttal, V.S. Maga 8-13, Dec. 6, 2018.) Amtrak states that, contrary to Mr. Krueger’s claims, CN is the party responsible for the delays caused by the short shunting. (*Id.*, V.S. Maga 10.) Specifically, Amtrak argues that the short shunting may be caused by grade crossing warning devices or CN’s infrastructure, both of which Amtrak states CN is responsible for maintaining. (*Id.*) Given Mr. Krueger’s discussion of the cause of the short shunt issue and his attributing the cause to Amtrak’s equipment, the Board finds that section I.C.1 of Mr. Maga’s surrebuttal verified statement is not improper and does not exceed the scope of the scheduling order. Therefore, CN’s request to strike that portion of the verified statement will be denied.

In the alternative, CN seeks leave to supplement the record regarding this issue and simultaneously filed its supplemental arguments. (CN Mot. to Strike 6, Ex. 1, V.S. Hilliard, Nov. 20, 2017.) Amtrak agrees to supplementing the record and includes its own supplement with its reply. (Amtrak Reply 2, 6-10, Dec. 7, 2017.) In the interest of building a full record, the Board will grant the “in the alternative” element of CN’s motion and will accept into the record the supplemental evidence already provided by both parties. See, e.g., Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—Great Walton R.R., in Hart Cty., Ga., AB 1242, slip op. at 2 n.4 (STB served Jan. 31, 2018).

## II. DISCUSSION

### A. On-Time Performance and Schedules

The contract schedules in the 2011 Operating Agreement are tied to the public schedules published by Amtrak.<sup>15</sup> (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at 9, Dec. 6, 2018.) CN’s performance under the 2011 Operating Agreement for the purpose of assessing incentives

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<sup>15</sup> CN notes that, “for various historical reasons,” there are instances where the current public schedules (i.e., published timetables) and contract schedules differ. (CN Surrebuttal 42, Oct. 30, 2017.) The 2011 Operating Agreement establishes that, should any difference arise between the published timetables and the corresponding contract schedule, Amtrak will “amend its published timetable to bring it into conformance” with that contract schedule. (CN Opening Evid. V.S. Ladue & Kuxmann, Ex. 1 at 9, Dec. 6, 2018.)

and penalties is measured by a contract-based on-time performance metric (KOTP).<sup>16</sup> KOTP, in a given month, is measured by dividing the number of trips of a train that arrived at a checkpoint within tolerance of the agreed-to contract schedule<sup>17</sup> by the number of trips operated by the train to that checkpoint. (Amtrak Opening Br. 15-16, Jan. 19, 2018; CN Opening Evid., V.S. Dubin 7, Dec. 6, 2018.) With one exception,<sup>18</sup> the checkpoints on all of the lines are the endpoints, i.e., the final stations on the line. (Amtrak Opening Br. 18, Jan. 19, 2018.)

Amtrak argues that KOTP ignores the quality of service experienced by the vast majority of passengers traveling on CN's lines because those passengers ride to and/or from intermediate stations that are not currently checkpoints. (*Id.*) According to Amtrak, there are 19 intermediate stations on the routes at issue that are not currently checkpoints. (*Id.* at 18-19.) Amtrak argues that, under the current system, CN has no incentive to minimize these delays at non-checkpoint stations and, therefore, Amtrak suggests a new framework<sup>19</sup> for assessing OTP. (*Id.* at 21-25.) Under this framework, Amtrak would make a quality (also known as incentive) payment to CN based upon defined thresholds derived from a regression analysis correlating seven distinct categories of "Host-Responsible Delays" (HRDs)<sup>20</sup> to "All Stations On-Time Performance" (ASOTP) on existing Amtrak schedules. (Amtrak Opening Statement V.S. Vilter 3, n.5, Sept. 8, 2015.)

Specifically, Amtrak proposes correlating, by route, HRDs per month per 10,000 train miles to 80% OTP at "all station stops." (Amtrak Opening Br. 11-12, 21, Jan. 19, 2018.) ASOTP measures the percentage of station arrivals (or departures, in the case of the origin station) of an Amtrak train that occur within fifteen minutes of the time established in the public timetables plus allowances.<sup>21</sup> (Amtrak Opening Statement 3, 7-8, Sept. 8, 2015.) Amtrak states

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<sup>16</sup> The target arrival times, against which CN's performance is measured, are in many cases later than the arrival times set forth in the public schedules. (Amtrak Opening Br. 38, Jan. 19, 2018; CN Open Evid., V.S. Ladue & Kuxmann, Ex. 1 at App II-2, Dec. 6, 2018.)

<sup>17</sup> A tolerance at each checkpoint is articulated in the 2011 Operating Agreement at Appendix V, Table 1. (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at App. V-12, Dec. 6, 2018.)

<sup>18</sup> The City of New Orleans line has one intermediate checkpoint. (Amtrak Opening Br. 18, Jan. 19, 2018.)

<sup>19</sup> This framework is discussed in the Incentives and Penalties section, *infra*.

<sup>20</sup> HRDs would include delays reported under seven different codes (commuter train interference, signal delays, maintenance of way, slow order delays, freight train interference, passenger train interference, and routing delays). (Amtrak Opening Statement, V.S. Vilter 2 n.2, Sept. 8, 2015.) A delay would be considered an HRD when an Amtrak train is delayed while on a line or delayed from entering a line due to an issue reported under one of these codes. (*Id.*, Amtrak Proposed Operating Agreement 4.)

<sup>21</sup> Recovery time, dwell time, and miscellaneous time are types of delays considered "allowances" within the schedules and are used to calculate whether a train has arrived within tolerance. Recovery time is "time added into the schedule to compensate for certain delays

(continued . . .)

that ASOTP reflects quality of service to all its passengers, including those who board or disembark at intermediate stations that are not checkpoints in KOTP. (Amtrak Opening Br. 23, Jan. 19, 2018.) In its rebuttal, Amtrak argues in the alternative that, if the Board retains the checkpoint-based system (as opposed to adopting Amtrak’s regression-based proposal), every station should become a checkpoint. (Amtrak Rebuttal 39-40, Sept. 14, 2017.)

CN argues that the current KOTP system remains the best way to measure CN’s performance. (CN Opening Evid. 24-27, Dec. 6, 2018.) CN opposes ASOTP, arguing that Amtrak’s OTP can vary widely between routes, based on factors unrelated to CN’s performance. (CN Opening Br. 27, Jan. 19, 2018.) As to Amtrak’s alternative all stations checkpoint-based system, CN states that Amtrak adds checkpoints indiscriminately without substantiating its claim that checkpoints at all stations would motivate CN to provide better service. (*Id.* at 118.) CN argues that any new checkpoints should be based on reasonable segment spacing and whether a meaningful number of passengers either board or disembark at the station. (*Id.*) To that end, CN proposes adding checkpoints at Carbondale and Jackson on the City of New Orleans route and at Champaign on the Illini/Saluki route. (*Id.*)

In addition, CN maintains that any checkpoint additions must be combined with appropriate adjustments to Amtrak’s public schedules. (*Id.* at 111-18.) If changes are made to KOTP, CN argues that the pure run time<sup>22</sup> in Amtrak’s schedules must be lengthened. (CN Opening Evid. 32-33, Dec. 6, 2018; CN Rebuttal, V.S. Kreuger 8, Sept. 14, 2017.) According to CN, inaccurately short pure run time in a schedule can artificially inflate the minutes of delay reported by Amtrak. (CN Opening Evid. 33, Dec. 6, 2018.) Amtrak opposes lengthening its public schedules in any way. (Amtrak Opening Br. 40-41, Jan. 19, 2018.) Amtrak argues that CN’s attempt to lengthen the schedules is neither necessary nor appropriate in light of what it claims is “the public interest in fast, convenient and competitive Amtrak service,”<sup>23</sup> and Amtrak maintains that the best way to overcome the “significant deficiencies” with the current KOTP

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( . . . continued)

encountered en route.” (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at 5, Dec. 6, 2018.) Dwell time is “the amount of time required to perform work while a train is stopped at a station, including loading and unloading passengers and bags, changing crews, and/or servicing the locomotive or cabin cars.” (*Id.*, V.S. Ladue & Kuxmann at 32 n.40.) Miscellaneous time is “time that Amtrak may add or remove from a schedule for operational convenience.” (*Id.*, V.S. Ladue & Kuxmann, Ex. 1 at 5.)

<sup>22</sup> According to CN, pure run time “is the theoretically shortest time, given established track speeds, in which a given Amtrak train can traverse its assigned route if there is no other traffic on the rail line and all operating conditions are perfect.” (CN Opening Evid. 32, Dec. 6, 2018.)

<sup>23</sup> Amtrak interprets the statute as creating three primary statutory guideposts for an incentives and penalties system: (1) operating Amtrak service to all stations within 15 minutes of scheduled arrival times, 49 U.S.C. § 24101(c)(4); (2) measuring the quality of service provided by CN to Amtrak, *id.* § 24308(a)(2)(B); and (3) including a penalty for untimely performance, *id.* § 24308(a)(1). (Amtrak Reply Br. 72, Mar. 5, 2018.)

system is its proposed regression-based model. (Amtrak Reply Br. 72, Mar. 5, 2018; see id. at 74, 87.)

As noted above, the 2011 Operating Agreement uses the OTP metric primarily to establish a threshold for the calculation of incentives and penalties.<sup>24</sup> The statute requires that terms of an agreement between the parties “include a penalty for untimely performance.” 49 U.S.C. § 24308(a). In considering the ways an agreement ought to measure performance, the Board recognizes that Amtrak’s core business is intercity passenger rail transportation, and, when passengers purchase that transportation, they select origin and destination points from a list of available stations along a route. Here, a significant portion of Amtrak’s passengers travel to or from stations that are not endpoints and also not OTP checkpoints under the 2011 Operating Agreement. (See Amtrak Opening Br. 18, Table 2, Jan. 19, 2018 (showing that, on the six Amtrak routes that travel over CN lines, only between 2.6% and 25.5% of passengers travel endpoint to endpoint, whereas between 74.5% and 97.6% travel between intermediate stations).) In general, if an OTP metric only includes checkpoints at the final station and two to three select intermediate points, as CN proposes for some routes, the metric does not measure performance in a way that captures whether a significant portion of Amtrak’s passengers actually arrived at their selected destinations on time. Such a metric would be an unrepresentative measure of performance. A metric measuring OTP at each station would measure whether all passengers arrived on time, not just those who travel to the final station or two to three select intermediate stations along a route.

At the same time, the incentives and penalties system has effects on both Amtrak and CN. For example, as the record indicates, because network and other constraints sometimes result in Amtrak trains impacting CN freight train operations, a change to the OTP metric that makes it more difficult for CN to receive net incentive payments from Amtrak may cause CN to change its freight operations to receive those payments. In other words, Amtrak’s passenger service may benefit from additional changes by CN that improve its OTP, which, in turn, could have impacts on CN’s freight operations.

While the Board recognizes these potential impacts, the Board finds, based on the record presented here, CN’s rationale unconvincing. It is not reasonable for an incentives and penalties system to have at its foundation a performance metric that fails to account for the OTP at stations central to the passenger experience for a significant portion of Amtrak passengers. CN has not provided adequate justification for an OTP metric that would disregard the punctuality, hence the quality, of a passenger’s trip simply because of a passenger’s destination.

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<sup>24</sup> For a given route, CN earns an incentive payment if 80% or more of Amtrak trains in a month arrive on time at the designated checkpoints, (Amtrak Opening Statement 7-8, Sept. 8, 2015), and incurs a penalty if 70% or fewer of Amtrak trains in a month arrive on time, (see Amtrak Opening Br. 15, Jan. 19, 2018).

Accordingly, the Board finds that the OTP metric would ideally include checkpoints at all stations along a route,<sup>25</sup> and the Board encourages the parties to negotiate with this interim finding in mind.<sup>26</sup>

With respect to the issue of Amtrak's schedules, the Board encourages the parties to work together to develop new contract schedules. The current schedules generally allocate most of the recovery time to the end of the routes. Appendix II of the 2011 Operating Agreement contains "schedule skeletons," which are used to set Amtrak's public schedules. Those schedule skeletons lay out how much pure run time, recovery time, and dwell time are allotted for each segment and station. On many segments, especially towards the beginning of routes, there is no recovery time built into the schedule. Conversely, at later stations, recovery time occasionally accounts for the majority of the schedule duration, more than even the pure run time of that segment. The record does not establish valid operational reasons for such large variances in recovery time on a station-by-station basis.

Currently, the distribution of recovery time between stations is inconsequential to CN's performance under KOTP as, under the 2011 Operating Agreement, there are not checkpoints at each station used to measure OTP. However, if all stations were checkpoints, recovery time would have to be redistributed to give CN a meaningful opportunity to meet its performance obligations.

Further, the Board notes that there are large variances in the amount of dwell time—almost an hour difference—at different stations in the current schedule skeletons. The record does not discuss whether there are valid operational reasons for such large variances in dwell time on a station-by-station basis. Unless there are such reasons, the parties should readjust that distribution as well. The parties may agree to specific terms regarding schedule lengths;

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<sup>25</sup> The Board recognizes that an OTP metric with checkpoints at all stations could be designed in ways that were not proposed or addressed by either party so far in this proceeding. For example, an OTP metric could measure the percentage of passengers that arrive at their destination stations on time, rather than the percentage of trains that arrive at each station on time. An OTP metric that measures the percentage of passengers that arrive at their destination stations on time could—in some circumstances—allow for greater host railroad operational flexibility and create an incentive structure more closely tied to the service delivery to the end consumer, the passenger. While such a metric would involve certain trade-offs, such as administrative complexity, such a metric could be consistent with the interim findings and guidance here.

<sup>26</sup> For the reasons discussed in the Incentives and Penalties section below, the Board will not adopt the delay-based ASOTP system proposed by Amtrak at this time. However, on the record presented here, the Board views as reasonable the addition of checkpoints at each station along a relevant route (generally consistent with the alternative proposed by Amtrak), subject to the other interim findings and guidance in this decision.

however, the record before the Board does not establish that the total time between a route's origin and its endpoint, i.e., final station, should be lengthened.<sup>27</sup>

## **B. Incentives and Penalties**

Under the 2011 Operating Agreement's incentives and penalties system, a train is considered to be "within tolerance"—or, in other words, on time—if it arrives at a designated checkpoint at or before a prescribed arrival time plus additional allowances. (Amtrak Opening Statement 8, Sept. 8, 2015.) As noted above, for a given route, CN earns an incentive payment if 80% or more of Amtrak trains in a month arrive on time at the designated checkpoints. (*Id.* at 7-8.) CN incurs a penalty if 70% or fewer of Amtrak trains on a route in a month arrive on time. (See Amtrak Opening Br. 15, Jan. 19, 2018.) When CN's monthly OTP on a route is above 70% but below 80%, no incentive or penalty is assessed. (*Id.*, App. A-10.) The parties and the 2011 Operating Agreement refer to this as the "neutral performance zone" or the "neutral zone." (See, e.g., *id.*; CN Opening Br. 125, Jan. 19, 2018.)

Arguing that the current incentives and penalties system is ineffective, Amtrak proposes discarding the checkpoint-based system entirely and replacing it with its own incentives and penalties system based on the regression analysis discussed further below. (See Amtrak Opening Br. 21, 23, Jan. 19, 2018.) Amtrak proposes to replace the current approach of considering only whether a train is late or on time with one that bases incentives and penalties on the degree of lateness caused by the host railroad, measured in HRD minutes calculated using its regression model. (See *id.* at 23.) Amtrak argues that high levels of HRD minutes on CN's lines are the primary cause of Amtrak's poor OTP. (*Id.*)

Amtrak contends that under the 2011 Operating Agreement, Amtrak has paid CN substantial incentive payments while OTP at all stations is generally poor. (Amtrak Opening Statement 4, 7, Sept. 8, 2015.) Amtrak argues that this anomaly occurs, in part, because the current system is not based on the overall degree of lateness. Rather, it rewards CN for arriving at a checkpoint within tolerance but does not otherwise encourage CN to minimize delays and the adverse effect delays have on arrival times at stations that are not checkpoints. (*Id.* at 8-11.)

Furthermore, under the current system, the train's status is binary: it is either late (outside of tolerance) or on time for the purposes of the OTP calculation. Amtrak contends that once a train is sufficiently delayed so as not to count favorably for CN for incentive purposes, whether it is late by one minute or several hours, there are no negative consequences to CN for additional delays. (*Id.* at 10.) Amtrak argues this is further support for its shift towards an HRD system that considers the degree of lateness. (*Id.* at 8-10.) Amtrak maintains that while the degree of lateness of already-late Amtrak trains does not have negative consequences for CN, it has a significant negative impact on Amtrak and its passengers. (*Id.* at 10.)

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<sup>27</sup> The Board notes, however, that at least one government entity, the Illinois Department of Transportation, is open to the lengthening of a route's schedule duration within its state. (See CN Pet. 1-2, Mar. 22, 2019.)

Accordingly, Amtrak proposes an incentives and penalties system based on the number of minutes of HRD to Amtrak trains. (*Id.* at 4.) Amtrak uses a regression model to correlate, by route, the HRD minutes per month per 10,000 train miles to 80% ASOTP. (*Id.* at 12.) Under Amtrak's proposed system, CN would accrue an incentive payment or penalty based on this correlation. (*Id.* at 12-13.) When monthly HRD minutes fall below the number of minutes that correlates to the 80% OTP threshold, CN would receive an incentive payment from Amtrak, and that incentive payment would increase as HRD minutes decrease below that threshold number. (*Id.* at 12.) When monthly HRD minutes exceed the number of minutes that correlates to the 80% OTP threshold, CN would pay Amtrak a penalty, and that penalty would increase (to a point) as HRD minutes increase above that threshold number. (*Id.* at 12, 14.)

Amtrak contends that the purpose of its HRD minutes, regression-based system is to motivate CN to minimize overall delay to Amtrak trains. (*Id.* at 15.) Amtrak, therefore, also proposes eliminating the neutral performance zone, where no incentive or penalty is assessed if CN's monthly OTP on a route is above 70% but below 80%. (Amtrak Opening Br., App. A-10, Jan. 19, 2018.) Under Amtrak's proposed system, penalties would be assessed based on performance level when CN's monthly performance falls to below 80% OTP. (*Id.*, App. A-10.) However, according to Amtrak, the proposed system would not continue to increase penalties indefinitely on a particular Amtrak route. (Amtrak Opening Statement 16, Sept. 8, 2015.) In Amtrak's proposal, at a certain point on each Amtrak route, the HRD minutes per 10,000 train miles are so high—in other words, the service is so poor—that CN would incur no additional costs on the route attributable to operating Amtrak trains. (*Id.*) Beyond that point in Amtrak's proposed system, the penalties assessed to CN would be the same, regardless of service level.

CN argues that the methodology for determining incentives and penalties in the 2011 Operating Agreement is sound. CN states that it has performed well as an Amtrak host and it is motivated by operational and reputational concerns to avoid additional delays to delayed trains. (CN Opening Evid. 24, Dec. 6, 2018; CN Opening Br. 30, Jan. 19, 2018.) CN states that it consistently averages OTP above 80% across all six routes. (CN Opening Evid. 25, Dec. 6, 2018.)

CN argues that Amtrak's proposed changes would profoundly modify the agreement in Amtrak's favor and to CN's detriment, (CN Surrebuttal 2, Oct. 30, 2017), and disagrees with Amtrak's underlying argument that the 2011 Operating Agreement's incentives and penalties provisions reward poor performance, (CN Opening Br. 30, Jan. 19, 2018). CN also argues that Amtrak's proposed delay-based framework premised on a regression model involving HRD and ASOTP is a radical change to the incentives and penalties system because it is based upon Amtrak's unrealistic schedules, is unreasonably punitive, and is inferior to the current system. (See CN Reply Br. 36-61, Mar. 5, 2018.) According to CN, Amtrak's reliance on its proposed HRD minutes, regression-based framework to determine an appropriate incentives and penalties system is misplaced because ASOTP levels reflect issues specific to individual lines, including how realistic Amtrak's schedules are given the infrastructure, congestion, and other operating conditions present. (*Id.* at 37-42.) CN argues that realistic schedules reflecting the operational and on-the-ground challenges on particular lines are critical to achieving desired performance goals. (*Id.* at 93-102.)

CN also contends that Amtrak's proposal to limit the neutral performance zone should be rejected. (CN Surrebuttal 35, Oct. 30, 2017.) CN argues that a "key fallacy" in Amtrak's proposal is its assumption that performance that falls within the neutral zone under the current incentives and penalties system should be penalized, and that Amtrak provides no basis for this assumption. (*Id.*) CN acknowledges that 80% may be an appropriate goal for Amtrak's OTP metrics, assuming reasonable schedules and Amtrak's willingness to pay the costs to achieve that goal. (*See id.*) CN also states that the neutral performance zone recognizes the agreed-to service standards between the parties and argues that any change to the neutral performance zone should be discussed between the parties. (*Id.*)

Based on the record, the Board finds that a reasonable incentives and penalties system is one that incentivizes both OTP and a reduction in the duration of train delays when OTP is not achieved. There is merit to Amtrak's argument that, while the increasing lateness of already-late Amtrak trains may not have negative consequences for CN, it negatively affects Amtrak and its passengers. (*See* Amtrak Opening Statement 10, Sept. 8, 2015.)

Currently, the incentives and penalties system is based on the percentage of trains that are on time, but it does not include a mechanism to incorporate a degree of lateness. Unlike the proposal from CN, Amtrak's HRD minutes, regression-based proposal incorporates a degree of lateness into calculations for incentives and penalties. However, the Board notes that Amtrak's proposed system is complicated in that it uses a regression model to infer a readily observable occurrence—whether, and to what degree, a train is late. The regression model also assumes that the influence of Amtrak- and third party-caused delays on OTP will remain constant. However, these sources of delay are not constant and affect the likelihood that a CN delay will cause a train to fall outside of tolerance. Therefore, in this decision, the Board does not adopt either party's proposed approach but reiterates that, overall, there is merit to Amtrak's argument regarding impacts of the current system not incorporating a degree of lateness factor.

Accordingly, the parties should incorporate the degree of lateness into their penalty calculation in some manner, perhaps through a degree-of-lateness multiplier in the penalty provision, or in another manner to which the parties agree. By incorporating the degree of lateness, CN would have an incentive to help deliver a late train more expeditiously and not allow the duration of the delay to increase.

Additionally, the parties should eliminate the current neutral performance zone where no incentive or penalty is assessed. The Board finds there is merit to an 80% OTP standard to receive incentive payments. Although Congress has not mandated 80% OTP as the dividing line between incentives and penalties for contractual purposes between Amtrak and its host railroads, Congress has established that two consecutive quarters of OTP below 80% (with OTP to be defined by the Federal Railroad Administration (FRA) and Amtrak) is sufficiently problematic to trigger a Board investigation. *See* 49 U.S.C. § 24308(f)(1); Passenger Rail Inv. & Improvement Act of 2008 (PRIIA), Pub. L. No. 110-432, 122 Stat. 4848.<sup>28</sup> Because 80% OTP otherwise

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<sup>28</sup> Section 24308(f)(1) provides that if the OTP of any intercity passenger train averages less than 80% for any two consecutive calendar quarters, the Board may initiate an investigation, (continued . . .)

appears to be reasonable, the parties should negotiate how to best address those occasions when 80% OTP is not achieved.<sup>29</sup>

### C. Lookback Provision

Another dispute between the parties is whether the compensation CN receives from Amtrak, after accounting for incentives and penalties, can fall below CN's incremental costs associated with Amtrak's use of CN's facilities and services. The starting point of this debate is the language in 49 U.S.C. § 24308(a). Amtrak relies on subsection (a)(1), added in 1981, which provides that agreements between Amtrak and host carriers "shall include a penalty for untimely performance," which Amtrak interprets as barring a lookback provision. (Amtrak Reply Br. 41-42, Mar. 5, 2018.) CN relies on subsection (a)(2)(B), which provides that, when the Board sets terms and compensation, "the Board shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services." (CN Opening Br. 45-46, Jan. 19, 2018.) CN interprets this language as permitting host railroad compensation to exceed the incremental cost level, but, by negative implication, not to fall below that level. (*Id.* at 46.)

Previously, Amtrak and CN agreed to include a "lookback" provision that, for a specified time period over which the incentives and penalties are calculated, offsets penalties incurred by CN against any incentives earned by CN up to the point that those penalties exceed incentives. (See CN Opening Evid. 19-21, Dec. 6, 2018; *id.*, V.S. Ladue & Kuxmann, Ex. 1, App. V § D at V-10.) According to CN, the provision is referred to as the "lookback" provision because if penalties are incurred in a month, one "looks back" over the prior 12 months for any net incentives which those penalties may offset. (*Id.* at 19.)

Amtrak proposes to eliminate the lookback provision so that the incremental costs and incentives and penalties payments are independent, in which case CN could possibly receive total net compensation that is lower than incremental costs. Amtrak argues that this is necessary pursuant to § 24308(a)(1) because retaining the lookback provision "would contravene the statutory requirement to have a penalty for untimely performance." (Amtrak Reply Br. 39, Mar. 5, 2018; see also *id.* at 39-46; Amtrak Opening Br. 31-33, App. A-2, Jan. 19, 2018.) Amtrak contends that eliminating the lookback provision would ensure a properly functioning penalty system and motivate CN to avoid untimely service. (Amtrak Opening Br., App. A-2,

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or upon the filing of a complaint by Amtrak, the Board shall 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."

<sup>29</sup> Under the 2011 Operating Agreement, the parties agreed that CN will earn an incentive payment when 80% OTP or more is achieved, so the elimination of the neutral zone would not change the threshold for incentive payments. (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at App. V-8, Dec. 6, 2018.)

Jan. 19, 2018.) According to Amtrak, a penalty that CN does not have to pay because of the application of the lookback provision does not motivate CN to improve OTP. (Id.)

CN argues that the lookback provision should remain because CN is statutorily entitled to recover at least its incremental costs under § 24308(a)(2)(B). (CN Opening Br. 53, Jan. 19, 2018; CN Reply Br. 10-18, Mar. 5, 2018.) CN argues that allowing its overall compensation to fall below incremental costs would result in CN and its customers further subsidizing Amtrak's operations. (CN Opening Evid. 19-20, Dec. 6, 2018.) According to CN, the lookback provision does not negate the fact that, under the 2011 Operating Agreement, penalties are real and can be substantial. (CN Opening Br. 54, Jan. 19, 2018.) CN adds that the lookback provision has rarely been invoked. (CN Opening Evid., V.S. Willig at 7, Dec. 6, 2018.) CN states that the lookback provision appears to have been a key feature of Amtrak's operating agreements with other Class I carriers for decades. (CN Reply Br. 13-14, 35, Mar. 5, 2018.)

To address Amtrak's concerns about the lookback provision, CN proposes a "reopener" provision that would provide that, if CN's performance falls below a certain level, the parties will confer to determine how to improve service. (CN Opening Br. 87-88, Jan. 19, 2018; see also Amtrak Opening Br. 32, Jan. 19, 2018.) Under the proposal, if CN's performance results in penalties for six consecutive months for a service, the parties will "use their best efforts to work together in good faith" to determine why the performance is resulting in penalties, to verify that the incentives and penalties payment system is being properly determined, to verify that only delays within CN's control are being attributed to CN, and to develop remedial measures including, if appropriate, changes to the operating agreement. (CN Opening Br. 88, Jan. 19, 2018.) According to CN, this provision will help ensure that if penalties exceed incentives over a sustained period, the parties will investigate and take action. (Id.)

Amtrak argues that CN's proposed reopener provision would be ineffective. (Amtrak Opening Br. 33, Jan. 19, 2018.) According to Amtrak, the six consecutive months of poor CN performance required to initiate the reopener is too long, and CN would not actually be obligated to implement any remedial measures that may be discussed by the parties unless the measures are acceptable to CN in its sole discretion. (Id. at 32.)

The Board recognizes that CN has obligations, not only to Amtrak, but also to its freight customers. The interim findings and guidance in this decision address substantial changes in the new operating agreement, including the addition of OTP checkpoints, the incorporation of a degree of lateness within the OTP penalties framework, and the elimination of the neutral zone for OTP penalties. Each of these changes relates to other important issues in the operating agreement, such as Amtrak's public schedules, and, therefore, must be considered in light of the agreement as a whole. Given CN's freight obligations and the overall uncertainty with the final framework for OTP, the Board is concerned that any agreement without a lookback provision might place CN in a situation where it may be required to, effectively, pay Amtrak to host Amtrak passenger trains on CN's own network.<sup>30</sup>

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<sup>30</sup> The Board acknowledges that the parties will negotiate an incentives and penalties system consistent with the interim findings and guidance in this decision and that the parties may  
(continued . . . )

Nevertheless, periods of sustained poor performance must be acknowledged and addressed, as appropriate. The Board, therefore, encourages the parties to include an effective reopener provision in the new operating agreement that will result in concrete action in order to resolve potential future performance disputes and to prevent sustained poor performance. For example, the parties could consider including in the provision mandatory actions by CN to improve service. The parties are also reminded that the Board's Rail Customer and Public Assistance (RCPA) office is available to assist with the informal resolution of disputes. The parties could agree, as part of a reopener provision, to take performance disputes under the provision to RCPA for informal assistance.

Additionally, the Board notes the potential for a completely separate mechanism under PRIIA by which Amtrak could seek relief for sustained periods of poor performance. As noted above, section 207 of PRIIA directs the FRA and Amtrak to jointly establish minimum standards for an Amtrak route's OTP. 49 U.S.C. § 24101 note. As also noted above, section 213 of PRIIA provides that if, for any two consecutive quarters, the OTP of any Amtrak train averages less than 80%, or its service quality fails to meet the minimum standards established under section 207 of PRIIA, then the Board may, or, upon proper request, shall, investigate to determine if the delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a host carrier or by Amtrak. 49 U.S.C. § 24308(f)(1). If the Board finds that the delays are attributable to a host carrier's failure to provide preference to Amtrak trains, as required under 49 U.S.C. § 24308(c), then the Board may award damages against the host, including prescribing such other reasonable and appropriate relief to Amtrak. 49 U.S.C. § 24308(f)(2), (f)(3).

These provisions of PRIIA have not been enforced due to challenges to the constitutionality of section 207. See, e.g., Ass'n of Am. R.Rs. v. Dep't of Transp., 865 F. Supp. 2d 22 (D.D.C. 2012), rev'd 721 F.3d 666 (D.C. Cir. 2013), vacated 135 S. Ct. 1225 (2015). Those challenges have recently been resolved, with the courts upholding section 207 after severing a provision that would have allowed, if the development of the metrics and standards were not completed within the 180-day period provided in law, any party involved in development of the metrics and standards to petition the Board to appoint an arbitrator to assist in resolution. Ass'n of Am. R.Rs. v. Dep't of Transp., 896 F.3d 539 (D.C. Cir. 2018), cert. denied, No. 18-976 (U.S. June 3, 2019). Once those metrics and standards are in place, the Board will be empowered to investigate the causes of sustained periods of poor performance in accordance with 49 U.S.C. § 24308(f), thus providing a separate mechanism (outside the operating agreement between Amtrak and CN) for addressing any excessive delays to Amtrak trains caused by CN.

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choose to negotiate a system that removes, keeps, or modifies the lookback provision in those negotiations. If those negotiations fail, the Board will more fully address other arguments, including statutory arguments, in a subsequent decision.

#### D. Incremental Costs

The parties disagree on which costs incurred by CN for Amtrak's use of CN's facilities (including rail lines) and services constitute the incremental costs for which CN must be reimbursed from Amtrak.

As noted earlier, § 24308 provides that, when setting reasonable compensation when parties cannot agree, "the Board shall consider quality of service as a major factor when determining whether, and the extent to which," a host railroad's "compensation shall be greater than the incremental costs of using the facilities and providing the services." The statute does not define incremental costs.

The 2011 Operating Agreement defines incremental costs as "all costs that CN would not incur but for: (a) the operations of Amtrak on the [r]ail [l]ines or (b) the provision of associated services to Amtrak pursuant to the [a]greement and/or the Act." (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at 3, Dec. 6, 2018 (emphasis added).) The 2011 Operating Agreement also states that Amtrak shall reimburse CN for incremental costs resulting from Amtrak's operation of trains over CN's lines and for the related services and activities provided by CN, (id., V.S. Ladue & Kuxmann, Ex. 1 at 19), and identifies specific items that the parties have agreed constitute incremental costs for which Amtrak will reimburse CN, (id., V.S. Ladue & Kuxmann, Ex. 1 at App. IV-1 to IV-3, Table 1).

CN argues that the new operating agreement should include three additional categories of incremental costs. First, CN argues incremental costs should be defined to include all avoidable costs, that is, "all costs which would not be incurred if no passenger service were performed for Amtrak." (CN Opening Br. 47, Jan. 19, 2018 (citing H.R. Rep. No. 93-415, at 11 (1973)); see also id. at 59.) CN's proposal for how to define these costs focuses on what it categorizes as "freight delay costs," that is, costs incurred by CN for the delays to CN trains that would not have been incurred but for Amtrak's presence on CN's lines. (Id. at 89, 93-107.) According to CN, these delay costs consist of three elements: train crew costs due to additional delay time, including wages, constructive allowances, and fringe benefits; additional fuel consumption costs due to additional stops, starts, and idling; and additional equipment costs.<sup>31</sup> (Id., Ex. 1, App. IV-7 to IV-8;<sup>32</sup> see also id. at 101.)

Second, CN argues that incremental costs should also include costs caused by freight rate suppression, capacity costs, and lost opportunity costs. (Id. at 91-92; see also id. at 67-72.) CN argues that, while these costs are not easily quantified for purposes of compensation, CN should nevertheless "be relieved of them by other means." (Id. at 92.) CN proposes that Amtrak should

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<sup>31</sup> CN also argues its compensation for these freight delay costs should be retroactive. (CN Opening Br. 110, Jan. 19, 2018.) As discussed later in this decision the Board is not deciding the issue of retroactivity here and will instead allow the parties to further negotiate this aspect of their new operating agreement.

<sup>32</sup> Exhibit 1 to CN's opening brief is CN's markup of the 2011 Operating Agreement between the parties reflecting its proposed changes.

reduce these costs by (a) making scheduling or performance standard adjustments to reduce the strain CN argues Amtrak places on CN's capacity, (b) by paying for infrastructure investments on CN lines to restore some of the capacity CN argues it has lost due to Amtrak, or (c) by a combination of the two. (*Id.* (citing CN Opening Evid., V.S. Willig 3, Dec. 6, 2018).)

Third, CN proposes that, because some costs CN incurs as a result of Amtrak are not currently readily quantifiable, CN should "be allowed to reserve the right to seek any incremental costs that become quantifiable" in the future. (CN Opening Br. 90, Jan. 19, 2018.) The proposed agreement submitted by CN with its opening brief adds a provision in the appendix that purports to allow CN a method to recoup these unknown future costs. (*See id.*, Ex. 1, App. IV-19.)

In support of its proposals, CN cites both the legislative history of § 24308 and agency precedent. (*Id.* at 43-49.) CN argues that Congress did not intend the term incremental costs to have any technical meaning, as Amtrak contends, but rather intended the phrase to include "all costs which would not be incurred if passenger service were not performed for Amtrak."<sup>33</sup> Further, CN states that "ICC and Board decisions have consistently rejected limitations on the kinds of costs that are compensable, so long as they are costs that would not have occurred but for Amtrak."<sup>34</sup> CN also argues that in promulgating the regulations to implement host railroads' statutory right to seek relief from preference,<sup>35</sup> FRA, which formerly administered § 24308(c), provided a reduction in host compensation as a condition when such relief was provided. (CN Reply Br. 81, Mar. 5, 2018 (citing 49 C.F.R. § 200.5(c)(3)).) CN argues that this provision shows that normal compensation for incremental costs includes compensation for preference. (*Id.* at 80-82.)

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<sup>33</sup> (CN Opening Br. 59-62, Jan. 19, 2018 (citing H.R. Rep. No. 93-587 (1973) (Conf. Rep.), as reprinted in 1973 U.S.C.C.A.N. 2330, 2336).)

<sup>34</sup> *Id.* (citing Baker—Comp. for Passenger Serv. (Penn Central), 342 I.C.C. 820, 831-33 (1973) (where the ICC declined to adopt "avoidable costs in the short run"); Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(a)—Union Pac. R.R. (UP/SP), 3 S.T.B. 143, 145 (1998) (stating that nothing in the statutory incremental cost standard precludes a host carrier's recovery of new types of costs so long as the costs are directly traceable to Amtrak operations); Nat'l R.R. Passenger Corp.—Appl. Under Section 402(a) of the Rail Passenger Serv. Act for an Order Fixing Just Comp., 10 I.C.C.2d 863, 888 (1995) (ICC accepted agreement among the parties that a seven-year time period was appropriate to determine annual maintenance of way costs and that both capital and expense items should be included); Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(a)—Springfield Terminal Ry., 3 S.T.B. 157, 157, 169 (1998) ("[i]f other incremental costs arise, such as those associated with facility capacity, [the host] may petition for reopening . . . to address those matters."))

<sup>35</sup> Section 24308(c) provides that, after an opportunity for a hearing, if the Board decides that granting Amtrak preference "materially will lessen the quality of freight transportation provided to shippers," the Board will establish reasonable terms for Amtrak and the host railroad.

CN also contends that limiting incremental costs to “short run avoidable costs,” as Amtrak argues,<sup>36</sup> would be unsound as a matter of economics and public policy. CN maintains that long-run avoidable expenditures often provide a more efficient solution to issues of Amtrak/host railroad operations. (CN Opening Br. 62, Jan. 19, 2018; CN Reply Br. 74, Mar. 5, 2018.) CN further argues that allowing it to recover freight delay costs would “better align Amtrak’s incentives with the public interest and motivate Amtrak to seek more reasonable and realistic schedules and performance standards.” (CN Reply Br. 64 n.254, Mar. 5, 2018.)

Finally, CN contends that a Board rejection of its proposed changes to incremental costs would constitute an unconstitutional taking. (CN Opening Br. 49-53, Jan. 19, 2018; CN Reply Br. 13, Mar. 5, 2018.) According to CN, Amtrak’s proposed limitations on incremental costs result in Amtrak effectively requesting “a Board order that would give Amtrak a usage right that is akin to an easement over CN’s property,” which, CN argues, would be a per se taking of its private property. (CN Opening Br. 50, Jan. 19, 2018.)

Amtrak argues the Board should reject all three broad categories of CN’s proposed additions to incremental costs, and that no new categories should be included because incremental costs should be narrowly construed. (Amtrak Opening Br. 76-82, 87-88, Jan. 19, 2018.) Amtrak states the term incremental costs is intended to include only “short run avoidable costs.” (*Id.* at 73-74 (citing Penn Central, 342 I.C.C. 820; Nat’l R.R. Passenger Corp. v. ICC, 610 F.2d 865, 872 (D.C. Cir. 1979)).) Amtrak argues that, in 1973, the ICC defined incremental costs to mean “avoidable costs in the short run.” (*Id.* at 71-72 (citing Penn Central, 342 I.C.C. at 832).) Soon thereafter, Congress enacted the Amtrak Improvement Act of 1973, which, Amtrak argues, used the same terminology—incremental costs—indicating that Congress intended the term to have the same meaning as used by the ICC. (Amtrak Opening Br. 72-74, Jan. 19, 2018.)

In addition, Amtrak asserts that § 24308(c), which guarantees Amtrak preference over freight transportation, implies that incremental costs do not include those costs associated with providing such preference. (*Id.* at 86-87.) Amtrak maintains that, if CN were entitled to recover freight delay costs from Amtrak as part of its base compensation, the preference relief provision of § 24308(c) would be a nullity, as there would be no reason for CN to ever seek relief from preference. (*Id.* at 86-87.)

With regard to CN’s proposal to include freight delay costs as incremental costs, Amtrak argues that neither the parties nor the Board have previously considered these costs to be incremental costs, and that the data CN provides to support its proposal are flawed and should be rejected as a matter of law. (*Id.* at 55, 57-71.) Amtrak further argues that CN would have to establish three distinct elements before such costs could properly be included. First, CN would have to show that it has actually incurred delays; second, that such delays were caused by

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<sup>36</sup> Amtrak argues that short-run avoidable costs consist of “that amount of maintenance of way, maintenance of equipment, and transportation expenses which could be saved if a particular service were eliminated.” (Amtrak Opening Br. 72, Jan. 19, 2018 (citing Penn Central, 342 I.C.C. at 832).)

Amtrak; and third, that it incurred actual costs as a result of the delays caused by Amtrak. (Id. at 56.)<sup>37</sup>

Amtrak also argues that freight delay costs are not appropriately reimbursed as incremental costs because they are actually avoidable costs to CN, but not to Amtrak. (Id. at 83-86.) Amtrak states that CN controls the factors affecting the performance of and delays to CN trains, including growth in the level of freight traffic, CN's decisions to single-track its main line, and CN's freight scheduling and operating decisions. (Id. at 84-85.) Amtrak further argues that CN is inappropriately conflating base compensation with quality (incentive) payment compensation. Amtrak states that if CN incurs freight delay costs from providing better service to Amtrak (i.e. better OTP), CN is already being properly reimbursed through the quality (incentive) payments CN receives. (Id. at 87-88.)

With regard to CN's argument that anything less than CN's proposal on incremental costs would constitute an unconstitutional taking, Amtrak contends it is well-settled that a Board order under § 24308(a) does not constitute a taking. (Amtrak Reply Br. 31-39, 32 n.81, Mar. 5, 2018 (citing Metro. Transp. Auth. v. Interstate Commerce Comm'n (MTA v. ICC), 792 F.2d 287, 296 (2d Cir. 1986); Nat'l Rail Passenger Corp. Appl. Under Section 402(a) of the Rail Passenger Serv. Act, 1 I.C.C.2d 243, 247 (1984); UP/SP, 3 S.T.B. at 156.)

With respect to incremental costs, the Board's interim findings and guidance here cover: (1) the definition of incremental costs, and (2) the criteria for establishing that those costs are reasonable and, therefore, reimbursable to CN. Section 24308 does not define the term incremental costs. While the parties agree that incremental costs must be those that result from Amtrak's presence on the line,<sup>38</sup> they present conflicting interpretations of the statute.

On the one hand, Amtrak claims that 49 U.S.C. § 24308 adopted Penn Central's definition of incremental costs and requires that such costs be temporally limited. (Amtrak Opening Br. 72-74, Jan. 19, 2018). Amtrak cites National Railroad Passenger Corp. v. ICC, 610 F.2d at 872-73, in which the court stated, in passing, that Congress' use of the term incremental cost "appears to coincide" with the definition of incremental cost applied by the ICC in Penn Central, i.e., "avoidable cost in the short run."

On the other hand, CN contends that incremental costs should not be temporally limited to the "short-run." CN points out that the central issue in Penn Central was the use of fully

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<sup>37</sup> Amtrak also raises specific issues with how CN has estimated certain costs. For instance, regarding fuel consumption costs as a result of Amtrak delays, Amtrak argues that CN improperly includes events that would occur in the absence of Amtrak trains, fails to account for fuel-saving technologies in CN's locomotive fleet, and relies on a proprietary simulation model when real-world data is likely available. (Amtrak Rebuttal, V.S. Crowley & Mulholland 24. Sept. 14, 2017.)

<sup>38</sup> As discussed above, Amtrak's definition of incremental costs includes expenses that could be saved if a particular service were eliminated, while CN argues that incremental costs are those that would not be incurred if Amtrak service were not performed.

allocated costs versus avoidable costs and argues that the ICC did not address whether compensation should be limited to short-run costs. (CN Opening Br. 59-60, Jan. 19, 2018.) Finally, as noted above, CN cites to several cases regarding Amtrak’s use of host carriers’ facilities and services, none of which place a temporal limitation on incremental costs.<sup>39</sup>

As to the definition, the Board finds that incremental costs are those costs that CN has actually incurred, and that CN would not have incurred “but for” the presence of Amtrak. Further, the Board rejects Amtrak’s contention that incremental costs are limited to “avoidable costs in the short run” because § 24308 contains no such temporal limitation. The Board will not construe such a limitation into the statute.<sup>40</sup> As to the second point, the Board finds that incremental costs do not include costs that CN cannot specifically and verifiably quantify.<sup>41</sup> The Board therefore rejects the non-quantified or otherwise amorphous costs CN proposes to include as incremental costs, such as freight rate suppression, capacity costs, foregone volume, lost opportunity costs, and other currently non-quantified costs CN might later identify.

With the interim findings and guidance here, the Board is not accepting or rejecting the specific additional three elements of freight delay costs CN proposes. As discussed above, the “but for” definition of incremental costs means that the new operating agreement could include

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<sup>39</sup> See *supra* note 35.

<sup>40</sup> While Amtrak argues for a temporal limit to incremental costs, it does not lay out a discernable test that the Board or the parties could use to determine whether a cost category could be included as an incremental cost under the “short-run avoidable” standard it proposes. Furthermore, as CN notes, Amtrak appears to concede that certain freight delay costs could be incremental costs, even under the method Amtrak proposes. (CN Reply Br. 75, Mar. 5, 2018 (citing Amtrak Rebuttal, V.S. Crowley & Mulholland 24, Sept. 14, 2017).) In other words, even under Amtrak’s own analysis, regardless of whether incremental costs were defined as short-run avoidable costs only, certain freight delay costs could be considered incremental costs.

<sup>41</sup> If costs are not specific, verifiable, and quantifiable, it would be speculation to permit CN to collect such amounts, for there would be an insufficient basis on which the amount of the costs could reasonably be determined. The Board has previously found in multiple contexts that speculation is not an appropriate basis for decision making. See, e.g., CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Vermilion Cty., Ill., AB 55 (Sub-No. 785X), slip op. at 3 (STB served Feb. 15, 2019) (finding that “mere speculation about future traffic is not a sufficient basis upon which to deny or revoke an abandonment or discontinuance exemption”) (quoting CSX Transp., Inc.—Aban. Exemption—in Bell Cty., Ky., & Claiborne Cty., Tenn., AB 55 (Sub-No. 478X), slip op. at 2 (ICC served Aug. 5, 1994)); Ballard Terminal R.R.—Acquis. & Operation Exemption—Woodinville Subdivision, FD 35731 et al., slip op. at 6 (STB served Aug. 1, 2013) (denying motion for preliminary injunction because alleged irreparable harm in the absence of an injunction was “remote, speculative, and uncertain”) (citation omitted).

such costs. However, as a practical matter, whether any proposed costs are included or excluded would depend on whether those costs are specific, verifiable, and quantifiable.<sup>42</sup>

Further, the Board agrees with Amtrak that CN would have to show that it has actually incurred delays, that those delays were caused by Amtrak, and that it incurred actual costs as a result of the delays caused by Amtrak. The Board also finds that freight delay costs need not be treated as a monolithic category. Rather, each cost proposed by CN should be separately evaluated in accordance with the interim findings and guidance stated above. The parties should use the interim findings and guidance provided here to negotiate the specific incremental costs that will be included in their new operating agreement. If the parties cannot agree, and the issue comes back before Board, the burden would be on CN to show that those specific costs could be included in a reasonable manner, consistent with the “but for” standard and the need for specificity, verifiability, and quantifiability as described above.

With regard to the data CN presents in support of its proposals, the Board disagrees with Amtrak that these data are so devoid of value that they should be rejected as a matter of law. In addition, while the Board provides interim findings and guidance here and is therefore not imposing terms including or excluding any of the cost categories proposed by CN, precedent is clear that such findings would not constitute a taking. See *MTA v. ICC*, 792 F.2d at 296 (“[P]roceeding by way of section 402(a) [now § 24308(a)] is not a taking.”); *UP/SP*, 3 S.T.B. at 156 (“‘[I]ncremental cost’ compensation, pursuant to [RPSA], does not effect a compensable taking under the Fifth Amendment.”).

## **E. Performance Measurement and Delays**

### **1. Root Cause**

The cause of a delay, whether it originates from CN, Amtrak, or a third-party, is a critical component in determining whether a host railroad has met its OTP obligations. Amtrak utilizes a system called Electronic Delay Reporting, which—based primarily on a GPS-based system that automatically logs arrival, departure, and passing times at stations and other locations—calculates the number of minutes of delay above the pure run time within each segment of an Amtrak route. (Amtrak Opening Statement, V.S. Vilter 15-16, Sept. 8, 2015.) The Amtrak train’s conductor then records the cause and location of each delay based on the conductor’s direct observations and information from train bulletins, radio communications, Amtrak engineers, freight train crews, dispatchers, maintenance-of-way crews, and other personnel. (*Id.*,

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<sup>42</sup> CN utilizes a two-part methodology to quantify Amtrak-caused freight delay costs: (1) a determination of Amtrak-caused delays, relying primarily on CN’s Service Reliability Strategy system (SRS); and (2) a quantification of costs resulting from such delays. (CN Opening Br. 89, Jan. 19, 2018.) CN maintains that SRS is reliable, conservative, and transparent. (*Id.* at 93-97.) Amtrak counters that SRS is unreliable in attributing the amount and cause of delay, and that the record does not support a finding that CN actually incurred additional costs as a result of freight delays attributed to Amtrak. (Amtrak Opening Br. 61-65, Jan. 19, 2018.)

V.S. Vilter 16.) Each delay is categorized by a code that classifies the delay into one of three categories: HRDs (e.g., freight train interference); Amtrak-responsible delays (e.g., crew and system delays); or third-party-responsible delays (e.g., weather delays). (*Id.*; Amtrak Surrebuttal, V.S. Maga, Ex. 3 at 12, Dec. 6, 2018.) Amtrak makes the delay data available to CN, and the parties address disagreements regarding the delay coding. (Amtrak Opening Statement, V.S. Vilter 16, Sept. 8, 2015.) Either may propose corrections within five days after the origin date of the Amtrak train, and Amtrak is responsible for implementing any agreed-upon changes. (*Id.*, V.S. Vilter 16-17.)

CN argues that this approach to recording delays is akin to a motorist blaming the delay caused by a traffic jam on the automobile directly in front of the motorist instead of considering the underlying reason for the traffic jam. (CN Opening Br. 82, Jan. 19, 2018.) Accordingly, CN proposes to amend the relevant section of the operating agreement to state that “evidence of root cause, as opposed to proximate cause, shall be taken as the best evidence of the cause of a delay.” (*Id.*) CN also seeks a more expeditious, equitable, and efficient process to resolve differing positions as to the reported cause of delays. (CN Opening Evid. 62-63, Dec. 6, 2018.)

Amtrak opposes CN’s “root cause” proposal. Amtrak argues that CN has failed to define the term, and that, in practice, determinations of root cause made under the proposal would be entirely subjective. (Amtrak Opening Br. 48-51, Jan. 19, 2018.) Amtrak contends that one would have to arbitrarily decide how far back in time and how far away in distance to look for contributing factors. (*Id.* at 50 n.154.) Amtrak proposes to continue the same delay recording and review process that Amtrak and CN use today, (*id.* at 48), and proposes adding procedures for dispute resolution, (Amtrak Opening Statement, V.S. Vilter 17, Sept. 8, 2015).

The Board finds that, on the record presented here, CN has neither adequately explained how a “root cause” approach would work in practice nor shown that such an approach would not be too burdensome and time-consuming to apply. For example, CN does not offer an adequate description of how far back in time or distance to look for contributing factors. It also does not explain the standard or mechanism for judging the evidence provided by the parties. However, the Board encourages the parties to review Amtrak’s existing delay codes and consider incorporating an analysis of which party is in the position to avoid or control the delay. Because the Board understands that the conductor delay reports may not provide definitive proof of the cause of Amtrak delays, the Board further encourages the parties to review their dispute resolution process regarding delay coding and to streamline that process.

## **2. Recovery Time Base**

Under the 2011 Operating Agreement, the schedule for each route includes recovery time, the purpose of which is to compensate for certain specific types of delays encountered en route. (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at 5, Dec. 6, 2018.) Recovery time varies from checkpoint to checkpoint and is applied separately within each segment. (Amtrak Rebuttal 40, Sept. 14, 2017.) A portion of this recovery time is designed to compensate for specific, Amtrak-caused delays; this portion is known as Recovery Time Base (RTB). (Amtrak Opening Br., App. A-6 to A-7, Jan. 19, 2018.) The 2011 Operating Agreement also allows CN

to offset its delays with RTB that the designated Amtrak delays do not exhaust. (Amtrak Rebuttal, V.S. Sacks 7, Sept. 14, 2017.)

Amtrak points out that when the designated Amtrak delays exceed the allotted RTB for a train, CN suffers no negative consequences for the train being late (i.e., the train is not considered late for purposes of calculating CN's level of OTP), assuming CN-responsible delays have not otherwise exceeded the recovery time allotted in the 2011 Operating Agreement. (*Id.* at 41; *id.*, V.S. Sacks 6-10.) Furthermore, Amtrak states that there are delays not eligible for offset with RTB, such as station dwell delays and delayed delivery from other host railroads. (*Id.* at 40-41; *id.*, V.S. Sacks 6-10.) According to Amtrak, when these delays occur, CN again suffers no negative consequences for the train being late, assuming CN-caused delays have not otherwise exceeded recovery time allotted in the 2011 Operating Agreement (including any RTB not exhausted by designated Amtrak-caused delays). (*Id.* at 41.)

Amtrak seeks several changes to the current RTB approach. Amtrak argues that RTB should be calculated and applied cumulatively from the CN origin point instead of on a "segment-by-segment" basis. (*Id.* at 40-41.) Amtrak also argues that the total recovery time defined in the new operating agreement should remain unchanged but be redistributed and apportioned at a higher percentage to RTB. (*Id.*) Furthermore, Amtrak proposes to expand the category of delays eligible for offset through RTB to include all non-CN-caused delays. (*Id.*) Amtrak also argues that CN should no longer be able to utilize unused RTB as recovery time. (*Id.* at 41.)

CN responds that under the proposal to make all non-CN delays eligible for relief under RTB, CN could suffer negative consequences for delays occurring before an Amtrak train ever reaches CN's lines or resulting from Amtrak's own operational choices. (CN Opening Br. 122, Jan. 19, 2018.) CN further notes that Amtrak's proposal would substantially raise the RTB threshold (that is, increase the portion of total recovery time allotted in the new operating agreement that would be considered RTB), which would necessarily reduce the relief available for delays attributed to CN, as the overall pool of recovery time would not increase. (*Id.* at 121-23.) CN argues that Amtrak has provided no basis for modifying the current split based on either historic operations or the parties' prior agreements. (*Id.* at 122-23.) CN argues that Amtrak's proposed changes would make it more difficult for CN to earn incentive payments or avoid penalties. (*Id.* at 122.)

Regarding Amtrak's proposed redistribution of the split of recovery time between RTB and the portion specifically designated for CN for recovery time, the Board will not impose a specific split at this time. The Board notes that any split should reflect the real-world operating conditions on a segment and each party's susceptibility to events resulting in a delay to Amtrak trains. Additionally, based on the record presented here, the Board does not find it objectionable that CN can utilize unused portions of Amtrak's RTB, provided that an Amtrak train otherwise arrives on time.

With regard to Amtrak's proposals that it be allowed to include in RTB additional categories of delays and that RTB be calculated cumulatively from the route's origin, the Board encourages the parties to negotiate these aspects of their new operating agreement as well. The

Board expects that the parties would identify and modify aspects of the new operating agreement to establish a system where both parties are incentivized to move trains that are running behind schedule toward being on time. Accordingly, the Board will not make any specific findings on these matters at this time, as the parties should be able to use their experience to negotiate the most efficient agreement for operation of the network in accordance with these stated goals.

### 3. Short Shunt

A “short shunt” occurs when a train fails to timely and properly close (or shunt) an electric circuit that activates automated crossing warning devices (ACWDs). (CN Mot. to Strike 2, Nov. 20, 2017.) Short shunts have become an issue with Amtrak trains on the Illini/Saluki route where Amtrak is operating some of its trains with single-level Horizon/Amfleet equipment. (CN Opening Evid., V.S. Ladue & Kuxmann 43, Dec. 6, 2018; see also CN Mot. to Strike 2, Nov. 20, 2017; id., V.S. Hilliard 2 & n.2; Amtrak Reply to Mot. to Strike 4, Dec. 7, 2017.) As a result of these short shunts, the crossing signals are not activated in a timely manner. (CN Opening Evid., V.S. Ladue & Kuxmann 43, Dec. 6, 2018.) This, CN argues, creates a safety issue. (CN Mot. to Strike 2, Nov. 20, 2017.) Based on its concern over safety, CN has imposed speed restrictions on the Horizon/Amfleet equipment operating on portions of the Illini/Saluki route. (Id.)

The parties are asking the Board to decide whether it is more appropriate to treat this issue as a rail car and safety issue, as CN argues it is, or as a track issue, as Amtrak argues it is. CN argues that the short shunts occur because of the weight, speed, and/or design of Horizon/Amfleet cars used by Amtrak and are, thus, Amtrak’s responsibility. (Id. at 2 n.1 & V.S. Hilliard 2 n.1.) In particular, CN alleges that there were 48 unexplained short shunt incidents between 2002 and 2010 involving Amtrak’s Illini/Saluki route. (Id., V.S. Hilliard 1-2.) Amtrak counters that the problem is rail contamination, a track issue that is the responsibility of the railroad, not Amtrak. (Amtrak Reply to Mot. to Strike 7 & V.S. Maga 2, Dec. 7, 2017.)

The parties are currently working with the FRA to determine the cause of the ACWDs activation failures. (Amtrak Surrebuttal, V.S. Maga 11, Dec. 6, 2018.) The FRA is the agency responsible for determining issues of railroad safety. See 49 C.F.R. §§ 200-272. Thus, the determination of the short shunt question is properly within the FRA’s jurisdiction, and the Board will defer to the FRA on the issue.<sup>43</sup>

### F. Other Contract Terms

As discussed throughout this decision, the Board is making findings and giving guidance on many important topics in dispute between the parties. The Board believes this decision will inform further negotiations between the parties on their new operating agreement as a whole. At

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<sup>43</sup> In its March 22, 2019 petition, CN states that further testing supports its assertion that the short shunting is a result of Amtrak’s equipment. (CN Pet. 2, Mar. 22, 2019.) Amtrak’s April 11, 2019 reply disputes those facts and arguments. The question, however, is still properly before the FRA, which has not yet issued a determination.

the same time, a number of the additional discrete contract implementation terms raised by the parties will not be addressed here.<sup>44</sup> Instead, the Board is directing the parties to negotiate those items given the other guidance contained in this decision. However, the Board will address arguments related to the term and confidentiality of the new operating agreement below.

### **I. Term of the Agreement**

The 2011 Operating Agreement between the parties was for a term of two years, from May 1, 2011, to April 30, 2013. (CN Opening Evid., V.S. Ladue & Kuxmann, Ex. 1 at 1-2, Dec. 6, 2018.) Upon expiration, the 2011 Operating Agreement was extended by mutual agreement twice, and then this proceeding was brought before the Board.

Amtrak proposes the new operating agreement between the parties have a term of 10 years. Amtrak argues this is an appropriate length, given the time and resources it has taken to develop new terms. (Amtrak Opening Br. 100, Jan. 19, 2018.) CN proposes a term of three years, with an evergreen renewal provision that would allow the new operating agreement to remain in place indefinitely until cancelled by either party. (CN Opening Br. 112, Jan. 19, 2018.) CN argues this gives the parties a reasonable time frame in which to work together without further litigation, but also gives them a reasonable opportunity to renegotiate elements of the agreement, if necessary. CN further argues that Amtrak's proposed 10-year term is too long, and, given the scope and complexity of the issues before the Board here, it is likely that many issues will need to be renegotiated. (*Id.* at 112-13.) In response to CN's proposal, Amtrak argues that a three-year term "would be extremely impractical and inefficient . . ." (Amtrak Opening Br. 100, Jan. 19, 2018.)

The Board agrees with Amtrak that CN's proposal for a term of three years may be too short, considering the amount of time and resources the parties will have spent to reach a new operating agreement. However, the Board also shares CN's concern that Amtrak's proposal for a term of 10 years may be too long, considering the breadth of the issues the parties have raised in this proceeding. The Board finds that a seven-year operating agreement term would be reasonable and would balance the concerns of both parties. However, the parties are free to negotiate a different term of their agreement given the findings and other guidance contained in this decision.

The Board also encourages the parties to include an evergreen renewal clause in their operating agreement, as CN proposes. Such a clause would allow the operating agreement to

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<sup>44</sup> (E.g., CN Reply Br. 103-04, Mar. 5, 2018 (presenting arguments regarding retroactivity of elements of the operating agreement); Amtrak Opening Br. 101, Jan. 19, 2018 (responding to CN's proposal); *id.* at 102-03 (proposing the elimination of unnecessary references to the term incremental costs); CN Reply Br. 106, Mar. 5, 2018 (responding to Amtrak's proposal); CN Opening Br. 113, Jan. 19, 2018; CN Reply Br. 107, Mar. 5, 2018 (proposing to incorporate into the new operating agreement two side-letter agreements between the parties, one relating to positive train control and one related to safety appliance costs); Amtrak Opening Br. 103-04, Jan. 19, 2018 (responding to CN's proposal).)

continue in force after it expires until either party cancels it. Such a clause would not require the continuation of the operating agreement beyond the initial term but would provide the parties with predictability by which they could continue to have an operating agreement in force while negotiating any future changes.

## 2. Confidentiality

The 2011 Operating Agreement does not itself contain a confidentiality clause, though the Board acknowledges that it may be subject to an external confidentiality agreement between the parties that was not provided to the Board in this proceeding. With regard to the new operating agreement, Amtrak proposes a confidentiality term requiring the parties to maintain the confidentiality of all of the agreement's terms and conditions and not disclose them to third parties without the consent of the other party to the agreement. Amtrak argues that this term is necessary to avoid prejudicing Amtrak in future negotiations with other railroads. (Amtrak Opening Br. 102, Jan. 19, 2018.) In response, CN objects to such a confidentiality term, arguing that Amtrak is seeking to impose terms on CN by Board order, not by means of a confidential commercial negotiation, and thus that "the outcome of that effort is a matter of public interest . . ." (CN Reply Br. 105, Mar. 5, 2018.) CN argues that, while the Board should permit CN to keep confidential terms that implicate CN's costs and trade secrets, the Board should not issue "secret precedents" in these proceedings. (*Id.* at 104-05.)

The parties are free to negotiate the confidentiality of the terms of their new operating agreement pursuant to the interim findings and guidance provided in this decision. However, the Board would make public any specific terms it would need to set in a later decision, as the Board disfavors confidential decision making unless absolutely necessary.

## III. BOARD-SPONSORED MEDIATION

As a general matter, the Board encourages the resolution of disputes through privately negotiated agreements. The parties are best equipped to determine what changes to their operating agreement are necessary and to work out the details to implement those changes in an effective and efficient manner. Accordingly, the Board finds it is appropriate here to initiate Board-sponsored mediation pursuant to 49 C.F.R. § 1109.2(a)(2) to facilitate further negotiation between the parties. The Board acknowledges the significant work and negotiation that the parties have already engaged in regarding this matter. The purpose of this decision is to provide the Board's interim findings and guidance to help the parties narrow the scope of their negotiations on the major disputes regarding Amtrak's use of CN's network.

The Board encourages and expects the parties to reach agreement on as many outstanding issues as possible. Within 10 days of the service date of this decision, the Chairman will appoint one or more mediators pursuant to 49 C.F.R. § 1109.3(a). Once appointed, the mediator or mediators will contact the parties to discuss ground rules and the time and location of any mediation sessions. At least one principal from each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator or mediators request(s) that the principal be present. The mediation period shall be 30 days, beginning on the date of the first mediation session. *Id.* § 1109.3(b). The parties may request to

extend mediation by mutual written requests of all parties to the mediation proceeding. Id. The mediator or mediators are instructed to inform the Board when mediation has ended, with or without a resolution.

If the parties come to a full agreement, they shall so notify the Board and request that the Board terminate this proceeding. 49 C.F.R. § 1109.3(f). If the parties are unable to reach a full agreement, they shall notify the Board, pursuant to 49 C.F.R. § 1109.3(g), of all of the issues that have been resolved in mediation and seek a new procedural schedule to present focused arguments on any residual issues. The Board expects that the residual issues, if any, would be limited in number and scope, as the mediation will have proceeded with the knowledge of the Board's interim findings and guidance concerning this case. The Board would then issue a final decision on any residual issues in this proceeding.

It is ordered:

1. CN's request for leave to file supplemental arguments on the Illini/Saluki schedule and the short shunt issue is granted, and the responsive arguments filed by CN and Amtrak are accepted into the record.

2. CN's motion to strike is denied. CN's motion in the alternative for leave to supplement the record is granted, and the responsive arguments filed by CN and Amtrak are accepted into the record.

3. NSR's and CSXT's motions for leave to file comments as amicus curiae are granted, and their comments are accepted into the record. NITL's, SPRC's, and RPA's comments are, likewise, accepted into the record.

4. Mediation will be initiated as discussed above.

5. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.

# EXHIBIT 3

Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 16, 2020.  
**Marietta Echeverria,**  
*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

**PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.564 amend paragraph (a)(1) by designating the table as Table 1 paragraph (a)(1) and adding in alphabetical order to newly designated Table 1 to paragraph (a)(1) the entries “Almond, hulls” and “Nut, tree, group 14–12” to read as follows:

**§ 180.564 Indoxacarb; tolerances for residues.**

(a) \* \* \* (1) \* \* \*

TABLE 1 TO PARAGRAPH (a)(1)

| Commodity                    | Parts per million |
|------------------------------|-------------------|
| * * * * *                    | *                 |
| Almond, hulls .....          | 8                 |
| * * * * *                    | *                 |
| Nut, tree, group 14–12 ..... | 0.08              |
| * * * * *                    | *                 |

\* \* \* \* \*  
 [FR Doc. 2020–23420 Filed 11–13–20; 8:45 am]  
 BILLING CODE 6560–50–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 30**

[FAC 2021–02; FAR Case 2020–003; Item I; Docket No. FAR–2020–0003, Sequence 1]

RIN 9000–AO06

**Federal Acquisition Regulation: Removal of FAR Appendix; Correction**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule; correction.

**SUMMARY:** DoD, GSA, and NASA are issuing a correction to FAC 2021–02;

FAR Case 2020–003; Removal of FAR Appendix; Item I; which published in the **Federal Register** on October 23, 2020. This correction makes an editorial change to correct the amendatory language in the affected FAR section of part 30.

**DATES:** *Effective:* November 23, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryon Boyer, Procurement Analyst, at 817–850–5580 or by email at *bryon.boyer@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2021–02, FAR Case 2020–003; Correction.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In FR Doc. 2020–21695, published in the **Federal Register** at 85 FR 67613, on October 23, 2020, make the following correction:

**30.202–7 [Corrected]**

■ On page 67614, in the third column, revise amendatory instruction number 24, to read as follows:

■ 24. Amend section 30.202–7 in paragraph (a)(1) introductory text by removing “(FAR Appendix)”.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

[FR Doc. 2020–24158 Filed 11–13–20; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 273**

[Docket No. FRA–2019–0069; Notice No. 3]

RIN 2130–AC85

**Metrics and Minimum Standards for Intercity Passenger Rail Service**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations.

**DATES:** This final rule is effective on December 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kristin Ferriter, Transportation Industry Analyst, telephone (202) 493–0197; or

Zeb Schorr, Assistant Chief Counsel, telephone (202) 493-6072.

**SUPPLEMENTARY INFORMATION:**

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**I. Executive Summary**

*A. Overview of the Final Rule*

This final rule establishes metrics and minimum standards for measuring the performance and service quality of Amtrak's intercity passenger train operations (Metrics and Standards). The Metrics and Standards are organized into four categories: On-time performance (OTP) and train delays,

customer service, financial, and public benefits. With respect to on-time performance and train delays, this final rule sets forth a customer on-time performance metric, defined as the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route. This final rule establishes a customer on-time performance minimum standard of 80 percent for any 2 consecutive calendar quarters, and sets forth when the standard begins to apply. In addition, this final rule includes the following related metrics: Ridership data, certified schedule, train delays, train delays per 10,000 train miles, station performance, and host running time.

*B. Procedural History*

By notice of proposed rulemaking (NPRM) published on March 31, 2020 (85 FR 17835), FRA proposed metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. FRA held a telephonic public hearing on April 30, 2020. Written comments on the proposed rule were required to be submitted no later than June 1, 2020.

FRA received more than 320 comments, including comments from: Alabama State Port Authority, Alaska Railroad, American Association of State Highway and Transportation Officials, Association of American Railroads,

Association of Independent Passenger Rail Operators, BNSF Railway Company, California State Transportation Agency, Canadian National Railway Company, Canadian Pacific, Capitol Corridor Joint Powers Authority, CSX Transportation, Environmental Law and Policy Center, Metropolitan Transportation Authority, Midwest Interstate Passenger Rail Commission, New York State Department of Transportation (DOT), NJ Transit, Norfolk Southern Railway Company, North Carolina DOT, Rail Passengers Association, San Joaquin Regional Rail Commission, Southeastern Pennsylvania Transportation Authority, Southern Rail Commission, States for Passenger Rail Coalition, Surface Transportation Board (STB), Transportation for America, Union Pacific Railroad Company, Utah Rail Passengers Association, Virginia Department of Rail and Public Transportation, Virginia Railway Express, Washington State DOT, the Honorable U.S. Representative Sam Graves, the Honorable U.S. Representative Rick Crawford, and more than 290 other individuals. Comments are addressed in the preamble.

*C. Economic Analysis*

All costs of this final rule are expected to be incurred during the first year. The following table shows the total 10-year costs of this final rule.

**TOTAL 10-YEAR COSTS**

| Category   | Total cost (\$)  | Annualized, 7 percent (\$) | Annualized, 3 percent (\$) |
|--|------------------|----------------------------|----------------------------|
| Cost of Meetings .....                               | 473,473          | 67,412                     | 55,505                     |
| Internal Staff Time (Preparation for Meetings) ..... | 296,991          | 42,285                     | 34,816                     |
| Monthly Letters .....                                | 50,328           | 7,166                      | 5,900                      |
| Arbitration .....                                    | 714,030          | 101,662                    | 83,706                     |
| Ridership Data .....                                 | 6,198            | 882                        | 727                        |
| <b>Total .....</b>                                   | <b>1,541,020</b> | <b>219,407</b>             | <b>180,655</b>             |

This final rule may result in lower operational costs for Amtrak to the extent it results in improved OTP, which may reduce labor costs, fuel costs, and expenses related to passenger inconvenience, and provide benefits to riders from improved travel times and service quality. Due to the difficulty in quantifying future benefits to rail routes from improved OTP, combined with the inability to quantify the potential synergistic effects that improved OTP reliability could have across Amtrak's network, FRA has not quantified any potential benefits from lower

operational costs or improved service that may result from the final rule.

**II. Background**

*A. PRIIA*

On October 16, 2008, President George W. Bush signed the Passenger Rail Investment and Improvement Act of 2008, Public Law 110-432, 122 Stat. 4907 (PRIIA) into law. Section 207 of PRIIA requires FRA and Amtrak to develop jointly new or improved metrics and minimum standards for measuring the performance and service

quality of intercity passenger train operations, including: Cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services.

Section 207 also calls for consultation with STB, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, and groups representing Amtrak passengers, as appropriate.

Section 207 further provides that the metrics, at a minimum, must include: The percentage of avoidable and fully allocated operating costs covered by

passenger revenues on each route; ridership per train mile operated; measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier; and, for long-distance routes, measures of connectivity with other routes in all regions currently receiving Amtrak service and the transportation needs of communities and populations that are not well-served by other forms of intercity transportation. Section 207 requires Amtrak to provide reasonable access to FRA to carry out its duty under section 207.

Section 207 provides that the Federal Railroad Administrator must collect the necessary data and publish a quarterly report on the performance and service quality of intercity passenger train operations, including: Amtrak's cost recovery, ridership, on-time performance and minutes of delay, causes of delay, on-board services, stations, facilities, equipment, and other services.

Finally, section 207 provides that, to the extent practicable, Amtrak and its host rail carriers shall incorporate the Metrics and Standards into their access and service agreements (also referred to as operating agreements).

The Metrics and Standards also relate to section 213 of PRIIA (codified at 49 U.S.C. 24308(f)). Section 213 states that if the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 207 fails to meet those standards for 2 consecutive calendar quarters, STB may initiate an investigation. Under section 213, STB shall also initiate such an investigation upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service. Section 213 further describes STB's investigation and STB's related authority to identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train and to award damages and prescribe other relief.

#### B. 2010 Metrics and Standards

In March 2009, FRA published proposed Metrics and Standards, which were jointly developed with Amtrak. After receiving and considering comments, FRA published final Metrics and Standards in May 2010. However, the 2010 Metrics and Standards were subject to a legal challenge on the basis

that section 207 of PRIIA was unconstitutional. In 2016, the United States Court of Appeals for the District of Columbia Circuit found that paragraph (d) of section 207 was unconstitutional, and this holding had the effect, in part, of voiding the 2010 Metrics and Standards. Following additional litigation, that Court also found that paragraphs (a) through (c) of section 207 were constitutional and remained in effect (this decision became final upon the U.S. Supreme Court's denial of certiorari on June 3, 2019). As a result, in July 2019, FRA and Amtrak once again began the process of developing joint Metrics and Standards under section 207(a).

#### C. Stakeholder Consultation

Consistent with section 207(a), FRA and Amtrak consulted with many stakeholders to develop the Metrics and Standards.

Specifically, in August and September, 2019, FRA met individually with representatives of the following Class I railroads that host Amtrak trains: BNSF Railway, Canadian National Railway, Canadian Pacific Railway, CSX Transportation, Norfolk Southern Railway Company, and Union Pacific Railroad. On September 5, 2019, FRA and Amtrak met with representatives of the Rail Passengers Association. On September 10, 2019, FRA and Amtrak met with representatives of the Metro-North Railroad. On September 12, 2019, FRA and Amtrak met with representatives of the Transport Workers Union. On September 13, 2019, FRA and Amtrak met with Surface Transportation Board staff. On September 18, 2019, FRA and Amtrak convened a meeting with members of the State-Amtrak Intercity Passenger Rail Committee, whose members include: Caltrans, Capitol Corridor Joint Powers Authority, Connecticut DOT, Illinois DOT, Los Angeles-San Diego-San Luis Obispo Joint Powers Authority, Massachusetts DOT, Michigan DOT, Missouri DOT, New York State DOT, North Carolina DOT, Northern New England Passenger Rail Authority, Oklahoma DOT, Oregon DOT, Pennsylvania DOT, San Joaquin Joint Powers Authority, Texas DOT, Vermont Agency of Transportation, Virginia Department of Rail and Public Transportation, Washington State DOT, and Wisconsin DOT. On September 20, 2019, Amtrak met separately with representatives of the Union Pacific Railroad. On September 24, 2019, FRA and Amtrak met with representatives of the Vermont Railway. On November 15, 2019, Amtrak met separately with representatives of the BNSF Railway.

On November 19, 2019, in two different meetings, FRA met separately with, first, representatives of the International Association of Sheet Metal, Air, Rail, and Transportation Workers, Transportation Division, and, second, with members of the Surface Transportation Board.<sup>1</sup> FRA and Amtrak also sought input from other potentially interested entities who did not express interest in consulting at that time.<sup>2</sup>

After publishing the NPRM, FRA invited each of the stakeholders to meet again. As a result of this invitation, on April 23, 2020, FRA met via telephone with representatives of the following Class I railroads that host Amtrak trains: BNSF Railway; Canadian National Railway; Canadian Pacific Railway; CSX Transportation; Norfolk Southern Railway Company; and Union Pacific Railroad. Representatives of the Association of American Railroads and Amtrak also attended this meeting. On May 6, 2020, FRA met via telephone with representatives of the American Association of State Highway Transportation Officials, Capitol Corridor Joint Powers Authority, Connecticut DOT, California DOT, Illinois DOT, Michigan DOT, Missouri DOT, North Carolina DOT, New York State DOT, Northern New England Passenger Rail Authority, Oklahoma DOT, Oregon DOT, San Joaquin Joint Powers Authority, Vermont Agency of Transportation, Virginia Department of Rail and Public Transportation, Washington State DOT, Wisconsin DOT, State Amtrak Intercity Passenger Rail Committee, and States for Passenger Rail Coalition. Representatives of Amtrak also attended this meeting. Lastly, on May 8, 2020, FRA met with representatives of STB. Representatives of Amtrak also attended this meeting. FRA placed summaries of each of these meetings, including the presentation material, in the NPRM's rulemaking docket (FRA-2019-0069-0013, FRA-2019-0069-0022, and FRA-2019-0069-0028).

In addition, on June 17, 2020, FRA met individually via telephone with BNSF Railway, Canadian National Railway, CSX Transportation, Norfolk Southern Railway Company, and Union Pacific Railroad. Representatives of

<sup>1</sup> One commenter stated that FRA should have also consulted with heavy tonnage seaports with terminal and switching railroads. FRA notes that, while such specific consultation was not required by the statute, FRA had many in-depth meetings with Class I railroads who are well-versed in the issues related to providing rail service to seaports; indeed Class I railroad comments mirrored those from this commenter.

<sup>2</sup> FRA sought input from certain rail labor groups that did not express interest in consulting at the time.

Amtrak attended each of these meetings. On June 19, 2020, FRA met via telephone with Canadian Pacific Railway. Representatives of Amtrak attended this meeting. In these six meetings, FRA sought collaborative commitment to affirm or adjust the intercity passenger train schedules published for stations served across the railroad’s network, and continued discipline to maintaining schedules, in order to expand the growing data pool that would support any necessary schedule change. Subsequent FRA letters to these parties summarizing the discussion were placed in the NPRM’s rulemaking docket (FRA–2019–0069–0379). On July 31, 2020, FRA met collectively via telephone with Amtrak, BNSF Railway, Canadian National Railway, Canadian Pacific Railway, CSX Transportation, Norfolk Southern Railway Company, and Union Pacific Railroad regarding reaffirmation or reconciliation of Amtrak’s published train schedules. FRA’s subsequent letter to those parties summarizing the discussion was placed in the NPRM’s rulemaking docket (FRA–2019–0069–0382).

*D. Amtrak’s Role in the Metrics and Standards Rulemaking*

Beginning in July 2019, FRA and Amtrak began the process of developing the Metrics and Standards under section 207(a) of PRIIA. FRA and Amtrak held an executive kick-off meeting to initiate the effort, which was followed by a regular cadence of staff level meetings. As described above, FRA and Amtrak then conducted an extensive consultation process with many stakeholders to develop the Metrics and Standards. After the conclusion of the consultation process, FRA worked with Amtrak to develop the Metrics and Standards, which included extensive Amtrak input that was reflected in the Metrics and Standards NPRM. After publication of the NPRM, FRA met with various stakeholders (Class I railroads, States, and the STB) together with Amtrak, as described above. FRA then sought (and received) Amtrak’s input on the draft Metrics and Standards final rule, considered Amtrak’s input, and then, as the agency with rulemaking authority, FRA ultimately determined the contents of this final rule.

**III. Response to Comments on On-Time Performance and Train Delays**

*A. Customer On-Time Performance*

As proposed in the NPRM, this final rule measures the OTP element of intercity passenger train performance using a customer OTP metric, defined as the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.<sup>3</sup> The customer OTP metric focuses on intercity passenger train performance as experienced by the customer. Customer OTP measures the on-time arrival of every intercity passenger customer, including those who detrain at intermediate stops along a route and those who ride the entire route.

The customer OTP metric is calculated as follows: The total number of customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, divided by the total number of customers on the intercity passenger rail train.<sup>4</sup> For example:

$$\text{Customer OTP} = \frac{\text{Customers Arriving at Detraining Point No Later Than 15 Minutes After Scheduled Arrival Time}}{\text{Total Number of Customers}}$$

The following table provides a hypothetical customer OTP calculation for a single train on two separate days. The table provides the minutes late,

arrival status (“OT” for on-time, “LT” for late), total number of customer arrivals, and number of on-time customer arrivals, by station, for each

day of operation and the two days overall.

| Station             | Train 130(1) |        |                   |              | Train 130(2) |        |                   |              | Overall           |              |
|---------------------|--------------|--------|-------------------|--------------|--------------|--------|-------------------|--------------|-------------------|--------------|
|                     | Minutes      |        | Customer Arrivals | OT Customers | Minutes      |        | Customer Arrivals | OT Customers | Customer Arrivals | OT Customers |
|                     | Late         | Status |                   |              | Late         | Status |                   |              |                   |              |
| WAS                 | -            | -      | -                 | -            | -            | -      | -                 | -            | -                 | -            |
| NCR                 | -3           | OT     | 2                 | 2            | 0            | OT     | 4                 | 4            | 6                 | 6            |
| BWI                 | 3            | OT     | 12                | 12           | 2            | OT     | 7                 | 7            | 19                | 19           |
| BAL                 | 1            | OT     | 15                | 15           | 1            | OT     | 9                 | 9            | 24                | 24           |
| ABE                 | 5            | OT     | 1                 | 1            | 3            | OT     | 0                 | 0            | 1                 | 1            |
| WIL                 | 5            | OT     | 18                | 18           | 2            | OT     | 13                | 13           | 31                | 31           |
| PHL                 | 1            | OT     | 31                | 31           | 1            | OT     | 38                | 38           | 69                | 69           |
| TRE                 | 2            | OT     | 9                 | 9            | 2            | OT     | 16                | 16           | 25                | 25           |
| MET                 | 0            | OT     | 14                | 14           | -1           | OT     | 19                | 19           | 33                | 33           |
| EWB                 | 2            | OT     | 2                 | 2            | 31           | LT     | 3                 | 0            | 5                 | 2            |
| NWK                 | 4            | OT     | 9                 | 9            | 49           | LT     | 10                | 0            | 19                | 9            |
| NYP                 | 2            | OT     | 41                | 41           | 46           | LT     | 37                | 0            | 78                | 41           |
| <b>Total</b>        |              |        | <b>154</b>        | <b>154</b>   |              |        | <b>156</b>        | <b>106</b>   | <b>310</b>        | <b>260</b>   |
| <b>Customer OTP</b> |              |        |                   | <b>100%</b>  |              |        |                   | <b>68%</b>   |                   | <b>84%</b>   |

<sup>3</sup> This definition reflects a minor revision to the NPRM’s definition of customer OTP, which clarifies that early trains are counted as on-time. FRA made this revision in response to a comment seeking this clarification.

<sup>4</sup> There are several uncommon situations that can affect the calculation of customer OTP. Customers

on canceled trains (less than 4 hours advance notice) are counted as late customer arrivals at their ticketed station if service to their ticketed station is canceled. Customers that are carried beyond their ticketed off-point are included in the customer arrival count at their ticketed off-points. Re-accommodated customers not due to the suspension

of a train are excluded from the calculation for their original trip but would be counted for customer OTP for the rescheduled trip. Customers on bus bridges (transportation on buses for a portion of a regularly scheduled train route) are excluded from the calculation.

In this example, customer OTP is 100% on day 1, 68% on day 2, and 84% for the two days combined. Because the number of customers on this train is different by station and by day, the aggregate customer OTP over the period is not a simple average of the daily numbers.

As also proposed in the NPRM, this final rule establishes a minimum standard for customer OTP of 80 percent for any 2 consecutive calendar quarters. To promote clarity and compliance, the customer OTP standard is the only standard set forth in connection with the OTP and train delays metrics. FRA believes this single standard is the most effective way to achieve dedicated focus on improving on-time performance. FRA emphasizes that 80 percent is a minimum standard, and FRA expects some intercity passenger rail services will reliably achieve a higher standard of performance. The 80 percent customer OTP standard is consistent with the statutory requirement in 49 U.S.C. 24308(f)(1).

Lastly, the final rule includes a provision not proposed in the NPRM, which provides that the customer OTP standard shall apply to a train beginning on the first full calendar quarter after May 17, 2021. For example, if the final rule is published on December 10, 2020, 6 months after that date would be June 10, 2021, and the first full calendar quarter after that would run from July 1, 2021 to October 31, 2021. FRA also understands that in some instances the alignment of a train schedule with the customer OTP metric may require additional time. As such, if Amtrak and a host railroad do not agree on a new train schedule and the schedule is reported as a disputed schedule on or before May 17, 2021, then the customer OTP standard for the disputed schedule shall apply beginning on the second full calendar quarter after May 17, 2021. FRA added these provisions to the final rule to ensure host railroads and Amtrak have sufficient time to align their train schedules before FRA begins reporting the customer OTP metric data.

FRA received hundreds of comments on customer OTP. Some commenters supported the customer OTP metric and standard and some disapproved of it. Many commenters generally supported the use of a single metric to measure OTP and the use of a single OTP standard.

Several commenters stated that section 207 requires the OTP metric to show OTP by host railroad in routes with multiple host railroads. In support, these commenters cited language in section 207(a), which states that the metrics “at a minimum, shall include

. . . measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier . . . .” FRA disagrees. As further described below, PRIIA calls for measuring the intercity passenger train’s OTP performance, not the host railroad’s performance in hosting the intercity passenger train. Section 207, when viewed in its entirety, does not require distinguishing OTP by host railroad. Sec. 207(a) (Requiring the development of metrics and minimum standards “including on-time performance and minutes of delay . . . .”); § 207(b) (Requiring FRA quarterly reporting on intercity passenger train operations, “including . . . on-time performance and minutes of delay . . . .”). Indeed, other sections in PRIIA require an OTP metric that measures a train’s performance over an entire route, and not just route segments by host railroad. 49 U.S.C. 24710(a) and (b); *see also* 49 U.S.C. 24308(f)(1). Furthermore, an OTP metric that measures a host railroad’s performance would not depict the customer’s experience as passenger trains that arrive late at their destinations may be reported as “on-time.” Lastly, Congress emphasized the importance of measuring delays by host railroad as evidenced in section 213, which requires the STB to investigate whether and to what extent delays are due to causes that could reasonably be addressed by a host railroad. Thus, in compliance with section 207(a), this final rule does include train delay metrics that describe train performance on individual host railroads (e.g., the host running time metric shows train performance over a host railroad as compared to the train’s scheduled running time, thereby distinguishing host railroads on multi-host railroad routes).

Regardless of whether the statute requires it, several commenters stated that the final rule should distinguish OTP by host railroad.<sup>5</sup> In support, these commenters noted that the OTP metric determines when a host railroad may be subjected to an STB investigation (and other delay metrics could not prevent the initiation of an investigation). In other words, these commenters expressed concern that a host railroad could be subject to an STB investigation and/or reputational harm even if its own performance did not cause the train to

<sup>5</sup> For example, one commenter stated that OTP on multi-host routes should be measured against the run time for each host railroad line segment (and not against the scheduled departure and arrival time at each station).

operate below the standard.<sup>6</sup> In related comments, commenters stated that the OTP calculation should exclude certain delays for which the host railroad was not responsible (e.g., third party delays or Amtrak-responsible delays) and give host railroads in dense metro territories an “out-of-slot delay tolerance” in connection with the OTP calculation.

In this final rule, FRA’s approach to OTP follows the framework Congress set forth in PRIIA. Section 207 calls for measuring the intercity passenger train’s OTP performance, not the host railroad’s performance in hosting the intercity passenger train.<sup>7</sup> A host railroad-specific measurement of OTP, accounting for late handoffs, slot time adjustments, and other methods of relief, would result in a system that is misaligned with the customer experience: passenger trains that arrive late at their destinations but are reported as “on-time.” Other sections in PRIIA also require an OTP metric that measures a train’s performance over an entire route (that can be compared to other routes), and not just route segments by host railroad.<sup>8</sup> In addition, Congress specifically identified the OTP metric as a trigger for an STB investigation.<sup>9</sup> 49 U.S.C. 24308(f)(1).

In any event, the train performance metrics in this final rule do not penalize host railroads for train delays for which they are not responsible. As described below, the final rule’s train delays metric and host running time metric speak to the individual host railroad’s

<sup>6</sup> One commenter also stated that the customer OTP metric would harm the morale of the host railroad’s employees who take pride in achieving good OTP. FRA appreciates the commitment of all employees, at Amtrak and the host railroads, and understand they work hard in support of Amtrak trains.

<sup>7</sup> FRA’s quarterly reports do not exist solely to serve as a trigger for an STB investigation. These reports also provide information for policymakers and the public, consistent with the data reporting for other modes of transportation, such as air travel. *See* <https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports>.

<sup>8</sup> *See* 49 U.S.C. 24710(a) (Requiring Amtrak to use the section 207 performance metrics to evaluate annually the operating performance of each long-distance train); 49 U.S.C. 24710(b) (Requiring Amtrak to develop a performance improvement plan for its long-distance routes based on the data collected from the section 207 performance metrics, to include OTP); 49 U.S.C. 24308(f)(1) (Referring to the on-time performance of an “intercity passenger train”); *see also* *Union Pac. R.R. Co. v. Surface Transp. Bd.*, 863 F.3d 816, 826 (8th Cir. 2017).

<sup>9</sup> FRA’s quarterly reports showing Amtrak’s performance under the OTP metric are relied upon to determine whether a train is below the standard. *See* *Union Pac. R.R. Co. v. Surface Transp. Bd.*, 863 F.3d 816, 826 (8th Cir. 2017). Congress also assigned STB with the responsibility to determine whether and to what extent delays . . . are due to causes that could reasonably be addressed” by the host railroad or by Amtrak. 49 U.S.C. 24308(f)(1).

performance. One commenter stated that the NPRM's train delays metrics are likely to get little attention compared to the customer OTP metric. FRA strongly disagrees. While the customer OTP metric provides a train-level view of actual passenger train performance focused on the customer experience, the train delays metric and the host running time metric can help identify certain categories of delays, their frequency, and their duration, which are central inquiries to understanding and improving passenger train performance, as well as an STB investigation under 49 U.S.C. 24308(f).

In addition, that STB can initiate an investigation certainly does not mean that an investigation will be sought. As acknowledged by several commenters, an STB investigation results in resource expenditures for affected entities, and it has an uncertain outcome. A decision to initiate such an investigation is not made lightly. As a result, it is not reasonable to assume that every train below the minimum OTP standard would be investigated. Furthermore, it is also not reasonable to assume that an STB investigation would be sought against a host railroad where the train delays metric and the host running time metric data do not support an investigation. FRA is confident STB can identify delays for which host railroads are not responsible when armed with data from these metrics.

In lieu of a customer OTP metric, several commenters proposed a key stations OTP metric that would measure train performance at key stations on a host railroad.<sup>10</sup> The customer OTP metric measures train OTP for every passenger at every station (not just passengers at designated stations), recognizes the relative importance of reliability at stations serving more passengers, and provides flexibility if demand changes. In contrast, a key stations OTP metric fails to recognize the importance of customers who do not use a key station. Such a metric would have additional challenges, including how to identify key stations. For these reasons, FRA determined that the customer OTP metric is superior to a key stations OTP metric. With that said, the customer OTP metric resembles a key stations OTP metric because stations with many detraining passengers have greater influence on the train's customer OTP and serve as de

facto key stations.<sup>11</sup> As discussed elsewhere in this final rule, FRA finds that, aside from predictable and broadly understood seasonal trends and short-term variability, the percentage of a train's detraining passengers at stations on a route is stable for purposes of calculating customer OTP; therefore, host railroads can identify key stations to maximize performance under the customer OTP metric.

Another commenter suggested that the existing, contractually negotiated Amtrak train performance provisions found in the host railroads' operating agreements with Amtrak are preferable to the customer OTP metric because the host railroads often perform well under those contract terms (whereas these same trains don't perform as well when measured by the customer OTP metric). The commenter stated that Amtrak and a host railroad should be allowed to develop and apply alternative OTP standards, such as the existing contractual performance provisions, or use mutually agreed upon times as a baseline to measure OTP. The commenter's proposal is counter to section 207's requirement to establish a metric to measure intercity passenger train performance, as it would result in many different measures of performance that would be, at best, difficult to understand and, at worst, entirely misleading. A single OTP metric and standard allows stakeholders to compare train performance, which may be important to evaluating connectivity information, among other things, and ensures all trains are held to the same standard.

Furthermore, FRA believes the OTP metric should measure train performance from the eyes of the customer. The customer OTP metric is meaningful, precisely because it is reflective of the passenger train's actual performance. The commenter's proposal would routinely produce the anomalous result stated elsewhere in this final rule of a passenger train that arrives late at stations yet has good "OTP." See *Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a)—Canadian National Railway Company*, STB Docket No. FD 35743 at 10 (Aug. 9, 2019) ("In general, if an OTP metric only includes checkpoints at the final station and two or three select

intermediate points, . . . , the metric does not measure performance in a way that captures whether a significant portion of Amtrak's passengers actually arrived at their selected destinations on time. Such a metric would be an unrepresentative measure of performance.").

Another commenter stated the final rule should adopt an all-stations OTP metric that would measure train performance at all stations on a route. Like an all-stations OTP metric, the customer OTP metric measures train performance at every station, and it also recognizes the importance of reliability at stations serving more passengers. Customer OTP also offers host railroads more flexibility in adjusting recovery time<sup>12</sup> based on passenger load versus recovery needed for every station stop.<sup>13</sup> For these reasons, FRA determined that the customer OTP metric is preferable to an all-stations OTP metric, and is adopting a customer OTP metric as proposed in the NPRM.

A commenter stated that FRA should have considered the impact of the customer OTP metric and standard on the host railroads' various operating agreements with Amtrak, including the performance incentive payments made under such agreements. FRA is not a party to these agreements, nor does FRA have knowledge of their details, as the parties consider the details of the agreements confidential business information, and have not shared them with FRA. More importantly, this final rule does not require a change to the performance incentive payment provisions in these operating agreements; Amtrak and the host railroads may continue to maintain those provisions as they see fit.

In addition, to the extent a host railroad is concerned with receiving lower performance incentive payments as a result of this final rule, this final rule does not prohibit a host railroad and Amtrak from revising the performance incentive payments to align better with the customer OTP metric and standard.<sup>14</sup> Indeed, section

<sup>12</sup> Recovery time means time added to a schedule to help a train "recover" to published schedule on-time operation in the event that it encounters delays.

<sup>13</sup> One commenter stated that under a customer OTP metric it is not reasonable to believe a host railroad would agree to a schedule that did not achieve OTP at all stations. Although Amtrak and a host railroad may agree on a schedule that reliably achieves OTP at all stations, the customer OTP metric provides greater flexibility to the parties by allowing them to focus on those stations with greater numbers of detraining passengers.

<sup>14</sup> As STB stated, "[i]t is not reasonable for an incentives and penalties system to have at its foundation a performance metric that fails to account for the OTP at stations central to the

<sup>10</sup> Another commenter suggested a key stations OTP metric combined with changes to the Amtrak-host railroad operating agreement to preserve a similar contractual performance payment regime. As stated elsewhere in this final rule, this final rule does not prohibit Amtrak and a host railroad from revising their operating agreement.

<sup>11</sup> See *Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a)—Canadian National Railway Company*, STB Docket No. FD 35743 at 11, FN 25 (Aug. 9, 2019) ("An OTP metric that measures the percentage of passengers that arrive at their destination stations on time could—in some circumstances—allow for greater host railroad operational flexibility and create an incentive structure more closely tied to the service delivery to the end consumer, the passenger.").

207(c) provides that, to the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards into their access and service agreements (the operating agreements). *See also Union Pac. R.R. Co. v. Surface Transp. Bd.*, 863 F.3d at 826 (“The § 207 on-time-performance metric was, to the extent practicable, to be incorporated into Amtrak’s contracts with host railroads.”).

A commenter stated that because the customer OTP metric is based on passenger loads it may be an unstable metric (as it may vary on a daily basis). Another commenter stated that this instability would result in lengthening schedules. A commenter also stated that the aggregation of customer OTP data could produce distorted results showing a train service as more reliable or less reliable than is actually the case. And, another commenter stated that the customer OTP metric will likely result in false positives for trains that depart late from congested Amtrak terminals. FRA does not agree with these commenters that customer OTP will be unreliable for two reasons. First, Amtrak has provided some ridership data to host railroads and the ridership data metric in this final rule requires Amtrak to provide additional data to host railroads to allow them to understand and monitor passenger loads.<sup>15</sup> Second, while the actual number of detrainning passengers may change at a station over time, the percentage of passengers detrainning at a station is generally stable.<sup>16</sup> Based on FRA’s review of the non-public ridership data Amtrak made available to the host railroads,<sup>17</sup> FRA found little movement in a station’s relative volume of detrainning passengers. For example, there were 15,714 total passengers on Amtrak train #391 (on the Illini/Saluki route) in the fourth quarter of 2019, and 10,481 total passengers in the first quarter of 2020, a difference of 5,233 passengers or 33%. Passengers detrainning at Champaign-

Urbana, IL represented 47.8% of the total passengers on the train in the fourth quarter 2019, and 50.4% of total passengers in the first quarter 2020. Despite this variation in ridership, Champaign-Urbana ranked as the highest volume station for detrainning passengers for these two quarters compared to all other stations on the route. Similarly, Carbondale, IL ranks as the second highest volume station for detrainning passengers, with 27.1% of the total passengers on the train in the fourth quarter 2019, and 25.6% of total passengers in the first quarter 2020. The relative importance of the station (*i.e.*, the station rank) along the route seldom changes despite fluctuation in the percentage of detrainning passengers. As stated above, if carefully analyzed, the ridership data will allow host railroads to identify de facto “key stations” to concentrate performance to ensure most passengers arrive at their destination on-time (thereby meeting the 80% standard).

A commenter stated that host railroads do not have adequate notice of the customer OTP metric because the metric is based on the number of detrainning passengers at a station, which the host railroads would receive after the fact. As noted above, there is generally not much change in proportional ridership by station by route (real-time ridership data is of limited utility), and host railroads already received a year of performance data on May 18, 2020. Furthermore, as described below, this final rule includes a ridership data metric that, in part, requires Amtrak to provide ridership data to host railroads. In addition, the final rule provides that the customer OTP standard shall apply to a train beginning, at the earliest, on the first full calendar quarter after May 17, 2021. Amtrak and the host railroads will also have at least a further five months to evaluate two years of relevant ridership data to work towards certifying train schedules, consistent with the data sharing requirement in this final rule. This commenter further suggested an alternative OTP metric that measures OTP by the train’s arrival at designated check-points (similar to the approach used in the commenter’s operating agreement with Amtrak), which it alleged would provide adequate notice. For the reasons stated above, FRA disagrees with this approach and believes that the OTP standard should be based on the passenger experience.

A commenter stated that a single OTP metric may fail to address certain State-supported trains that have negotiated local expectations of performance with a host railroad and that currently serve

passengers reliably above the 80 percent OTP standard. Similarly, another commenter stated that where an existing partnership exists between a State and a railroad, such as a service outcome agreement, the OTP metric and standard should be used to inform and complement that agreement, rather than to supersede it. As stated, the 80 percent customer OTP standard is a minimum standard. FRA expects many services to operate more reliably and this final rule is not intended to obstruct the unique performance arrangements that may exist between host railroads and States.

Some commenters expressed concern that the customer OTP metric would delay commuter rail trains sharing the right-of-way with Amtrak trains due to Amtrak trains “waiting for time” (*i.e.*, when a train arrives early to a station and waits until its scheduled departure time) at intermediate stations. A commenter stated that such an action in high density territory could create a net reduction in rail line capacity. Similarly, other commenters stated that aligning schedules to a customer OTP metric enlarges an Amtrak train’s dispatch footprint by redistributing recovery time across intermediate stations, which threatens overall network fluidity, decreases the host railroad’s ability to manage slow orders, and will result in longer schedules. FRA disagrees. First, delays waiting for time at intermediate stations can be foreclosed by an accurate schedule. Second, adjusting train schedules to align with the customer OTP standard does not mean that recovery time must be added for each station. Recovery time should, for example, be included across a schedule to protect performance at larger volume stations, locations where passenger trains can wait clear of main tracks, where stations are farther apart, or where trains are more likely to incur operational delays. However, spreading existing recovery time linearly across a schedule would be inefficient and would be more likely to result in trains waiting at stations for departure times if a train performed well on a given segment that included additional, unnecessary recovery time. Furthermore, in the case of capacity impacts great enough to warrant schedule change, reductions of time to remove these waits would be in both parties’ favor. Third, Amtrak trains on many routes avoid large numbers of station stops in districts already well served by commuter operations. Lastly, Amtrak trains should not be given more time between stations in commuter train territory than the commuter trains themselves. In these types of territories

passenger experience for a significant portion of Amtrak passengers.” *Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a)—Canadian National Railway Company*, STB Docket No. FD 35743 at 10 (Aug. 9, 2019).

<sup>15</sup> The percentage of detrainning passengers to each station on a route can be calculated from the information Amtrak is currently providing to host railroads for their internal use. *See* FRA-2019-0069-0295. This data provides quarterly detrainning totals by station by train.

<sup>16</sup> Station rank in absolute terms may also be a helpful tool for schedule planning in connection with the customer OTP metric.

<sup>17</sup> While Amtrak does not make this ridership data publicly available, Amtrak shared this data with relevant host railroads. *See* FRA-2019-0069-0295. Amtrak also consented to this minimal public disclosure of ridership data to provide this illustrative example.

there should be little slack time written into the schedule, consistent with standard railroad operating best practices. For all these reasons, FRA is confident that the professional railroaders at Amtrak and the host railroads, whose daily job it is to develop train schedules, can account for the issues raised by these commenters.

Another commenter suggested that the customer OTP metric penalizes trains that perform well according to the performance provisions in their Amtrak-host railroad bilateral operating agreement and is not consistent with the intent of section 207. In support, the commenter, a host railroad, stated that it receives payments under its contract with Amtrak for the performance of trains operating on its right-of-way, but is concerned these same trains will not perform well as measured by a customer OTP metric. FRA disagrees. Put simply, a measure that is not focused on when a passenger train arrives at a station is not measuring the on-time performance of the passenger train. FRA encourages Amtrak and the host railroads to work toward aligning the bilateral operating agreements with the customer OTP metric and standard to ensure performance is measured, and appropriately incentivized, in a consistent manner. *See* PRIIA § 207(c).

A commenter sought clarity regarding whether the customer OTP metric is measured by the actual number of passengers detraining at a station, or by the number of tickets that Amtrak sells to a specific arrival station. Amtrak measures detraining passengers by the number of passengers actually traveling on the train, as determined by conductor ticket collections via electronic ticket scanning for a specific arrival station. Passengers who have reserved a seat, but elect not to travel, are not reflected in passenger counts. Another commenter wondered whether it is possible for Amtrak to calculate customer OTP accurately where Amtrak customers share tickets in metro areas with commuter passenger railroads (e.g., in Los Angeles with Metrolink commuter rail services). Most passengers traveling on Amtrak under a cross-honor arrangement with a commuter rail operator are included in the customer OTP calculation (in most cases, the conductor records the origin and destination station for the cross-honor rider as they board). Amtrak maintains cross-honor agreements with several commuter passenger railroads across the country, and riders traveling under those arrangements represent 2.4% of total Amtrak ridership. Approximately two-thirds of these cross-honor passengers are included in

Amtrak detraining counts, including Metrolink and Virginia Railway Express cross-honors.

A commenter stated a concern that, under the customer OTP metric, Amtrak passengers on cancelled trains would be counted as late customer arrivals at their ticketed station if service to their ticketed station is cancelled. In this case, a passenger on a train that has had their ticket scanned and the service to their ticketed station canceled on less than four hours advance notice is counted as a late customer arrival at their ticketed station by design, as it reflects the customer's experience.<sup>18</sup> In Amtrak fiscal year 2019, the number of passengers impacted by en route cancellations to their detraining stations was 0.04% of Amtrak ridership (14,439 impacted passengers divided by 32,519,241 total passengers).

A commenter stated that the customer OTP metric should be reported by train only, and not by train and by route. However, it is important to maintain route reporting because the customer is less likely to know what train number they are on, and are more likely to know the route they travel.

Lastly, a commenter stated that the customer OTP metric and standard should consider the fluidity of the entire network in determining whether a host railroad has given an Amtrak train preference. Preference under 49 U.S.C. 24308(c) is determined by STB, not FRA. *See* 49 U.S.C. 24308(c) and (f)(2). The commenter also stated that the customer OTP metric should consider non-Amtrak passengers, in addition to Amtrak passengers. As described further below, FRA developed the metrics for Amtrak intercity passenger train operations, which is consistent with section 207.

<sup>18</sup>In Amtrak's system, a cancellation with less than four hours advance notice represents an unplanned en route event. Amtrak established the four-hour benchmark to recognize that a cancellation with less than four hours advance notice would not give the customer sufficient time to make alternative travel arrangements. The four-hour benchmark is the same used for several other measures of Amtrak performance. The cancellation need not include the entire train or trip such as in an emergency detour situation, where selected stations may be bypassed (and passengers bussed to their original detraining location) but the train continues to its final destination. Passengers who are required to take a bus bridge to their final destination as a result of an unplanned cancellation are counted as late. Amtrak makes every effort to get these passengers to their desired destination, typically by bus or by re-accommodation on another train. Implementing these alternative travel plans due to an en route event nearly always results in passengers arriving late to their final destination. They are therefore counted as late to their detraining station and are included as such in customer OTP calculations.

## B. Train Schedules

While the NPRM did not propose any metrics related to train schedules, FRA received many comments about train schedules. Some commenters stated that the final rule should require Amtrak and a host railroad to certify that a train's schedule aligns with the customer OTP metric and standard before the customer OTP standard takes effect. STB, for example, supported requiring properly aligned schedules before an OTP standard takes effect. In support, commenters stated that many of Amtrak's existing schedules are not a meaningful benchmark for measuring customer OTP because they were not designed for a customer OTP metric, and they are outdated and unrealistic. As a result, these commenters stated, the use of the customer OTP metric to measure Amtrak schedules would produce misleading train performance data, and may result in unnecessary STB litigation.

Further, some commenters stated that it would be challenging to renegotiate some schedules due to disagreements about train scheduling and challenges with existing schedules, among other reasons. Several commenters stated that the final rule should provide an initial six-month period for Amtrak and the host railroads to certify schedules, and should extend this period for the pendency of any dispute resolution process. Commenters also stated that the final rule should incorporate a dispute resolution process to address schedules in dispute. Several commenters also stated that the dispute resolution process should automatically certify a schedule if the host railroad refused to participate and, conversely, should withhold certification if Amtrak refused to participate. Some commenters stated that the final rule should include a schedule recertification process to ensure ongoing schedule validity.

FRA generally agrees with many of these observations (although not all). FRA agrees that Amtrak and the host railroads should align schedules with the customer OTP metric.<sup>19</sup> Where a train's OTP is measured against the train schedule provided to the public, the train's schedule should be aligned with the OTP measure used to evaluate the train's performance. Historically,

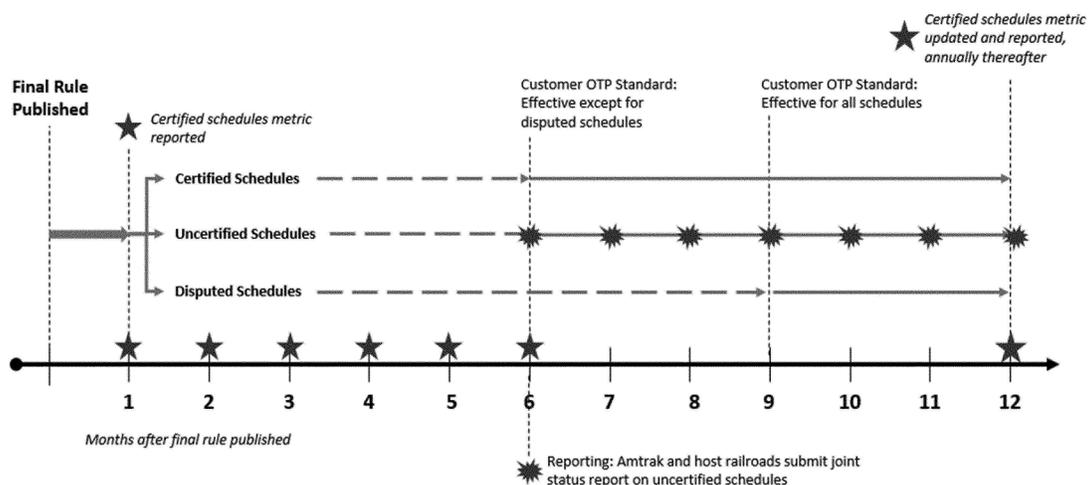
<sup>19</sup>An OTP metric, in part, can inform the formulation of a train schedule. For example, a customer OTP metric may encourage a schedule with more recovery time at those stations with more de-boarding passengers, while an endpoint OTP metric may encourage a schedule with more recovery time at the endpoints of a line segment.

Amtrak’s published train schedules have not been designed with a customer OTP metric in mind. Accordingly, this final rule: Establishes a certified schedule metric that addresses alignment with the customer OTP metric and standard; provides more time for Amtrak and the host railroads to negotiate schedules; and allows for a dispute resolution process if the parties disagree.<sup>20</sup>

The certified schedule metric first requires Amtrak to report the number of certified schedules, uncertified schedules, and disputed schedules, by train, by route, and by host railroad.<sup>21</sup> This information is reported monthly for six months, at 12 months, and yearly

thereafter. Second, the final rule provides more time to negotiate schedules by delaying application of the customer OTP standard until the first full calendar quarter six months after publication of the final rule. Third, the final rule encourages the parties to certify schedules timely and to resolve disagreements by further delaying application of the OTP standard when a non-binding dispute resolution process is engaged. Specifically, if a train schedule is reported as a disputed schedule during the first six months, then the customer OTP standard does not apply until the second full calendar quarter following those six months.<sup>22</sup> Fourth, the certified schedule metric

further encourages the parties to certify schedules by requiring Amtrak and a host railroad to transmit monthly letters signed by their chief executive officers to Congress (and others) when they have an uncertified schedule after six months.<sup>23</sup> These letters will make policymakers aware of the status of the train schedule,<sup>24</sup> and help ensure that a sense of urgency is maintained by the parties to resolve the disagreement. Lastly, the certified schedule metric recognizes that ongoing coordination between Amtrak and a host railroad is needed as certified schedules are impacted by future events.<sup>25</sup> The graphic below provides an overview of the certified schedule metric process.



A commenter stated that a schedule dispute resolution process should allow for both non-binding and binding dispute resolution (and should not require binding dispute resolution only). Here, the final rule does not require Amtrak or a host railroad to

engage in a dispute resolution process, nor does the final rule attempt to prescribe the process the parties use if they do choose to engage a dispute resolution process. However, the final rule only affords delay of the customer OTP standard beyond six months for

engagement of a non-binding dispute resolution process.<sup>26</sup> The resolution of a schedule disagreement must be achieved as quickly as possible. The final rule encourages Amtrak and host railroads who are serious about finding common ground on a schedule to

<sup>20</sup> A certified schedule metric is consistent with section 207’s direction to measure on-time performance, as the schedule is a benchmark of train performance.

<sup>21</sup> Although the certified schedule metric is reported by host railroad (excluding switching and terminal railroads), FRA encourages all the host railroads for a route to work together in aligning the train schedule.

<sup>22</sup> The final rule defines the term disputed schedule to mean a published train schedule for which a specific change is sought: (1) That is the only subject of a non-binding dispute resolution process led by a neutral third-party and involving Amtrak and one or more host railroads; (2) that is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by one or more host railroads and Amtrak has not consented to participate in the process within 30 calendar days; or (3) that is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by Amtrak and the host railroad has not consented to participate in the process within 30 calendar days. The written decision resulting from a non-

binding dispute resolution process is admissible in Surface Transportation Board investigations under 49 U.S.C. 24308(f). If a published train schedule is reported as a disputed schedule under subsection (c)(1), then it remains a disputed schedule until designated as a certified schedule.

<sup>23</sup> If a train schedule is reported as an uncertified schedule at six months, twelve months, or yearly thereafter, then Amtrak and the host railroad must transmit a joint letter and status update, signed by their respective chief executive officers, to each U.S. Senator and U.S. Representative whose district is served by the train, in addition to several other government offices. This joint letter and status update must identify the Amtrak published train schedule(s) at issue and the plan and expectation date to resolve the disagreement(s), among other details.

<sup>24</sup> In addition, FRA will post such joint letters on its website.

<sup>25</sup> FRA recognizes the importance of reviewing schedules periodically to ensure their integrity. However, the customer OTP standard would continue to apply during a schedule review period. In addition, the customer OTP standard will apply

to any new Amtrak train service initiated after application of the customer OTP standard (and that train will be subject to the certified schedule metric).

<sup>26</sup> The final rule only affords delay of the customer OTP standard beyond six months for disputed schedules. After the six-month period, the customer OTP standard applies to both certified schedules and uncertified schedules. There may be a scenario where one host railroad for a train has a disputed schedule (to which the customer OTP standard is not yet applied) and another host railroad for that train has either a certified schedule or an uncertified schedule. As the customer OTP metric is reported by train (and by route), in this situation, FRA will not include customer OTP metric data in the quarterly report for that train during the time when there is a disputed schedule (to which the customer OTP standard is not yet applied) for some portion of the train’s route. FRA encourages Amtrak and all of the host railroads of a train to work together when evaluating the published train schedules.

engage in a dispute resolution process if they are unable to reach agreement amongst themselves.<sup>27</sup> While non-binding, the written decision resulting from a non-binding dispute resolution process may facilitate resolution and may also assist the Surface Transportation Board in a 49 U.S.C. 24308(f) investigation. While parties may seek binding dispute resolution, this final rule does not include that process given the broad array of impacts that may occur from a schedule required by arbitration, such as, among other things, significant additional operating expenses or revenue losses (for Amtrak and its partners), commercially infeasible times of operation or duration, and conflicting schedules on multi-host railroad routes.

Some commenters stated it would be unfair to apply a customer OTP standard to a schedule that is not aligned with the customer OTP metric (because the metric could produce misleading train performance data that could ultimately result in an STB investigation).<sup>28</sup> A commenter also stated that Amtrak has no incentive to adjust its schedules, and other commenters expressed concern about lengthening schedules. FRA understands that Amtrak and host railroads have some competing interests. This final rule balances those interests consistent with section 207. As explained, the final rule encourages the parties to agree on certified schedules while not explicitly requiring them. In addition, a host railroad or Amtrak may initiate a timely non-binding dispute resolution process (regardless of whether the other party agrees to participate in that process), which would temporarily delay application of the OTP standard to a train. The non-binding dispute resolution process will produce a written decision that will inform Amtrak and a host railroad in aligning the schedule with the customer OTP metric. The final rule empowers Amtrak and the host railroads to resolve schedule disputes without being overly prescriptive (and without government involvement that could hamper the

parties' ability to engage in confidential discussions, among other things). Section 207 does not require schedule certification and, indeed, section 213 acknowledges that STB investigations may include STB review of the extent to which scheduling contributed to delay. 49 U.S.C. 24308(f)(1).

Many comments addressed the NPRM's train schedule principles, which recommended, but did not require, alignment of train schedules with the customer OTP metric. Some commenters stated that the principles should be removed, others supported their inclusion, and still others suggested adding to the principles. This final rule does not include the train schedule principles. FRA determined these principles are no longer necessary given the final rule's inclusion of a certified schedule metric; the NPRM's train schedule principles would only serve to complicate the process of determining train schedules for Amtrak and the host railroads.

Several commenters stated that State sponsors of intercity passenger rail should be included in Amtrak and host railroad schedule alignment discussions. FRA agrees that State sponsors are important stakeholders in these discussions. Although the final rule does not require nor prohibit a State sponsor's involvement, FRA expects that a State sponsor may be invited to participate consistent with their existing agreement(s). Based on the comments received, FRA understands that Amtrak and many of the host railroads have existing agreements with State sponsors that relate to schedules. Those agreements remain in place and are not altered or negated by this final rule.

Commenters also stated that Amtrak schedule modifications should not compromise the standardized schedules Amtrak has agreed to with commuter agencies in dense commuting territories, as these existing schedules allow for the optimal use of capacity and ensure reliable operations for both Amtrak and commuter rail operations. Similarly, a commenter stated that Amtrak, host railroads, and commuter services must work cooperatively to update schedules in the interest of providing achievable OTP goals. FRA recognizes the important role commuter rail services play in the passenger rail network. This final rule does not prohibit commuter agency involvement in Amtrak-host railroad schedule discussions, and any Amtrak and/or host railroad agreements with commuter agencies remain in place and are not altered or negated by this final rule.

A commenter stated that there should be a test period for new schedules. With the application provisions for the OTP standard in this final rule, FRA believes Amtrak and the host railroads have sufficient time to test and negotiate train schedules. FRA will not dictate a process for negotiating schedules, but it expects both parties will use data-driven processes, such as modeling, simulation, and real-world testing to validate any proposed schedule changes.

One commenter stated that a new schedule aligned with the customer OTP metric should take into account the existing contractual performance payments that may exist between Amtrak and a host railroad under their operating agreement. It is unnecessary to require new schedules to account for contractual performance payments because any new schedule will be agreed to by Amtrak and the host railroad, and they may consider the implications of the schedule on future performance payments, and can work to adjust those payments to align with the new schedule.

A commenter stated that Amtrak must provide the same consideration to other host railroads that Amtrak grants itself on the Northeast Corridor (NEC) and adjust scheduled running times to accommodate infrastructure work as appropriate. The commenter stated that Amtrak regularly adjusts scheduled running times for its trains on the segments of the NEC that it maintains and dispatches but does not grant similar running-time adjustments to Amtrak trains traversing other host railroad territory on the NEC. Considerations for running time impact are more properly addressed in the operating agreement between the parties.

Lastly, a commenter stated that Amtrak must provide the percentage of recovery time per route segment. FRA sees limited value in this metric and it is not included in this final rule. Together, a host railroad and Amtrak can arrive at an efficient use of recovery time, which is an inherent element in any schedule. Once a schedule is completed, a host railroad will know how much recovery time exists on each line segment for each train and between which stations the recovery time has been placed.

### C. Train Delays

FRA recognizes that the customer OTP metric and standard should be accompanied by metrics that provide additional useful information about a train's performance. There are factors that contribute to poor OTP on a route

<sup>27</sup>The final rule does not dictate a specific process beyond that it is a non-binding dispute resolution process led by a neutral third-party. For example, the final rule does not address how the parties pay the fees and costs associated with such a process (although an equal share of such costs would be one reasonable approach), nor does the final rule address the number of arbitrators (although the associated costs for an arbitration in the final rule's section regarding economic impacts are based on a panel of three arbitrators).

<sup>28</sup>In a related comment, a commenter stated that Congress only intended for a limited number of Amtrak trains to be subject to an STB investigation. FRA is not aware of any language in section 207, or PRIIA, to support this interpretation.

that are not evident from measuring station arrival times alone. For example, an intercity passenger rail train dispatched by multiple hosts may experience delays on one host railroad but not on another host railroad. Because the customer OTP metric does not easily distinguish performance on individual host railroads (including Amtrak), this final rule also establishes metrics to measure train delays, station performance, and host running time, to provide more information about the customer experience, train performance on individual host railroads,<sup>29</sup> and the minutes and causes of delay.

#### 1. Train Delays

The NPRM proposed to define a train delays metric as the total minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third-party delays, for the host railroad territory

<sup>29</sup>To the customer, there may be no discernable difference as to whether they are on one host railroad's territory or another's while traveling on a route. However, most intercity passenger rail routes involve one or more host railroads. This final rule establishes metrics that measure route-level performance reflecting the customer experience and that measure aspects of performance of the individual host railroads within the route segments that they control.

within each route.<sup>30</sup> The NPRM further proposed to define the terms "Amtrak-responsible delays," "host-responsible delays," and "third party delays."

Many commenters stated that the train delays metric should report delays by delay category (*i.e.*, Amtrak-responsible delays, host-responsible delays, and third party delays). Several commenters also stated that the train delays metric should measure Amtrak delays as operator and as host railroad, in total and separately. Some commenters also stated that the final rule should report delays by root cause and that, in instances where Amtrak and the host railroads disagree on the causes of delay, FRA should publish both findings. In addition, several commenters stated that Amtrak and the host railroad should work together on a regular basis to identify and agree on the delay data and the delay causes.

In response to comments on the NPRM, the final rule includes a revised train delays metric. First, the train delays metric in the final rule reports disputed delay minutes, which are those

<sup>30</sup>In response to a comment seeking clarification, the train delays metric measures the minutes of delay for each individual host railroad territory within a route.

non-Amtrak host responsible delays disputed by the host railroad and not resolved by Amtrak. This additional information captures host-responsible delays disputed by the host railroad pursuant to its operating agreement with Amtrak and not resolved by Amtrak. It is important to note that FRA views the host railroad's National Railroad Passenger Corporation (NRPC) operations officer as a critically important position at the host railroad that demands direct access to the host railroad's chief operations officer and other senior leadership.<sup>31</sup> In addition to reporting the number of disputed delay minutes, the final rule also provides that the train delays metric is reported by delay code by: Total minutes of delay; Amtrak-responsible delays; Amtrak's host-responsible delays; Amtrak's host-responsible delays and Amtrak-responsible delays, combined; non-Amtrak host-responsible delays; and third party delays. The table below is a sample train delay metric chart to further illustrate the metric.

<sup>31</sup>If the host railroad does not have an NRPC officer, then another officer with the appropriate expertise and authority at the host railroad would fulfill this responsibility.

| Table: Sample Train Delay Metric Template                                 |     |                |                |                        |                                      |               |               |   |                 |               |   |  |
|---|-----|----------------|----------------|------------------------|--------------------------------------|---------------|---------------|---|-----------------|---------------|---|--|
| Period Reported: July 1 - September 30, 20XX                              |     |                |                |                        |                                      |               |               |   |                 |               |   |  |
| Note: The table below shows sample delay codes for illustrative purposes. |     |                |                |                        |                                      |               |               |   |                 |               |   |  |
| Fiscal Year   | Qtr | Route          | Train Number   | Segment Host Railroad  | Amtrak-Responsible Delays (non-host) |               |               | Amtrak-Responsible Delays (host)        |                 |               | Total Minutes of Amtrak-Responsible Delay |  |
|   |     |                |                |                        | Delay Code 1                         | Delay Code 2  | Delay Code 3  | Delay Code 4                            | Delay Code 5    | Delay Code 6  |   |  |
|   |     |                |                |                        | (total mins.)                        | (total mins.) | (total mins.) | (total mins.)                           | (total mins.)   | (total mins.) | (total mins.)                             |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| Fiscal Year   | Qtr | Route          | Train Number   | Segment Host Railroad  | Host-Responsible Delays (non-Amtrak) |               |               | Total Minutes of Host-Responsible Delay | Disputed Delays |               |   |  |
|   |     |                |                |                        | Delay Code 7                         | Delay Code 8  | Delay Code 9  |   |                 |               |   |  |
|   |     |                |                |                        | (total mins.)                        | (total mins.) | (total mins.) | (total mins.)                           | (total mins.)   |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| Fiscal Year   | Qtr | Route          | Train Number   | Segment Host Railroad  | Third Party Delay                    |               |               | Total Minutes of Third Party Delays     |                 |               |   |  |
|   |     |                |                |                        | Delay Code 7                         | Delay Code 8  | Delay Code 9  |   |                 |               |   |  |
|   |     |                |                |                        | (total mins.)                        | (total mins.) | (total mins.) | (total mins.)                           |                 |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |
| 20XX  | 4   | Sample Route A | Sample Train 1 | Sample Host Railroad B |                                      |               |               |   |                 |               |   |  |

One commenter stated that all departure and arrival times at each Amtrak station should be automated so that manual data collections by Amtrak conductors are minimized or eliminated. FRA agrees that Amtrak should use automated methods to collect data to the greatest extent practicable. In fact, Amtrak currently uses an automated electronic delay reporting system based primarily on a GPS-based system that automatically logs arrival, departure, and passing times at stations and other locations, and calculates the number of minutes of delay above pure run time within each segment of an Amtrak route. See *Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a)—Canadian National Railway Company*, STB Docket No. FD 35743 at 23 (Aug. 9, 2019).

Several commenters gave examples of types of delays that should not be designated as host-responsible delays, such as passenger delays to Amtrak trains while at a station, and other commenters expressed concern about Amtrak’s identification of root causes of delay. FRA understands that Amtrak and the host railroads may disagree on how to assign responsibility for any

particular delay. FRA also understands that some host railroads have processes and data systems in place through which they look closely at delay causes, and that other host railroads do not have such processes or systems and approach the issue in a different way. The train delays metric includes the reporting of disputed delays where Amtrak and the host railroad are unable to agree on a delay category pursuant to the existing process for delay attribution in the Amtrak-host railroad operating agreement.<sup>32</sup> The metric’s reporting of disputed delays ensures transparent reporting, while not prescribing an additional process for the parties to use to reach agreement or inserting FRA in the process to adjudicate disputes. FRA expects that Amtrak and the host railroad’s NRPC officer (or equivalent) will be in frequent communication about train delays.

Lastly, one commenter stated that in other FRA and Amtrak reports, delay metrics have not been published for segments that are less than 15 miles in

length. The commenter proposed that minutes of delay should be reported for each host railroad territory that exceeds 0.1 miles in length to ensure that delays on short segments (frequently near terminals) are also reflected, as these delays can have an outsized effect on customer OTP. FRA agrees. Amtrak collects delay data on all segments of a route regardless of segment length. The delay data for all segments are available to all host railroad partners via on-line access, and in some cases, automated data feeds. FRA’s quarterly reports will include delays for all segments of the route.

2. Station Performance

The NPRM proposed an average minutes late per late customer metric as the average minutes late that late customers arrive at their detraining stations, reported by route (excluding on-time customers that arrive within 15 minutes of their scheduled time). A commenter stated that this metric does not provide information about the location of problems causing the delay or how to fix them, and that it does not differentiate between the performance of individual host railroads. Another commenter proposed that this metric

<sup>32</sup> See *Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a)—Canadian National Railway Company*, STB Docket No. FD 35743 at 23–24 (Aug. 9, 2019) (Describing the delay cause identification process under an existing operating agreement).

should reflect average minutes late of all customers (not just the late customers).

In response to these comments, FRA is renaming the metric as a station performance metric, and revising it to measure the number of detraining passengers, the number of late passengers, and the average minutes late that late customers arrive at their detraining stations, reported by route, by train, and by station. The average

minutes late per late customer calculation excludes on-time customers that arrive not later than 15 minutes after their scheduled time and reflects the severity of the delayed train, as experienced by the customer. To clarify, a customer who arrives at their detraining station 16 minutes late would be included in this calculation and would be recorded as 16 minutes late. The revised metric expands upon the

proposed metric by providing information on all passengers, not just late passengers, by route, train, and station. It will offer FRA, hosts, and Amtrak customers more information on the location of performance problems and allow them to calculate the customer OTP metric.

The table below is a sample station performance metric chart to further illustrate the metric.

| Fiscal Year | Quarter | Route              | Train | Station Code | Station                                    | Number of Detraining Passengers | Number of Late Passengers | Avg. Min Late per Late Passenger |
|-------------|---------|--------------------|-------|--------------|--|---------------------------------|---------------------------|----------------------------------|
| 20XX        | 4       | Northeast Regional | 130   | WAS          | Washington, DC                             | -                               | -                         | -                                |
| 20XX        | 4       | Northeast Regional | 130   | NCR          | New Carrollton, MD                         | 713                             | 17                        | 17                               |
| 20XX        | 4       | Northeast Regional | 130   | BWI          | Baltimore-Washington International Airport | 1,842                           | 129                       | 16                               |
| 20XX        | 4       | Northeast Regional | 130   | BAL          | Baltimore, MD                              | 1,111                           | 45                        | 22                               |
| 20XX        | 4       | Northeast Regional | 130   | ABE          | Aberdeen, MD                               | 780                             | 44                        | 23                               |
| 20XX        | 4       | Northeast Regional | 130   | WIL          | Wilmington, DE                             | 1,470                           | 119                       | 19                               |
| 20XX        | 4       | Northeast Regional | 130   | PHL          | Philadelphia, PA                           | 4,444                           | 81                        | 32                               |
| 20XX        | 4       | Northeast Regional | 130   | TRE          | Trenton, NJ                                | 1,807                           | 168                       | 27                               |
| 20XX        | 4       | Northeast Regional | 130   | MET          | Metropark, NJ                              | 1,753                           | 154                       | 33                               |
| 20XX        | 4       | Northeast Regional | 130   | EWR          | Newark International Airport               | 1,740                           | 141                       | 29                               |
| 20XX        | 4       | Northeast Regional | 130   | NWK          | Newark, NJ                                 | 1,280                           | 101                       | 30                               |
| 20XX        | 4       | Northeast Regional | 130   | NYP          | New York, NY                               | 1,674                           | 198                       | 31                               |

### 3. Host Running Time

The final rule establishes a host running time metric to measure the average actual running time and the median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad segment set forth in the Amtrak schedule skeleton,<sup>33</sup> reported by route, by train, and by host railroad (excluding switching and terminal railroads). For a given host railroad, the scheduled running time is

defined as the scheduled duration of a train's travel on a host railroad, as set forth in the Amtrak schedule skeleton, and the actual running time is defined as the actual elapsed travel time of a train's travel on a host railroad, between the departure time at the first reporting point for a host railroad segment and the arrival time at the reporting point at the end of the host railroad segment. As delays may or may not cause a train to be late on its schedule, it is important to measure the performance of host railroads against the scheduled

operation. The host running time metric shows the performance of a host railroad against the time allowed for in the schedule and provides more insight into a host railroad's operating impact on OTP. This metric is an indication of which host railroads may be responsible for chronic performance below standard and which ones are not. The metric will not explain the cause of delays, nor will it assign responsibility for them.

The table below is a sample host running time metric chart to illustrate the metric.

<sup>33</sup> The final rule defines schedule skeleton to mean a schedule grid used by Amtrak and host railroads to communicate the public schedule of an Amtrak train and the schedule of operations of an Amtrak train on host railroads. Schedule skeletons

indicate, for each train, the: (a) Time of arrival at the point of entry to the rail lines of a host railroad, and time of departure from the point of exit from the rail lines of a host railroad; (b) dwell time at each station and servicing location on the rail lines

of a host railroad; and (c) pure running time, recovery time, and miscellaneous time within a segment.

| Fiscal Year | Quarter | Route           | Train | Host | Scheduled Running Time | Average Actual Running Time | Median Actual Running Time |
|-------------|---------|-----------------|-------|------|------------------------|-----------------------------|----------------------------|
| 20XX        | 4       | Capitol Limited | 29    | CSX  | 4:00                   | 4:05                        | 4:10                       |
| 20XX        | 4       | Capitol Limited | 29    | NS   | 3:00                   | 2:55                        | 3:00                       |
| 20XX        | 4       | Capitol Limited | 30    | NS   | 4:10                   | 4:10                        | 5:12                       |
| 20XX        | 4       | Capitol Limited | 30    | CSX  | 3:15                   | 5:15                        | 3:20                       |

Several commenters stated that the NPRM did not distinguish between host railroads on multi-host railroad routes, and that delays on one host railroad can be carried over to a subsequent host railroad. FRA believes the host running time metric specifically addresses this concern by showing train performance over a host railroad as compared to the train's scheduled running time, thereby distinguishing host railroads on multi-host railroad routes.

Lastly, two commenters also stated that a late, out-of-slot Amtrak train can itself cause additional delays on the receiving host railroad.<sup>34</sup> One commenter stated that the final rule should provide host railroads with an "out-of-slot delay tolerance" in calculating OTP that would account for Amtrak trains that arrive late to the host railroad and miss their scheduled slot. FRA disagrees. Amtrak trains that operate out-of-slot may pose operating issues in certain scheduled network areas where train operation distances are very short, dense, and tightly scheduled (*i.e.*, commuter train territory around major metropolitan areas). However, outside of that situation, effective communication between a host railroad and Amtrak regarding an impending delay is generally the key to mitigate the impact of an out-of-slot Amtrak train. Further, as stated elsewhere in this final rule, FRA believes the most meaningful measurement of OTP is based on the customer experience of actually arriving at their destination on time, not obscured by other tolerance or relief.

#### 4. Train Delays per 10,000 Train Miles

The NPRM proposed a train delays per 10,000 train miles metric as the

<sup>34</sup>FRA understands an out-of-slot train to be a train that arrives after the time the host railroad anticipated and planned for the train in its operating plan.

minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route. Several commenters stated that this metric is not informative as it does not provide data about the location of delays or how to fix them. One commenter stated that the metric can be helpful when comparing delays among different routes. The final rule includes this metric. Minutes of Amtrak-responsible delay and host-responsible delay have historically been normalized by 10,000 train miles to compare performance more easily on routes of varying length. This calculation is helpful when assessing an individual railroad's performance on a route that has more than one host.

#### D. Ridership Data

Many commenters stated that the final rule must require Amtrak to provide host railroads with sufficient data to calculate and monitor customer OTP. Without this information, these commenters stated, host railroads would not be able to verify the accuracy of customer OTP data, monitor their performance, identify improvement opportunities, or take corrective action. Commenters requested ridership data, such as: Close to real-time access to daily, station-specific Amtrak ridership data, including late arriving customers and the degree of lateness; daily numbers of detaining passengers for each Amtrak train on a station-by-station basis; four years of historical ridership data; the data underlying the customer OTP metric calculation; relevant route data on performance and Amtrak customer travel; and Amtrak's ridership projections.

During the NPRM's comment period, Amtrak agreed to provide some ridership data to the host railroads. See FRA-2019-0069-0295. In response,

some commenters stated that this data was not sufficient because it was aggregated and did not show station-specific performance or the number of passengers detaining at each station.

In consideration of these comments, the final rule includes a ridership data metric. The ridership data metric is the number of host railroads to whom Amtrak has provided ridership data, reported by host railroad and by month. In addition, the ridership data metric requires that, not later than December 16, 2020, Amtrak must provide host railroad-specific ridership data to each host railroad for the preceding 24 months. Also, on the 15th day of every month following December 16, 2020, Amtrak must provide host railroad-specific ridership data to each host railroad for the preceding month. The final rule defines the term ridership data to mean, in a machine-readable format: The total number of passengers, by train and by day; the station-specific number of detaining passengers, reported by host railroad whose railroad right-of-way serves the station, by train, and by day; and the station-specific number of on-time passengers reported by host railroad whose railroad right-of-way serves the station, by train, and by day.

A commenter stated that ridership data should be available to the public. FRA's quarterly reports will be publicly available. FRA also recognizes that the ridership data may include information that Amtrak views as confidential/competitively sensitive. Although this final rule requires Amtrak to provide ridership data to host railroads, Amtrak may impose reasonable conditions on the host railroad's use of these data. With that said, at a minimum, the host railroad should be able to use these data in connection with negotiation, review, adjustment, or analysis of relevant Amtrak train schedules, or in connection with an STB proceeding

under 49 U.S.C. 24308(f) involving the host railroad.

The tables below are samples of ridership data to illustrate further the

format and data that Amtrak will share with host railroads under this metric

(however, this supporting data will not be publicly available).

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| <b>Route</b> | <b>Train</b> | <b>Date</b> | <b>Total Ridership</b> |
|--------------|--------------|-------------|------------------------|
| Wolverine    | 350          | 9/1/20XX    | 124                    |
| Wolverine    | 350          | 9/2/20XX    | 128                    |
| Wolverine    | 350          | 9/3/20XX    | 250                    |
| Wolverine    | 350          | 9/4/20XX    | 409                    |
| Wolverine    | 350          | 9/5/20XX    | 258                    |
| Wolverine    | 350          | 9/6/20XX    | 373                    |
| Wolverine    | 350          | 9/7/20XX    | 236                    |
| Wolverine    | 350          | 9/8/20XX    | 237                    |
| Wolverine    | 350          | 9/9/20XX    | 246                    |
| Wolverine    | 350          | 9/10/20XX   | 497                    |
| Wolverine    | 350          | 9/11/20XX   | 345                    |
| Wolverine    | 350          | 9/12/20XX   | 194                    |
| Wolverine    | 350          | 9/13/20XX   | 100                    |
| Wolverine    | 350          | 9/14/20XX   | 205                    |
| Wolverine    | 350          | 9/15/20XX   | 360                    |
| Wolverine    | 350          | 9/16/20XX   | 106                    |
| Wolverine    | 350          | 9/17/20XX   | 10                     |
| Wolverine    | 350          | 9/18/20XX   | 348                    |
| Wolverine    | 350          | 9/19/20XX   | 464                    |
| Wolverine    | 350          | 9/20/20XX   | 283                    |
| Wolverine    | 350          | 9/21/20XX   | 405                    |
| Wolverine    | 350          | 9/22/20XX   | 241                    |
| Wolverine    | 350          | 9/23/20XX   | 330                    |
| Wolverine    | 350          | 9/24/20XX   | 243                    |
| Wolverine    | 350          | 9/25/20XX   | 266                    |
| Wolverine    | 350          | 9/26/20XX   | 396                    |
| Wolverine    | 350          | 9/27/20XX   | 349                    |
| Wolverine    | 350          | 9/28/20XX   | 280                    |
| Wolverine    | 350          | 9/29/20XX   | 102                    |
| Wolverine    | 350          | 9/30/20XX   | 164                    |

**Table: Station Ridership, Detraining and On-Time Passengers, by Train, by Host, by Day**  
**Period Reported: September 1 - 30, 20XX**

| Route     | Train | Host   | Station Code | Station                     | Date     | Total Detraining Passengers | Total On-Time Passengers |
|-----------|-------|--------|--------------|-----------------------------|----------|-----------------------------|--------------------------|
| Wolverine | 350   | NS     | CHI          | Chicago (Union Station), IL | 9/1/20XX | -                           | -                        |
| Wolverine | 350   | NS     | HMI          | Hammond-Whiting, IN         | 9/1/20XX | 8                           | 8                        |
| Wolverine | 350   | Amtrak | MCI          | Michigan City, IN           | 9/1/20XX | 9                           | 9                        |
| Wolverine | 350   | Amtrak | NBU          | New Buffalo, MI             | 9/1/20XX | 10                          | 10                       |
| Wolverine | 350   | Amtrak | NLS          | Niles, MI                   | 9/1/20XX | 39                          | 0                        |
| Wolverine | 350   | Amtrak | DOA          | Dowagiac, MI                | 9/1/20XX | 28                          | 28                       |
| Wolverine | 350   | MIDOT  | KAL          | Kalamazoo, MI               | 9/1/20XX | 15                          | 15                       |
| Wolverine | 350   | MIDOT  | BTL          | Battle Creek, MI            | 9/1/20XX | 24                          | 24                       |
| Wolverine | 350   | MIDOT  | JXN          | Jackson, MI                 | 9/1/20XX | 16                          | 0                        |
| Wolverine | 350   | MIDOT  | ARB          | Ann Arbor, MI               | 9/1/20XX | 30                          | 30                       |
| Wolverine | 350   | MIDOT  | DER          | Dearborn, MI                | 9/1/20XX | 53                          | 53                       |
| Wolverine | 350   | CN     | DET          | Detroit, MI                 | 9/1/20XX | 49                          | 49                       |
| Wolverine | 350   | CN     | ROY          | Royal Oak, MI               | 9/1/20XX | 54                          | 0                        |
| Wolverine | 350   | CN     | TRM          | Troy, MI                    | 9/1/20XX | 15                          | 15                       |
| Wolverine | 350   | CN     | PNT          | Pontiac, MI                 | 9/1/20XX | 26                          | 0                        |
| Wolverine | 350   | NS     | CHI          | Chicago (Union Station), IL | 9/2/20XX | -                           | -                        |
| Wolverine | 350   | NS     | HMI          | Hammond-Whiting, IN         | 9/2/20XX | 19                          | 19                       |
| Wolverine | 350   | Amtrak | MCI          | Michigan City, IN           | 9/2/20XX | 21                          | 21                       |
| Wolverine | 350   | Amtrak | NBU          | New Buffalo, MI             | 9/2/20XX | 17                          | 17                       |
| Wolverine | 350   | Amtrak | NLS          | Niles, MI                   | 9/2/20XX | 11                          | 0                        |
| Wolverine | 350   | Amtrak | DOA          | Dowagiac, MI                | 9/2/20XX | 10                          | 0                        |
| Wolverine | 350   | MIDOT  | KAL          | Kalamazoo, MI               | 9/2/20XX | 13                          | 13                       |
| Wolverine | 350   | MIDOT  | BTL          | Battle Creek, MI            | 9/2/20XX | 37                          | 0                        |
| Wolverine | 350   | MIDOT  | JXN          | Jackson, MI                 | 9/2/20XX | 33                          | 0                        |
| Wolverine | 350   | MIDOT  | ARB          | Ann Arbor, MI               | 9/2/20XX | 28                          | 28                       |
| Wolverine | 350   | MIDOT  | DER          | Dearborn, MI                | 9/2/20XX | 50                          | 50                       |
| Wolverine | 350   | CN     | DET          | Detroit, MI                 | 9/2/20XX | 51                          | 0                        |
| Wolverine | 350   | CN     | ROY          | Royal Oak, MI               | 9/2/20XX | 11                          | 11                       |
| Wolverine | 350   | CN     | TRM          | Troy, MI                    | 9/2/20XX | 34                          | 34                       |
| Wolverine | 350   | CN     | PNT          | Pontiac, MI                 | 9/2/20XX | 10                          | 10                       |

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A commenter stated that Amtrak must share the ridership data with its State-supported route partners. FRA encourages Amtrak to share ridership data with its State-supported route partners; however, a requirement to share such data is not directly related to this rulemaking. Amtrak’s provision of data to its State partners should be consistent with existing agreements. State entities that provide payments to Amtrak under PRIIA section 209 currently have access to some of Amtrak’s online data systems, which include train delay information and ridership information.

Some commenters stated that the host railroad’s current lack of access to station-specific ridership data limited their ability to comment on the NPRM, and that the customer OTP metric would not provide host railroads adequate notice. As discussed, above, any OTP standard adopted in this final rule must be relevant to the actual passenger experience; the most relevant of which is whether a passenger arrived at the destination on time. As noted previously, FRA finds that, aside from predictable and broadly understood seasonal trends, the percentage of a train’s detraining passengers at stations

on a route is stable for purposes of calculating customer OTP. In addition, host railroads have received some additional ridership data and will receive more ridership data under this final rule.

A commenter stated that Amtrak should describe how it collects the ridership data and its passenger-counting methodology. As stated, Amtrak measures detraining passengers by the number of passengers actually traveling on the train, as determined by conductor ticket collections via electronic ticket scanning for a specific arrival station. Passengers who have

reserved a seat, but elect not to travel, are not reflected in passenger counts.

Lastly, a commenter stated that host railroads should be able to audit the ridership data provided by Amtrak. FRA determined the ridership data required by this final rule will allow a host railroad to calculate the customer OTP independently. In addition, Amtrak's reported ridership data is subject to verification by Amtrak's Office of the Inspector General.

#### IV. FRA Quarterly Reporting

Section 207(b) requires FRA to publish a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak's cost recovery, ridership, on-time performance and minutes of delay, causes of delay, on-board services, stations, facilities, equipment, and other services. FRA's first quarterly report on intercity passenger train performance will cover the first full calendar quarter 3 months after the date of publication of the final rule in the **Federal Register**. For example, if the final rule is published on December 10, 2020, three months after that date would be March 10, 2021, and the first full calendar quarter after that would run from April 1, 2021 to June 30, 2021.

The first quarterly report will include data on the customer service metrics, the financial metrics, the public benefits metrics, the certified schedule metric, the ridership data metric, the train delays metric, and the train delays per 10,000 train miles metric, but will not include data on the customer OTP metric, the station performance metric, or the host running time metric. Beginning with the second quarterly report, FRA will report data on all of the final rule's metrics, unless a train schedule is a disputed schedule on or before May 17, 2021. In that circumstance, FRA will report customer OTP metric data for that particular train beginning with the second full calendar quarter after May 17, 2021. In addition, in that circumstance, FRA will also not report data for the station performance metric or the host running time metric in connection with the host railroad(s) party to the disputed schedule. Unless otherwise specified, FRA will update metrics on a quarterly basis.

#### V. Section-by-Section Analysis of Comments and Revisions From the NPRM

This section responds to public comments and identifies any changes made from the provisions as proposed in the NPRM. Provisions that received no comment, and are otherwise being

finalized as proposed, are not discussed again here. To review the complete section-by-section analysis in the NPRM, see 85 FR 20466.

##### Section 273.1 Purpose

This section provides that the final rule establishes metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations.

A commenter sought clarity regarding non-Amtrak operators of intercity passenger rail trains and the metrics (and under what circumstances the STB may initiate an investigation of substandard performance). FRA developed the metrics for Amtrak intercity passenger train operations, which is consistent with section 207's many references to Amtrak, including: The development of the metrics; the entities to consult regarding the development of the metrics; specific metrics; FRA's access to information; and FRA's quarterly reports. This final rule does not apply to non-Amtrak operators of intercity passenger rail trains. Lastly, investigations of substandard performance under 49 U.S.C. 24308(f) are conducted by STB, and as such, STB alone determines when to initiate an investigation.

A commenter stated that FRA should put this rulemaking on hold and, together with the Federal Transit Administration and STB, convene a seminar with freight and passenger stakeholders to address comprehensively issues relating to the shared use of rail right-of-way. FRA appreciates the comment, and while such a meeting is outside the scope of this rulemaking, FRA is always working to advance rail policy and development, both on its own and in partnership with other federal agencies.

A commenter stated that the Metrics and Standards should not create a statutory preference for Amtrak over commuter operations or intercity passenger service operated by non-Amtrak carriers. Amtrak does have certain statutory rights regarding the use of facilities and preference over freight transportation in using a rail line, among other things. See, e.g., 49 U.S.C. 24308. The Metrics and Standards do not create any additional preference in law for Amtrak. Another commenter stated that FRA should identify actions that exhibit preference in the operating environment to facilitate identification of those actions that do not exhibit preference and should be the subject of enforcement. As an initial matter, STB is responsible for investigating substandard train performance under PRIIA section 213. Further, FRA

believes the metrics in this final rule provide sufficient information to assist in such an STB investigation.

A commenter also proposed that FRA research the development of an "assignable tax credit" for passenger and highway competitive intermodal freight routes to generate funding for rail infrastructure. FRA appreciates the comment; however, it is outside the scope of this rulemaking.

Lastly, several commenters expressed support for additional rail infrastructure funding. The metrics in this final rule may assist decision makers in identifying rail projects.

##### Section 273.3 Definitions

This final rule includes several new and revised definitions, which are described here.

This section defines the term "actual running time" to mean the actual elapsed travel time of a train's travel on a host railroad, between the departure time at the first reporting point for a host railroad segment and the arrival time at the reporting point at the end of the host railroad segment. This definition is new to the final rule and supports the host running time metric.

This section defines the term "adjusted operating expenses" to mean Amtrak's operating expenses adjusted to exclude certain Amtrak expenses that are not considered core to operating the business. The major exclusions are depreciation, capital project related expenditures not eligible for capitalization, non-cash portion of pension and post-retirement benefits, and Amtrak's Office of Inspector General expenses (which are separately appropriated). Adjusted operating expenses do not include any operating expenses for State-supported routes that are paid for separately by States. This definition is a revision of the definition proposed in the NPRM to clarify its intent in response to commenters.

This section defines the term "certified schedule" to mean a published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer on-time performance metric and standard in § 273.5(a)(1) and (2). If a published train schedule is reported as a certified schedule under § 273.5(c)(1), then it cannot later be designated as an uncertified schedule. This definition is new to the final rule in support of certified schedule metric.

This section defines the term "disputed schedule" to mean a published train schedule for which a specific change is sought: (i) That is the only subject of a non-binding dispute resolution process led by a neutral

third-party and involving Amtrak and one or more host railroads; (ii) that is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by one or more host railroads and Amtrak has not consented to participate in the process within 30 calendar days; or (iii) that is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by Amtrak and the host railroad has not consented to participate in the process within 30 calendar days. The written decision resulting from a non-binding dispute resolution process is admissible in Surface Transportation Board investigations under 49 U.S.C. 24308(f). If a published train schedule is reported as a disputed schedule under § 273.5(c)(1), then it remains a disputed schedule until reported as a certified schedule. This definition is new to the final rule and supports the certified schedule metric.

This section defines the term “host railroad” to mean a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment. Amtrak is a host railroad of Amtrak trains and other trains operating over an Amtrak owned or controlled railroad line segment. For purposes of the certified schedule metric under § 273.5(c), Amtrak is not a host railroad. This definition is new to the final rule and supports several new and revised metrics.

This section defines the term “ridership data” to mean, in a machine-readable format: The total number of passengers, by train and by day; the station-specific number of detraining passengers, reported by host railroad whose railroad right-of-way serves the station, by train, and by day; and the station-specific number of on-time passengers reported by host railroad whose railroad right-of-way serves the station, by train, and by day. This definition is new to the final rule and supports the ridership data metric.

This section defines the term “scheduled running time” to mean the scheduled duration of a train’s travel on a host railroad, as set forth in the Amtrak schedule skeleton. This definition is new to the final rule and supports the host running time metric.

This section defines the term “schedule skeleton” to mean a schedule grid used by Amtrak and host railroads to communicate the public schedule of an Amtrak train and the schedule of operations of an Amtrak train on host railroads. This definition is new to the final rule and supports the host running time metric.

This section defines the term “uncertified schedule” to mean a published train schedule that has not been reported as a certified schedule or a disputed schedule under § 273.5(c)(1). This definition is new to the final rule and supports the certified schedule metric.

#### *Section 273.5 On-Time Performance and Train Delays*

Paragraph (a)(1) of this section provides that the customer on-time performance metric is the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.

Paragraph (a)(2) of this section provides a minimum standard for customer on-time performance of 80 percent for any 2 consecutive calendar quarters. This standard is consistent with the statutory requirement in 49 U.S.C. 24308(f)(1).

Paragraph (a)(3)(i) of this section provides that, except as provided in paragraph (a)(3)(ii), the customer on-time performance standard shall apply to a train beginning on the first full calendar quarter after May 17, 2021.

Paragraph (a)(3)(ii) of this section provides that, if a train schedule is a disputed schedule on or before May 17, 2021, then the customer on-time performance standard for the disputed schedule shall apply beginning on the second full calendar quarter after May 17, 2021.

Paragraph (b) of this section provides that the ridership data metric is the number of host railroads to whom Amtrak has provided ridership data consistent with this paragraph (b), reported by host railroad and by month. Not later than December 16, 2020, Amtrak must provide host railroad-specific ridership data to each host railroad for the preceding 24 months. On the 15th day of every month following December 16, 2020, Amtrak must provide host railroad-specific ridership data to each host railroad for the preceding month.

Paragraph (c)(1) of this section provides that the certified schedule metric is the number of certified schedules, uncertified schedules, and disputed schedules, reported by train, by route, and by host railroad (excluding switching and terminal railroads), identified in a notice to the Federal Railroad Administrator by Amtrak monthly, for the first six months following publication of the final rule, and then annually on the anniversary of the final rule’s publication on November 16, 2020.

Paragraph (c)(2) of this section provides that, if a train schedule is reported as an uncertified schedule under paragraph (c)(1)(vi), (vii), or (viii), then Amtrak and the host railroad must transmit a joint letter and status report on the first of each month following the report, signed by their respective chief executive officers to each U.S. Senator and U.S. Representative whose district is served by the train, the Chairman and Ranking Member of the Committee on Transportation and Infrastructure of the House of Representatives, the Chairman and Ranking Member of the Committee on Commerce, Science, and Transportation of the Senate, the Chairman and Ranking Member of the Committee on Appropriations of the House of Representatives, the Chairman and Ranking Member of the Committee on Appropriations of the Senate, the Secretary of Transportation, and the Chairman of the Surface Transportation Board, which states: (i) The Amtrak train schedule(s) at issue; (ii) the specific components of the train schedule(s) on which Amtrak and host railroad cannot reach agreement; (iii) Amtrak’s position regarding the disagreed upon components of the train schedule(s); (iv) host railroad’s position regarding the disagreed upon components of the train schedule(s); and (v) Amtrak and the host railroad’s plan and expectation date to resolve the disagreement(s). The requirement to transmit this joint letter and status report ends for the train schedule at issue when the uncertified schedule becomes a certified schedule.

Paragraph (c)(3) of this section provides that, when conditions have changed that impact a certified schedule, Amtrak or a host railroad may seek to modify the certified schedule. The customer on-time performance standard in subsection (a)(2) remains in effect during the schedule negotiation process.

Paragraph (d) of this section provides that the train delays metric is the minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third party delays, for the host railroad territory within each route. The train delays metric is reported by delay code by: Total minutes of delay; Amtrak-responsible delays; Amtrak’s host-responsible delays; Amtrak’s host responsible delays and Amtrak-responsible delays, combined; non-Amtrak host-responsible delays; and third party delays. The train delays metric is also reported by the number of non-Amtrak host-responsible delay minutes disputed by host railroad and not resolved by Amtrak.

Paragraph (e) of this section provides that the train delays per 10,000 train miles metric is the minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route. Paragraph (f) of this section provides that the station performance metric is the number of detraining passengers, the number of late passengers, and the average minutes late that late customers arrive at their detraining stations, reported by route, by train, and by station. The average minutes late per late customer calculation excludes on-time customers that arrive within 15 minutes of their scheduled time. A customer who arrives at their detraining station 16 minutes late would be included in this calculation and would be recorded as 16 minutes late.

Paragraph (g) of this section provides that the host running time metric is the average actual running time and the median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad set forth in the Amtrak schedule skeleton, reported by route, by train, and by host railroad (excluding switching and terminal railroads).

#### Section 273.7 Customer Service

Paragraph (a) of this section provides that the customer satisfaction metric is the percent of respondents to Amtrak's customer satisfaction survey who provided a score of 70 percent or greater for their "overall satisfaction" on a 100 point scale for their most recent trip, by route, shown both adjusted for performance and unadjusted. Amtrak's customer satisfaction survey is a market-research survey that measures more than fifty specific service attributes that cover the entire customer journey. It should be noted that Amtrak can change the customer satisfaction survey, and such changes could in turn impact the information reported for the customer service metrics. However, in the event Amtrak changes the survey, the new survey would continue to seek information in connection with the customer satisfaction metrics required in this final rule (a survey change would just modify how the survey solicits this information). FRA will publish information about Amtrak's survey (including the survey questions and methodology) annually as an appendix to the quarterly report.

Several commenters provided feedback on Amtrak's customer satisfaction survey, including stating that the survey: Does not address accessibility concerns for disabled or

elderly passengers (e.g., at the boarding station, on board the train, and at the destination station); and does not address ticket-purchase methods (e.g., phone, in-person agent, or website). First, as discussed above, Amtrak may change the customer satisfaction survey in the future. FRA understands that Amtrak is evaluating these suggestions and is committed to working with stakeholders to address these comments in future survey updates and/or by regularly providing related information on accessibility for disabled and elderly passengers that it collects already. A commenter also stated that Amtrak should offer additional contact methods for passengers to complete the customer satisfaction survey, such as postal mail and telephone. However, most Americans have access to the internet and there would be a substantial additional cost to providing surveys by postal mail or telephone with a corresponding limited benefit to the statistical sample of respondents.<sup>35</sup>

A commenter stated that the survey should directly ask whether the customer was satisfied with the train's on-time performance. The Amtrak CSI Survey, which FRA included in docket number FRA-2019-0069-0004 for reference, does have a question asking respondents to rate their satisfaction with the reliability or on-time performance of the train on which they traveled. A commenter stated that the survey should include questions about customer/passenger interactions with Amtrak customer relations to evaluate this customer-facing service. FRA understands that Amtrak is evaluating this suggestion.

A commenter stated that a net promoter score or a median survey response should be used instead of the customer satisfaction survey. As noted, Amtrak may change the customer satisfaction survey. With that said, FRA considered several approaches to measuring customer service, including the net promoter score, but determined that the customer satisfaction survey offers an accurate assessment of the customer experience. Specifically, the customer satisfaction metric measures the percentage of respondents who provided a score of 70 percent or greater for their overall satisfaction. The use of 70 percent as the threshold is based on Amtrak's analysis of the relationship between customer satisfaction and the likelihood of future travel. As reported by Amtrak, the historical data suggests

that customers who rate their overall satisfaction as 70 percent or greater are likely to travel on Amtrak again. In addition, Amtrak reports it adheres to industry best practices and solicits feedback from a random selection of riders, with a sample size of survey responses far greater than industry minimum standards. Lastly, FRA further understands that Amtrak distributes email surveys from a centralized database to ensure that employees are unable to provide surveys to targeted customers.

Amtrak adjusts overall satisfaction score performance by removing passengers who arrive at their destinations on State-supported and long-distance routes excessively late (30 minutes late for State-supported routes and 120 minutes for long-distance routes) from the system-wide calculation. Typically, on these routes, many of the major causes of passenger lateness are beyond Amtrak's control. By removing these customer responses from the calculations, most of the impact from these significantly late customers (whose responses may be overly influenced by the train's late arrival) is removed. Both the performance adjusted and non-performance adjusted overall satisfaction scores will be reported under this final rule to reflect the responses of all Amtrak customers.

A commenter stated that there should be a performance adjusted customer service metric and a separate non-performance adjusted customer service metric. FRA revised the final rule to clearly state that the customer satisfaction metric will be shown both adjusted for performance and not adjusted for performance. A commenter stated that the customer satisfaction metric should also be adjusted to show customer satisfaction surveys in which the excessive delays are Amtrak-related. FRA does not believe this would provide useful information. The intent of the customer satisfaction metric is to understand the experience of customers and measure "overall satisfaction," not to determine the impacts of delay responsibility. Information on minutes of delay by category, responsible party, route and host territory, including Amtrak-responsible delays, are reported by other metrics in this final rule.

A commenter stated that the definition of excessively late should be changed to match the definition of late used in the customer OTP metric. However, aligning these two definitions would render the customer service metric less meaningful by significantly decreasing the number of survey responses included in the performance

<sup>35</sup>In 2016, the U.S. Census reported that eighty-one percent of American households had a broadband internet subscription. See <https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-39.pdf>.

adjusted customer service score (on some routes, more than 70 percent of current customers would be excluded). FRA determined reporting both performance adjusted and non-performance adjusted customer service scores best provides a full and accurate view of customer satisfaction while also accounting for the impact of poor performance on customers' scores.

Several commenters stated that there should be additional customer service metrics with quantitative measurements not based on a survey score regarding: Mishandled bags; denied boardings; consumer complaints; riders needing assistance; riders using mobility-enhancing devices; and riders who paid for their tickets in cash. As a counterpoint, one commenter noted that including customer service metrics with quantitative measurements may require significant time and cost to build specific monitoring systems. FRA agrees that the cost to implement these metrics is unduly burdensome in cases where Amtrak does not already collect the data. In addition, FRA did not include a mishandled bags metric in the final rule because, unlike air and bus travel, Amtrak reported that the majority of intercity rail passengers handle their own bags. FRA believes the additional cost to collect this information is not warranted as Amtrak does not already collect the data on a routine basis. FRA did not include a denied boardings metric because the final rule's missed connections metric offers a broader measurement of customers who do not travel on their originally ticketed itinerary. FRA did not include a consumer complaints metric in the final rule because the customer satisfaction survey offers a more comprehensive quantitative measurement of customer satisfaction for the overall trip, as well as specific attributes of the experience, as compared to the number of complaints received. FRA did not include metrics about riders needing assistance, riders using mobility-enhancing devices, and riders who paid for their tickets in cash because, while these metrics may provide information about the customers Amtrak serves, these metrics do not measure the quality of service provided.

Finally, a commenter stated that all customer service metrics should be reported on a quarterly basis. FRA agrees and the final rule establishes quarterly reporting of all customer service metrics.

Paragraph (b) of this section provides that the Amtrak personnel metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of Amtrak

personnel on their most recent trip, by route.

Paragraph (c) of this section provides that the information given metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of information provided by Amtrak on their most recent trip, by route.

Paragraph (d) of this section provides that the on-board comfort metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of on-board comfort on their most recent trip, by route.

Paragraph (e) of this section provides that the on-board cleanliness metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of on-board cleanliness on their most recent trip, by route.

Paragraph (f) of this section provides that the on-board food service metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board food service on their most recent trip, by route.

#### *Section 273.9 Financial*

Paragraph (a) of this section provides that the cost recovery metric is Amtrak's adjusted operating revenue divided by Amtrak's adjusted operating expense. This metric is reported at the corporate level/system-wide and for each route and is reported in constant dollars of the reporting year based on the Office of Management and Budget's gross domestic product chain deflator.

A commenter stated that the definition of the cost recovery metric presumes that Amtrak is responsible for all operating expenses over State-supported routes, which does not accurately represent the cost of service delivery routes where States cover the cost of some of the component services. FRA acknowledges that some States have separate arrangements to pay for operating expenses that are not reflected in Amtrak's adjusted operating expenses. Section 273.3 of the final rule includes a revised definition of the term "adjusted operating expenses" to clarify that the cost recovery metric does not include operating expenses for State-supported routes paid for separately by States.

Paragraph (b) of this section provides that the avoidable operating costs covered by passenger revenue metric is the percent of avoidable operating costs divided by passenger revenue for each route, shown with and without State operating payments. Each route's operating costs can be separated into three components: Frequency variable costs, route variable costs, and system/

fixed costs. Avoidable operating costs are the sum of frequency and route variable costs. Frequency variable costs are costs that vary based on short-term decisions to adjust a route's schedule or frequency, not as a result of long-term decisions to add or eliminate a service permanently. Frequency variable costs typically occur directly and immediately with the service change. Frequency variable costs may include train and engine crew labor, on-board service labor, fuel and power, commissary provisions, specific yard operations, connecting motor coaches, and station staffing expenses.

Route variable costs are costs that vary based on long-term decisions to add or eliminate service and have a broader impact. Route variable costs typically require a separate management action to achieve a change in cost. Route variable costs may include car and locomotive maintenance turnaround, on-board passenger technology, commissary operations, direct advertising, specific reservations and call centers costs, station facility operations, station technology, maintenance of way, block and tower operations, regional/local police, and insurance expenses. These costs do not vary with individual train frequencies but may vary if service is increased or reduced on a larger scale. For example, costs for food and beverages stocked on a train would be avoidable if a single train were cancelled, but the commissary supporting the route would continue operations if other trains remained. Route variable costs attempt to capture the potential costs that would vary if the entire route were suspended or eliminated and the commissary supporting it no longer operated. Over time, or with a large enough expansion or reduction in service, the shared costs would be expected to change.

System/fixed costs are not likely to vary with smaller service changes and would not change if a single route were added or eliminated. System/fixed costs may include marketing and distribution, national police, environmental and safety, and general and administrative expenses.

Adding frequency variable and route variable costs to calculate avoidable operating costs does not make any distinction between short- and long-term avoidable costs, but results in a single avoidable cost figure for a single route at a future time. This approach represents a maximum saving, or cost avoided, and may be lower depending on the specific context of each individual route. The results of this approach are limited to the costs avoided if a single service is

permanently eliminated. If multiple routes are eliminated, it is likely that some fixed costs will also decrease. Corporate-wide costs such as general and administrative expenses may shrink to reflect the size of the smaller business. In the event an actual elimination in service is contemplated, a detailed planning analysis would be required, considering the location of the route and the facilities that serve it, to determine the cost impacts.

The metric reflects avoidable operating costs as a percentage of passenger revenue, which, when shown at the route level, provides information about cost recovery, or the ability of the route to cover avoidable operating costs with revenue generated. States or other sponsoring entities also provide operating payments to Amtrak to provide service for trains on State-supported routes, which is classified as passenger revenue. To understand better the impact of these State payments, the metric avoidable operating costs covered by passenger revenue is calculated in two ways: First, as a percent dividing avoidable operating costs by passenger revenue, and second, as a percent dividing avoidable operating costs by passenger revenue without State operating payments.

One commenter stated general support for segregating State operating payments from passenger revenue for this metric (and for the fully allocated core operating costs covered by the passenger revenue metric). Another commenter stated that the avoidable operating costs and the fully allocated core operating costs covered by the passenger revenue metric should be reported by the specific sub-categories listed in the definition of passenger revenue. FRA disagrees. The final rule establishes metrics that report passenger revenue as a percent of avoidable costs and, separately, as a percent of fully allocated costs per route. Consistent with section 207, these metrics do not show the actual amount of revenue generated, but rather set forth a ratio of revenue to cost. In addition, the purpose of representing passenger revenue with and without State operating payments is to understand better the impact of State payments on route financial performance.

A commenter stated that the proposed avoidable cost metric is deficient and that the final rule should instead include a short-term avoidable cost metric, a long-term avoidable cost metric, and a long-term average infrastructure cost metric. FRA believes the avoidable cost metric is appropriate. Section 207 requires a metric that measures “the percentage of avoidable

and fully allocated operating costs covered by passenger revenues on each route . . . .” The statute does not specify the time horizon of the metric or differentiate between short-term and long-term avoidable costs. The commenter also asserted that the proposed definition of avoidable costs includes some costs that may not be fully avoidable for a single route because they are shared among multiple routes. Although some costs are shared, FRA believes that these costs are avoidable, as over time they will scale to the size of the service provided. The commenter also proposed definitions of long-term avoidable costs and long-term average infrastructure costs that equate them with above-the-rail costs and below-the-rail costs, respectively. However, these proposed definitions do not align with the way Amtrak is organized as a business or the way that it allocates costs across its service lines and routes. In addition, the commenter proposed that the long-term avoidable cost definition include off-book equipment interest and depreciation expenses, but as equipment is shared across Amtrak’s network, these costs likely are not avoidable because equipment may be used on other routes.

Paragraph (c) of this section provides that the fully allocated core operating costs covered by the passenger revenue metric is the percent of fully allocated core operating costs divided by passenger revenue for each route, shown with and without State operating payments. Fully allocated core operating costs include the fully-loaded share of overhead-type costs that pertain to more than one route or to the company as a whole. Costs are limited to “core” expenses (*i.e.*, related to the provision of intercity passenger trains) to match expenses with passenger revenue. Several commenters stated general support for this metric, especially when reported alongside the avoidable operating costs covered by the passenger revenue metric.

Paragraph (d) of this section provides that the average ridership metric is the number of passenger-miles divided by train-miles for each route. This metric measures the average number of passengers on each of the route’s trains. One commenter proposed that FRA also report an additional ridership metric to reflect total passengers by route alongside the passenger-miles per train-miles metric for convenience in comparing ridership data in FRA’s quarterly report. FRA agrees, and the final rule includes such an additional metric in paragraph (e).

Paragraph (e) of this section provides that the total ridership metric is the total

number of passengers on Amtrak trains, reported by route.

The definitions of terms in section 273.9 are only intended to apply to this final rule and the Amtrak financial reporting herein.

#### *Section 273.11 Public Benefits*

Paragraph (a) of this section provides that the connectivity metric is the percent of passengers connecting to and from other Amtrak routes, updated on an annual basis. The metric reports passengers making connections between the Northeast Corridor, State-supported, and long distances routes, or any combination thereof. Under this metric, a connection means a passenger arriving on one train and connecting to a departing train within 23 hours. Section 207 of PRIIA specifies that the metrics shall include “measures of connectivity with other routes in all regions currently receiving Amtrak service” for long distance routes. The connectivity metric provides connectivity information for the entire Amtrak network, including by route for long distance routes. One commenter expressed support for the connectivity metric, stating that it would give States more granular data with which to adjust schedules and build more regional-scale service.

Paragraph (b) of this section provides that the missed connections metric is the percent of passengers connecting to/ from other Amtrak routes who missed connections due to a late arrival from another Amtrak train, reported by route and updated on an annual basis. A missed connection, particularly in a location with only one daily train, can result in a significant impact to the customer. A commenter stated that FRA should revise the missed connections metric to include the financial impact of missed connections and to report the results more frequently than once per year. FRA does not have the economic data to quantify the total financial impact of missed connections, and acquiring such data and methodologies would be challenging and burdensome, as FRA does not believe these data are readily available.

Paragraph (c) of this section provides that the community access metric is the percent of Amtrak passenger-trips to and from not well-served communities, updated on an annual basis. While one commenter expressed general support for this metric, another commenter stated that the community access metric does not adequately measure transportation needs because it does not identify communities that do not have access to intercity passenger rail or airports, nor does it address the convenience of train arrival times at

rural stations. However, section 207(a) requires “measures of . . . the transportation needs of communities and populations that are not well-served by other forms of intercity transportation.” The final rule’s definition of not well-served communities identifies rural communities that are not well-served by other intercity transportation modes (air and bus), but that do have regularly scheduled intercity passenger rail service, using distance from airports or station stops as a proxy for access. FRA recognizes the importance of understanding how to improve intercity passenger rail service to these communities, and views the current metric as an initial step in identifying the communities and analyzing their current use of Amtrak service. In addition, Amtrak is required to consider the transportation needs of not well-served communities in their route and service planning decisions. *Fixing America’s Surface Transportation Act*, Public Law 114–94, 11206 (2015); 49 U.S.C. 24101, note.

Paragraph (d) of this section provides that the service availability metric is the total number of daily Amtrak trains per 100,000 residents in a metropolitan statistical area (MSA) for each of the top 100 MSAs in the United States, shown in total and adjusted for time of day, updated on an annual basis. Many MSAs are served regularly by Amtrak trains, but during inconvenient travel times. The metric, as adjusted for time of day, shows only those trains that arrive or depart between 5:00 a.m. and 11:00 p.m.

A commenter stated that there should be two economic and station development metrics to measure the annual total economic value to communities served by the intercity passenger rail service, accounting for factors such as labor, value-added benefits, and increased tax revenue, and to report that value as a ratio to the investment made in a route. The commenter also stated that these metrics should be based on an economic model developed by the Rail Passengers Association for such a purpose. FRA declines to include these metrics in this final rule. The final rule addresses service quality metrics that measure the actual provision of rail service. Although important, economic and station development metrics are indirectly related to intercity passenger rail service. In addition, measures of economic and development activity often require detailed information on local market conditions, and as such, are not well-suited for national metrics and may rely too heavily on general

assumptions. Finally, these metrics would impose a significant burden on FRA to identify the appropriate data, obtain and track the detailed economic data, as well as to develop modeling capabilities.

A commenter stated that there should be an overlapping corridors metric to measure the number and economic value of passenger trips dependent upon intermediate connections on long-distance corridors. The commenter stated that the data for this metric could be gathered using the commenter’s proposed economic and station development metric, with underlying community economic data updated annually, as well as the connections data from the final rule’s missed connections metric. FRA declines to include this metric in the final rule. The missed connections metric is the percent of passengers connecting to/ from other Amtrak routes who missed connections due to a late arrival from another Amtrak train, reported by route and updated on an annual basis. The reported data from the missed connections metric would not comprehensively identify intermediate connections on long-distance corridors. FRA selected metrics to measure the public benefit of intercity rail across all services and routes for the entire nation; this commenter’s proposed metric would focus exclusively on long-distance routes. In addition, and as noted above, the proposed economic and station development metric would impose a significant burden on FRA to identify the appropriate data, obtain and track the detailed economic data, as well as to develop modeling capabilities.

A commenter stated that there should be a normalized route performance metric, reported quarterly, which would measure route performance for all routes on a per-passenger-mile basis and on a passengers-per-departure from each originating station basis. FRA declines to include this metric in the final rule and believes presenting the route-level information without any normalization is the most straight-forward method. The final rule does include a route-level ridership metric (the number of passenger miles divided by train-miles), which is consistent with section 207. Parties seeking additional information about Amtrak’s operating statistics may also view Amtrak’s monthly performance report, which includes seat miles and passenger miles by route.

Several commenters expressed general support for metrics that would measure the public benefit of passenger rail service. One commenter stated that the public benefits metrics listed in

paragraphs (a) through (d) should be reported by route and updated quarterly, on a rolling previous 12-month basis. FRA recognizes the value of providing data more frequently to measure performance and to identify trends; however, the metrics listed in paragraphs (a) through (d) require significant effort to compile and calculate, and as such, the final rule provides that these metrics will be updated annually.

## VI. Regulatory Impact and Notices

### A. Executive Order (E.O.) 12866, E.O. 13771, and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action within the meaning of Executive Order 12866 and DOT regulatory policies and procedures.<sup>36</sup> Although the economic effects of this regulatory action would not exceed the \$100 million annual threshold defined by Executive Order 12866, the rule is significant because of the substantial public interest in this rulemaking. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ‘major rule’, as defined by 5 U.S.C. 804(2). Additionally, this final rule is considered an E.O. 13771 regulatory action. FRA has provided an assessment of the costs and cost savings expected to result from implementation of this final rule.

The Metrics and Standards measure the performance and service quality of intercity passenger train operations as required by section 207 of PRIIA. The Metrics and Standards are generally organized into four categories: On-time performance and train delays, customer service, financial, and public benefits.

Other than the OTP and train delays metrics, the Metrics and Standards in this final rule will not pose an additional burden on Amtrak or host railroads. Data such as customer satisfaction and financial information are currently collected by Amtrak and submitted to FRA on a quarterly basis. Other data, such as train delays and on-time performance, are already shared between Amtrak, host railroads, and State partners under their various agreements, and the parties have established protocols for data collection, distribution, and reconciliation. While the final rule establishes a new data-sharing requirement to assist with calculating the customer OTP metric (specifically, ridership data), this information is already collected by

<sup>36</sup> See 5 CFR part 5.

Amtrak. FRA expects that Amtrak will develop additional procedures for sharing the data, but once established, this data sharing will not burden Amtrak's routine operations. Lastly, as a result of the final rule's customer OTP metric and certified schedule metric, Amtrak and host railroads may adjust Amtrak's published train schedules to align them with the customer OTP metric. As part of that effort, Amtrak and host railroads may meet to discuss and agree upon schedule modifications to the published train schedules.

FRA received several comments addressing the NPRM's cost estimates. A commenter stated that the NPRM did not consider the impacts on commerce and a host railroad's operations and network fluidity. A commenter stated that a customer OTP metric enlarges an Amtrak train's dispatch footprint (*i.e.*, it would cause the Amtrak train to take up additional capacity on the rail line) by redistributing recovery time across intermediate stations, which threatens overall network fluidity, among other things. A commenter also stated that FRA did not consider payments made under the Amtrak-host railroad operating agreement (stating that the host railroad would receive less performance payments under the existing operating agreement).

With respect to operational impacts, as discussed above, delays waiting for time at intermediate stations can be foreclosed by an accurate schedule, and adjusting train schedules to align with the customer OTP metric does not mean that recovery time will be added for each station. In the case of capacity impacts great enough to warrant schedule change, reductions of time to remove these waits would be in both parties' interests. In addition, with respect to impacts on commerce

specifically, Congress has accounted for such impacts by providing that STB's enforcement of the preference requirement not "materially lessen the quality of freight transportation provided to shippers." 49 U.S.C. 24308(c).

With respect to operating agreement payments, as noted previously, FRA is not a party to these agreements, nor does FRA have knowledge of their details. More importantly, this final rule does not require a change to the performance payment provisions in these operating agreements; Amtrak and the host railroads may continue to maintain those provisions as they see fit. In addition, to the extent a host railroad is concerned with receiving lower performance payments as a result of this final rule, this final rule likewise does not prohibit a host railroad and Amtrak from revising the performance payments to align better with the customer OTP metric and standard. In fact, section 207(c) provides that, to the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards into their operating agreements. Also, performance payments, even if they change as a result of the final rule, would not change the estimate of costs due to the rule. Such payments represent transfers rather than economic costs or benefits.

One Class I host railroad stated that the NPRM's costs are too low and their railroad alone would require more than 10 hours of meetings to discuss schedule revisions. Another commenter stated that the NPRM substantially underestimates the cost of attempting to negotiate schedule adjustments. Based on both comments, FRA has increased the estimate of meeting time and number of employees present at those

meetings. Additionally, FRA has substantially increased the estimated time spent on preparations for those meetings.

For purposes of this analysis, FRA assumed that Amtrak and each of the host railroads will meet five times during the first year to discuss revising Amtrak's published train schedules. Amtrak currently has agreements with 31 host railroads. However, eight of these railroads are switching and terminal railroads that will not likely be involved in revising schedules, as Amtrak only operates over those railroads for short distances with very few, if any, stops. If there were discussions between Amtrak and any switching and terminal railroads, then it would be expected to occur during regularly scheduled meetings and would not add any additional burden.

For the other 23 host railroads, schedule discussions will add time to the current regular meetings held with Amtrak. FRA estimates that such schedule alignment discussions will require 40 hours of additional meeting time between Amtrak and each host railroad. FRA estimates that Amtrak and the host railroad will each have approximately three to six employees at the meetings. The following table shows the total cost of additional meetings between Amtrak and host railroads. Wage rates for this analysis are from the Surface Transportation Board.<sup>37</sup> Over the course of the first year, the total cost of all additional meetings is estimated to be \$473,473.

<sup>37</sup> 2019 STB wage rates: Group #100 (Executives, Officials, & Staff Assistants) Wage Rate: \$68.81 or \$120.42 with a 75% burden factor. Group #200 (Professional & Administrative) Wage Rate: \$44.27 or \$77.47 with a 75% burden factor. Group #500 (Transportation (Other than Train & Engine)) Wage Rate: \$40.27 or \$70.47 with a 75% burden factor.

| Amtrak/Host Railroads Meeting Cost (2019 Dollars) |                     |                    |                         |               |                           |   |
|---|---------------------|--------------------|-------------------------|---------------|---------------------------|---|
| Type of Employee                                  | Number of Employees | Hours per Employee | Burdened Wage Rate (\$) | Total (\$)    | Number of Disputed Routes | Total Cost for All Disputed Routes (\$) |
|   | a                   | b                  | c                       | d = a * b * c | e                         | f = d * e                               |
| <b>Amtrak Meeting with Class I Railroads</b>      |                     |                    |                         |               |                           |   |
| Group #100  | 2                   | 40                 | 120.42                  | 9,633         |                           |   |
| Group #200  | 4                   | 40                 | 77.47                   | 12,396        |                           |   |
| <b>Total</b>                                      |                     |                    |                         | <b>22,029</b> | <b>6</b>                  | <b>132,174</b>                          |
| <b>Class I Railroads Meeting with Amtrak</b>      |                     |                    |                         |               |                           |   |
| Group #100  | 1                   | 40                 | 120.42                  | 4,817         |                           |   |
| Group #200  | 3                   | 40                 | 77.47                   | 9,297         |                           |   |
| Group #500  | 2                   | 40                 | 70.47                   | 5,638         |                           |   |
| <b>Total</b>                                      |                     |                    |                         | <b>19,751</b> | <b>6</b>                  | <b>118,507</b>                          |
| <b>Amtrak Meeting with Non-Class I Railroads</b>  |                     |                    |                         |               |                           |   |
| Group #100  | 2                   | 16                 | 120.42                  | 3,853         |                           |   |
| Group #200  | 4                   | 16                 | 77.47                   | 4,958         |                           |   |
| <b>Total</b>                                      |                     |                    |                         | <b>8,812</b>  | <b>17</b>                 | <b>149,797</b>                          |
| <b>Non-Class I Railroads Meeting with Amtrak</b>  |                     |                    |                         |               |                           |   |
| Group #100  | 1                   | 16                 | 120.42                  | 1,927         |                           |   |
| Group #200  | 1                   | 16                 | 77.47                   | 1,240         |                           |   |
| Group #500  | 1                   | 16                 | 70.47                   | 1,128         |                           |   |
| <b>Total</b>                                      |                     |                    |                         | <b>4,294</b>  | <b>17</b>                 | <b>72,995</b>                           |
| <b>Total Cost of All Meetings</b>                 |                     |                    |                         |               |                           | <b>473,473</b>                          |

Note: Totals may not sum due to rounding, in this and subsequent tables.

Wage Rates are from STB, 2019:  
 Group #100 (Executives, Officials, & Staff Assistants) Wage Rate: \$68.81 or \$120.42 with a 75% burden factor.  
 Group #200 (Professional & Administrative) Wage Rate: \$44.27 or \$77.47 with a 75% burden factor.  
 Group #500 (Transportation (Other than Train & Engine)) Wage Rate: \$40.27 or \$70.47 with a 75% burden factor.

Further, to prepare for these meetings, Amtrak and the 23 host railroads will need to perform the necessary groundwork, such as historical data analysis of schedules and train performance, as well as analysis of current and future operations, to

determine how train schedules should be adjusted. The cost for host railroads preparing for meetings will vary depending on the complexity of the route. FRA estimates that Class I host railroads will have more extensive discussions than non-

Class I host railroads, based largely on the greater amount of route miles hosted. The following table shows the estimated costs of preparing for meetings. Amtrak and host railroads will spend \$296,991 over the first year to prepare for meetings.

| Amtrak Staff Time and Internal Scheduling                         |                     |                         |                    |                 |                                  |                                       |
|---|---------------------|-------------------------|--------------------|-----------------|----------------------------------|---------------------------------------|
| Type of Employee  | Number of Employees | Burdened Wage Rate (\$) | Hours per Employee | Total Cost (\$) | Number of Class I Host Railroads | Total Cost for Class I Railroads (\$) |
|   | a                   | b                       | c                  | e = a * b * c   | f                                | g = e * f                             |
| <b>Amtrak Staff Time (For All Routes)</b>                         |                     |                         |                    |                 |                                  |                                       |
| Group #200  | 4                   | 77.47                   | 200                | 61,978          |                                  |                                       |
| <b>Class I Railroads Staff Time</b>                               |                     |                         |                    |                 |                                  |                                       |
| Group #200  | 3                   | 77.47                   | 60                 | 13,945          |                                  |                                       |
| Group #500  | 2                   | 70.47                   | 60                 | 8,457           |                                  |                                       |
| <b>Total Class I Railroads' Cost</b>                              |                     |                         |                    | <b>22,402</b>   | <b>6</b>                         | <b>134,411</b>                        |
| <b>Non-Class I Host Railroads' Staff Time</b>                     |                     |                         |                    |                 |                                  |                                       |
| Group #200  | 1                   | 77.47                   | 40                 | 3,099           |                                  |                                       |
| Group #500  | 1                   | 70.47                   | 40                 | 2,819           |                                  |                                       |
| <b>Total Non-Class I Railroads' Cost</b>                          |                     |                         |                    | <b>5,918</b>    | <b>17</b>                        | <b>100,603</b>                        |
| <b>Total Cost of Staff Time for Amtrak and All Host Railroads</b> |                     |                         |                    |                 |                                  | <b>296,991</b>                        |

In addition, this final rule requires Amtrak and a host railroad to transmit a monthly joint letter and status report, signed by their respective chief executive officers, to certain members of

Congress and other Federal Agencies, in the event a published train schedule is not certified or disputed by May 17, 2021. Preparing a letter will require staff time by Amtrak and a host railroad, as

well as briefings with the chief executive officers. Each letter is estimated to require \$656 in labor on Amtrak's part and \$1,022 on the host railroad's part. FRA estimates that five

routes will be uncertified in the first year; each of which will require six letters. The following table shows the

cost of the monthly letters. The total estimated cost to Amtrak and host

railroads for the monthly letters will be \$50,328.

| <b>Total Cost of Monthly Letters</b>          |                           |                                |                              |                          |                         |                        |
|---|---------------------------|--------------------------------|------------------------------|--------------------------|-------------------------|------------------------|
| <b>Employee</b>                               | <b>Hours per Employee</b> | <b>Burdened Wage Rate (\$)</b> | <b>Total Labor Cost (\$)</b> | <b>Number of Letters</b> | <b>Number of Routes</b> | <b>Total Cost (\$)</b> |
|   | <b>a</b>                  | <b>b</b>                       | <b>c = a * b</b>             | <b>d</b>                 | <b>e</b>                | <b>f = c * d * e</b>   |
| <b>Amtrak</b>                                 |                           |                                |                              |                          |                         |                        |
| Amtrak VP                                     | 0.5                       | 120.42                         | 60                           |                          |                         |                        |
| Jr. Attorney                                  | 2                         | 120.42                         | 241                          |                          |                         |                        |
| Staff Analyst                                 | 2                         | 77.47                          | 155                          |                          |                         |                        |
| CEO   | 0.5                       | 399.64                         | 200                          |                          |                         |                        |
| <b>Total Amtrak Cost</b>                      |                           |                                | <b>656</b>                   | <b>6</b>                 | <b>5</b>                | <b>19,674</b>          |
| <b>Host Railroads</b>                         |                           |                                |                              |                          |                         |                        |
| VP  | 0.5                       | 120.42                         | 60                           |                          |                         |                        |
| Jr. Attorney                                  | 2                         | 120.42                         | 241                          |                          |                         |                        |
| Staff Analyst                                 | 2                         | 77.47                          | 155                          |                          |                         |                        |
| CEO   | 0.5                       | 1,131.61                       | 566                          |                          |                         |                        |
| <b>Total Host Railroad Cost</b>               |                           |                                | <b>1,022</b>                 | <b>6</b>                 | <b>5</b>                | <b>30,654</b>          |
| <b>Total Cost (Amtrak and Host Railroads)</b> |                           |                                |                              |                          |                         | <b>50,328</b>          |

Due to this final rule, some railroads will likely initiate a non-binding dispute resolution process to resolve scheduling disputes. Based on an analysis by FRA subject matter experts, FRA estimates that approximately eight

routes will be the subject of such a non-binding dispute resolution process. The total cost of such a non-binding dispute resolution process per route is approximately \$52,200, and includes arbitration fees and compensation for

the arbitrators. The arbitration fees include administrative fees,<sup>38</sup> arbitrator travel fees, and the rental fee for the hearing room. The table below shows the estimated costs for arbitration fees.

| <b>Arbitration Fees</b>                 |                  |                                  |                                       |
|---|------------------|----------------------------------|---------------------------------------|
| <b>Category</b>                         | <b>Cost (\$)</b> | <b>Number of Disputed Routes</b> | <b>Total Cost for All Routes (\$)</b> |
|   | <b>a</b>         | <b>b</b>                         | <b>c = a * b</b>                      |
| Arbitrator Standard Administrative Fees | 17,500           |                                  |                                       |
| Hearing Room Rental                     | 1,500            |                                  |                                       |
| Travel                                  | 2,000            |                                  |                                       |
| <b>Total</b>                            | <b>21,000</b>    | <b>8</b>                         | <b>168,000</b>                        |

The compensation paid to the arbitrator includes time spent by each arbitrator to prepare for the hearing,

attend the hearing, and review the hearing after completion. The table

below shows the costs for arbitrator compensation.

<sup>38</sup> Source: American Arbitration Association. See "Undetermined Monetary Claims" Standard Fee

Schedule at [https://www.adr.org/sites/default/files/Commercial\\_Arbitration\\_Fee\\_Schedule\\_1.pdf](https://www.adr.org/sites/default/files/Commercial_Arbitration_Fee_Schedule_1.pdf)

| Arbitrator Compensation              |                     |                         |                    |                 |                           |                                |
|--------------------------------------|---------------------|-------------------------|--------------------|-----------------|---------------------------|--------------------------------|
| Type of Employee                     | Number of Employees | Burdened Wage Rate (\$) | Hours per Employee | Total Cost (\$) | Number of Disputed Routes | Total Cost for All Routes (\$) |
|                                      | a                   | b                       | c                  | d = a * b * c   | e                         | f = d * e                      |
| Arbitrator (pre-hearing staff time)  | 3                   | 300                     | 16                 | 14,400          |                           |                                |
| Arbitrator (day of hearing)          | 3                   | 400                     | 8                  | 9,600           |                           |                                |
| Arbitrator (post-hearing staff time) | 3                   | 300                     | 8                  | 7,200           |                           |                                |
| <b>Total Arbitrator Compensation</b> |                     |                         |                    | <b>31,200</b>   | <b>8</b>                  | <b>249,600</b>                 |

The cost paid to the arbitrator for their fees would likely be split between Amtrak and the host railroad. The total estimated cost paid for the non-binding dispute resolution process for all eight

routes will be \$417,600, which includes arbitrator fees and compensation.

In addition to the cost of the non-binding dispute resolution process, Amtrak and a host railroad will need to spend time: Preparing documents in

connection with the non-binding dispute resolution process; briefing within their organization; and attending the hearing. The table below shows the total cost of staff time for Amtrak and host railroads.

| Total Cost of Staff Time, Amtrak and Host Railroads |                    |                |                 |                           |                                |
|---|--------------------|----------------|-----------------|---------------------------|--------------------------------|
| Employee  | Hours per Employee | Wage Rate (\$) | Total Cost (\$) | Number of Disputed Routes | Total Cost for All Routes (\$) |
|   | a                  | b              | c = a * b       | d                         | e = c * d                      |
| <b>Amtrak Staff Time</b>                            |                    |                |                 |                           |                                |
| Attorney  | 56                 | 120.42         | 6,743           |                           |                                |
| Train operation (VP)                                | 12                 | 120.42         | 1,445           |                           |                                |
| Train operation analyst                             | 56                 | 77.47          | 4,338           |                           |                                |
| <b>Total Amtrak Cost</b>                            |                    |                | <b>12,527</b>   | <b>8</b>                  | <b>100,215</b>                 |
| <b>Host Railroads' Staff Time</b>                   |                    |                |                 |                           |                                |
| Employee  | Total Time (Hours) | Wage Rate (\$) | Total Cost (\$) |                           |                                |
| Attorney  | 56                 | 120.42         | 6,743           |                           |                                |
| Train operation (VP)                                | 12                 | 120.42         | 1,445           |                           |                                |
| Train operation analyst                             | 56                 | 77.47          | 4,338           |                           |                                |
| <b>Total Host Railroads' Staff Time</b>             |                    |                | <b>12,527</b>   | <b>8</b>                  | <b>100,215</b>                 |

FRA assumes that employees from the host railroads and Amtrak will incur

some travel costs associated with the hearing. The table below shows the

expected cost of travel related to the hearing.

| Total Travel Cost, Amtrak and Host Railroads |                     |                                |                                    |                           |                                |
|--|---------------------|--------------------------------|------------------------------------|---------------------------|--------------------------------|
| Employee                                     | Number of Employees | Travel Cost, per Employee (\$) | Total Cost per Disputed Route (\$) | Number of Disputed Routes | Total Cost for All Routes (\$) |
|  | a                   | b                              | c = a * b                          | d                         | e = c * d                      |
| Amtrak Employees                             | 3                   | 2,000                          | 6,000                              |                           |                                |
| Host Railroads' Employees                    | 3                   | 2,000                          | 6,000                              |                           |                                |
| <b>Total Cost</b>                            |                     |                                | <b>12,000</b>                      | <b>8</b>                  | <b>96,000</b>                  |

The table below shows all estimated arbitration costs, including: Arbitration

fees, arbitrator compensation, and Amtrak and the host railroad's staff

compensation and travel costs. The total cost of arbitration will be \$714,030.

| <b>Total Cost for Arbitration</b> |                  |
|-----------------------------------|------------------|
| <b>Category</b>                   | <b>Cost (\$)</b> |
| Arbitration Fees                  | 168,000          |
| Arbitrator Compensation           | 249,600          |
| Amtrak Staff Time                 | 100,215          |
| Host Railroads' Staff Time        | 100,215          |
| Railroads' Travel Costs           | 96,000           |
| <b>Total Cost</b>                 | <b>714,030</b>   |

This final rule also requires Amtrak to share ridership data with each host railroad. Although systems are already

in place for sharing of data, it will require additional time from an Amtrak employee to process the data and share

it in a usable format. The following table shows the estimated cost to prepare the ridership reports.

| <b>Amtrak Cost to Develop Ridership Reports</b> |                           |                                |                              |
|---|---------------------------|--------------------------------|------------------------------|
| <b>Type of Employee</b>                         | <b>Hours per Employee</b> | <b>Burdened Wage Rate (\$)</b> | <b>Total Labor Cost (\$)</b> |
|   | <b>a</b>                  | <b>b</b>                       | <b>c = a * b</b>             |
| Group #200                                      | 80                        | 77.47                          | 6,198                        |
| <b>Total</b>                                    |                           |                                | <b>6,198</b>                 |

All costs of this final rule are expected to be incurred during the first year, though FRA acknowledges that

conditions regarding a certified schedule may change. The following

table shows the total 10-year estimated costs of this final rule.

| <b>Total 10-Year Costs</b>                     |                        |                                   |                                   |
|--|------------------------|-----------------------------------|-----------------------------------|
| <b>Category</b>                                | <b>Total Cost (\$)</b> | <b>Annualized, 7 Percent (\$)</b> | <b>Annualized, 3 Percent (\$)</b> |
| Cost of Meetings                               | 473,473                | 67,412                            | 55,505                            |
| Internal Staff Time (Preparation for Meetings) | 296,991                | 42,285                            | 34,816                            |
| Monthly Letters                                | 50,328                 | 7,166                             | 5,900                             |
| Arbitration                                    | 714,030                | 101,662                           | 83,706                            |
| Ridership Data                                 | 6,198                  | 882                               | 727                               |
| <b>Total</b>                                   | <b>1,541,020</b>       | <b>219,407</b>                    | <b>180,655</b>                    |

This final rule may result in lower operational costs for Amtrak, to the extent it results in improved OTP, which may reduce labor costs, fuel costs, and expenses related to passenger inconvenience, and provide benefits to riders from improved travel times and service quality. A commenter stated that improved OTP should have a significant effect on ridership, and would make a significant improvement on operational costs. Due to the difficulty in precisely quantifying future benefits to rail routes from improved OTP, combined with the

inability to quantify the potential synergistic effects that improved OTP reliability could have across Amtrak's network, FRA has not quantified any potential benefits from lower operational costs or improved service that may result from the final rule. FRA expects Amtrak and host railroads to structure schedules to achieve performance that meets this rule's OTP standard, thus avoiding the expense and uncertainty of an STB investigation under section 213.

#### *B. Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. When an agency issues a rulemaking proposal, the RFA requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the

proposed rule on small entities.” (5 U.S.C. 603(a)).

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Out of an abundance of caution, FRA prepared an initial regulatory flexibility analysis to accompany the NPRM, which noted no expected significant economic impact on a substantial number of small entities. FRA is now certifying that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Description of Small Entities Impacted by the Final Rule

In consultation with the SBA, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209). FRA is using this definition for the final rule.

This final rule impacts Amtrak and Amtrak’s host railroads. This rule establishes a customer OTP metric and a certified schedule metric, which will likely result in modifications to some of Amtrak’s published train schedules. Amtrak is not a small entity and the majority of the host railroads are Class I railroads or State Departments of Transportation, none of which are small entities. There are currently 12 host railroads that are small entities, including approximately 8 switching and terminal railroads and 4 short line or regional railroads.<sup>39</sup> There are approximately 695 class III railroads on the general system. Therefore, the 12 small entities potentially affected by this final rule are not considered a substantial number of small entities.

#### Economic Impact on Small Entities

FRA has determined that the economic impact on small entities will

<sup>39</sup>FRA received one comment from a Class III terminal railroad operating on track controlled by another railroad, expressing concern about being the subject of an STB investigation. However, it is FRA’s understanding that Amtrak does not currently operate over the right-of-way in question (and although the possibility of future Amtrak service may exist, such future service would be subject to the certified schedule metric in this final rule).

not be significant. This final rule does not require published train schedule modifications. However, FRA assumes that, as a result of the Metrics and Standards, Amtrak will engage with many host railroads to discuss modifications to the published train schedule to align the schedules with the customer OTP metric.

There are currently twelve host railroads that are small entities, including approximately eight switching and terminal railroads and four short line and regional railroads. The impact on those small entities are very minimal. The switching and terminal railroads are not likely burdened by this final rule because Amtrak only operates over those routes for short distances and has very few stops along those sections of track. Those railroads already meet with Amtrak on a periodic basis, so any discussions regarding their schedule will take place at that time. It is likely that no schedule adjustments are required along those routes.

Amtrak has limited stops along the routes of the four short line and regional railroads; therefore, published train schedule adjustments would be brief. Those railroads also already meet with Amtrak on a periodic basis and discussions regarding schedules can take place at that time. Such discussions may add a minimal amount of time to those meetings. However, published train schedule adjustments may not even be necessary for these railroads.

Other than the customer OTP metric, the final rule does not provide an additional burden on Amtrak or the host railroads. Amtrak already collects the data to support these new metrics; therefore, there is no additional burden.

#### Certification

Consistent with the findings in FRA’s initial regulatory flexibility analysis, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### C. Paperwork Reduction Act

FRA is publishing a new information collection request in connection with this final rule in a separate notice. For information or a copy of the paperwork package submitted to OMB, contact Ms. Kim Toone, at 202–493–6132, or [Kim.Toone@dot.gov](mailto:Kim.Toone@dot.gov).

#### D. Federalism Implications

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the

development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule under the principles and criteria contained in Executive Order 13132. This final rule could affect State and local governments to the extent that they sponsor, or exercise oversight of, intercity passenger rail service. Because this final rule is required by Federal statute, the consultation and funding requirements of Executive Order 13132 do not apply.

In sum, FRA has analyzed this final rule under the principles and criteria in Executive Order 13132. As explained above, FRA has determined this final rule has no federalism implications. Therefore, preparation of a federalism summary impact statement for this final rule is not required.

#### E. Environmental Impact

FRA has evaluated this final rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its NEPA implementing regulations at 23 CFR part 771. Under NEPA, categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), “Promulgation of rules,

the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.”

In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. See 23 CFR 771.116(b). FRA has concluded that no unusual circumstances exist with respect to this regulation that would trigger the need for a more detailed environmental review. The purpose of this rulemaking is to establish metrics and standards to measure the performance and service quality of intercity passenger train operations. FRA does not anticipate any environmental impacts from this final rule and finds there are no unusual circumstances present in connection with this final rule.

A commenter stated that FRA should consider whether the rulemaking meets the requirements of a categorical exclusion under NEPA given the operational impacts on the host railroads. As discussed elsewhere in this final rule, any such operational impacts relate to, and should be resolved by, the development of new schedules. FRA expects Amtrak and the host railroads to account for these issues when they develop new schedules. Therefore, FRA finds that a categorical exclusion is appropriate here.

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. See 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f). See *Department of Transportation Act of 1966*, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

#### *F. Executive Order 12898 (Environmental Justice)*

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534 May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and

activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

#### *G. Executive Order 13175 (Tribal Consultation)*

FRA has evaluated this final rule under the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The final rule will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

#### *H. Unfunded Mandates Reform Act of 1995*

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Unfunded Mandates Reform Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

#### *I. Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking; (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a “significant energy action” within the meaning of Executive Order 13211.

Executive Order 13783, “Promoting Energy Independence and Economic Growth,” requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with attention to oil, natural gas, coal, and nuclear energy resources. 82 FR 16093 (March 31, 2017). Executive Order 13783 defines “burden” to mean unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources. FRA has determined this final rule will not potentially burden the development or use of domestically produced energy resources.

#### *J. Trade Impact*

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this final rule on

foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979.

#### List of Subjects in 49 CFR Part 273

Railroads, Transportation.

#### The Rule

■ For the reasons discussed in the preamble, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations, by adding part 273 to read as follows:

#### PART 273—METRICS AND MINIMUM STANDARDS FOR INTERCITY PASSENGER TRAIN OPERATIONS

Sec.

273.1 Purpose.

273.3 Definitions.

273.5 On-time performance and train delays.

273.7 Customer service.

273.9 Financial.

273.11 Public benefits.

**Authority:** Sec. 207, Div. B, Pub. L. 110-432; 49 U.S.C. 24101, note; 49 U.S.C. 103(j); 49 CFR 1.81; 49 CFR 1.88; and 49 CFR 1.89.

##### § 273.1 Purpose.

The purpose of this part is to establish metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations.

##### § 273.3 Definitions.

As used in this part—

*Actual running time* means the actual elapsed travel time of a train's travel on a host railroad, between the departure time at the first reporting point for a host railroad segment and the arrival time at the reporting point at the end of the host railroad segment.

*Adjusted operating expenses* means Amtrak's operating expenses adjusted to exclude certain Amtrak expenses that are not considered core to operating the business. The major exclusions are depreciation, capital project related expenditures not eligible for capitalization, non-cash portion of pension and post-retirement benefits, and Amtrak's Office of Inspector General expenses. Adjusted operating expenses do not include any operating expenses for State-supported routes that are paid for separately by States.

*Adjusted operating revenue* means Amtrak's operating revenue adjusted to exclude certain revenue that is associated with capital projects. The major exclusions are the amortization of State capital payments and capital project revenue related to expenses not eligible for capitalization.

*Amtrak* means the National Railroad Passenger Corporation.

*Amtrak's customer satisfaction survey* means a market-research survey that measures Amtrak's satisfaction score as measured by specific service attributes that cover the entire customer journey.

*Amtrak-responsible delays* means delays recorded by Amtrak, in accordance with Amtrak procedures, as Amtrak-responsible delays, including passenger-related delays at stations, Amtrak equipment failures, holding for connections, injuries, initial terminal delays, servicing delays, crew and system delays, and other miscellaneous Amtrak-responsible delays.

*Avoidable operating costs* means costs incurred by Amtrak to operate train service along a route that would no longer be incurred if the route were no longer operated.

*Certified schedule* means a published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer on-time performance metric and standard in § 273.5(a)(1) and (2). If a published train schedule is reported as a certified schedule under § 273.5(c)(1), then it cannot later be designated as an uncertified schedule.

*Disputed schedule* means:

(1) A published train schedule for which a specific change is sought:

(i) That is the only subject of a non-binding dispute resolution process led by a neutral third-party and involving Amtrak and one or more host railroads;

(ii) That is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by one or more host railroads and Amtrak has not consented to participate in the process within 30 calendar days; or

(iii) That is the only subject of a non-binding dispute resolution process led by a neutral third-party that has been initiated by Amtrak and the host railroad has not consented to participate in the process within 30 calendar days.

(2) The written decision resulting from a non-binding dispute resolution process is admissible in Surface Transportation Board investigations under 49 U.S.C. 24308(f). If a published train schedule is reported as a disputed schedule under § 273.5(c)(1), then it remains a disputed schedule until reported as a certified schedule.

*Fully allocated core operating costs* means Amtrak's total costs associated with operating an Amtrak route, including direct operating expenses, a portion of shared expenses, and a portion of corporate overhead expenses. Fully allocated core operating costs exclude ancillary and other expenses that are not directly reimbursed by passenger revenue to match revenues with expenses.

*Host railroad* means a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment. Amtrak is a host railroad of Amtrak trains and other trains operating over an Amtrak owned or controlled railroad line segment. For purposes of the certified schedule metric under § 273.5(c), Amtrak is not a host railroad.

*Host-responsible delays* means delays recorded by Amtrak, in accordance with Amtrak procedures, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.

*Not well-served communities* means those rural communities: Within 25 miles of an intercity passenger rail station; more than 75 miles from a large airport; and more than 25 miles from any other airport with scheduled commercial service or an intercity bus stop.

*Passenger revenue* means intercity passenger rail revenue generated from passenger train operations, including ticket revenue, food and beverage sales, operating payments collected from States or other sponsoring entities, special trains, and private car operations.

*Ridership data* means, in a machine-readable format: The total number of passengers, by train and by day; the station-specific number of detraining passengers, reported by host railroad whose railroad right-of-way serves the station, by train, and by day; and the station-specific number of on-time passengers reported by host railroad whose railroad right-of-way serves the station, by train, and by day.

*Scheduled running time* means the scheduled duration of a train's travel on a host railroad, as set forth in the Amtrak schedule skeleton.

*Schedule skeleton* means a schedule grid used by Amtrak and host railroads to communicate the public schedule of an Amtrak train and the schedule of operations of an Amtrak train on host railroads.

*Third party delays* means delays recorded by Amtrak, in accordance with Amtrak procedures, as third party delays, including bridge strikes, debris strikes, customs, drawbridge openings, police-related delays, trespassers, vehicle strikes, utility company delays, weather-related delays (including heat or cold orders, storms, floods/washouts, earthquake-related delays, slippery rail due to leaves, flash-flood warnings, wayside defect detector actuations caused by ice, and high-wind

restrictions), acts of God, or waiting for scheduled departure time.

*Uncertified schedule* means a published train schedule that has not been reported as a certified schedule or a disputed schedule under § 273.5(c)(1).

**§ 273.5 On-time performance and train delays.**

(a) *Customer on-time performance*—

(1) *Metric.* The customer on-time performance metric is the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.

(2) *Standard.* The customer on-time performance minimum standard is 80 percent for any 2 consecutive calendar quarters.

(3) *Application.* (i) Except as provided in paragraph (a)(3)(ii) of this section, the customer on-time performance standard shall apply to a train beginning on the first full calendar quarter after May 17, 2021.

(ii) If a train schedule is a disputed schedule on or before May 17, 2021, then the customer on-time performance standard for the disputed schedule shall apply beginning on the second full calendar quarter after May 17, 2021.

(b) *Ridership data.* The ridership data metric is the number of host railroads to whom Amtrak has provided ridership data consistent with this paragraph (b), reported by host railroad and by month. Not later than December 16, 2020, Amtrak must provide host railroad-specific ridership data to each host railroad for the preceding 24 months. On the 15th day of every month following December 16, 2020, Amtrak must provide host railroad-specific ridership data to each host railroad for the preceding month.

(c) *Certified schedule*—(1) *Metric.* The certified schedule metric is the number of certified schedules, uncertified schedules, and disputed schedules, reported by train, by route, and by host railroad (excluding switching and terminal railroads), identified in a notice to the Federal Railroad Administrator by Amtrak:

- (i) On December 16, 2020;
- (ii) On January 19, 2021;
- (iii) On February 16, 2021;
- (iv) On March 16, 2021;
- (v) On April 16, 2021;
- (vi) On May 17, 2021;
- (vii) On November 16, 2021; and
- (viii) Every 12 months after November 16, 2021.

(2) *Reporting.* If a train schedule is reported as an uncertified schedule under paragraph (c)(1)(vi), (vii), or (viii) of this section, then Amtrak and the

host railroad must transmit a joint letter and status report on the first of each month following the report, signed by their respective chief executive officers to each U.S. Senator and U.S.

Representative whose district is served by the train, the Chairman and Ranking Member of the Committee on Transportation and Infrastructure of the House of Representatives, the Chairman and Ranking Member of the Committee on Commerce, Science, and Transportation of the Senate, the Chairman and Ranking Member of the Committee on Appropriations of the House of Representatives, the Chairman and Ranking Member of the Committee on Appropriations of the Senate, the Secretary of Transportation, and the Chairman of the Surface Transportation Board, which states:

(i) The Amtrak train schedule(s) at issue;

(ii) The specific components of the train schedule(s) on which Amtrak and host railroad cannot reach agreement;

(iii) Amtrak's position regarding the disagreed upon components of the train schedule(s);

(iv) Host railroad's position regarding the disagreed upon components of the train schedule(s); and

(v) Amtrak and the host railroad's plan and expectation date to resolve the disagreement(s). The requirement to transmit this joint letter and status report ends for the train schedule at issue when the uncertified schedule becomes a certified schedule.

(3) *Ongoing coordination between Amtrak and host railroads.* When conditions have changed that impact a certified schedule, Amtrak or a host railroad may seek to modify the certified schedule. The customer on-time performance standard in paragraph (a)(2) of this section remains in effect for the existing certified schedule, until a modified schedule is jointly certified.

(d) *Train delays.* The train delays metric is the minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third party delays, for the host railroad territory within each route. The train delays metric is reported by delay code by: total minutes of delay; Amtrak-responsible delays; Amtrak's host-responsible delays; Amtrak's host responsible delays and Amtrak-responsible delays, combined; non-Amtrak host-responsible delays; and third party delays. The train delays metric is also reported by the number of non-Amtrak host-responsible delay minutes disputed by host railroad and not resolved by Amtrak.

(e) *Train delays per 10,000 train miles.* The train delays per 10,000 train

miles metric is the minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route.

(f) *Station performance.* The station performance metric is the number of detraining passengers, the number of late passengers, and the average minutes late that late customers arrive at their detraining stations, reported by route, by train, and by station. The average minutes late per late customer calculation excludes on-time customers that arrive no later than 15 minutes after their scheduled time.

(g) *Host running time.* The host running time metric is the average actual running time and the median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad set forth in the Amtrak schedule skeleton, reported by route, by train, and by host railroad (excluding switching and terminal railroads).

**§ 273.7 Customer service.**

(a) *Customer satisfaction.* The customer satisfaction metric is the percent of respondents to the Amtrak customer satisfaction survey who provided a score of 70 percent or greater for their "overall satisfaction" on a 100 point scale for their most recent trip, by route, shown both adjusted for performance and unadjusted.

(b) *Amtrak personnel.* The Amtrak personnel metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of Amtrak personnel on their most recent trip, by route.

(c) *Information given.* The information given metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of information provided by Amtrak on their most recent trip, by route.

(d) *On-board comfort.* The on-board comfort metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of on-board comfort on their most recent trip, by route.

(e) *On-board cleanliness.* The on-board cleanliness metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of on-board cleanliness on their most recent trip, by route.

(f) *On-board food service.* The on-board food service metric is the average score from respondents to the Amtrak customer satisfaction survey for their overall review of on-board food service on their most recent trip, by route.

**§ 273.9 Financial.**

(a) *Cost recovery.* The cost recovery metric is Amtrak's adjusted operating revenue divided by Amtrak's adjusted operating expense. This metric is reported at the corporate level/system-wide and for each route and is reported in constant dollars of the reporting year based on the Office of Management and Budget's gross domestic product chain deflator.

(b) *Avoidable operating costs covered by passenger revenue.* The avoidable operating costs covered by passenger revenue metric is the percent of avoidable operating costs divided by passenger revenue for each route, shown with and without State operating payments.

(c) *Fully allocated core operating costs covered by passenger revenue.* The fully allocated core operating costs covered by passenger revenue metric is the percent of fully allocated core operating costs divided by passenger revenue for each route, shown with and without State operating payments.

(d) *Average ridership.* The average ridership metric is the number of passenger-miles divided by train-mile for each route.

(e) *Total ridership.* The total ridership metric is the total number of passengers on Amtrak trains, reported by route.

**§ 273.11 Public benefits.**

(a) *Connectivity.* The connectivity metric is the percent of passengers connecting to and from other Amtrak routes, updated on an annual basis.

(b) *Missed connections.* The missed connections metric is the percent of passengers connecting to/from other Amtrak routes who missed connections due to a late arrival from another Amtrak train, reported by route and updated on an annual basis.

(c) *Community access.* The community access metric is the percent of Amtrak passenger-trips to and from not well-served communities, updated on an annual basis.

(d) *Service availability.* The service availability metric is the total number of daily Amtrak trains per 100,000 residents in a metropolitan statistical area (MSA) for each of the top 100 MSAs in the United States, shown in total and adjusted for time of day, updated on an annual basis.

Issued in Washington, DC.

**Gerald A. Reynolds,**  
Chief Counsel.

[FR Doc. 2020-25212 Filed 11-13-20; 8:45 am]

BILLING CODE 4910-06-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 200610-0156; RTID 0648-XA570]

**Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2020 Tribal Fishery Allocations for Pacific Whiting; Reapportionment Between Tribal and Non-Tribal Sectors**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Inseason reapportionment of tribal Pacific whiting allocation.

**SUMMARY:** This document announces the reapportionment of 40,000 metric tons of Pacific whiting from the tribal allocation to the non-tribal commercial fishery sectors via automatic action on September 16, 2020. This reapportionment is to allow full utilization of the Pacific whiting resource.

**DATES:** The reapportionment of Pacific whiting went into effect at 12 p.m. local time, September 16, 2020, and is effective through December 31, 2020. Comments will be accepted through December 1, 2020.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2020-0027 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at [www.regulations.gov/docket?D=NOAA-NMFS-2020-0027](http://www.regulations.gov/docket?D=NOAA-NMFS-2020-0027). Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 1201 NE Lloyd Center Blvd., Suite #1100, Portland, OR 97232, Attn: Stacey Miller.

*Instructions:* Comments sent by any other method to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain

anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**Electronic Access**

This notice is accessible online at the Office of the Federal Register's website at <https://www.federalregister.gov/>. Background information and documents are available at the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/species/pacific-whiting#management>.

**FOR FURTHER INFORMATION CONTACT:** Stacey Miller (West Coast Region, NMFS), phone: 503-231-6290 or email: [Stacey.Miller@noaa.gov](mailto:Stacey.Miller@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background***Pacific Whiting*

Pacific whiting (*Merluccius productus*) is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span compared to other groundfish species. Pacific whiting has the largest annual allowable harvest levels (by volume) of the more than 90 groundfish species managed under the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. The coastwide Pacific whiting stock is managed jointly by the United States and Canada, and mature Pacific whiting are commonly available to vessels operating in U.S. waters from April through December. Background on the stock assessment, and the establishment of the 2020 Total Allowable Catch (TAC), for Pacific whiting was provided in the final rule for the 2020 Pacific whiting harvest specifications, published June 18, 2020 (85 FR 36803). Pacific whiting is allocated to the Pacific Coast treaty tribes (tribal fishery) and to three non-tribal commercial sectors: The catcher/processor cooperative (C/P Coop), the mothership cooperative (MS Coop), and the Shorebased Individual Fishery Quota (IFQ) Program.

This notice announces the reapportionment of 40,000 metric tons (mt) of Pacific whiting from the tribal allocation to the non-tribal commercial sectors on September 16, 2020. Regulations at 50 CFR 660.131(h) contain provisions that allow the Regional Administrator to reapportion Pacific whiting from the tribal allocation, specified at 50 CFR 660.50, that will not be harvested by the end of the fishing year to other sectors.

# EXHIBIT 4



December 18, 2020

Mr. Scott Kuxmann  
NRPC Operations Officer  
Canadian National  
17641 South Ashland Ave.  
Homewood, Illinois 60430-1345

Dear Mr. Kuxmann,

As you know, the *Metrics and Minimum Standards for Intercity Passenger Rail Service* final rule published on November 16, 2020 (the “Final Rule”) introduces a certified schedule metric that requires Amtrak to report to the Federal Railroad Administration (“FRA”) the number of certified schedules, uncertified schedules, and disputed schedules, by train, by route, and by host railroad.

The Final Rule defines a “certified schedule” as a published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer on-time performance (“OTP”) metric and standard set forth in the Final Rule.

Appendix A provides the list of train schedules that Amtrak proposes to jointly certify with Canadian National are aligned to the customer OTP metric and standard on Canadian National. Each train listed has been reviewed and meets one or more of the following criteria:

- The schedule is already aligned or was modified to align with the customer OTP metric and standard.
- Customer OTP regularly exceeded 80% in FY 2020.
- The placement of the recovery time is correlated with the locations of detraining passengers.
- The recovery time is distributed to the benefit of detraining passengers.

Please confirm Canadian National’s agreement to certify the train schedules listed in Appendix A pursuant to the Final Rule. Please contact Chris Zappi, Director Host Railroads, at [Christopher.Zappi@amtrak.com](mailto:Christopher.Zappi@amtrak.com) if you have any questions. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Blair", with a large, stylized flourish underneath.

Jim Blair  
*Amtrak*  
*Sr. Director, Host Railroads*

*December 18, 2020*

*Page 2*

|     |                   |        |
|-----|-------------------|--------|
| cc: | Dennis Newman     | Amtrak |
|     | Shawn Gordon      | Amtrak |
|     | Jason Maga        | Amtrak |
|     | Bruce Davidson    | Amtrak |
|     | Christopher Zappi | Amtrak |

**Appendix A**

**Train Schedules Aligned to the Customer On-Time Performance Metric and Standard**

| <b>Service</b>      | <b>Train</b> |
|---------------------|--------------|
| Blue Water          | 364          |
| Blue Water          | 365          |
| City Of New Orleans | 58           |
| City Of New Orleans | 59           |
| Illini / Saluki     | 390          |
| Illini / Saluki     | 392          |
| Lincoln Service     | 300          |
| Lincoln Service     | 301          |
| Lincoln Service     | 302          |
| Lincoln Service     | 303          |
| Lincoln Service     | 304          |
| Lincoln Service     | 305          |
| Lincoln Service     | 306          |
| Sunset Limited      | 1            |
| Sunset Limited      | 2            |
| Texas Eagle         | 21           |
| Texas Eagle         | 22           |
| Wolverine           | 350          |
| Wolverine           | 351          |
| Wolverine           | 352          |
| Wolverine           | 353          |
| Wolverine           | 354          |
| Wolverine           | 355          |

# EXHIBIT 5

CONFIDENTIAL

[REDACTED]

# EXHIBIT 6

CONFIDENTIAL

[REDACTED]

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER  
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**VERIFIED STATEMENT OF YOEL WEISS  
ON BEHALF OF NATIONAL RAILROAD PASSENGER CORP.**

1. I submit this Verified Statement in support of the opening submission of the National Railroad Passenger Corporation (“Amtrak”) in this matter.
2. This Verified Statement will address:
  - a. The schedule skeletons that serve as the basis for Amtrak’s public schedules for Amtrak passenger trains operating, in whole or in part, on the rail system of Canadian National Railway Company (“CN”);<sup>1</sup>
  - b. The process by which Amtrak evaluated whether its schedules aligned with the customer on-time performance (“COTP”) metric and standard mandated by the Federal Railroad Administration (“FRA”) in a Final Rule issued in November 2020 entitled *Metrics and Standards for Intercity Passenger Rail Service* (“the Final Rule”);
  - c. Amtrak and CN’s agreement to “certify” the majority of Amtrak’s schedules as aligning with the FRA’s COTP metric and standard enunciated in the Final Rule;
  - d. The reasons why, for the Amtrak schedules that remain disputed, the

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<sup>1</sup> Illinois Central Railroad Company (“IC”) and Grand Trunk Western Railroad Company (“GTW”) (subsidiaries of Canadian National Railway Company and direct parties to the operating agreement with Amtrak at issue in this proceeding) are two of Amtrak’s Host Railroads. In this Verified Statement, “CN” refers collectively to IC and GTW, but not their parent company.

schedules proposed by Amtrak align with the FRA's COTP metric and standard and afford CN a meaningful opportunity to meet or exceed it because, among other things, Amtrak's proposed schedules reallocate Recovery Time within the schedule as recommended by the FRA in the Final Rule; and

e. That historical train delay data supports Amtrak's proposed threshold of 900 minutes of Host-Responsible Delay per 10,000 train-miles.

### **I. Background and Qualifications**

3. I am presently employed by Amtrak as Senior Principal - Host Railroad Development, a position I have held since January 2022.

4. I graduated from Massachusetts Institute of Technology in 1989 with a Bachelor of Science in Mechanical Engineering. I also earned a Master's Degree in Business Administration from the "Institut Européen d'Administration des Affaires," (which translates to the European Institute of Business Administration) in 1994.

5. From 1989 to 1993, I worked for Asea Brown Boveri ("ABB") as a business development manager, project manager and applications engineer in the Steam Turbine Division. ABB is a multi-national corporation whose operations include, among other areas, power, heavy industry - - like railroads - - and robotics. My responsibilities as a project manager included assessing job profitability, timeline management and resource management.

6. From 1995 to 1999, I worked as an operations manager for Acutus Gladwin, an equipment service company in the steel industry based in Coraopolis, Pennsylvania. In that role, I was responsible for working with over a dozen facilities throughout the organization (including facilities in Canada) and the corporate office to identify and implement improvement opportunities. For example, I increased productivity by 30% plant-wide in one year by

identifying and eliminating non-value-added activities in the production process.

7. From 2000 to 2018, I worked as an operations and logistics manager at Art Guild, Inc., a company specializing in face-to-face marketing based in West Deptford, New Jersey. My responsibilities included budgeting, project management, logistics management, order processing, resource management and invoicing. For example, I successfully spearheaded a division reorganization, including business process reengineering, to allow the division to meet the demands of over 500 clients with simultaneous deadlines. The reorganization improved the division's 15% loss to a 20% profit.

8. In 2018, I began working at Amtrak as Lead - Host Railroads Specialist. In October 2020, I was promoted to Principal - Host Railroad Development. My responsibilities included assessing the performance of Amtrak's Host Railroads (including CN) with respect to on-time performance ("OTP") of Amtrak passenger trains on the Host's system and any delays that may have impacted Amtrak. In performing these assessments, I was extensively involved in identifying the causes of delays to Amtrak's trains operating on the Host's system and formulated solutions for reducing and eliminating those delays. This involved frequent collaboration with Amtrak's Hosts. For example, by collaborating with a certain Host, Freight Train Interference ("FTI") and Commuter Train Interference delays on certain segments were reduced by up to 100%.

9. In my current role as Senior Principal - Host Railroad Development at Amtrak, in addition to continuing to perform many of the same tasks described in the prior paragraph, I have focused on:

- a. Preparing case studies in support of investigation requests to the Surface Transportation Board (STB) for trains failing to meet the Final Rule's standard;

- b. Providing regular reporting to the FRA in compliance with the Final Rule. For example, I have provided a report about the number of certified schedules (by host) pursuant to dates in the Final Rule and a quarterly report about disputed delays.
- c. Coordinating the collection of data in connection with the Final Rule (e.g. ridership data) and ensuring the distribution of same to the FRA and Amtrak's Host Railroads.
- d. Representing Amtrak's Host Railroad Group during a biweekly call to discuss and evaluate the performance of Amtrak's trains with Amtrak's top leadership (including its Chief Operating Officer and senior personnel across many departments (Mechanical, Engineering, Scheduling, Transportation, and Network Support)). During these calls, we discussed and analyzed underperforming routes, including why the route was performing poorly and how to address those issues. This was a robust process during which scheduling and delays were both evaluated.
- e. Analyzing the impact of potential and actual schedule changes on Amtrak train performance by using Amtrak's LASER tool (discussed below).

10. Based, in part, on the aforementioned experience, I have also negotiated schedule modifications with Amtrak's Host Railroads in connection with the Certified Schedule Metric (discussed below).

11. I also review CN's weekly delay code change requests. Amtrak's on-board conductors record the cause of a particular delay impacting an Amtrak train through the use of various delay codes. On a weekly basis, CN submits delay code change requests for delays it

believes were miscoded or not coded with the appropriate amount of delay time. Where CN's request is accompanied by data or information supporting CN's requested change, I will generally agree to change the delay code Amtrak previously recorded, where appropriate. If, however, I disagree with CN's change request, I inform them that the coding will remain as-is. CN is then able to submit a relief request to the Host Railroad Group, contracts division, which administers Amtrak's contracts with Host Railroads.

## **II. Amtrak's Schedules on Host Railroads**

12. Amtrak's published schedules for its passenger trains operating on CN's system are derived from "Schedule Skeletons" which represent the Parties' agreed upon operating schedule, and include the following information for each train:

- a. The arrival and departure times at each station stop;
- b. The Dwell Time at each station on the route; and
- c. The Pure Running Time, Recovery Time, and any Miscellaneous Time between each station, and
- d. Additional locations against which the train's performance may be measured, but that are not station stops including the points of entry to and exit from CN's system (and in the case of a route where there are multiple Host Railroads, the points of entry to and exit from the other Host's systems).

13. The foregoing terms are defined in the 2011 Operating Agreement between CN and Amtrak (under which the Parties are operating pending the resolution of this case) as follows:

- a. "Pure Running Time" is defined as "the travel time between two points at maximum authorized passenger train speeds, without delays."

- b. “Recovery Time” is defined as “time added to the schedule to compensate for certain delays encountered en route.”
- c. “Miscellaneous Time” is defined as the “time that Amtrak may add or remove from a schedule for operational convenience.”
- d. “Dwell Time” is defined as the amount of time scheduled to perform station work.”

14. An example of a Schedule Skeleton for an Amtrak train operating on CN’s system is attached as **Exh. 1**. This particular Schedule Skeleton is for Amtrak Train 364 on Amtrak’s Blue Water route, which operates from Chicago, Illinois to Port Huron, Michigan. This schedule has been “certified” by agreement of Amtrak and CN pursuant to the Final Rule. (See ¶¶ 33 - 35, *infra*). As this Schedule Skeleton demonstrates, the departure and arrival times for stations on CN’s system (Battle Creek, MI, East Lansing, MI, etc.) are not simply based on the train’s Pure Running Time between two points. Rather additional time - - including Recovery Time, and Miscellaneous Time - - is built into the schedule where appropriate, to absorb the effects of en route delays.

15. The Schedule Skeletons form the basis for the schedules Amtrak publishes to its passengers. Those published schedules, in turn, serve as the basis against which Amtrak (and CN’s) performance is ultimately measured by both the FRA’s COTP metric in the Final Rule and by Amtrak customers/passengers. (See § 273.3 *Definitions*; see also § 273.5).

### **III. The Final Rule’s COTP Metric and CN and Amtrak’s Certification of Schedules Pursuant to the Final Rule**

#### **A. The COTP Metric and Certification Process**

16. The COTP metric established in the Final Rule is defined as “the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15

minutes after their published scheduled arrival time, reported by train and by route.” (85 Fed. Reg. 72974-75). The Final Rule instructs that COTP is calculated as follows: (a) the number of passengers arriving at their detraining point for an intercity rail train no later than 15 minutes after their scheduled arrival time; (b) divided by the total number of customers on that train. (Id.).

17. The Final Rule also established “a minimum standard for customer OTP of 80 percent for any 2 consecutive calendar quarters.” (Id. at 79275).

18. The Final Rule also established a “certified schedule” metric that requires Amtrak to report to the FRA the number of “certified schedules,” “uncertified schedules” and “disputed schedules,” by train, by route, and by Host Railroad. (See 85 Fed. Reg. at 72979).

19. The foregoing terms are defined in the Final Rule as follows:

a. “Certified schedule” means “a published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer [OTP] metric and standard in § 273.5(a)(1) and (2). If a published train schedule is reported as a certified schedule under § 273.5(c)(1), then it cannot later be designated as uncertified.”;

b. “Disputed schedule” means “a published train schedule for which a specific change is sought” by either the Amtrak or the host railroad that is the “only subject of a non-binding dispute resolution process led by a neutral third-party.” Moreover, “[t]he written decision resulting from a non-binding dispute resolution process is admissible in Surface Transportation Board investigations under 49 U.S.C. § 24308(f).”; and

c. “Uncertified schedule” means “a published train schedule that has not

been reported as a certified schedule or a disputed schedule under § 273.5(c)(1).”

(See 85 Fed. Reg. 72987-88; 49 C.F.R. § 273.3, *Definitions*).

**B. Review of Whether Amtrak’s Schedules Align with the COTP Metric**

20. Immediately after the Final Rule was published in November 2020, Amtrak utilized a multi-disciplinary team that assessed whether its existing schedules aligned with the FRA’s COTP metric or whether the schedules required some changes to do so. I was personally involved in this process from the outset and have led it since mid-April 2021. The team included Amtrak personnel in Scheduling and the HRG.

21. After assessing the schedules for Amtrak trains operating on CN’s system, Amtrak determined that the majority of them aligned with the FRA’s COTP metric and should be certified in their present state. Among other things, Amtrak determined that no adjustment of Recovery Time (or Dwell Time) was required for the schedules to be aligned with the COTP metric as the train schedules were already aligned with that metric.<sup>2</sup>

22. Amtrak conveyed this position to CN in a December 18, 2020 letter from Jim Blair (then Amtrak’s Senior Director, Host Railroads) to Scott Kuxmann (CN’s Amtrak Operations Officer). (**Exh. 2**). Although Mr. Blair authored this letter, it conveys the determinations and assessment made by Amtrak through the process in which I participated that evaluated Amtrak’s schedules, including whether adjustments to Recovery Time were necessary to align with the Final Rule’s COTP metric.

23. In the December 18, 2020 letter, Amtrak advised CN that Amtrak believed twenty-three (23) schedules for trains operating on its Blue Water, City of New Orleans,

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<sup>2</sup> The only trains Amtrak did not recommend for certification were Trains 391 and 393 (Illini/Saluki) and Train 307 (Lincoln). They are discussed below.

Illini/Saluki, Lincoln, Sunset Limited, Texas Eagle and Wolverine routes were already aligned with the Final Rule's COTP metric because those schedules satisfied at least one of four alignment criteria.<sup>3</sup> (**Exh. 2**, p. 1). Accordingly, Amtrak requested that CN agree to jointly "certify" those schedules pursuant to the Final Rule. The four criteria Amtrak utilized in determining whether these schedules aligned with the Final Rule's COTP metric are discussed below. The results of Amtrak's per-train, per-criterion analysis were captured in a spreadsheet which is attached as **Exh. 3**.

24. This process - - evaluating CN schedules against four criteria to determine whether they aligned with the COTP metric and standard - - was uniformly applied for all schedules operating on all Hosts' systems.

(i) *Schedules Where Amtrak and Host Railroads had Already Analyzed and Implemented Appropriate COTP Adjustments to Schedules*

25. First, before the FRA implemented the Final Rule, Amtrak had already negotiated with various Host Railroads some of Amtrak's schedules for trains operating, in part, on CN's system. During those negotiations, the Parties' evaluated the train's performance and analyzed, among other things, the operational impact of certain proposed modifications to the train's schedule, including changes to Recovery Time. In some instances, Amtrak and its Host or Hosts agreed to reallocate Recovery Time (but not to lengthen the overall schedule). Following the Final Rule, Amtrak confirmed that these schedules - - which had been the subject of discussions with its Host or Hosts and, in some cases, were modified - - aligned with the Final Rule's COTP metric. Therefore, Amtrak recommended that no further discussions or modifications were necessary, and CN and Amtrak could certify the schedule as-is. An example of a train that met

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<sup>3</sup> Each of the four criteria was independently analyzed against each train.

this criterion is Train 364 on Amtrak's Blue Water route. (See **Exh. 3**).<sup>4</sup>

*(ii) Schedules for Trains Which Regularly Operate at 80% or More COTP*

26. Second, for certain other Amtrak trains, COTP on the train's route already regularly exceeded 80% during Fiscal Year 2020. As such, Amtrak advised CN that those train schedules were already aligned with the Final Rule's COTP metric. Therefore, no modifications or amendments were necessary to align those schedules with the COTP metric. An example of a train that performed at or above 80% COTP during FY 2020 is Train 352 on Amtrak's Wolverine route which operates from Chicago, Illinois to Pontiac, Michigan.<sup>5</sup>

*(iii) Schedules Where Recovery Time was Already Allocated Appropriately Based Upon Locations and Volumes of Detraining Passengers*

27. Third, Amtrak assessed whether the current allocation of Recovery Time in the schedule was appropriately correlated with the locations and volumes of detraining passengers. In other words, Amtrak evaluated whether Recovery Time was already allocated to protect stations which handled the highest volume of passengers, as recommended by the FRA.

28. Amtrak's analysis involved examining Fiscal Year 2020 train performance for each train. Specifically, Amtrak assessed two separate data points: (a) the number of passengers de-training at each station stop; and (b) the amount of Recovery Time, if any, protecting each station stop. The train met the criterion if the data points were positively correlated. For

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<sup>4</sup> The other trains meeting this criterion were: Trains 68 and 69 on Amtrak's Adirondack route; Trains 365 on Amtrak's Blue Water route; and Trains 350, 351, 352, 353, 354 and 355. See **Exh. 3**.

<sup>5</sup> The other Amtrak trains that were regularly exceeding 80% COTP in FY 2020 were: Train 69 on Amtrak's Adirondack route; Train 365 on Amtrak's Blue Water route; Trains 351 and 352 on Amtrak's Wolverine route; Trains 58 and 59 on Amtrak's City of New Orleans route; and Trains 300, 301, 302, 303, 304 and 306 on Amtrak's Lincoln route. With the exception of the trains operating on Amtrak's Adirondack and City of New Orleans routes, CN agreed to certify the schedules for these trains. See **Exh. 3**.

example, Amtrak observed that, in general, a higher percentage of the route's total Recovery Time was used to protect stations with a higher percentage of de-training passengers based on total ridership (*e.g.*, if 50% of passengers de-trained at a given station, approximately 50% of the route's Recovery Time was placed directly in front of that station). An example of a train meeting this criterion is Train 301 on Amtrak's Lincoln Service, which operates from Chicago, Illinois to St. Louis Missouri.<sup>6</sup>

*(iv) Schedules With Recovery Time Benefitting Detraining Passengers*

29. Fourth, Amtrak assessed whether Recovery Time was distributed in a manner which had the cumulative effect of benefitting de-training passengers. In other words, if by a given station, two-thirds of the train's total passengers had de-trained, had approximately two-thirds of the route's total Recovery Time been used? An example of a train meeting this criterion is Train 300 on Amtrak's Lincoln service, which operates from St. Louis, Missouri to Chicago, Illinois.<sup>7</sup>

30. For certain schedules Amtrak proposed amendments to the schedules which reflected an allocation of Recovery Time that benefitted detraining passengers with no discernable operational disadvantage to CN. But, it is not just Amtrak and its passengers who

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<sup>6</sup> The other Amtrak trains meeting this criterion were: Train 68 on Amtrak's Adirondack route; Train 365 on Amtrak's Blue Water route; Trains 58 and 59 on Amtrak's City of New Orleans route; Trains 390 and 392 on Amtrak's Illini/Saluki route; Trains 300, 302, 303, 304, 305 and 306 on Amtrak's Lincoln route; Trains 1 and 2 on Amtrak's Sunset Limited route; Train 21 on Amtrak's Texas Eagle route; and Trains 351, 353 and 355 on Amtrak's Wolverine route. See **Exh. 3**.

<sup>7</sup> Other trains meeting this criterion were: Trains 68 and 69 on Amtrak's Adirondack route; Train 365 on Amtrak's Blue Water route; Train 58 on Amtrak's City of New Orleans route; Trains 390 and 392 on Amtrak's Illini/Saluki route; Trains 302, 304 and 306 on Amtrak's Lincoln route; Trains 1 and 2 on Amtrak's Sunset Limited route; Trains 21 and 22 on Amtrak's Texas Eagle route; and Trains 350, 351, 353 and 355 on Amtrak's Wolverine route. See **Exh. 3**.

benefit from the resulting higher COTP. CN itself benefits because, among other things, it is less likely to be subject to an investigation under PRIIA § 213.<sup>8</sup> In short, Amtrak's proposed adjustments would benefit both Parties, as well as Amtrak's passengers.

31. These proposed reallocations of Recovery Time by Amtrak pertained to certain stations on CN's system known as "D-stops." These are stations where - - by design - - passengers de-board the train, but no passengers are permitted to board the train. As a result, a train arriving early at a "D-stop" can depart as soon the passengers arriving at that station have de-boarded. The train does not have to dwell at the station until the scheduled departure time to wait for boarding passengers.

32. An example of this scenario is Train 392 which operates from Carbondale, Illinois to Chicago, Illinois on Amtrak's Illini/Saluki service. Immediately preceding Chicago, there is a "D-stop" at Homewood, Illinois. Recovery Time for this schedule has historically been allocated to protect the arrival time of passengers arriving at Chicago (rather than Homewood). However, COTP could be improved by reallocating Recovery Time more strategically along the route, including moving the majority of Recovery Time currently placed immediately before Chicago to immediately before Homewood. Because no passengers board the train at Homewood, and a train arriving early at Homewood does not have to dwell until the scheduled departure time, but can instead depart early, shifting Recovery Time from Chicago to before Homewood has the dual purpose of: (a) improving the COTP at Homewood; and (b) continuing to ensure the on-time arrival time of the passengers travelling onto Chicago.

33. Pursuant to these foregoing considerations, Amtrak's December 18, 2020 letter proposed that the Parties certify twenty-three (23) of the twenty-eight (28) schedules for trains

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<sup>8</sup> CN will also benefit under Amtrak's proposed incentive/penalty system, because there will be a greater amount of incentives potentially available to it. (See, e.g., Blair ¶ 36(c)).

operating on CN's system. (See **Exh. 2**, p. 3).

34. On April 7, 2021, Michael Matteucci - - CN's Regional Director Contracts and Administration - - sent a letter to Jim Blair agreeing to certify twenty (20) of the twenty-eight (28) schedules as aligned with the customer OTP metric, but disputed six (6). (**Exh. 4**).<sup>9</sup>

35. The twenty (20) schedules the Parties have agreed to certify include trains operating on the following Amtrak routes: Wolverine (Trains 350, 351, 352, 353, 354 and 355); Blue Water (Trains 364 and 365); Lincoln (Trains 300, 301, 302, 303, 304, 305, 306 and 307); Texas Eagle (Trains 21 and 22) and Sunset Limited service (Trains 1 and 2).<sup>10</sup>

36. The six (6) schedules that remain disputed include the City of New Orleans (Trains 58 and 59) and Illini/Saluki (Trains 390, 391, 392 and 393).

37. In sum, for the majority of trains operating on CN's system, the Parties agree that the current schedules align with the Final Rule's COTP metric and standard.

#### **IV. The Disputed Schedules Align with the COTP Metric**

38. For the six (6) train schedules that remain disputed, Amtrak has analyzed the following for each route:

- a. the scheduled arrival and departure times;
- b. the actual arrival and departure times;

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<sup>9</sup> CN's letter only identifies twenty-six schedules that operate over CN's lines in the United States. While Amtrak identified two additional schedules - - for Amtrak's Adirondack route (Trains 68 and 69) - - as operating over CN's lines in the United States and requiring certification, CN disagrees. Given the limited length of track over which those trains travel on CN's system in the United States (only 1.4 miles) Amtrak has excluded the Adirondack trains from the discussion below about disputed schedules and optimized Recovery Time.

<sup>10</sup> As mentioned above, Amtrak did not initially recommend the Parties certify Train 307 on Amtrak's Lincoln route. But, CN agreed to certify the schedule as-is, as did the other host of the route.

- c. actual ridership data;
- d. Host-Responsible Delays (HRD);
- e. the actual COTP for each route for the last three years and;
- f. the optimized COTP which resulted when Recovery Time is reallocated.

39. To aid in its assessment of schedule alignment with the COTP metric and standard as outlined in the Final Rule, Amtrak developed and then used the LASER (“Limited Adjustment of Schedule or Equivalent Recovery”) tool. Amtrak’s LASER tool optimizes placement of Recovery Time<sup>11</sup> using actual passenger ridership and actual train performance. LASER was created and implemented by Amtrak in 2019 to optimize the distribution of Recovery Time in its schedules and Amtrak shares the results with many of its Host Railroads.<sup>12</sup> The following data is entered into LASER, for a particular train on a per-day, per-station basis over a fixed-period of time (generally one-year): (a) station sequence; (b) schedule departure and arrival times; (c) actual arrival and departure times; (d) actual ridership; and (e) lateness (i.e. how many minutes after the scheduled arrival time the train actually arrived).

40. Based on this data, LASER calculates the actual COTP for the train for the timeframe for which the data was collected. LASER then runs a series of algorithms<sup>13</sup> that reallocate Recovery Time from areas in the schedule where it is not fully utilized to those areas

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<sup>11</sup> For purposes of LASER’s analysis, Recovery Time and Miscellaneous Time are treated as one pool of minutes that can be used to optimize the schedule.

<sup>12</sup> For example, in June 2020, Amtrak provided CN with the results of the LASER tool for Amtrak’s Illini/Saluki service.

<sup>13</sup> The algorithms are subject to certain rules. An example of a rule that LASER must follow when trying to optimize COTP is that if a train arrives early at a station at which passengers board the train (*i.e.*, it is not a “D-stop”), the train must wait until the scheduled departure time to leave the station. The departure time at each station can, of course be modified by both LASER or the user and the algorithm can be run again.

where it is needed the most (that is, stations with higher passenger volumes), searching for the distribution of Recovery Time that optimizes COTP.<sup>14</sup>

41. In other words, Amtrak did not propose to simply reallocate Recovery Time “linearly across a schedule.” (*Id.*)<sup>15</sup> Rather, Amtrak shifted Recovery Time in the schedules from, for example, low-volume stations to high volume stations - - that is, the Recovery Time is allocated to better ensure the train’s on-time status at stations that handle a large volume of passenger traffic. This was consistent with FRA guidance in the Final Rule, specifically, that Amtrak should consider whether Recovery Time was allocated in a manner that protected stations that handle a large volume of passenger traffic or had other specific characteristics.<sup>16</sup>

42. Importantly, LASER’s calculations were based on existing trip times and length of schedule.

**(a) Schedules Optimized above 80% COTP**

43. For two (2) of the six (6) disputed schedules, Amtrak has proposed optimized schedules to CN that would increase the COTP for the route above 80%. The proposed schedules are based on schedule optimizations and Recovery Time reallocations (based on historical actual operating data) performed using LASER.

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<sup>14</sup> Amtrak plans to evaluate its schedules - - including the allocation of Recovery Time - - annually.

<sup>15</sup> As the FRA explained, doing so “would be inefficient and would be more likely to result in trains waiting at stations for departure times if a train performed well on a given segment that included additional, unnecessary recovery time.” (*Id.*)

<sup>16</sup> In addition to protecting performance at large volume stations, the FRA also suggested that Recovery Time be allocated at “locations where passenger trains can wait clear of main tracks, where stations are further apart, or where trains are more likely to incur operational delays.” (85 Fed. Reg. 72977). Amtrak was able to assess these additional considerations, because LASER considers delays and ridership data when it makes its calculations. In other words, delays associated with - - for example - - locations where the train is more likely to incur operational delays is embedded in the data entered into LASER.

*i. Train 391 - Illini/Saluki (40.26% COTP to 80.95% COTP)*

44. Amtrak's use of LASER in reviewing the disputed schedule for Train 391 which runs from Chicago, Illinois to Carbondale, Illinois on Amtrak's Illini/Saluki service illustrates the optimization process. Amtrak loaded data into LASER for April 2021 through March 2022 for Train 391. Currently, the schedule contains 40 total minutes of Recovery Time, 35 minutes of which is allocated immediately in front of Carbondale (the last station on the route).

45. During the relevant timeframe, 22,718 passengers rode Train 391. Only 5,342 passengers (23.5%) de-boarded the train at Carbondale. In comparison, 12,991 passengers (57.2%) de-boarded at Champagne. There are no minutes of Recovery Time currently in front of Champagne.

46. Although COTP for the relevant timeframe at Carbondale was 77.91%, COTP for Champagne was only 29.84%. COTP for the entire route was 40.26%, well below the 80% standard mandated by the Final Rule.

47. Based on the analysis Amtrak performed using LASER, the schedule for Train 391 would be optimized for the relevant timeframe by reallocating Recovery Time to areas earlier in the route to protect an on-time arrival at Champagne, Illinois (the highest volume station on the route). This includes placing fourteen (14) minutes of Recovery Time and Pure Run Time between Rantoul, Illinois and Champagne, as well as an additional twelve (12) minutes of Recovery Time and Pure Run Time at other stations earlier in the route.<sup>17</sup>

48. **Exhibit 5** hereto is a LASER summary page which illustrates the actual COTP from April 2021 through March 2022 for Train 391, as compared with COTP for the same timeframe *after* the schedule was optimized as explained above by, among other things,

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<sup>17</sup> The overall length of the schedule was not extended, despite Pure Run Time being extended in certain areas.

reallocating Recovery Time. The following information is captured by the spreadsheet:

- a. “Train #” refers to the train whose data is being analyzed and the columns directly underneath it refer to the station stops on the route for that train.
- b. The “Start” header refers to the current schedule (and ridership) without any adjustments to Recovery Time. In other words, this reflects the actual experience of the riders for the time period being analyzed. Under the “Start” header are several sub-columns.
- c. The sub-columns are defined as follows: (i) “Riders” refers to the number of passengers on the train; (ii) “Late” refers to the number of passengers arriving at their scheduled destination station more than 15 minutes after their scheduled arrival time; (iii) “Accepted” refers to the number of passengers arriving at their scheduled destination no later than 15 minutes after their scheduled arrival time (which passengers are considered to be “on-time”); and (iv) “OTP%” refers to the COTP as calculated in accordance with the Final Rule. The calculations under these sub-columns are made for the entire route and by each station on the route.
- d. The “Finish” header refers to the data post-recovery time optimization by LASER. In other words, it is the experience the passenger *would have had* if Recovery Time had been optimized during the actual trip. Under the “Finish” header are several sub-columns.
- e. The sub-columns are defined as follows: (i) “New Late” refers to the number of passengers that would have arrived at their destination station more than 15 minutes after their scheduled arrival time had Recovery Time been optimized; (ii) “New Accepted” refers to the number of passengers that would

have arrived at their destination station within 15 minutes of their scheduled arrival time had Recovery Time been optimized (meaning these passengers would be considered “on-time” under the optimized schedule); (iii) “New OTP%” refers to what the COTP would have been had Recovery Time been optimized; (iv) “Saved” refers to the difference between “New Accepted” and “Accepted” (which effectively identifies the number of additional passenger who would be “on-time” under the optimized schedule); (v) “OTP Impact” refers to the difference between “New OTP%” and “OTP%”; and (iv) “Relative %” refers to the percentage of late passengers that have now been saved (i.e., the percentage of passenger rendered “on-time” under the optimized schedule). The calculations under these sub-columns are made for the entire route and for each station on the route.

f. The summary page also contains data for “Schedule Change” and “Net Edit.” “Schedule Change” is the change in the number of minutes to successive station arrivals. “Net Edit” is the net total of the running schedule change. As demonstrated in **Exh. 5**, while interim station stops may reflect certain minutes of adjustment, the “Net Edit” to the final station on the route in this case is zero (0), because LASER was set to not increase the overall length of the schedule.

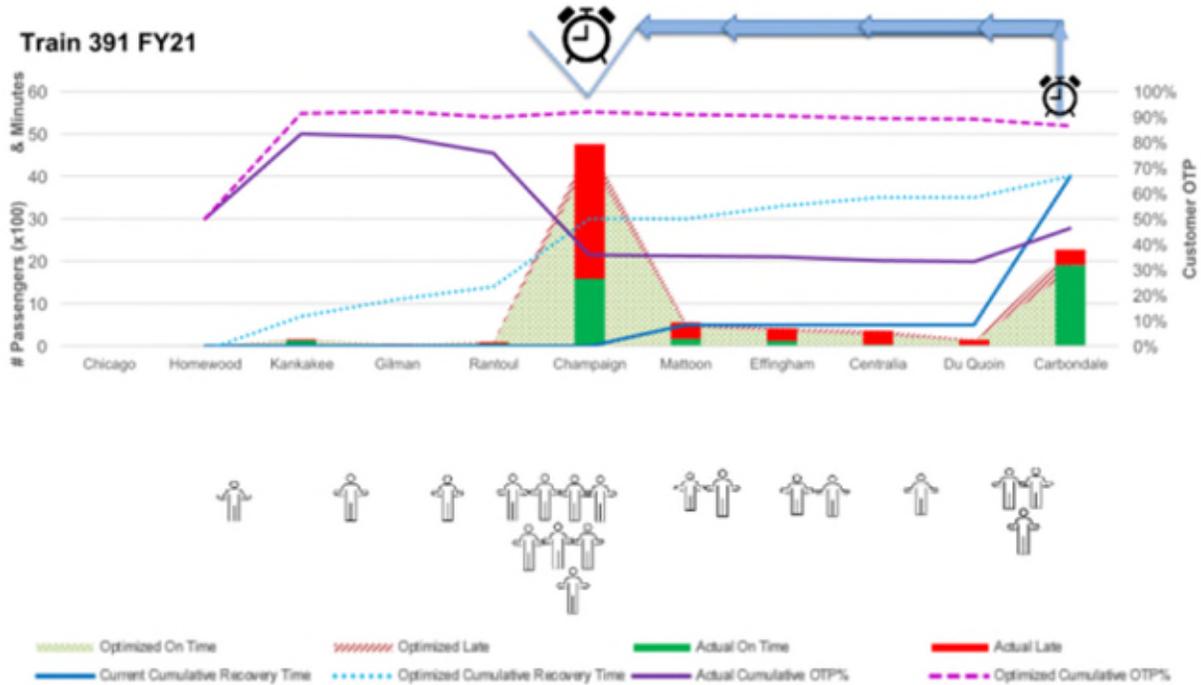
49. The optimized schedules result in the following improved metrics for the relevant timeframe:

- a. the COTP at Champagne increases from 29.84% to 85.36%;
- b. COTP increases for the stations between Champagne and Carbondale (for example, COTP at Centralia, Illinois rises from 10.11% to 60.05%); and
- c. COTP for the route as a whole increases from 40.26% to 80.95% had that

reallocation been made.

50. This optimized COTP of 80.95% for Train 391 for April 2021 through March 2022 meets the 80% COTP metric established in the Final Rule.

51. The following is a graph depicting the impact of schedule optimization on Train 391 during Fiscal Year 2021:



52. Importantly, because LASER ran its optimization calculations based on actual performance data for the subject train, it necessarily considered the delays encountered en route for each trip, including CN's HRDs. In other words, the optimized COTP as calculated by LASER assumed no reduction to HRDs.<sup>18</sup> In the case of Train 391, it encountered a monthly average of 907 minutes of CN HRDs per 10,000 train-miles. This means CN could continue to cause the same minutes of HRD to Train 391 and the train would still be expected to perform at

<sup>18</sup> LASER does have the ability to assume a reduction to HRD, but that option was not run as part of the analysis described herein.

or above 80% COTP. If, however, CN reduced the minutes of its HRDs, COTP would continue to improve on the route.

*ii. Train 59 - City New Orleans (76.80% COTP to 81.67% COTP)*

53. Similarly, Amtrak loaded data into LASER for April 2021 through March 2022 for Train 59 on Amtrak's City of New Orleans service which runs from Chicago, Illinois to New Orleans, Louisiana. Currently, the schedule contains 180 total minutes of Recovery Time, 63 minutes of which is allocated immediately in front of New Orleans (the last station on the route). During the relevant timeframe, 45,997 passengers rode Train 59. 12,552 passengers de-boarded the train at New Orleans. In comparison, 13,011 passengers de-boarded at Champagne; however, there are only four (4) minutes of Recovery Time currently in front of Champagne.

54. Although COTP for the relevant timeframe at New Orleans was 84.67%, COTP for Champagne was 79.26%. COTP for the entire route was 76.80%, which is below the 80% standard mandated by the Final Rule.

55. Based on the analysis Amtrak performed using LASER, the schedule for Train 59 would be optimized for the relevant timeframe by reallocating Recovery Time to areas earlier in the route to protect an on-time arrival at Champagne (the highest volume station on the route). This includes placing eight (8) additional minutes of recovery time between Kankakee, Illinois and Champagne, as well as an additional ten (10) minutes of Recovery Time at stations later in the route, but before Hammond, Louisiana.<sup>19</sup>

56. With these adjustments, the COTP at Champagne increases from 79.26% to 85.86% COTP. Similarly, the COTP for the entire route increases from 76.80% to 81.67%.

57. Again, LASER calculated the optimized COTP based on the delays the train

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<sup>19</sup> Hammond is the station stop immediately before New Orleans. And, as was the case with Train 391, the overall schedule length is not extended under Amtrak's proposed schedule.

actually incurred. During the period of time for which LASER ran its calculations, Train 59 experienced a monthly average of 771 minutes of CN HRDs per 10,000 train-miles. Since the optimized COTP for this route is above 80%, CN can hit the standard set by the FRA without any reduction to HRDs.

**(b) Optimized Schedules Below 80% COTP**

58. For the remaining four (4) disputed schedules where Amtrak utilized LASER to optimize COTP, the optimized COTP metric is still lower than 80%.<sup>20</sup> Amtrak reasonably believes, however, that these schedules - - which it has proposed to CN - - nonetheless align with the 80% COTP metric and that CN has a reasonable opportunity to meet that standard in light of: (a) the high number of HRDs those trains experienced during the timeframe for which actual performance data was collected; and (b) the train's actual performance at or above 80% COTP with the *non-optimized* schedules in those months when CN-responsible HRDs were lower.

59. In evaluating these schedules, Amtrak analyzed delay data from April 2019 through March 2022 (thirty-six (36) months). Specifically, Amtrak assessed the reason for the delays which resulted in the sub-80% COTP, including whether the delays were Amtrak-responsible delays, HRDs or third-party delays. Amtrak determined that the number of CN HRDs correlated to the train's performance. In that regard, when CN's HRDs were lower, the COTP was higher; when minutes of HRD were higher, the COTP was lower.

60. More importantly, for certain months, each of these trains were able to achieve 80% COTP *even without optimizing* Recovery Time. In other words, there are no problems inherent in the schedules which render it unreasonable for CN to meet achieve 80% COTP.

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<sup>20</sup> For the Illini/Saluki route, Train 390's COTP goes from 73.81% to 78.62%, Train 392's COTP goes from 67.29% to 75.70%, and Train 393's COTP goes from 52.37% to 79.70%. For the City of New Orleans route, Train 58's COTP goes from 74.55% to 76.21%.

Indeed, the trains are able to achieve 80% when CN limits its HRDs.

*i. Train 390 - Illini/Saluki*

61. Train 390, which operates from Carbondale, Illinois to Chicago had a COTP of 73.81% during the period of April 2021 through March 2022. Utilizing LASER, Amtrak has determined that, if Recovery Time is reallocated, optimized COTP for that period would have been approximately 78.62%.

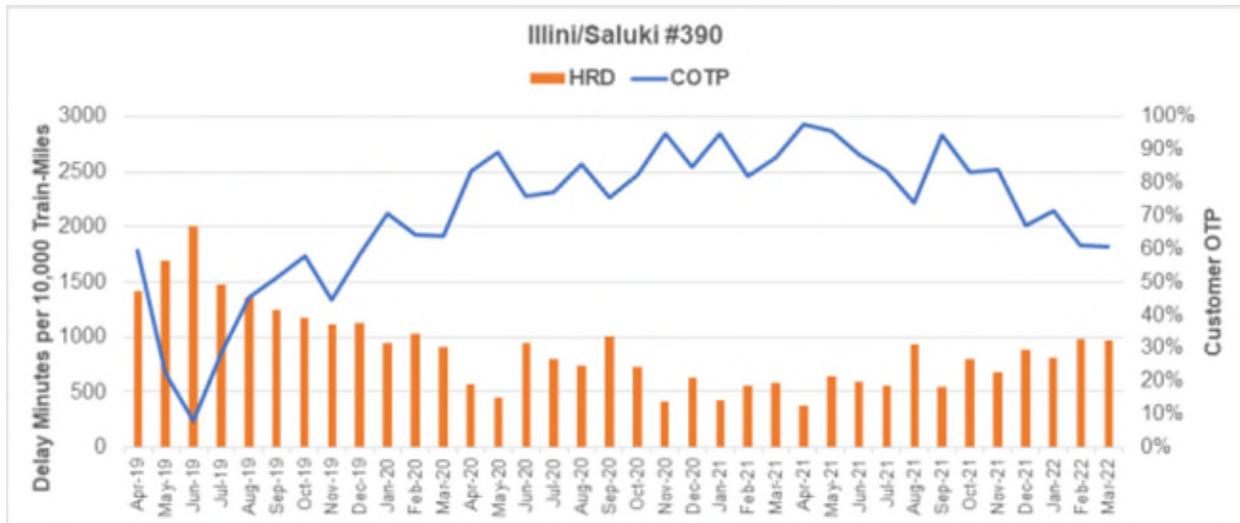
62. However, during that entire period, Train 390 averaged approximately 731 minutes of HRDs per month per 10,000 train-miles. For the seven (7) months where its performance exceeded 80% COTP, Train 390 averaged approximately 600 minutes of HRDs per month per 10,000 train-miles. For the five (5) months where its performance fell below 80% COTP, Train 390 average approximately 916 minutes of HRDs per 10,000 train-miles.

63. Amtrak's historical data confirms both the correlation between CN HRDs and COTP and that Train 390 is capable, even under the non-optimized schedule, of performing at or above 80% COTP. For example, in June 2019, CN had 2,012 minutes of HRD (685 minutes of which was due to FTI)<sup>21</sup> for Train 390 and COTP was only 8%. However, in September 2021, CN had only 549 minutes of HRD for Train 390 (83 minutes of which were due to FTI) and COTP was 95%.

64. The following is a graph depicting the data Amtrak analyzed for Train 390 which illustrates Amtrak's findings:

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<sup>21</sup> The FRA defines HRD to include Freight Train Interference. (See § 273.3 Definitions).



65. For twenty (20) of the thirty-six (36) months Amtrak analyzed, Train 390’s OTP fell below 80% - - averaging 57% COTP and 1,142 minutes of HRD per 10,000 train-miles. For sixteen (16) of those months, Train 390’s COTP met or exceeded 80% - - averaging 88% COTP and 581 minutes of HRD per 10,000 train-miles.

**ii. Train 392 - Illini/Saluki**

66. Train 392 also operates from Carbondale to Chicago. From April 2021 to March 2022, Train 392’s COTP was 67.29%.<sup>22</sup> Utilizing LASER, Amtrak has determined that, if Recovery Time is reallocated, optimized COTP for that period would have been approximately 75.70%.

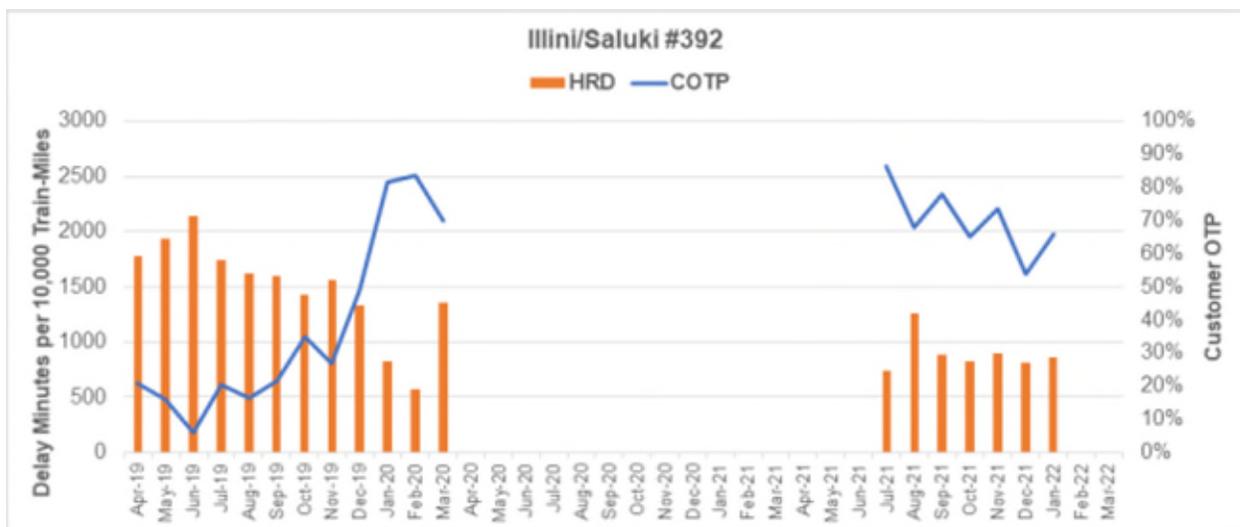
67. However, during that entire period, Train 392 experienced an average of 897 minutes of HRDs per 10,000 train-miles. For the one (1) month where Train 392’s performance exceeded 80% COTP, it averaged approximately 746 minutes of HRDs per 10,000 train-miles. For the six (6) months where its performance fell below 80% COTP, Train 392 averaged approximately 922 minutes of HRDs per 10,000 train-miles.

68. Again, Amtrak’s historical data confirms both the correlation between COTP and

<sup>22</sup> Train 392 only operated for only seven months during the relevant time period.

CN HRDs and that Train 392 is capable, even under a non-optimized schedule, of performing at or above 80% COTP. For example, in January 2020, Train 392 performed at 82% COTP. During that month, the Train experienced 829 minutes of CN HRDs per 10,000 train-miles. However, August 2021, Train 392's COTP was 68%. During that month, Train 392 experienced 1,254 minutes of CN HRDs per 10,000 train-miles (197 minutes of which were related to FTI).

69. The following is a graph depicting the data Amtrak analyzed for Train 392 which illustrates Amtrak's findings:



70. For sixteen (16) of the thirty-six (36) months, Train 392's COTP was under 80% - - averaging 43% COTP and 1,376 minutes of HRD per 10,000 train-miles. For three (3) of the thirty-six (36) months, Train 392's COTP was over 80% - - averaging 84% COTP and 717 minutes of HRD per 10,000 train-miles. The Train did not operate for seventeen (17) of the thirty-six (36) months due to the Covid-19 pandemic.

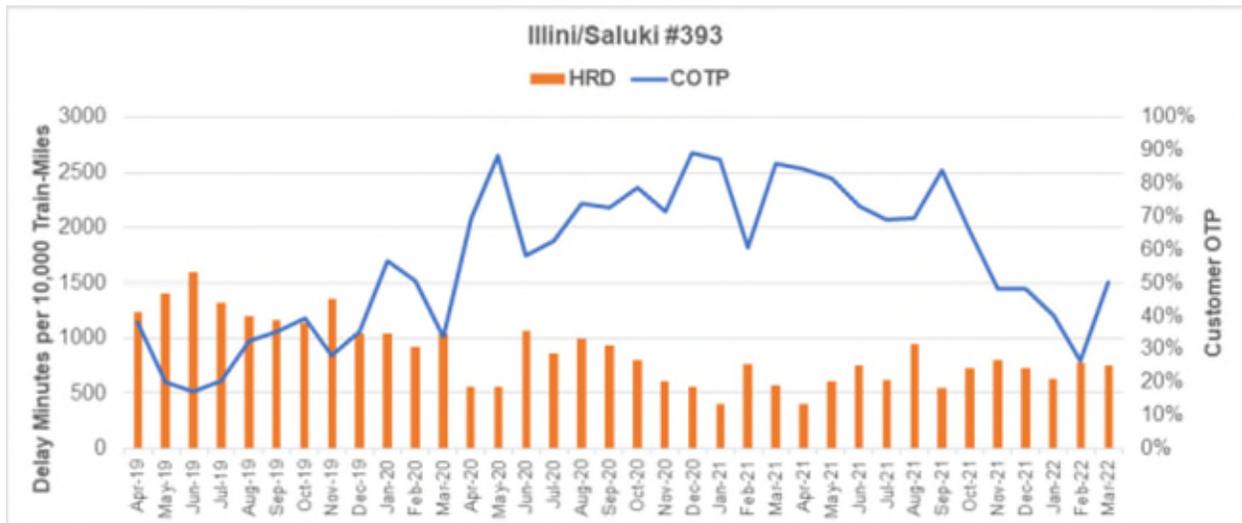
**iii. Train 393 - Illini/Saluki**

71. Train 393 operates from Chicago to Carbondale. From April 2021 to March 2022, Train 393's COTP was 52.37%. Utilizing LASER, Amtrak has determined that, if Recovery Time is reallocated, optimized COTP for that period would have been approximately

79.70%. However, during that entire period, Train 393 experienced an average of 691 minutes of HRDs per 10,000 train-miles. For the three (3) months Train 393’s performance exceeded 80% COTP, it averaged approximately 521 minutes of HRDs per 10,000 train-miles. For the nine (9) months its performance fell below 80% COTP, Train 393 averaged approximately 747 minutes of HRDs per 10,000 train-miles.

72. Again, Amtrak’s historical data confirms the correlation between COTP and CN HRDs and that the Train 393 is capable, even under the non-optimized schedule, of performing at or above 80% COTP. For example, in September 2021, Train 393’s COTP was 84%. During that month, the Train experienced 549 minutes of HRD per 10,000 train-miles. In May 2019, however, Train 393’s COTP was 20%. During that month the Train experienced 1,409 minutes of HRD per 10,000 train-miles (401 minutes of which were related to FTI).

73. The following is a graph depicting the data Amtrak analyzed for Train 393 which illustrates Amtrak’s findings:



74. For seven (7) of the thirty-six (36) months, Train 393 performed at or above 80% COTP - - averaging 86% COTP and 521 minutes of HRD. For the other twenty-nine (29) months, however, Train 393 performed below 80% COTP - - averaging 50% COTP and 958

minutes HRD per 10,000 train miles (193 minutes of which are related to FTI).

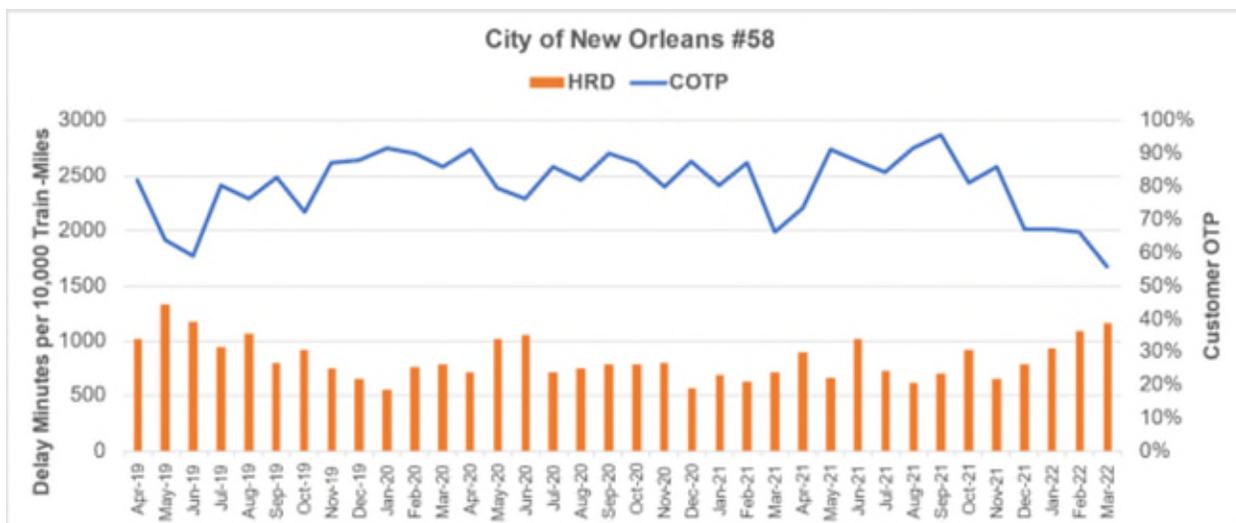
*iv. Train 58 - City of New Orleans*

75. Train 58 operates from New Orleans to Chicago. From April 2021 to March 2022, Train 58's COTP was 74.55%. Utilizing LASER, Amtrak has determined that, if Recovery Time is reallocated, optimized COTP for that period would have been approximately 76.21%.

76. However, during that period, Train 58 experienced an average of 850 minutes of HRDs per 10,000 train-miles. For the seven (7) months Train 58's performance exceeded 80% COTP, the train experienced on average approximately 761 minutes of HRDs per 10,000 train-miles. For the five (5) months its performance fell below 80% COTP. Train 58 experienced on average approximately 974 minutes of HRDs per 10,000 train-miles.

77. Again, Amtrak's historical data confirms the correlation between COTP and CN HRDs and that the Train is capable, even under the non-optimized schedule, of performing at or above 80% COTP. For example, in July 2019, Train 58's COTP was 80%. During that month, the Train experienced 949 minutes of HRD per 10,000 train-miles. In March 2022, however, Train 58's COTP was 56%. During that month the Train experienced 1162 minutes of HRD per 10,000 train-miles (549 minutes of which were related to FTI).

78. The following is a graph of the data Amtrak analyzed for Train 58 to help illustrate Amtrak's findings:



79. For eleven (11) of the thirty-six (36) months, Train 58 operated below 80% COTP - - averaging 68% COTP and 1,011 minutes of HRD per 10,000 train-miles (412 minutes of which are related to FTI). For twenty-five (25) months, Train 58 operated at or above 80% COTP - - averaging 86% COTP and 763 minutes of HRD per 10,000 train-miles (only 235 minutes of which are related to FTI).

**V. Amtrak’s Proposed Threshold of 900 Minutes of HRDs per 10,000 Train-Miles is Supported by Data Across Class-I Freight Railroads**

80. As mentioned above, one of my responsibilities at Amtrak involves assessing the performance of Amtrak’s Host Railroads (including CN) with respect to OTP of Amtrak passenger trains on the Host’s system and any delays that may have impacted the Amtrak train.

81. In my experience, which is confirmed by the data in reports Amtrak sends to the FRA, STB and its Host Railroads - - and even publishes on its website - - HRDs typically account for 67-70% of the total delays an Amtrak train encounters daily on host railroads.<sup>23</sup> In

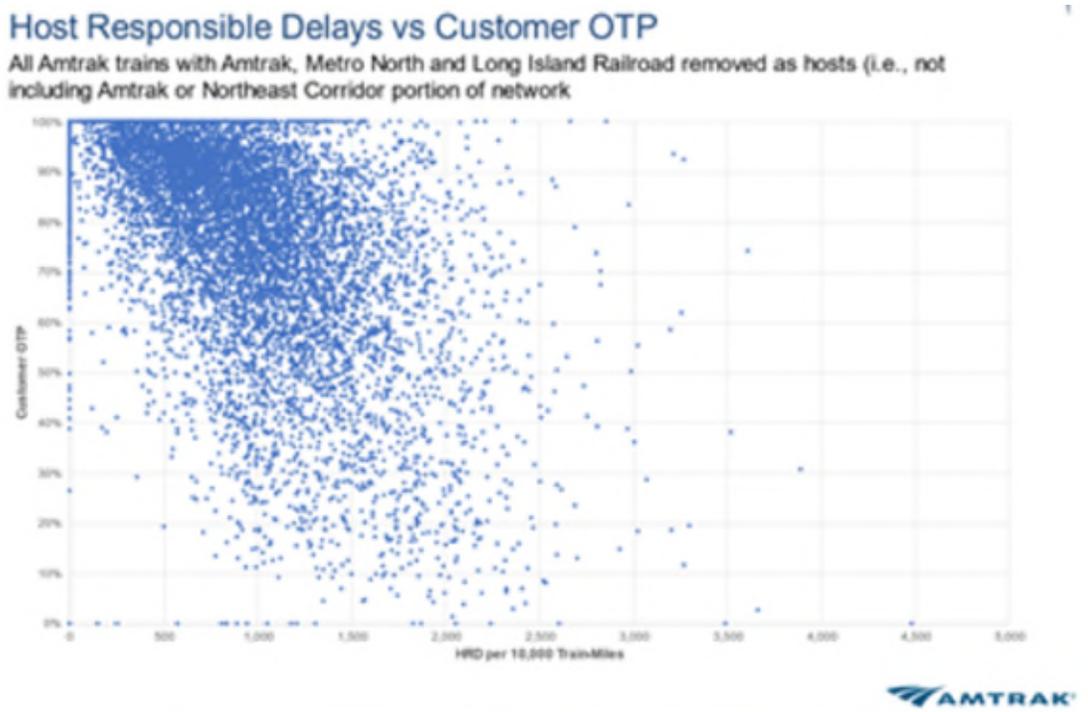
<sup>23</sup> See, e.g., “Host Railroad Report: Amtrak Train Performance on Host Railroads” dated through April 2022, page 4, available at:

<https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/April-2022-Amtrak-Host-Railroad-Report.pdf>

short, HRDs are a primary factor in whether an Amtrak will arrive at any specific station on-time, or if it will arrive late.

82. Amtrak has reviewed historical data for every Amtrak train operating on the systems of its Host Railroads (including CN) from April 2019 through March 2022. Specifically, Amtrak analyzed monthly COTP and HRD data, on a train-by-train basis, for 8,361 Amtrak trains.<sup>24</sup>

83. By analyzing historical data of HRDs impacting Amtrak's trains on routes hosted by its Host Railroads (including CN) from April 2019 through March 2022, Amtrak has confirmed the relationship between HRDs and COTP. Below is a graph that illustrates the relationship:



<sup>24</sup> Amtrak hosts a majority of the Northeast Corridor, as well as portions of the Michigan and Blue Water routes. Amtrak excluded from the analysis its HRDs for a train operating, in whole or in part, over a portion of track that it hosts. Amtrak also excluded HRDs for Long Island Railroad and Metro-North Railroad for portions of track that they host.

84. The top left corner of the graph depicts trains achieving 100% COTP and no HRDs. The data is skewed towards 100%. As HRDs decreases (the X axis), the COTP (y axis) increases.

85. Moreover, Amtrak's analysis revealed that - - for these trains - - the average performance was 77% COTP and 920 minutes of HRD per 10,000 train-miles. The median was 82% COTP and 887 minutes of HRD per 10,000 train miles. Because Amtrak analyzed over 8,300 data points, it is clear that there is an association between 80% COTP and approximately 900 minutes of HRD per 10,000 train-miles.

86. I, Yoel Weiss, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.

[The remainder of this page has been intentionally left blank]

Dated: May 27, 2022

A handwritten signature in blue ink that reads "Yoel Weiss".

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Yoel Weiss  
Senior Principal - Host Railroad Development  
National Railroad Passenger Corporation

# EXHIBIT 1

| Blue Water Train 364    |                        |                          | Schedule Skeleton - Blue Water/Train 364 (Daily) |       |           |              |     |                  |               |               |          |          | October 12, 2020  |                        |
|-------------------------|------------------------|--------------------------|--|-------|-----------|--------------|-----|------------------|---------------|---------------|----------|----------|-------------------|------------------------|
| Effective 7/16/18 Daily | Days of Operation      | Effective 10/12/20 Daily | Remarks and Changes                              | RR    | Mileage   | Services     | PRT | Recovery Minutes | Misc. Adjust. | Dwell Minutes | Arrive   | Depart   | Station           |                        |
| 4:00 PM                 | Dp Chicago, IL         | CT 4:00 PM               | Added 13" recovery from PHT                      | AMT   | 0.0       | t,E,FA,I,W,G |     |                  |               |               |          | 4:00 PM  | Chicago, IL CT    |                        |
| ---                     | Dp Hammond-Whiting, IN | ---                      |  | NS    | 1.6       |              |     |                  |               |               |          | 4:05 PM  | 4:05 PM           | XTF - 21st Street      |
| 6:10 PM                 | Dp Michigan City, IN   | CT 6:10 PM               |  | NS    | 15.7      |              |     |                  |               |               |          | 4:23 PM  | 4:23 PM           | Hammond-Whiting, IN    |
| 6:32 PM                 | Dp New Buffalo, MI     | ET 6:32 PM               |  | AMT   | 40.5      |              |     |                  | 5             |               |          | 4:50 PM  | 4:50 PM           | XPI - Porter CP482     |
| 6:43 PM                 | Dp Niles, MI           | 6:43 PM                  |  | AMT   | 52.3      |              |     |                  |               |               |          | 5:00 PM  | 5:00 PM           | Michigan City, IN      |
| 6:43 PM                 | Dp Dowagiac, MI        | 6:43 PM                  |  | AMT   | 52.7      |              |     |                  |               |               |          | 5:01 PM  | 5:01 PM           | XMC - Drawbridge       |
| 7:11 PM                 | Dp Kalamazoo, MI       | 7:11 PM                  |  | AMT   | 55.0      |              |     |                  |               |               |          | 5:03 PM  | 5:03 PM           | CP-226 CT              |
| 7:38 PM                 | Dp Battle Creek, MI    | 7:38 PM                  |  | AMT   | 62.3      |              |     |                  |               | -1            | 2        | 6:08 PM  | 6:10 PM           | New Buffalo (MP219) ET |
| 8:47 PM                 | Dp East Lansing, MI    | 9:00 PM                  |  | AMT   | 67.3      |              |     |                  |               |               |          | 6:15 PM  | 6:15 PM           | CP-213                 |
| 9:24 PM                 | Dp Durand, MI          | 9:37 PM                  |  | AMT   | 69.6      |              |     |                  |               |               |          | 6:16 PM  | 6:16 PM           | CP-211                 |
| 9:55 PM                 | Dp Flint, MI           | 10:08 PM                 |  | AMT   | 79.1      |              |     |                  |               |               |          | 6:21 PM  | 6:21 PM           | CP-202                 |
| 10:21 PM                | Dp Lapeer, MI          | 10:34 PM                 |  | AMT   | 80.7      |              |     |                  |               |               |          | 6:22 PM  | 6:22 PM           | CP-200                 |
| 11:31 PM                | Ar Port Huron, MI      | 11:31 PM                 |  | AMT   | 89.0      |              |     |                  |               |               |          | 6:28 PM  | 6:28 PM           | CP-192                 |
|                         |                        |                          |  | AMT   | 89.3      |              |     |                  |               |               |          | 6:29 PM  | 6:32 PM           | Niles, MI              |
|                         |                        |                          |  | AMT   | 90.8      |              |     |                  |               |               |          | 6:34 PM  | 6:34 PM           | CP-190                 |
|                         |                        |                          |  | AMT   | 101.0     |              |     |                  |               |               |          | 6:41 PM  | 6:41 PM           | CP-180                 |
|                         |                        |                          |  | AMT   | 101.7     |              |     |                  |               |               | 1        | 6:42 PM  | 6:43 PM           | Dowagiac, MI           |
|                         |                        |                          |  | AMT   | 103.1     |              |     |                  |               |               |          | 6:46 PM  | 6:46 PM           | CP-178                 |
|                         |                        |                          |  | AMT   | 108.6     |              |     |                  |               |               |          | 6:49 PM  | 6:49 PM           | CP-172                 |
|                         |                        |                          |  | AMT   | 109.8     |              |     |                  |               |               |          | 6:50 PM  | 6:50 PM           | CP-171                 |
|                         |                        |                          |  | AMT   | 119.7     |              |     |                  |               |               |          | 6:55 PM  | 6:55 PM           | CP-161                 |
|                         |                        |                          |  | AMT   | 121.0     |              |     |                  |               |               |          | 6:56 PM  | 6:56 PM           | CP-160                 |
|                         |                        |                          |  | AMT   | 134.1     |              |     |                  |               |               |          | 7:03 PM  | 7:03 PM           | CP-147                 |
|                         |                        |                          |  | MDOT  | 137.8     |              |     |                  |               |               | 3        | 7:08 PM  | 7:11 PM           | Kalamazoo, MI          |
|                         |                        |                          |  | MDOT  | 141.3     |              |     |                  |               |               |          | 7:15 PM  | 7:15 PM           | CP 140- Comstock       |
|                         |                        |                          |  | MDOT  | 156.8     |              |     |                  |               |               |          | 7:27 PM  | 7:27 PM           | CP 124-Custer          |
|                         |                        |                          |  | CN    | 159.8     |              |     |                  |               |               |          | 7:31 PM  | 7:31 PM           | XGO - Gord             |
|                         |                        |                          |  | CN    | 160.1     | t,e          |     |                  |               |               | 5        | 7:33 PM  | 7:38 PM           | Battle Creek, MI       |
|                         |                        |                          |  | CN    | 161.0     |              |     |                  |               |               |          | 7:41 PM  | 7:41 PM           | XB0 - Baron            |
|                         |                        |                          |  | CN    | 199.1     |              |     |                  |               |               |          | 8:20 PM  | 8:20 PM           | CP-Mill                |
|                         |                        |                          |  | CN    | 205.8     |              |     |                  |               |               |          | 8:29 PM  | 8:29 PM           | CP-Cedar               |
|                         |                        |                          |  | CN    | 208.2     |              |     |                  | 7             | 14            | 5        | 8:55 PM  | 9:00 PM           | East Lansing, MI       |
|                         |                        |                          | CN   | 237.6 |           |              |     | 2                | 2             | 2             | 9:35 PM  | 9:37 PM  | Durand, MI        |                        |
|                         |                        |                          | CN   | 239.7 |           |              |     |                  |               |               | 9:40 PM  | 9:40 PM  | East Durand       |                        |
|                         |                        |                          | CN   | 248.1 |           |              |     |                  |               |               | 9:48 PM  | 9:48 PM  | West Flint        |                        |
|                         |                        |                          | CN   | 256.1 |           |              |     | 1                | 3             | 5             | 10:03 PM | 10:08 PM | Flint, MI         |                        |
|                         |                        |                          | CN   | 261.0 |           |              |     |                  |               |               | 10:13 PM | 10:13 PM | East Flint        |                        |
|                         |                        |                          | CN   | 271.3 |           |              |     |                  |               |               | 10:23 PM | 10:23 PM | W.E. Lapeer       |                        |
|                         |                        |                          | CN   | 273.3 |           |              |     |                  |               |               | 10:25 PM | 10:25 PM | E.E. Lapeer       |                        |
|                         |                        |                          | CN   | 274.3 |           |              |     |                  | 4             | 2             | 10:32 PM | 10:34 PM | Lapeer, MI        |                        |
|                         |                        |                          | CN   | 286.6 |           |              |     | 20               |               |               | 10:54 PM | 10:54 PM | W.E. Imlay        |                        |
|                         |                        |                          | CN   | 288.8 |           |              |     | 3                |               |               | 10:57 PM | 10:57 PM | E.E. Imlay        |                        |
|                         |                        |                          | CN   | 300.7 |           |              |     | 10               |               |               | 11:07 PM | 11:07 PM | W.E. Emmett       |                        |
|                         |                        |                          | CN   | 303.5 |           |              |     | 3                |               |               | 11:10 PM | 11:10 PM | E.E. Emmett       |                        |
|                         |                        |                          | CN   | 313.3 |           |              |     | 9                |               |               | 11:19 PM | 11:19 PM | West Tappan       |                        |
|                         |                        |                          | CN   | 318.5 | T,E (PON) |              |     | 7                | 5             |               | 11:31 PM |          | Port Huron, MI ET |                        |

timezone  
1:00

|              |                | Total Pure Run | Total Recovery Minutes | Total Arbitrary Minutes | Total Dwell | Total Schedule Time |
|--------------|----------------|----------------|------------------------|-------------------------|-------------|---------------------|
| AMT          | CHI-XTF        | 5              | 0                      | 0                       | 0           | 5                   |
| NS           | XTF-XPI        | 40             | 5                      | 0                       | 0           | 45                  |
| AMT          | XPI-KAL        | 73             | 0                      | -1                      | 9           | 81                  |
| MDOT         | KAL-XGO        | 20             | 0                      | 0                       | 0           | 20                  |
| CN           | XGO-PTH        | 183            | 15                     | 23                      | 19          | 240                 |
| <b>TOTAL</b> | <b>CHI-PTH</b> | <b>321</b>     | <b>20</b>              | <b>22</b>               | <b>28</b>   | <b>391</b>          |

Purpose of Misc. Adjustments

|                        |           |
|------------------------|-----------|
| New Buffalo (MP219) ET | -1 Legacy |
| East Lansing, MI       | 14 Legacy |
| Durand, MI             | 2 Legacy  |
| Flint, MI              | 3 Legacy  |
| Lapeer, MI             | 4 Legacy  |

# EXHIBIT 2



December 18, 2020

Mr. Scott Kuxmann  
NRPC Operations Officer  
Canadian National  
17641 South Ashland Ave.  
Homewood, Illinois 60430-1345

Dear Mr. Kuxmann,

As you know, the *Metrics and Minimum Standards for Intercity Passenger Rail Service* final rule published on November 16, 2020 (the “Final Rule”) introduces a certified schedule metric that requires Amtrak to report to the Federal Railroad Administration (“FRA”) the number of certified schedules, uncertified schedules, and disputed schedules, by train, by route, and by host railroad.

The Final Rule defines a “certified schedule” as a published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer on-time performance (“OTP”) metric and standard set forth in the Final Rule.

Appendix A provides the list of train schedules that Amtrak proposes to jointly certify with Canadian National are aligned to the customer OTP metric and standard on Canadian National. Each train listed has been reviewed and meets one or more of the following criteria:

- The schedule is already aligned or was modified to align with the customer OTP metric and standard.
- Customer OTP regularly exceeded 80% in FY 2020.
- The placement of the recovery time is correlated with the locations of detraining passengers.
- The recovery time is distributed to the benefit of detraining passengers.

Please confirm Canadian National’s agreement to certify the train schedules listed in Appendix A pursuant to the Final Rule. Please contact Chris Zappi, Director Host Railroads, at [Christopher.Zappi@amtrak.com](mailto:Christopher.Zappi@amtrak.com) if you have any questions. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Blair", with a large, stylized flourish underneath.

Jim Blair  
*Amtrak*  
*Sr. Director, Host Railroads*

*December 18, 2020*

*Page 2*

cc: Dennis Newman Amtrak  
Shawn Gordon Amtrak  
Jason Maga Amtrak  
Bruce Davidson Amtrak  
Christopher Zappi Amtrak

**Appendix A**

**Train Schedules Aligned to the Customer On-Time Performance Metric and Standard**

| <b>Service</b>      | <b>Train</b> |
|---------------------|--------------|
| Blue Water          | 364          |
| Blue Water          | 365          |
| City Of New Orleans | 58           |
| City Of New Orleans | 59           |
| Illini / Saluki     | 390          |
| Illini / Saluki     | 392          |
| Lincoln Service     | 300          |
| Lincoln Service     | 301          |
| Lincoln Service     | 302          |
| Lincoln Service     | 303          |
| Lincoln Service     | 304          |
| Lincoln Service     | 305          |
| Lincoln Service     | 306          |
| Sunset Limited      | 1            |
| Sunset Limited      | 2            |
| Texas Eagle         | 21           |
| Texas Eagle         | 22           |
| Wolverine           | 350          |
| Wolverine           | 351          |
| Wolverine           | 352          |
| Wolverine           | 353          |
| Wolverine           | 354          |
| Wolverine           | 355          |

# EXHIBIT 3

| Service             | Train | Host Railroad | In list of planned operations? | Terminal/ Switching Railroad? | FY20 Departures | FY20 Host delay minutes per 10K train-miles | Criteria                         |   |   |   |   |
|---------------------|-------|---------------|--------------------------------|-------------------------------|-----------------|---|----------------------------------|---|---|---|---|
|                     |       |               |                                |                               |                 |   | More than 14 departures in FY20? | Schedule designed or modified for Customer OTP? | Customer OTP >=80% for at least 50% of the quarters operated? | Placement of the recovery time is correlated with the locations of detrainings (with r value) | Recovery time is distributed to the benefit of detrainings (with metric result) |
| Adirondack          | 68    | CN            | Yes                            | No                            | 156             | 2,847                                       | Yes                              | Yes   |   | Yes (0.54)  | Yes (0.95)  |
| Adirondack          | 69    | CN            | Yes                            | No                            | 157             | 4,981                                       | Yes                              | Yes   | Yes   |   | Yes (0.99)  |
| Blue Water          | 364   | CN-IC         | Yes                            | No                            | 364             | 482   | Yes                              | Yes   |   |   |   |
| Blue Water          | 365   | CN-IC         | Yes                            | No                            | 364             | 868   | Yes                              | Yes   | Yes   | Yes (0.72)  | Yes (1)   |
| City Of New Orleans | 58    | CN-IC         | Yes                            | No                            | 354             | 789   | Yes                              |   | Yes   | Yes (0.77)  | Yes (0.95)  |
| City Of New Orleans | 59    | CN-IC         | Yes                            | No                            | 352             | 759   | Yes                              |   | Yes   | Yes (0.71)  |   |
| City Of New Orleans | 1058  | CN-IC         | No                             | No                            | 4               | 781   | No                               |   | Yes   |   |   |
| City Of New Orleans | 1059  | CN-IC         | No                             | No                            | 7               | 840   | No                               |   | Yes   |   |   |
| Illini / Saluki     | 390   | CN-IC         | Yes                            | No                            | 364             | 902   | Yes                              |   |   | Yes (0.99)  | Yes (0.87)  |
| Illini / Saluki     | 391   | CN-IC         | Yes                            | No                            | 172             | 1,148                                       | Yes                              |   |   |   |   |
| Illini / Saluki     | 392   | CN-IC         | Yes                            | No                            | 172             | 1,173                                       | Yes                              |   |   | Yes (0.99)  | Yes (0.78)  |
| Illini / Saluki     | 393   | CN-IC         | Yes                            | No                            | 364             | 962   | Yes                              |   |   |   |   |
| Lincoln Service     | 300   | CN-IC         | Yes                            | No                            | 366             | 2,318                                       | Yes                              |   | Yes   | Yes (0.86)  | Yes (0.94)  |
| Lincoln Service     | 301   | CN-IC         | Yes                            | No                            | 171             | 1,748                                       | Yes                              |   | Yes   | Yes (0.78)  |   |
| Lincoln Service     | 302   | CN-IC         | Yes                            | No                            | 172             | 2,306                                       | Yes                              |   | Yes   | Yes (0.59)  | Yes (0.94)  |
| Lincoln Service     | 303   | CN-IC         | Yes                            | No                            | 366             | 1,490                                       | Yes                              |   | Yes   | Yes (0.93)  |   |
| Lincoln Service     | 304   | CN-IC         | Yes                            | No                            | 171             | 1,590                                       | Yes                              |   | Yes   | Yes (0.96)  | Yes (0.77)  |
| Lincoln Service     | 305   | CN-IC         | Yes                            | No                            | 172             | 1,103                                       | Yes                              |   |   | Yes (0.69)  |   |
| Lincoln Service     | 306   | CN-IC         | Yes                            | No                            | 366             | 1,961                                       | Yes                              |   | Yes   | Yes (0.93)  | Yes (0.86)  |
| Lincoln Service     | 307   | CN-IC         | Yes                            | No                            | 366             | 1,286                                       | Yes                              |   |   |   |   |
| Lincoln Service     | 308   | CN-IC         | No                             | No                            | 2               | 0   | No                               |   |   |   |   |
| Lincoln Service     | 309   | CN-IC         | No                             | No                            | 2               | 2,011                                       | No                               |   |   |   |   |
| Sunset Limited      | 1     | CN-IC         | Yes                            | No                            | 146             | 28,798                                      | Yes                              |   |   | Yes (0.63)  | Yes (0.95)  |
| Sunset Limited      | 2     | CN-IC         | Yes                            | No                            | 145             | 30,627                                      | Yes                              |   |   | Yes (0.89)  | Yes (0.92)  |
| Texas Eagle         | 21    | CN-IC         | Yes                            | No                            | 366             | 2,191                                       | Yes                              |   |   | Yes (0.63)  | Yes (0.76)  |
| Texas Eagle         | 22    | CN-IC         | Yes                            | No                            | 364             | 2,932                                       | Yes                              |   |   |   | Yes (0.97)  |
| Wolverine           | 350   | CN-IC         | Yes                            | No                            | 171             | 2,516                                       | Yes                              | Yes   |   |   | Yes (0.85)  |
| Wolverine           | 351   | CN-IC         | Yes                            | No                            | 364             | 2,908                                       | Yes                              | Yes   | Yes   | Yes (1)   | Yes (0.95)  |
| Wolverine           | 352   | CN-IC         | Yes                            | No                            | 363             | 3,241                                       | Yes                              | Yes   | Yes   |   |   |
| Wolverine           | 353   | CN-IC         | Yes                            | No                            | 172             | 2,586                                       | Yes                              | Yes   |   | Yes (0.82)  | Yes (0.9)   |
| Wolverine           | 354   | CN-IC         | Yes                            | No                            | 168             | 2,672                                       | Yes                              | Yes   |   |   |   |
| Wolverine           | 355   | CN-IC         | Yes                            | No                            | 169             | 2,741                                       | Yes                              | Yes   |   | Yes (0.95)  | Yes (0.86)  |

# EXHIBIT 4



United States Region

**Michael A. Matteucci**  
Region Director Contracts and Administration

17641 So. Ashland Avenue  
Homewood, IL 60430-1345  
T 708.332.3598  
F 708.332.3673

April 7, 2021

Jim Blair  
Senior Director, Host Railroads  
National Railroad Passenger Corporation  
30th Street Station  
4th Floor, 4N-163  
Philadelphia, PA 19104

Dear Jim:

This letter responds to your December 18, 2020 letter to Scott Kuxmann proposing to certify various Amtrak schedules in accordance with the *Metrics and Minimum Standards for Intercity Passenger Rail Service* final rule published by FRA on November 16, 2020. It also follows up on a related exchange of letters between our CEO's regarding proposed schedule changes (Attachment 1).

As you know, the final FRA rule makes Customer on-time performance ("OTP") the sole metric for measuring Amtrak OTP. The final rule instructs and Administrator Batory has urged Amtrak and its host railroads to align schedules, as necessary, with that metric, which is consistent with the work our railroads have jointly undertaken on long-term schedules during the past 10 months. If we agree that a schedule is aligned with the Customer OTP metric, we are to certify the schedule. If we cannot agree, we have the option either of leaving the schedule uncertified or initiating a non-binding dispute resolution process.

Your letter proposes to certify the schedules of 23 of the 26 daily Amtrak trains that operate over CN's lines in the United States during normal operations. Although we do not agree with your methodology for identifying schedules ready for certification, we do agree on certification for most of the schedules for the Amtrak trains we host. Assuming there are no changes to the arrival or start times at the beginning of CN's portion of the route, CN believes the schedules for the trains on its portion of the *Wolverine*, *Blue Water*, *Lincoln*, *Texas Eagle*, and *Sunset Limited* services are ready to be certified. We can therefore certify the schedules for 5 of the 7 services and 20 of the 26 daily trains that operate over CN's lines in the United States during normal operations.

What remains are the two trains on the *City of New Orleans* service and the four trains on the *Illini/Saluki* service. We believe a key reason for our difference in view is your use of high Customer OTP in FY 2020 as an independent basis for proposed certification. As discussed below, due to Amtrak's significant reductions in operations during the present

pandemic, Amtrak's temporarily improved performance is not an adequate or appropriate basis to establish long-term schedules. It is also evident that your list is over-inclusive as it includes schedules for two trains on the *Illini/Saluki* service that have been the subject of continuing discussions between our railroads and for which Amtrak itself has acknowledged require at least 10 minutes added to the schedule (see Flynn Letter to Ruest, Oct. 16, 2020, Attachment 1).

For CN's 930-mile *City of New Orleans* service, after a reallocation of recovery time, we believe only a small amount of additional run time (1-3%) is needed. I have attached a proposal (see Attachment 2) that shows the necessary changes that would allow us to also certify the schedule for these two trains.

This leaves only the schedules for the 4 trains on the *Illini/Saluki* service. Since June 2020, our executives have met multiple times and exchanged and discussed different schedule proposals for that service. They have appropriately focused their efforts on establishing long-term, standard schedules intended to work well into the future, when the pandemic is over, and Amtrak's operations have returned to normal (including operating 4 trains and without the speed restriction CN has imposed for the safe operation of Amtrak's single level equipment over grade crossings).

Most recently Amtrak proposed adopting temporary schedules for the *Illini/Saluki* service based only on a reallocation of existing schedule time, with longer standard schedules that would automatically take effect at a later date based on an objective measure. See Flynn Letter (Attachment 1). Given the extreme temporary changes to Amtrak operations caused by the pandemic, we are willing to use that proposed framework in an effort to resolve our differences. In addition, provided that Amtrak agrees to adopt CN's proposed standard schedules (see Attachment 3) based on one of the objective criterion proposed below, we are willing to accept the temporary schedules that Amtrak proposed during the June 9 meeting (see Attachment 4). As noted above, Amtrak proposed adding 10 minutes to the long-term standard schedule for these trains (Flynn Letter, Attachment 1). However, as I will explain, additional run time is required for these trains to reliably achieve the 80% Customer OTP standard once operations return to normal.

The FRA and Administrator Batory emphasized schedule adjustments must be focused on meeting the Customer OTP standard for the long-term under normal (non-pandemic) operating conditions. The longer-term standard schedules cannot be based on present temporary conditions. Over the past year, the COVID pandemic has transformed passenger and freight operations. Amtrak suffered a 95% reduction in ridership at the height of the pandemic, causing it to slash the number of trains it operates. On CN lines, Amtrak has reduced the number of trains by half: from 24 daily trains pre-pandemic to just 10 daily trains and 4 trains that operate every-other-day. With fewer riders, there are fewer station delays, and without opposing passenger train meets, passenger train interference has disappeared, and now that the Superliner equipment is the standard consist for this service (see Flynn Letter, Attachment 1), delays due to the short shunt speed restriction have also been eliminated.

As result of these changes, performance has temporarily improved on the *Illini/Saluki* service. But temporary improved performance due to these pandemic conditions does not provide a basis for establishing a standard schedule. A standard schedule must remain achievable when ridership and train volumes return to normal. That is the task that the FRA's final rule and Administrator Batory set for us, and that is the task our railroads have undertaken.

Accordingly, in order to develop our proposed standard schedules for the *Illini/Saluki* service, CN used data for arrivals, departures, and delays from the most recent past period of normal operations (2018-2019), and we then tested our schedule proposal against operations during that period. Starting with the schedules proposed by Amtrak on June 9, which shifted some existing recovery time to PRT, we added recovery time until the schedule could reliably achieve 80% Customer OTP during this period of normal operations. The resulting schedules would add 15, 26, 26, and 40 minutes to the current run times for the four trains in this service, which is, on average, only a modest 8% increase in average run time. This increase is even more modest when the 10 minutes of added run time proposed by Amtrak is taken into account – CN’s proposed schedules would be only 5, 16, 16, and 30 minutes longer, an average increase of only 5%. See Attachment 3.

CN’s proposal, consistent with most other Amtrak services, provides for different schedules and schedule adjustments for individual trains because different trains encounter different levels and types of delay. For example, train 392, for which we have proposed an additional 40 minutes, tends to experience the highest levels of both passenger train interference and delays caused by Amtrak crews, passengers, and equipment.

With this small overall increase in schedule time, we anticipate large gains in Customer OTP. Our estimate is that Customer OTP would increase by approximately 55 percentage points, from 27% during the 2018-2019 period under the existing schedules to over 80% once the new schedules are implemented.

Importantly, the need for additional time in the schedule is not driven by delays caused by CN’s freight trains. CN analyzed Amtrak’s delay reports for the period 2018-2019 and found that delays caused by CN’s freight trains averaged only 11.4 minutes per trip during the 2018-2019 period. Even if CN could somehow eliminate *all* such delays, which would require eliminating freight trains and ceasing to provide key services to our shippers, there would still be far too little time in the schedule to reliably meet the Customer OTP standard, given other delays. In any event, eliminating all delays due to freight operations is unrealistic and infeasible. CN works hard to minimize freight train interference, but on a busy single-line, with shared freight and passenger operations, real world events are bound to result in some FTI delays. These events include such things as badly out of slot Amtrak trains, severe weather, mechanical malfunctions of freight or passenger trains, and network congestion. Indeed, Amtrak experiences FTI delays even when it dispatches and controls its own lines, such as in the Northeast Corridor.

In contrast to the relatively low levels of delay caused by CN’s freight trains, CN’s analysis showed that delays due to non-CN causes (including on the non-CN portion of the route) averaged 19.8 minutes per trip, which is 74% higher than the average delay caused by CN’s freight trains, and 42% of total delays, excluding delays attributable to the short shunt speed restriction. Delays due to interference from Amtrak’s other trains, which are inevitable where trains are scheduled to meet on single track territory, averaged a further 7.1 minutes per trip, equal to 15% of total delays.

Taken together, total delays that cannot reasonably be attributed to CN average 26.9 minutes per trip. These delays consume between 67% and 75% of the 36 to 40 total minutes of recovery (including miscellaneous) time in the current schedules. During normal operating conditions, it is impossible to meet an 80% Customer OTP standard when such a high percentage of recovery time is consumed by delays, such as these, that are beyond CN’s reasonable control.

As further evidence that our proposed standard schedules are reasonable, as we've noted previously, CN's proposed schedules for the *Illini/Saluki* service would remain shorter than almost every other Amtrak schedule of comparable length. The average run time for CN's proposed schedules are each 357 minutes, covering a 309 mile route. As shown in the table in Attachment 5, among the 14 Amtrak routes that are between 200 and 400 miles long, CN's proposed schedules would have the third smallest ratio of schedule time to distance. (The current schedule for the *Illini/Saluki* is second overall in this metric.) This strongly suggests that the total run times for the proposed schedules are not excessive, and that their transit times should be as attractive to Amtrak's passengers as other Amtrak services. The *Wolverine* service attracts customers with a 364 minute schedule over its 304 mile route between Chicago and Pontiac, and the *Cascades* service attracts customers with a 383 minute schedule over a 311 mile route between Seattle and Eugene. By comparison, the *Illini/Saluki* service would have a shorter schedule over its 309 mile route.

We believe our proposed standard schedules will benefit both Amtrak and its riders. Amtrak's Customer OTP would dramatically improve, and Amtrak's passengers will benefit from more realistic and reliable performance. The added time in the schedules would not lengthen trip times actually experienced by riders. It would simply align the schedule with Amtrak's actual operating times as experienced over many years. More generally, we believe riders will find the benefits of accurate and reliable schedules and enhanced OTP performance of the trains to greatly outweigh the modest lengthening of the schedule.

As noted above, provided that Amtrak is willing to accept CN's proposed longer-term standard schedules based on one of the objective criterion proposed below, CN would be willing to accept Amtrak's proposed temporary schedules. The additional run time necessary during normal operations is not required today, when Amtrak's operations remain severely impacted by the COVID pandemic. CN proposes that the standard schedules automatically replace the temporary schedules proposed by Amtrak if and when Amtrak resumes operating 4 trains in the *Illini/Saluki* service. Alternatively, if Amtrak prefers, CN is willing to use actual Customer OTP as the sole basis for transitioning to standard schedules. Under that option, the transition to a standard schedule for a train in the *Illini/Saluki* service would only occur if on or after January 1, 2022, Customer OTP for that train falls below 85% for any calendar quarter.

Each of these proposed criterion is clear, objective, and easy to implement. Whichever Amtrak chooses, it will ensure that the standard schedule will not be implemented before it is necessary, and if the criterion chosen is not met, the "temporary" schedules would remain in place.

Our proposal to adopt both these permanent and temporary schedules is also predicated and conditioned on the absence of any delays due to the application of a short shunt slow order. As you know, Amtrak's recent use of the Superliner equipment has significantly increased the recent OTP on this service. In order that we may agree to schedules with no added time to compensate for such a slow order, Amtrak would need to agree to continue running the Superliner equipment it is currently running, at least until we have a functioning shunt enhancer or other solution to resolve the short shunt safety issue. We were encouraged in this regard by Mr. Flynn's statement that Amtrak's Superliner equipment is now "the standard consist for this service."

We hope you will review our compromise proposal with an open mind, as we believe the proposed schedules will serve the interests of all stakeholders. It reflects a sincere effort and desire by CN to resolve our long-standing schedule issues with Amtrak on this lone service, and

to incorporate and improve upon Amtrak's own proposal for temporary and permanent schedules.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael Matteucci", with a long horizontal flourish extending to the right.

Michael Matteucci

Attachments

## **Attachment 1**



[www.cn.ca](http://www.cn.ca)

**J.J. Ruest**  
President and  
Chief Executive Officer

935 de La Gauchetière Street West  
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Montreal, Quebec H3B 2M9  
Canada  
T 514-399-6734

**Jean-Jacques Ruest**  
Président-  
directeur général

935, rue de La Gauchetière Ouest  
Montréal (Québec) H3B 2M9  
16<sup>e</sup> étage  
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T 514 399-6734

October 16, 2020

Mr. William J. Flynn  
President and Chief Executive Officer  
National Railroad Passenger Corporation  
1 Massachusetts Avenue, NW  
Washington, D.C. 20001

Dear Mr. Flynn:

Thank you very much for your letter of September 24, 2020, regarding Amtrak's plan for a future return to regular service. I hope this letter finds you and your family healthy. These are indeed challenging times and I appreciate your steadfast and bold leadership to keep employees and passengers safe during the pandemic. Safety is a core value at CN and it drives every decision we make.

CN is proud to host Amtrak long distance services, such as the *City of New Orleans*, and state-supported services, such as the *Blue Water*, *Wolverine*, and *Illini/Saluki*. When Amtrak plans in the future to transition from its reduced service to regular service, CN will work with Amtrak to reinstate regular service. I have asked Derek Taylor, our Vice President of the Eastern Region, to be available to your team if operations questions or concerns arise.

Thank you for offering your assistance on issues that may require your attention. In fact, there is such an issue. I would very much appreciate your help in addressing important schedule changes required for Amtrak's state-supported *Illini/Saluki* service.

As you know, CN was eager to work with Amtrak to develop revised schedules in anticipation of the Federal Railroad Administration's pending rulemaking to establish a new metric for measuring the on-time performance of Amtrak's trains. Further, we were pleased that as part of those discussions, CN and Amtrak have reached agreement on new schedules for the *Blue Water* and *Wolverine* services. Unfortunately, we have not been as successful in addressing necessary schedule changes for Amtrak's *Illini/Saluki* service.

Despite CN's strong performance as host, Amtrak passengers on the *Illini/Saluki* service often arrive late to their destination stations because its published schedules are outdated and unrealistic. Amtrak schedules for this service do not account for all delays, including delays outside of CN's control such as delays caused by Amtrak and third-parties. Changing Amtrak's schedules is necessary to make them realistically achievable. Additional schedule time is required for the *Illini/Saluki* service given operational realities, including delays attributable to Amtrak such as two Amtrak trains meeting one another, and infrastructure limitations of CN's mostly-single track network. It is important to understand that the majority of delays on this service are attributed to Amtrak's own crews, trains, passengers, and third parties for this service, and not interference due to CN's freight trains, which accounts for just 17% of delay.

Mr. William J. Flynn  
October 16, 2020  
Page 2

For this service, a modest lengthening of the *Illini/Saluki* schedule is required and could significantly improve Amtrak on-time performance, without the need for Amtrak funding of additional network capacity.

CN has proposed a modest lengthening in total run time (an average of 27 minutes added per train) that should dramatically increase on-time performance under FRA's proposed metric at the stations used by the great majority of Amtrak's passengers. Unfortunately, to date, Amtrak has not accepted that proposal. I ask that you reach out to your team and encourage them to reconsider CN's proposed schedule adjustments so that *Illini/Saluki* trains can reliably achieve high on time performance.

CN is dedicated to providing Amtrak's trains with the highest priority of all trains that operate on CN's network in the United States. As you know, CN regularly delays its freight trains carrying cargo for the nation's economy in order to minimize delays to Amtrak passengers. In 2019, CN's dispatchers delayed CN's freight trains for Amtrak passenger trains an average of more than 35 times per day. As a result, direct delays to CN trains due to Amtrak in 2019 totaled approximately 19.9 hours of delay per day, which is over 8 times more delay than the delays reported by Amtrak due to CN's trains.

Thank you again for your letter. We look forward to working together toward a successful future.

Sincerely,



Jean-Jacques Ruest  
President and Chief Executive Officer

William J. Flynn  
President and Chief Executive Officer



November 3, 2020

Mr. Jean-Jacques Ruest  
President and Chief Executive Officer  
Canadian National Railway Company  
Rue de la Gauchetière Ouest  
Montreal, Quebec H3B 2M9 Canada

**Re: Illini/Saluki Schedule Proposals**

Dear J.J.:

Thank you for your letter of October 16 and for your commitment to Amtrak service. We appreciate your support and wish you, your family, and the entire CN team well through this continuing health crisis.

During our conversation in April, we agreed that the safe operation of the *Illini/Saluki* is of the utmost importance to both Amtrak and CN. We appreciate the continued cooperation of our companies, together with the Illinois Department of Transportation, Federal Railroad Administration, and others, to identify and evaluate potential solutions to mitigate the risk of loss of shunt incidents, including the establishment of a new test track to analyze the viability of electrical and mechanical shunt enhancement devices. I know our teams remain in close communication and focused on expeditiously progressing these efforts. CN also previously suggested that Amtrak operate double-level Superliner equipment on the *Illini/Saluki*. In October, Superliner equipment became the standard consist for the service.

Regarding the *Illini/Saluki* schedule, it is important to recognize that the *majority of customers are arriving at their destination on time today*. Even while still operating with single-level trains which are subject to the speed restrictions, customer on-time performance (OTP) reached 80 percent in August. Nevertheless, we made the following proposal as a compromise: (1) redistribute recovery time now to better align the schedules with the proposed customer OTP metric, which we expect would immediately increase customer OTP to 90 percent or more, and (2) lengthen the schedule by ten minutes in the future based on an objective metric agreed upon in advance.

Redistributing some of the 36 to 40 minutes of recovery time in each schedule, especially when combined with the 12 minutes saved by the use of Superliner equipment, would result in an immediate and measurable improvement in customer OTP. The addition of ten minutes to the schedule in the future, based on an objective metric that Amtrak's representatives invited CN to propose earlier this summer, should ensure these improvements can be sustained when circumstances change.

*Mr. Jean-Jacques Ruest*  
*November 3, 2020*  
*Page 2*



CN's suggestion to add as much as 52 minutes to the schedule would not only substantially increase the costs borne by the State of Illinois and likely decimate customer demand, but also create inefficiencies for CN's own operation as Amtrak trains arrive early at stations and wait to depart on schedule.

Therefore, we ask you to reconsider our compromise proposal, which we believe is supported by the data and addresses both CN's and Amtrak's concerns.

Sincerely,

A handwritten signature in black ink that reads "Bill Flynn". The signature is written in a cursive style with a long, sweeping underline.

William J. Flynn  
*President & Chief Executive Officer*

cc: Stephen Gardner  
Dennis Newman  
Scot Naparstek

## **Attachment 2**

**Current Schedule Skeleton - City of New Orleans/Train 58**

| RR   | Mileage | Services      | PRT                  | Recovery<br>Minutes          | Misc.<br>Adjust.       | Dwell<br>Minutes | Arrive   | Depart                    | Station                    |
|------|---------|---------------|----------------------|------------------------------|------------------------|------------------|----------|---------------------------|----------------------------|
| AMT  | 0.0     | T,E,F,A,I,W,G |                      |                              |                        |                  |          |                           |                            |
| CNIC | 3.7     |               | 10                   |                              |                        |                  | 1:55 PM  | 1:45 PM                   | New Orleans, LA CT         |
| CNIC | 53.3    |               | 47                   |                              | 3                      | 3                | 2:42 PM  | 2:45 PM                   | Hammond, LA                |
| CNIC | 105.4   |               | 45                   |                              | 2                      | 2                | 3:30 PM  | 3:32 PM                   | F McComb, MS               |
| CNIC | 129.2   |               | 22                   |                              | 2                      | 2                | 3:54 PM  | 3:56 PM                   | F Brookhaven, MS           |
| CNIC | 149.8   |               | 19                   |                              | 2                      | 2                | 4:15 PM  | 4:17 PM                   | F Hazlehurst, MS           |
| CNIC | 183.3   | e             | 42                   | 18                           | 11                     | 16               | 5:28 PM  | 5:44 PM                   | Jackson, MS                |
| CNIC | 227.7   |               | 54                   | 2                            | 2                      | 2                | 6:40 PM  | 6:42 PM                   | F Yazoo City, MS           |
| CNIC | 280.2   | t             | 48                   | 2                            | 5                      | 5                | 7:32 PM  | 7:37 PM                   | Greenwood, MS              |
| CNIC | 336.5   |               | 52                   |                              | 2                      | 2                | 8:29 PM  | 8:31 PM                   | F Marks, MS                |
| CNIC | 405.4   | E e           | 76                   | 28                           | 5                      | 20               | 10:20 PM | 10:40 PM                  | Memphis, TN                |
| CNIC | 491.6   |               | 98                   | 2                            | 2                      | 2                | 12:20 AM | 12:22 AM                  | F Newbern-Dyersburg, TN    |
| CNIC | 527.4   |               | 37                   | 3                            | 2                      | 2                | 1:02 AM  | 1:04 AM                   | F Fulton, KY               |
| CNIC | 624.9   | T,E           | 104                  | 23                           | 5                      | 5                | 3:11 AM  | 3:16 AM                   | Carbondale, IL             |
| CNIC | 680.8   |               | 62                   |                              | 2                      | 2                | 4:08 AM  | 4:10 AM                   | F Centralia, IL            |
| CNIC | 733.8   |               | 45                   | 1                            | 1                      | 1                | 4:56 AM  | 4:57 AM                   | F Elfringham, IL           |
| CNIC | 780.6   |               | 23                   | 1                            | 2                      | 2                | 5:21 AM  | 5:23 AM                   | F Mattoon, IL (Charleston) |
| CNIC | 805.2   |               | 37                   | 5                            | 5                      | 5                | 6:05 AM  | 6:10 AM                   | Champaign-Urbana, IL       |
| CNIC | 877.1   |               | 59                   | 2                            | 2                      | 2                | 7:11 AM  | 7:13 AM                   | F Kankakee, IL             |
| CNIC | 909.5   |               | 27                   | 1                            | 3                      | 3                | 7:41 AM  | 7:44 AM                   | Homewood, IL               |
| AMT  | 931.6   |               | 30                   | 39                           | 15                     |                  | 9:08 AM  | 9:08 AM                   | XCS - Clark St.            |
| CT   | 932.3   |               | 16                   |                              |                        |                  | 9:24 AM  | 9:24 AM                   | X9R - Roosevelt Rd.        |
| AMT  | 933.8   | t,e           | 7                    |                              | -16                    |                  | 9:15 AM  | 9:15 AM                   | Chicago, IL CT             |
|      |         |               | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell   |          | Total<br>Schedule<br>Time |                            |
|      |         |               | NOL-XSU              | 19                           | 0                      | 0                | 0        | 19                        |                            |
|      |         |               | XSU-MEM              | 405                          | 50                     | 16               | 54       | 525                       |                            |
|      |         |               | MEM-XCS              | 512                          | 77                     | 15               | 24       | 628                       |                            |
|      |         |               | XCS-CHI              | 23                           | 0                      | -16              | 0        | 7                         |                            |
|      |         |               | XSU-XCS              | 917                          | 127                    | 31               | 78       | 1153                      |                            |
|      |         |               | NOL-CHI              | 956                          | 127                    | 15               | 78       | 1170                      |                            |

**Proposed Schedule Skeleton - City of New Orleans/Train 58**

| RR   | Mileage | Services      | PRT                  | Recovery<br>Minutes          | Misc.<br>Adjust.       | Dwell<br>Minutes | Arrive   | Depart                    | Station                    |
|------|---------|---------------|----------------------|------------------------------|------------------------|------------------|----------|---------------------------|----------------------------|
| AMT  | 0.0     | T,E,F,A,I,W,G |                      |                              |                        |                  |          |                           |                            |
| CNIC | 3.7     |               | 11                   |                              |                        |                  | 1:56 PM  | 1:45 PM                   | New Orleans, LA CT         |
| CNIC | 53.3    |               | 51                   | 8                            | 5                      | 3                | 2:57 PM  | 3:00 PM                   | Hammond, LA                |
| CNIC | 105.4   |               | 45                   | 2                            | 2                      | 2                | 3:47 PM  | 3:49 PM                   | F McComb, MS               |
| CNIC | 129.2   |               | 21                   | 5                            | 2                      | 2                | 4:15 PM  | 4:17 PM                   | F Brookhaven, MS           |
| CNIC | 149.8   |               | 18                   | 3                            | 2                      | 2                | 4:40 PM  | 4:42 PM                   | F Hazlehurst, MS           |
| CNIC | 183.3   | e             | 33                   | 5                            | 10                     | 16               | 5:30 PM  | 5:46 PM                   | Jackson, MS                |
| CNIC | 227.7   |               | 52                   | 2                            | 2                      | 2                | 6:40 PM  | 6:42 PM                   | F Yazoo City, MS           |
| CNIC | 280.2   | t             | 49                   | 2                            | 2                      | 5                | 7:35 PM  | 7:40 PM                   | Greenwood, MS              |
| CNIC | 336.5   |               | 53                   |                              | 2                      | 2                | 8:33 PM  | 8:35 PM                   | F Marks, MS                |
| CNIC | 405.4   | E e           | 79                   | 30                           | 2                      | 20               | 10:26 PM | 10:46 PM                  | Memphis, TN                |
| CNIC | 491.6   |               | 107                  | 2                            | 2                      | 2                | 12:35 AM | 12:37 AM                  | F Newbern-Dyersburg, TN    |
| CNIC | 527.4   |               | 34                   | 8                            | 2                      | 2                | 1:21 AM  | 1:23 AM                   | F Fulton, KY               |
| CNIC | 624.9   | T,E           | 109                  | 18                           | 2                      | 5                | 3:30 AM  | 3:35 AM                   | Carbondale, IL             |
| CNIC | 680.8   |               | 52                   |                              | 2                      | 2                | 4:29 AM  | 4:31 AM                   | F Centralia, IL            |
| CNIC | 733.8   |               | 45                   | 0                            | 2                      | 1                | 5:25 AM  | 5:26 AM                   | F Elfringham, IL           |
| CNIC | 780.6   |               | 25                   | 0                            | 2                      | 2                | 5:58 AM  | 6:00 AM                   | F Mattoon, IL (Charleston) |
| CNIC | 805.2   |               | 41                   | 0                            | 4                      | 4                | 6:46 AM  | 6:51 AM                   | Champaign-Urbana, IL       |
| CNIC | 877.1   |               | 62                   | 4                            | 2                      | 2                | 8:00 AM  | 8:02 AM                   | F Kankakee, IL             |
| CNIC | 909.5   |               | 29                   | 10                           | 3                      | 3                | 8:41 AM  | 8:44 AM                   | Homewood, IL               |
| AMT  | 931.6   |               | 30                   | 17                           |                        |                  | 9:31 AM  | 9:31 AM                   | XCS - Clark St.            |
| CT   | 932.3   |               | 28                   |                              |                        |                  | 9:59 AM  | 9:59 AM                   | X9R - Roosevelt Rd.        |
| AMT  | 933.8   | t,e           | 2                    |                              | -16                    |                  | 9:45 AM  | 9:45 AM                   | Chicago, IL CT             |
|      |         |               | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell   |          | Total<br>Schedule<br>Time |                            |
|      |         |               | NOL-XSU              | 11                           | 0                      | 0                | 0        | 11                        |                            |
|      |         |               | XSU-MEM              | 401                          | 52                     | 23               | 54       | 530                       |                            |
|      |         |               | MEM-XCS              | 538                          | 75                     | 8                | 24       | 645                       |                            |
|      |         |               | XCS-CHI              | 30                           | 0                      | -16              | 0        | 14                        |                            |
|      |         |               | XSU-XCS              | 939                          | 127                    | 31               | 78       | 1175                      |                            |
|      |         |               | NOL-CHI              | 966                          | 127                    | 15               | 78       | 1200                      |                            |

**Difference**

| PRT | Recovery<br>Minutes  | Misc.<br>Adjust.             | Dwell<br>Minutes       | Arrive         | Depart                    | Station                       |
|-----|----------------------|------------------------------|------------------------|----------------|---------------------------|-------------------------------|
|     |                      |                              |                        |                |                           | 0 New Orleans, LA CT          |
| 1   | 0                    | 0                            | 0                      |                | 1                         | 1 XSU - Southport Jct         |
| 4   | 5                    | 5                            | 0                      | 15             | 15                        | 15 Hammond, LA                |
| 0   | 0                    | 2                            | 0                      | 17             | 17                        | 17 F McComb, MS               |
| -1  | 5                    | 0                            | 0                      | 21             | 21                        | 21 F Brookhaven, MS           |
| -1  | 3                    | 2                            | 0                      | 25             | 25                        | 25 F Hazlehurst, MS           |
| -6  | -13                  | -1                           | 0                      | 2              | 2                         | 2 Jackson, MS                 |
| -2  | 0                    | 0                            | 0                      | 0              | 0                         | 0 F Yazoo City, MS            |
| 1   | 0                    | 2                            | 0                      | 3              | 3                         | 3 Greenwood, MS               |
| 1   | 0                    | 0                            | 0                      | 4              | 4                         | 4 F Marks, MS                 |
| 3   | 2                    | -3                           | 0                      | 6              | 6                         | 6 Memphis, TN                 |
| 9   | 0                    | 0                            | 0                      | 15             | 15                        | 15 F Newbern-Dyersburg, TN    |
| -3  | 5                    | 2                            | 0                      | 19             | 19                        | 19 F Fulton, KY               |
| 5   | -8                   | 0                            | 0                      | 19             | 19                        | 19 Carbondale, IL             |
| 0   | 0                    | 2                            | 0                      | 21             | 21                        | 21 F Centralia, IL            |
| 4   | 4                    | 0                            | 0                      | 29             | 29                        | 29 F Elfringham, IL           |
| 2   | 4                    | 2                            | 0                      | 37             | 37                        | 37 F Mattoon, IL (Charleston) |
| 4   | 0                    | 0                            | 0                      | 41             | 41                        | 41 Champaign-Urbana, IL       |
| 3   | 3                    | 2                            | 0                      | 49             | 49                        | 49 F Kankakee, IL             |
| 2   | 9                    | 0                            | 0                      | 60             | 60                        | 60 Homewood, IL               |
| 0   | -22                  | -15                          | 0                      | 23             | 23                        | 23 XCS - Clark St.            |
| 12  | 0                    | 0                            | 0                      | 35             | 35                        | 35 X9R - Roosevelt Rd.        |
| -5  | 0                    | 0                            | 0                      | 30             | 30                        | 0 Chicago, IL CT              |
|     | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time | Percent<br>Change             |
|     | NOL-XSU              | 1                            | 0                      | 0              | 1                         | 10.0%                         |
|     | XSU-MEM              | -4                           | 2                      | 7              | 6                         | 1.0%                          |
|     | MEM-XCS              | 26                           | -2                     | -7             | 17                        | 2.7%                          |
|     | XCS-CHI              | 7                            | 0                      | 0              | 7                         | 100.0%                        |
|     | XSU-XCS              | 22                           | 0                      | 0              | 22                        | 1.9%                          |
|     | NOL-CHI              | 30                           | 0                      | 0              | 30                        | 2.6%                          |

**Current Schedule Skeleton - City of New Orleans/Train 59**

| RR   | Mileage | Services      | PRT          | Recovery Minutes | Misc. Adjust. | Dwell Minutes | Arrive       | Depart        | Station                 |
|------|---------|---------------|--------------|------------------|---------------|---------------|--------------|---------------|-------------------------|
| AMT  | 0.0     | Le.FA.I.W.G.M |              |                  |               |               |              | 8:05 PM       | Chicago, IL             |
| CT   | 0.7     |               | 2            |                  |               |               | 8:07 PM      | 8:07 PM       | XSR-Roosevelt Rd.       |
| CNIC | 2.2     |               | 15           |                  |               |               | 8:22 PM      | 8:22 PM       | XCS - Clark St          |
| CNIC | 24.3    |               | 28           | 1                |               | 3             | 8:51 PM      | 8:54 PM       | Homewood, IL            |
| CNIC | 56.7    |               | 27           |                  |               | 2             | 9:21 PM      | 9:23 PM       | F Kankakee, IL          |
| CNIC | 128.6   |               | 63           | 3                |               | 5             | 10:29 PM     | 10:34 PM      | Champaign-Urbana, IL    |
| CNIC | 173.2   |               | 37           |                  |               | 2             | 11:11 PM     | 11:13 PM      | F Mattoon, IL           |
| CNIC | 200.0   |               | 23           |                  |               | 1             | 11:36 PM     | 11:37 PM      | F Effingham, IL         |
| CNIC | 253.2   |               | 44           | 2                |               | 2             | 12:23 AM     | 12:25 AM      | F Centralia, IL         |
| CNIC | 308.9   | T.E           | 51           | 5                |               | 5             | 1:21 AM      | 1:26 AM       | Carbondale, IL          |
| CNIC | 406.4   | E.e.M         | 102          | 4                |               | 2             | 3:12 AM      | 3:14 AM       | F Fulton, KY            |
| CNIC | 442.2   |               | 38           | 2                |               | 2             | 3:54 AM      | 3:56 AM       | F Newbern-Dyersburg, TN |
| CNIC | 528.4   |               | 95           | 56               |               | 13            | 6:27 AM      | 6:40 AM       | Memphis, TN             |
| CNIC | 597.3   |               | 74           | 1                | 5             | 2             | 7:59 AM      | 8:01 AM       | F Marks, MS             |
| CNIC | 653.6   |               | 51           | 3                | 5             | 5             | 8:55 AM      | 9:00 AM       | Greenwood, MS           |
| CNIC | 706.1   |               | 47           | 2                |               | 2             | 9:49 AM      | 9:51 AM       | F Yazoo City, MS        |
| CNIC | 750.5   | e             | 53           | 18               | 9             | 9             | 11:11 AM     | 11:20 AM      | Jackson, MS             |
| CNIC | 784.0   |               | 32           | 1                |               | 2             | 11:53 AM     | 11:55 AM      | F Hazlehurst, MS        |
| CNIC | 804.6   |               | 18           | 1                |               | 2             | 12:14 PM     | 12:16 PM      | F Brookhaven, MS        |
| CNIC | 828.4   |               | 20           | 2                |               | 2             | 12:38 PM     | 12:40 PM      | F McComb, MS            |
| CNIC | 880.5   |               | 42           | 3                |               | 3             | 1:25 PM      | 1:28 PM       | Hammond, LA             |
| CNIC | 930.1   |               | 50           | 48               |               | 22            | 3:28 PM      | 3:28 PM       | XSU - Southport Jct     |
| AMT  | 933.8   |               | 26           |                  |               | -7            | 3:47 PM      |               | New Orleans, LA         |
|      |         |               | <b>Total</b> | <b>Total</b>     | <b>Total</b>  | <b>Total</b>  | <b>Total</b> | <b>Total</b>  |                         |
|      |         |               | Pure Run     | Recovery Minutes | Misc. Adj.    | Total Dwell   |              | Schedule Time |                         |
|      |         |               | CHI-XCS      | 17               | 0             | 0             | 0            | 17            |                         |
|      |         |               | XCS-MEM      | 508              | 73            | 0             | 37           | 618           |                         |
|      |         |               | MEM-XSU      | 387              | 78            | 36            | 27           | 528           |                         |
|      |         |               | XSU-NOL      | 26               | 0             | -7            | 0            | 19            |                         |
|      |         |               | XCS-XSU      | 895              | 151           | 36            | 64           | 1146          |                         |
|      |         |               | NOL-CHI      | 938              | 151           | 29            | 64           | 1182          |                         |

**Proposed Schedule Skeleton - City of New Orleans/Train 59**

| RR   | Mileage | Services      | PRT          | Recovery Minutes | Misc. Adjust. | Dwell Minutes | Arrive       | Depart        | Station                 |
|------|---------|---------------|--------------|------------------|---------------|---------------|--------------|---------------|-------------------------|
| AMT  | 0.0     | Le.FA.I.W.G.M |              |                  |               |               |              | 8:05 PM       | Chicago, IL             |
| CT   | 0.7     |               | 2            |                  |               |               | 8:07 PM      | 8:07 PM       | XSR-Roosevelt Rd.       |
| CNIC | 2.2     |               | 12           |                  |               |               | 8:19 PM      | 8:19 PM       | XCS - Clark St          |
| CNIC | 24.3    |               | 30           | 5                |               | 3             | 8:54 PM      | 8:57 PM       | Homewood, IL            |
| CNIC | 56.7    |               | 29           | 2                |               | 2             | 9:28 PM      | 9:30 PM       | F Kankakee, IL          |
| CNIC | 128.6   |               | 62           | 12               | 3             | 5             | 10:47 PM     | 10:52 PM      | Champaign-Urbana, IL    |
| CNIC | 173.2   |               | 41           | 2                |               | 2             | 11:35 PM     | 11:37 PM      | F Mattoon, IL           |
| CNIC | 200.0   |               | 25           | 5                |               | 1             | 12:07 AM     | 12:08 AM      | F Effingham, IL         |
| CNIC | 253.2   |               | 50           |                  |               | 2             | 12:58 AM     | 1:00 AM       | F Centralia, IL         |
| CNIC | 308.9   | T.E           | 53           | 6                | 2             | 5             | 2:01 AM      | 2:06 AM       | Carbondale, IL          |
| CNIC | 406.4   | E.e.M         | 109          | 7                |               | 2             | 4:02 AM      | 4:04 AM       | F Fulton, KY            |
| CNIC | 442.2   |               | 34           | 10               | 3             | 2             | 4:51 AM      | 4:53 AM       | F Newbern-Dyersburg, TN |
| CNIC | 528.4   |               | 107          | 16               |               | 13            | 6:56 AM      | 7:09 AM       | Memphis, TN             |
| CNIC | 597.3   |               | 75           | 5                | 5             | 2             | 8:38 AM      | 8:40 AM       | F Marks, MS             |
| CNIC | 653.6   |               | 54           | 10               | 6             | 5             | 9:50 AM      | 9:55 AM       | Greenwood, MS           |
| CNIC | 706.1   |               | 50           | 5                |               | 2             | 10:50 AM     | 10:52 AM      | F Yazoo City, MS        |
| CNIC | 750.5   | e             | 53           | 15               | 5             | 9             | 12:05 PM     | 12:14 PM      | Jackson, MS             |
| CNIC | 784.0   |               | 33           | 1                |               | 2             | 12:48 PM     | 12:50 PM      | F Hazlehurst, MS        |
| CNIC | 804.6   |               | 19           | 1                | 5             | 2             | 1:15 PM      | 1:17 PM       | F Brookhaven, MS        |
| CNIC | 828.4   |               | 22           | 2                |               | 2             | 1:41 PM      | 1:43 PM       | F McComb, MS            |
| CNIC | 880.5   |               | 45           | 7                |               | 3             | 2:35 PM      | 2:38 PM       | Hammond, LA             |
| CNIC | 930.1   |               | 51           | 40               | 7             |               | 4:16 PM      | 4:16 PM       | XSU - Southport Jct     |
| AMT  | 933.8   |               | 18           |                  | -7            |               | 4:27 PM      |               | New Orleans, LA         |
|      |         |               | <b>Total</b> | <b>Total</b>     | <b>Total</b>  | <b>Total</b>  | <b>Total</b> | <b>Total</b>  |                         |
|      |         |               | Pure Run     | Recovery Minutes | Misc. Adj.    | Total Dwell   |              | Schedule Time |                         |
|      |         |               | CHI-XCS      | 14               | 0             | 0             | 0            | 14            |                         |
|      |         |               | XCS-MEM      | 540              | 65            | 8             | 37           | 650           |                         |
|      |         |               | MEM-XSU      | 406              | 86            | 28            | 27           | 547           |                         |
|      |         |               | XSU-NOL      | 18               | 0             | -7            | 0            | 11            |                         |
|      |         |               | XCS-XSU      | 946              | 151           | 36            | 64           | 1197          |                         |
|      |         |               | NOL-CHI      | 978              | 151           | 29            | 64           | 1222          |                         |

**Difference**

| PRT | Recovery Minutes | Misc. Adjust.    | Dwell Minutes | Arrive       | Depart        | Station                    |
|-----|------------------|------------------|---------------|--------------|---------------|----------------------------|
|     | 0                | 0                | 0             | 0            | 0             | 0 Chicago, IL              |
|     | -3               | 0                | 0             | 0            | -3            | 0 XSR-Roosevelt Rd.        |
|     | 2                | 4                | 0             | 0            | 3             | -3 XCS - Clark St          |
|     | 2                | 2                | 0             | 0            | 7             | 3 Homewood, IL             |
|     | -1               | 9                | 3             | 0            | 16            | 7 F Kankakee, IL           |
|     | 4                | 2                | 0             | 0            | 24            | 18 Champaign-Urbana, IL    |
|     | 2                | 5                | 0             | 0            | 31            | 24 F Mattoon, IL           |
|     | 6                | -2               | 0             | 0            | 35            | 31 F Effingham, IL         |
|     | 2                | 1                | 2             | 0            | 40            | 35 F Centralia, IL         |
|     | 7                | 3                | 0             | 0            | 50            | 40 Carbondale, IL          |
|     | -4               | 8                | 3             | 0            | 57            | 50 F Fulton, KY            |
|     | 12               | -40              | 0             | 0            | 29            | 57 F Newbern-Dyersburg, TN |
|     | 5                | 5                | 0             | 0            | 39            | 29 Memphis, TN             |
|     | 3                | 7                | 6             | 0            | 55            | 39 F Marks, MS             |
|     | 3                | 3                | 0             | 0            | 61            | 55 Greenwood, MS           |
|     | 0                | -3               | -4            | 0            | 54            | 61 F Yazoo City, MS        |
|     | 1                | 0                | 0             | 0            | 55            | 54 Jackson, MS             |
|     | 1                | 0                | 5             | 0            | 61            | 55 F Hazlehurst, MS        |
|     | 2                | 0                | 0             | 0            | 63            | 61 F Brookhaven, MS        |
|     | 3                | 4                | 0             | 0            | 70            | 63 F McComb, MS            |
|     | 1                | -8               | -15           | 0            | 49            | 70 Hammond, LA             |
|     | -8               | 0                | 0             | 0            | 46            | 49 XSU - Southport Jct     |
|     |                  |                  |               |              |               | 0 New Orleans, LA          |
|     | <b>Total</b>     | <b>Total</b>     | <b>Total</b>  | <b>Total</b> | <b>Total</b>  | <b>Percent Change</b>      |
|     | Pure Run         | Recovery Minutes | Misc. Adj.    | Total Dwell  | Schedule Time |                            |
|     | CHI-XCS          | -3               | 0             | 0            | -3            | -17.6%                     |
|     | XCS-MEM          | 32               | -6            | 8            | 32            | 5.2%                       |
|     | MEM-XSU          | 19               | 6             | -8           | 19            | 3.6%                       |
|     | XSU-NOL          | -8               | 0             | 0            | -8            | -42.1%                     |
|     | XCS-XSU          | 51               | 0             | 0            | 51            | 4.5%                       |
|     | NOL-CHI          | 40               | 0             | 0            | 40            | 3.4%                       |

## **Attachment 3**

## Illini/Saluki Train 390

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT | Recovery<br>Minutes  | Misc.<br>Adjust.             | Dwell<br>Minutes       | Arrive         | Depart                    | Station                  |
|------|---------|-----|----------------------|------------------------------|------------------------|----------------|---------------------------|--------------------------|
| CNIC | 0.0     |     |                      |                              |                        |                | 7:30 AM                   | Carbondale, IL CT        |
| CNIC | 20.3    | 19  | 0                    |                              | 1                      | 7:49 AM        | 7:50 AM                   | Du Quoin, IL             |
| CNIC | 55.7    | 31  | 0                    |                              | 1                      | 8:21 AM        | 8:22 AM                   | Centralia, IL            |
| CNIC | 108.9   | 48  | 0                    |                              | 1                      | 9:10 AM        | 9:11 AM                   | Effingham, IL            |
| CNIC | 135.7   | 26  | 0                    |                              | 1                      | 9:37 AM        | 9:38 AM                   | Mattoon, IL (Charleston) |
| CNIC |         | 31  |                      | 0                            |                        | 10:09 AM       | 10:09 AM                  | XTI - Tolono             |
| CNIC | 180.3   | 8   | 3                    |                              | 3                      | 10:20 AM       | 10:23 AM                  | Champaign-Urbana, IL     |
| CNIC | 194.3   | 14  | 2                    |                              | 1                      | 10:39 AM       | 10:40 AM                  | Rantoul, IL              |
| CNIC | 227.0   | 28  | 2                    |                              | 1                      | 11:10 AM       | 11:11 AM                  | Gilman, IL               |
| CNIC | 252.2   | 22  | 7                    |                              | 1                      | 11:40 AM       | 11:41 AM                  | Kankakee, IL             |
| CNIC | 284.6   | 28  | 0                    |                              | 2                      | 12:09 PM       | 12:11 PM                  | Homewood, IL             |
| AMT  | 306.7   | 27  | 7                    |                              |                        | 12:45 PM       | 12:45 PM                  | XCS - 16th Street        |
| AMT  | 308.9   | 15  | 0                    | 0                            |                        | 1:00 PM        |                           | Chicago, IL CT           |
|      |         |     | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |                          |
|      |         |     | <b>297</b>           | <b>21</b>                    | <b>0</b>               | <b>12</b>      | <b>330</b>                |                          |

### Proposed Standard Schedules

| RR   | Mileage | PRT | Recovery<br>Minutes  | Misc.<br>Adjust.             | Dwell<br>Minutes       | Arrive         | Depart                    | Station                  |
|------|---------|-----|----------------------|------------------------------|------------------------|----------------|---------------------------|--------------------------|
| CNIC | 0.0     |     |                      |                              |                        |                | 7:30 AM                   | Carbondale, IL CT        |
| CNIC | 20.3    | 19  | 0                    |                              | 1                      | 7:49 AM        | 7:50 AM                   | Du Quoin, IL             |
| CNIC | 55.7    | 31  | 0                    |                              | 1                      | 8:21 AM        | 8:22 AM                   | Centralia, IL            |
| CNIC | 108.9   | 48  | 0                    |                              | 1                      | 9:10 AM        | 9:11 AM                   | Effingham, IL            |
| CNIC | 135.7   | 26  | 4                    |                              | 1                      | 9:41 AM        | 9:42 AM                   | Mattoon, IL (Charleston) |
| CNIC |         | 31  |                      |                              |                        | 10:13 AM       | 10:13 AM                  | XTI - Tolono             |
| CNIC | 180.3   | 8   | 10                   |                              | 3                      | 10:31 AM       | 10:34 AM                  | Champaign-Urbana, IL     |
| CNIC | 194.3   | 14  | 0                    |                              | 1                      | 10:48 AM       | 10:49 AM                  | Rantoul, IL              |
| CNIC | 227.0   | 28  | 0                    |                              | 1                      | 11:17 AM       | 11:18 AM                  | Gilman, IL               |
| CNIC | 252.2   | 22  | 5                    |                              | 1                      | 11:45 AM       | 11:46 AM                  | Kankakee, IL             |
| CNIC | 284.6   | 28  | 6                    |                              | 2                      | 12:20 PM       | 12:22 PM                  | Homewood, IL             |
| AMT  | 306.7   | 27  | 22                   |                              |                        | 1:11 PM        | 1:11 PM                   | XCS - 16th Street        |
| AMT  | 308.9   | 15  | 0                    |                              |                        | 1:26 PM        |                           | Chicago, IL CT           |
|      |         |     | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |                          |
|      |         |     | <b>297</b>           | <b>47</b>                    | <b>0</b>               | <b>12</b>      | <b>356</b>                |                          |

### Difference between temporary and standard schedules

| PRT                  | Recovery<br>Minutes          | Misc.<br>Adjust.       | Dwell<br>Minutes | Arrive                    | Depart | Station                  |
|----------------------|------------------------------|------------------------|------------------|---------------------------|--------|--------------------------|
| 0                    | 0                            | 0                      | 0                | 0                         | 0      | Carbondale, IL CT        |
| 0                    | 0                            | 0                      | 0                | 0                         | 0      | Du Quoin, IL             |
| 0                    | 0                            | 0                      | 0                | 0                         | 0      | Centralia, IL            |
| 0                    | 0                            | 0                      | 0                | 0                         | 0      | Effingham, IL            |
| 0                    | 4                            | 0                      | 0                | 4                         | 4      | Mattoon, IL (Charleston) |
| 0                    | 0                            | 0                      | 0                | 0                         | 4      | XTI - Tolono             |
| 0                    | 7                            | 0                      | 0                | 11                        | 11     | Champaign-Urbana, IL     |
| 0                    | -2                           | 0                      | 0                | 9                         | 9      | Rantoul, IL              |
| 0                    | -2                           | 0                      | 0                | 7                         | 7      | Gilman, IL               |
| 0                    | -2                           | 0                      | 0                | 5                         | 5      | Kankakee, IL             |
| 0                    | 6                            | 0                      | 0                | 11                        | 11     | Homewood, IL             |
| 0                    | 15                           | 0                      | 0                | 26                        | 26     | XCS - 16th Street        |
| 0                    | 0                            | 0                      | 0                | 26                        | 26     | Chicago, IL CT           |
| Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell   | Total<br>Schedule<br>Time |        |                          |
| <b>0</b>             | <b>26</b>                    | <b>0</b>               | <b>0</b>         | <b>26</b>                 |        |                          |

## Illini/Saluki Train 391

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart   | Station              |
|------|---------|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------|----------------------|
| AMT  | 0.0     |                               |                                       |                                 |                        |                                    | 8:15 AM  | Chicago, IL          |
| CNIC | 2.2     | 11                            |                                       |                                 |                        | 8:26 AM                            | 8:26 AM  | XCS - 16th Street    |
| CNIC | 24.3    | 27                            | 0                                     |                                 | 2                      | 8:53 AM                            | 8:55 AM  | Homewood, IL         |
| CNIC | 56.7    | 28                            | 5                                     |                                 | 1                      | 9:28 AM                            | 9:29 AM  | Kankakee, IL         |
| CNIC | 81.9    | 22                            | 3                                     |                                 | 1                      | 9:54 AM                            | 9:55 AM  | Gilman, IL           |
| CNIC | 114.6   | 28                            | 0                                     |                                 | 1                      | 10:23 AM                           | 10:24 AM | Rantoul, IL          |
| CNIC | 128.6   | 13                            | 15                                    |                                 | 3                      | 10:52 AM                           | 10:55 AM | Champaign-Urbana, IL |
| CNIC |         | 10                            |                                       | 0                               |                        | 11:05 AM                           | 11:05 AM | XTI - Tolono         |
| CNIC | 173.2   | 29                            | 0                                     |                                 | 1                      | 11:34 AM                           | 11:35 AM | Mattoon, IL          |
| CNIC | 200.0   | 26                            | 0                                     |                                 | 1                      | 12:01 PM                           | 12:02 PM | Effingham, IL        |
| CNIC | 253.2   | 48                            | 0                                     |                                 | 1                      | 12:50 PM                           | 12:51 PM | Centralia, IL        |
| CNIC | 288.6   | 32                            | 0                                     |                                 | 1                      | 1:23 PM                            | 1:24 PM  | Du Quoin, IL         |
| CNIC | 308.9   | 18                            | 3                                     | 0                               |                        | 1:45 PM                            |          | Carbondale, IL       |
|      |         | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |          |                      |
|      |         | <b>292</b>                    | <b>26</b>                             | <b>0</b>                        | <b>12</b>              | <b>330</b>                         |          |                      |

### Proposed Standard Schedules

| RR   | Mileage | PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart   | Station              |
|------|---------|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------|----------------------|
| AMT  | 0.0     |                               |                                       |                                 |                        |                                    | 8:15 AM  | Chicago, IL          |
| CNIC | 2.2     | 15                            |                                       |                                 |                        | 8:30 AM                            | 8:30 AM  | XCS - 16th Street    |
| CNIC | 24.3    | 27                            | 0                                     |                                 | 2                      | 8:57 AM                            | 8:59 AM  | Homewood, IL         |
| CNIC | 56.7    | 28                            | 5                                     |                                 | 1                      | 9:32 AM                            | 9:33 AM  | Kankakee, IL         |
| CNIC | 81.9    | 22                            | 0                                     |                                 | 1                      | 9:55 AM                            | 9:56 AM  | Gilman, IL           |
| CNIC | 114.6   | 28                            | 2                                     |                                 | 1                      | 10:26 AM                           | 10:27 AM | Rantoul, IL          |
| CNIC | 128.6   | 14                            | 20                                    |                                 | 3                      | 11:01 AM                           | 11:04 AM | Champaign-Urbana, IL |
| CNIC |         | 8                             |                                       |                                 |                        | 11:12 AM                           | 11:12 AM | XTI - Tolono         |
| CNIC | 173.2   | 31                            | 8                                     |                                 | 1                      | 11:51 AM                           | 11:52 AM | Mattoon, IL          |
| CNIC | 200.0   | 26                            | 5                                     |                                 | 1                      | 12:23 PM                           | 12:24 PM | Effingham, IL        |
| CNIC | 253.2   | 48                            | 0                                     |                                 | 1                      | 1:12 PM                            | 1:13 PM  | Centralia, IL        |
| CNIC | 288.6   | 31                            | 0                                     |                                 | 1                      | 1:44 PM                            | 1:45 PM  | Du Quoin, IL         |
| CNIC | 308.9   | 19                            | 7                                     |                                 |                        | 2:11 PM                            |          | Carbondale, IL       |
|      |         | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |          |                      |
|      |         | <b>297</b>                    | <b>47</b>                             | <b>0</b>                        | <b>12</b>              | <b>356</b>                         |          |                      |

### Difference between temporary and standard schedules

| PRT | Recovery<br>Minutes | Misc.<br>Adjust.              | Dwell<br>Minutes                      | Arrive                          | Depart                 | Station                            |
|-----|---------------------|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|
|     |                     |                               |                                       |                                 | 0                      | Chicago, IL                        |
| 4   | 0                   | 0                             | 0                                     | 4                               | 4                      | XCS - 16th Street                  |
| 0   | 0                   | 0                             | 0                                     | 4                               | 4                      | Homewood, IL                       |
| 0   | 0                   | 0                             | 0                                     | 4                               | 4                      | Kankakee, IL                       |
| 0   | -3                  | 0                             | 0                                     | 1                               | 1                      | Gilman, IL                         |
| 0   | 2                   | 0                             | 0                                     | 3                               | 3                      | Rantoul, IL                        |
| 1   | 5                   | 0                             | 0                                     | 9                               | 9                      | Champaign-Urbana, IL               |
| -2  | 0                   | 0                             | 0                                     | 7                               | 7                      | XTI - Tolono                       |
| 2   | 8                   | 0                             | 0                                     | 17                              | 17                     | Mattoon, IL                        |
| 0   | 5                   | 0                             | 0                                     | 22                              | 22                     | Effingham, IL                      |
| 0   | 0                   | 0                             | 0                                     | 22                              | 22                     | Centralia, IL                      |
| -1  | 0                   | 0                             | 0                                     | 21                              | 21                     | Du Quoin, IL                       |
| 1   | 4                   | 0                             | 0                                     | 26                              | 0                      | Carbondale, IL                     |
|     |                     | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |
|     |                     | <b>5</b>                      | <b>21</b>                             | <b>0</b>                        | <b>0</b>               | <b>26</b>                          |

## Illini/Saluki Train 392

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT | Recovery<br>Minutes  | Misc.<br>Adjust.             | Dwell<br>Minutes       | Arrive         | Depart                    | Station                  |
|------|---------|-----|----------------------|------------------------------|------------------------|----------------|---------------------------|--------------------------|
| CNIC | 0.0     |     |                      |                              |                        |                | 4:15 PM                   | Carbondale, IL CT        |
| CNIC | 20.3    | 19  | 0                    |                              | 1                      | 4:34 PM        | 4:35 PM                   | Du Quoin, IL             |
| CNIC | 55.7    | 31  | 0                    |                              | 1                      | 5:06 PM        | 5:07 PM                   | Centralia, IL            |
| CNIC | 108.9   | 48  | 0                    |                              | 1                      | 5:55 PM        | 5:56 PM                   | Effingham, IL            |
| CNIC | 135.7   | 26  | 0                    |                              | 1                      | 6:22 PM        | 6:23 PM                   | Mattoon, IL (Charleston) |
| CNIC |         | 31  |                      | 0                            |                        | 6:54 PM        | 6:54 PM                   | XTI - Tolono             |
| CNIC | 180.3   | 8   | 6                    |                              | 3                      | 7:08 PM        | 7:11 PM                   | Champaign-Urbana, IL     |
| CNIC | 194.3   | 14  | 0                    |                              | 1                      | 7:25 PM        | 7:26 PM                   | Rantoul, IL              |
| CNIC | 227.0   | 28  | 0                    |                              | 1                      | 7:54 PM        | 7:55 PM                   | Gilman, IL               |
| CNIC | 252.2   | 22  | 0                    |                              | 1                      | 8:17 PM        | 8:18 PM                   | Kankakee, IL             |
| CNIC | 284.6   | 28  | 15                   |                              | 2                      | 9:01 PM        | 9:03 PM                   | Homewood, IL             |
| AMT  | 306.7   | 27  | 0                    |                              |                        | 9:30 PM        | 9:30 PM                   | XCS - 16th Street        |
| AMT  | 308.9   | 15  | 0                    | 0                            |                        | 9:45 PM        |                           | Chicago, IL CT           |
|      |         |     | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |                          |
|      |         |     | <b>297</b>           | <b>21</b>                    | <b>0</b>               | <b>12</b>      | <b>330</b>                |                          |

### Proposed Standard Schedules

| RR   | Mileage | PRT | Recovery<br>Minutes  | Misc.<br>Adjust.             | Dwell<br>Minutes       | Arrive         | Depart                    | Station                  |
|------|---------|-----|----------------------|------------------------------|------------------------|----------------|---------------------------|--------------------------|
| CNIC | 0.0     |     |                      |                              |                        |                | 4:15 PM                   | Carbondale, IL CT        |
| CNIC | 20.3    | 19  | 0                    |                              | 1                      | 4:34 PM        | 4:35 PM                   | Du Quoin, IL             |
| CNIC | 55.7    | 31  | 4                    |                              | 1                      | 5:10 PM        | 5:11 PM                   | Centralia, IL            |
| CNIC | 108.9   | 48  | 0                    |                              | 1                      | 5:59 PM        | 6:00 PM                   | Effingham, IL            |
| CNIC | 135.7   | 26  | 0                    |                              | 1                      | 6:26 PM        | 6:27 PM                   | Mattoon, IL (Charleston) |
| CNIC |         | 31  |                      |                              |                        | 6:58 PM        | 6:58 PM                   | XTI - Tolono             |
| CNIC | 180.3   | 8   | 10                   |                              | 3                      | 7:16 PM        | 7:19 PM                   | Champaign-Urbana, IL     |
| CNIC | 194.3   | 14  | 0                    |                              | 1                      | 7:33 PM        | 7:34 PM                   | Rantoul, IL              |
| CNIC | 227.0   | 28  | 10                   |                              | 1                      | 8:12 PM        | 8:13 PM                   | Gilman, IL               |
| CNIC | 252.2   | 22  | 0                    |                              | 1                      | 8:35 PM        | 8:36 PM                   | Kankakee, IL             |
| CNIC | 284.6   | 28  | 10                   |                              | 2                      | 9:14 PM        | 9:16 PM                   | Homewood, IL             |
| AMT  | 306.7   | 27  | 27                   |                              |                        | 10:10 PM       | 10:10 PM                  | XCS - 16th Street        |
| AMT  | 308.9   | 15  | 0                    |                              |                        | 10:25 PM       |                           | Chicago, IL CT           |
|      |         |     | Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell | Total<br>Schedule<br>Time |                          |
|      |         |     | <b>297</b>           | <b>61</b>                    | <b>0</b>               | <b>12</b>      | <b>370</b>                |                          |

### Difference between temporary and standard schedules

| PRT                  | Recovery<br>Minutes          | Misc.<br>Adjust.       | Dwell<br>Minutes | Arrive                    | Depart | Station                  |
|----------------------|------------------------------|------------------------|------------------|---------------------------|--------|--------------------------|
| 0                    | 0                            | 0                      | 0                | 0                         | 0      | Carbondale, IL CT        |
| 0                    | 4                            | 0                      | 0                | 4                         | 4      | Du Quoin, IL             |
| 0                    | 0                            | 0                      | 0                | 4                         | 4      | Centralia, IL            |
| 0                    | 0                            | 0                      | 0                | 4                         | 4      | Effingham, IL            |
| 0                    | 0                            | 0                      | 0                | 4                         | 4      | Mattoon, IL (Charleston) |
| 0                    | 0                            | 0                      | 0                | 4                         | 4      | XTI - Tolono             |
| 0                    | 4                            | 0                      | 0                | 8                         | 8      | Champaign-Urbana, IL     |
| 0                    | 0                            | 0                      | 0                | 8                         | 8      | Rantoul, IL              |
| 0                    | 10                           | 0                      | 0                | 18                        | 18     | Gilman, IL               |
| 0                    | 0                            | 0                      | 0                | 18                        | 18     | Kankakee, IL             |
| 0                    | -5                           | 0                      | 0                | 13                        | 13     | Homewood, IL             |
| 0                    | 27                           | 0                      | 0                | 40                        | 40     | XCS - 16th Street        |
| 0                    | 0                            | 0                      | 0                | 40                        | 40     | Chicago, IL CT           |
| Total<br>Pure<br>Run | Total<br>Recovery<br>Minutes | Total<br>Misc.<br>Adj. | Total<br>Dwell   | Total<br>Schedule<br>Time |        |                          |
| <b>0</b>             | <b>40</b>                    | <b>0</b>               | <b>0</b>         | <b>40</b>                 |        |                          |

## Illini/Saluki Train 393

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT | Recovery<br>Minutes           | Misc.<br>Adjust.                      | Dwell<br>Minutes                | Arrive                 | Depart                             | Station              |
|------|---------|-----|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------------------|
| AMT  | 0.0     |     |                               |                                       |                                 |                        | 4:05 PM                            | Chicago, IL          |
| CNIC | 2.2     | 11  |                               |                                       |                                 | 4:16 PM                | 4:16 PM                            | XCS - 16th Street    |
| CNIC | 24.3    | 27  | 0                             |                                       | 2                               | 4:43 PM                | 4:45 PM                            | Homewood, IL         |
| CNIC | 56.7    | 28  | 5                             |                                       | 1                               | 5:18 PM                | 5:19 PM                            | Kankakee, IL         |
| CNIC | 81.9    | 22  | 3                             |                                       | 1                               | 5:44 PM                | 5:45 PM                            | Gilman, IL           |
| CNIC | 114.6   | 28  | 0                             |                                       | 1                               | 6:13 PM                | 6:14 PM                            | Rantoul, IL          |
| CNIC | 128.6   | 13  | 15                            |                                       | 3                               | 6:42 PM                | 6:45 PM                            | Champaign-Urbana, IL |
| CNIC |         | 10  |                               | 0                                     |                                 |                        | 6:55 PM                            | XTI - Tolono         |
| CNIC | 173.2   | 29  | 0                             |                                       | 1                               | 7:24 PM                | 7:25 PM                            | Mattoon, IL          |
| CNIC | 200.0   | 26  | 0                             |                                       | 1                               | 7:51 PM                | 7:52 PM                            | Effingham, IL        |
| CNIC | 253.2   | 48  | 0                             |                                       | 1                               | 8:40 PM                | 8:41 PM                            | Centralia, IL        |
| CNIC | 288.6   | 32  | 0                             |                                       | 1                               | 9:13 PM                | 9:14 PM                            | Du Quoin, IL         |
| CNIC | 308.9   | 18  | 3                             | 0                                     |                                 | 9:35 PM                |                                    | Carbondale, IL       |
|      |         |     | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |                      |
|      |         |     | <b>292</b>                    | <b>26</b>                             | <b>0</b>                        | <b>12</b>              | <b>330</b>                         |                      |

### Proposed Standard Schedules

| RR   | Mileage | PRT | Recovery<br>Minutes           | Misc.<br>Adjust.                      | Dwell<br>Minutes                | Arrive                 | Depart                             | Station              |
|------|---------|-----|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------------------|
| AMT  | 0.0     |     |                               |                                       |                                 |                        | 4:05 PM                            | Chicago, IL          |
| CNIC | 2.2     | 15  |                               |                                       |                                 | 4:20 PM                | 4:20 PM                            | XCS - 16th Street    |
| CNIC | 24.3    | 27  | 0                             |                                       | 2                               | 4:47 PM                | 4:49 PM                            | Homewood, IL         |
| CNIC | 56.7    | 28  | 5                             |                                       | 1                               | 5:22 PM                | 5:23 PM                            | Kankakee, IL         |
| CNIC | 81.9    | 22  | 0                             |                                       | 1                               | 5:45 PM                | 5:46 PM                            | Gilman, IL           |
| CNIC | 114.6   | 28  | 2                             |                                       | 1                               | 6:16 PM                | 6:17 PM                            | Rantoul, IL          |
| CNIC | 128.6   | 14  | 15                            |                                       | 3                               | 6:46 PM                | 6:49 PM                            | Champaign-Urbana, IL |
| CNIC |         | 8   |                               |                                       |                                 |                        | 6:57 PM                            | XTI - Tolono         |
| CNIC | 173.2   | 31  | 10                            |                                       | 1                               | 7:38 PM                | 7:39 PM                            | Mattoon, IL          |
| CNIC | 200.0   | 26  | 0                             |                                       | 1                               | 8:05 PM                | 8:06 PM                            | Effingham, IL        |
| CNIC | 253.2   | 48  | 0                             |                                       | 1                               | 8:54 PM                | 8:55 PM                            | Centralia, IL        |
| CNIC | 288.6   | 31  | 4                             |                                       | 1                               | 9:30 PM                | 9:31 PM                            | Du Quoin, IL         |
| CNIC | 308.9   | 19  | 0                             |                                       |                                 | 9:50 PM                |                                    | Carbondale, IL       |
|      |         |     | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |                      |
|      |         |     | <b>297</b>                    | <b>36</b>                             | <b>0</b>                        | <b>12</b>              | <b>345</b>                         |                      |

### Difference between temporary and standard schedules

| PRT                           | Recovery<br>Minutes | Misc.<br>Adjust.                      | Dwell<br>Minutes                | Arrive                 | Depart                             | Station              |
|-------------------------------|---------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------------------|
|                               |                     |                                       |                                 |                        | 0                                  | Chicago, IL          |
| 4                             | 0                   | 0                                     | 0                               | 4                      | 4                                  | XCS - 16th Street    |
| 0                             | 0                   | 0                                     | 0                               | 4                      | 4                                  | Homewood, IL         |
| 0                             | 0                   | 0                                     | 0                               | 4                      | 4                                  | Kankakee, IL         |
| 0                             | -3                  | 0                                     | 0                               | 1                      | 1                                  | Gilman, IL           |
| 0                             | 2                   | 0                                     | 0                               | 3                      | 3                                  | Rantoul, IL          |
| 1                             | 0                   | 0                                     | 0                               | 4                      | 4                                  | Champaign-Urbana, IL |
| -2                            | 0                   | 0                                     | 0                               | 2                      | 2                                  | XTI - Tolono         |
| 2                             | 10                  | 0                                     | 0                               | 14                     | 14                                 | Mattoon, IL          |
| 0                             | 0                   | 0                                     | 0                               | 14                     | 14                                 | Effingham, IL        |
| 0                             | 0                   | 0                                     | 0                               | 14                     | 14                                 | Centralia, IL        |
| -1                            | 4                   | 0                                     | 0                               | 17                     | 17                                 | Du Quoin, IL         |
| 1                             | -3                  | 0                                     | 0                               | 15                     | 15                                 | Carbondale, IL       |
| <b>Total<br/>Pure<br/>Run</b> |                     | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |                      |
| <b>5</b>                      |                     | <b>10</b>                             | <b>0</b>                        | <b>0</b>               | <b>15</b>                          |                      |

## **Attachment 4**

## Illini/Saluki Train 390

### Current Schedule

| RR   | Mileage | PRT                   | Recovery Minutes              | Misc. Adjust.           | Dwell Minutes      | Arrive                     | Depart   | Station                  |
|------|---------|-----------------------|-------------------------------|-------------------------|--------------------|----------------------------|----------|--------------------------|
| CNIC | 0.0     |                       |                               |                         |                    |                            | 7:30 AM  | Carbondale, IL CT        |
| CNIC | 20.3    | 20                    | 0                             |                         | 1                  | 7:50 AM                    | 7:51 AM  | Du Quoin, IL             |
| CNIC | 55.7    | 31                    | 0                             |                         | 1                  | 8:22 AM                    | 8:23 AM  | Centralia, IL            |
| CNIC | 108.9   | 43                    | 0                             |                         | 1                  | 9:06 AM                    | 9:07 AM  | Effingham, IL            |
| CNIC | 135.7   | 23                    | 0                             |                         | 1                  | 9:30 AM                    | 9:31 AM  | Mattoon, IL (Charleston) |
| CNIC |         | 27                    |                               | 5                       |                    | 10:03 AM                   | 10:03 AM | XTI - Tolono             |
| CNIC | 180.3   | 8                     | 0                             |                         | 3                  | 10:11 AM                   | 10:14 AM | Champaign-Urbana, IL     |
| CNIC | 194.3   | 12                    | 0                             |                         | 1                  | 10:26 AM                   | 10:27 AM | Rantoul, IL              |
| CNIC | 227.0   | 25                    | 0                             |                         | 1                  | 10:52 AM                   | 10:53 AM | Gilman, IL               |
| CNIC | 252.2   | 21                    | 0                             |                         | 1                  | 11:14 AM                   | 11:15 AM | Kankakee, IL             |
| CNIC | 284.6   | 27                    | 0                             |                         | 2                  | 11:42 AM                   | 11:44 AM | Homewood, IL             |
| AMT  | 306.7   | 28                    | 26                            |                         |                    | 12:38 PM                   | 12:38 PM | XCS - 16th Street        |
| AMT  | 308.9   | 17                    | 0                             | 5                       |                    | 1:00 PM                    |          | Chicago, IL CT           |
|      |         | <b>Total Pure Run</b> | <b>Total Recovery Minutes</b> | <b>Total Misc. Adj.</b> | <b>Total Dwell</b> | <b>Total Schedule Time</b> |          |                          |
|      |         | <b>282</b>            | <b>26</b>                     | <b>10</b>               | <b>12</b>          | <b>330</b>                 |          |                          |

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT                   | Recovery Minutes              | Misc. Adjust.           | Dwell Minutes      | Arrive                     | Depart   | Station                  |
|------|---------|-----------------------|-------------------------------|-------------------------|--------------------|----------------------------|----------|--------------------------|
| CNIC | 0.0     |                       |                               |                         |                    |                            | 7:30 AM  | Carbondale, IL CT        |
| CNIC | 20.3    | 19                    | 0                             |                         | 1                  | 7:49 AM                    | 7:50 AM  | Du Quoin, IL             |
| CNIC | 55.7    | 31                    | 0                             |                         | 1                  | 8:21 AM                    | 8:22 AM  | Centralia, IL            |
| CNIC | 108.9   | 48                    | 0                             |                         | 1                  | 9:10 AM                    | 9:11 AM  | Effingham, IL            |
| CNIC | 135.7   | 26                    | 0                             |                         | 1                  | 9:37 AM                    | 9:38 AM  | Mattoon, IL (Charleston) |
| CNIC |         | 31                    |                               | 0                       |                    | 10:09 AM                   | 10:09 AM | XTI - Tolono             |
| CNIC | 180.3   | 8                     | 3                             |                         | 3                  | 10:20 AM                   | 10:23 AM | Champaign-Urbana, IL     |
| CNIC | 194.3   | 14                    | 2                             |                         | 1                  | 10:39 AM                   | 10:40 AM | Rantoul, IL              |
| CNIC | 227.0   | 28                    | 2                             |                         | 1                  | 11:10 AM                   | 11:11 AM | Gilman, IL               |
| CNIC | 252.2   | 22                    | 7                             |                         | 1                  | 11:40 AM                   | 11:41 AM | Kankakee, IL             |
| CNIC | 284.6   | 28                    | 0                             |                         | 2                  | 12:09 PM                   | 12:11 PM | Homewood, IL             |
| AMT  | 306.7   | 27                    | 7                             |                         |                    | 12:45 PM                   | 12:45 PM | XCS - 16th Street        |
| AMT  | 308.9   | 15                    | 0                             | 0                       |                    | 1:00 PM                    |          | Chicago, IL CT           |
|      |         | <b>Total Pure Run</b> | <b>Total Recovery Minutes</b> | <b>Total Misc. Adj.</b> | <b>Total Dwell</b> | <b>Total Schedule Time</b> |          |                          |
|      |         | <b>297</b>            | <b>21</b>                     | <b>0</b>                | <b>12</b>          | <b>330</b>                 |          |                          |

### Difference between current and temporary proposal

| PRT                   | Recovery Minutes              | Misc. Adjust.           | Dwell Minutes      | Arrive                     | Depart | Station                  |
|-----------------------|-------------------------------|-------------------------|--------------------|----------------------------|--------|--------------------------|
|                       |                               |                         |                    |                            | 0      | Carbondale, IL CT        |
| -1                    | 0                             | 0                       | 0                  | -1                         | -1     | Du Quoin, IL             |
| 0                     | 0                             | 0                       | 0                  | -1                         | -1     | Centralia, IL            |
| 5                     | 0                             | 0                       | 0                  | 4                          | 4      | Effingham, IL            |
| 3                     | 0                             | 0                       | 0                  | 7                          | 7      | Mattoon, IL (Charleston) |
| 4                     | 0                             | -5                      | 0                  | 6                          | 6      | XTI - Tolono             |
| 0                     | 3                             | 0                       | 0                  | 9                          | 9      | Champaign-Urbana, IL     |
| 2                     | 2                             | 0                       | 0                  | 13                         | 13     | Rantoul, IL              |
| 3                     | 2                             | 0                       | 0                  | 18                         | 18     | Gilman, IL               |
| 1                     | 7                             | 0                       | 0                  | 26                         | 26     | Kankakee, IL             |
| 1                     | 0                             | 0                       | 0                  | 27                         | 27     | Homewood, IL             |
| -1                    | -19                           | 0                       | 0                  | 7                          | 7      | XCS - 16th Street        |
| -2                    | 0                             | -5                      | 0                  | 0                          | 0      | Chicago, IL CT           |
| <b>Total Pure Run</b> | <b>Total Recovery Minutes</b> | <b>Total Misc. Adj.</b> | <b>Total Dwell</b> | <b>Total Schedule Time</b> |        |                          |
| <b>15</b>             | <b>-5</b>                     | <b>-10</b>              | <b>0</b>           | <b>0</b>                   |        |                          |

## Illini/Saluki Train 391

### Current Schedule

| RR   | Mileage | PRT | Recovery<br>Minutes           | Misc.<br>Adjust.                      | Dwell<br>Minutes                | Arrive                 | Depart                             | Station              |
|------|---------|-----|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------------------|
| AMT  | 0.0     |     |                               |                                       |                                 |                        | 8:15 AM                            | Chicago, IL          |
| CNIC | 2.2     | 13  |                               |                                       |                                 | 8:28 AM                | 8:28 AM                            | XCS - 16th Street    |
| CNIC | 24.3    | 26  | 0                             |                                       | 2                               | 8:54 AM                | 8:56 AM                            | Homewood, IL         |
| CNIC | 56.7    | 25  | 0                             |                                       | 1                               | 9:21 AM                | 9:22 AM                            | Kankakee, IL         |
| CNIC | 81.9    | 21  | 0                             |                                       | 1                               | 9:43 AM                | 9:44 AM                            | Gilman, IL           |
| CNIC | 114.6   | 25  | 0                             |                                       | 1                               | 10:09 AM               | 10:10 AM                           | Rantoul, IL          |
| CNIC | 128.6   | 12  | 0                             |                                       | 3                               | 10:22 AM               | 10:25 AM                           | Champaign-Urbana, IL |
| CNIC |         | 10  |                               | 5                                     |                                 | 10:40 AM               | 10:40 AM                           | XTI - Tolono         |
| CNIC | 173.2   | 24  | 0                             |                                       | 1                               | 11:04 AM               | 11:05 AM                           | Mattoon, IL          |
| CNIC | 200.0   | 23  | 0                             |                                       | 1                               | 11:28 AM               | 11:29 AM                           | Effingham, IL        |
| CNIC | 253.2   | 46  | 0                             |                                       | 1                               | 12:15 PM               | 12:16 PM                           | Centralia, IL        |
| CNIC | 288.6   | 32  | 0                             |                                       | 1                               | 12:48 PM               | 12:49 PM                           | Du Quoin, IL         |
| CNIC | 308.9   | 21  | 26                            | 9                                     |                                 | 1:45 PM                |                                    | Carbondale, IL       |
|      |         |     | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |                      |
|      |         |     | <b>278</b>                    | <b>26</b>                             | <b>14</b>                       | <b>12</b>              | <b>330</b>                         |                      |

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT | Recovery<br>Minutes           | Misc.<br>Adjust.                      | Dwell<br>Minutes                | Arrive                 | Depart                             | Station              |
|------|---------|-----|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------------------|
| AMT  | 0.0     |     |                               |                                       |                                 |                        | 8:15 AM                            | Chicago, IL          |
| CNIC | 2.2     | 11  |                               |                                       |                                 | 8:26 AM                | 8:26 AM                            | XCS - 16th Street    |
| CNIC | 24.3    | 27  | 0                             |                                       | 2                               | 8:53 AM                | 8:55 AM                            | Homewood, IL         |
| CNIC | 56.7    | 28  | 5                             |                                       | 1                               | 9:28 AM                | 9:29 AM                            | Kankakee, IL         |
| CNIC | 81.9    | 22  | 3                             |                                       | 1                               | 9:54 AM                | 9:55 AM                            | Gilman, IL           |
| CNIC | 114.6   | 28  | 0                             |                                       | 1                               | 10:23 AM               | 10:24 AM                           | Rantoul, IL          |
| CNIC | 128.6   | 13  | 15                            |                                       | 3                               | 10:52 AM               | 10:55 AM                           | Champaign-Urbana, IL |
| CNIC |         | 10  |                               | 0                                     |                                 | 11:05 AM               | 11:05 AM                           | XTI - Tolono         |
| CNIC | 173.2   | 29  | 0                             |                                       | 1                               | 11:34 AM               | 11:35 AM                           | Mattoon, IL          |
| CNIC | 200.0   | 26  | 0                             |                                       | 1                               | 12:01 PM               | 12:02 PM                           | Effingham, IL        |
| CNIC | 253.2   | 48  | 0                             |                                       | 1                               | 12:50 PM               | 12:51 PM                           | Centralia, IL        |
| CNIC | 288.6   | 32  | 0                             |                                       | 1                               | 1:23 PM                | 1:24 PM                            | Du Quoin, IL         |
| CNIC | 308.9   | 18  | 3                             | 0                                     |                                 | 1:45 PM                |                                    | Carbondale, IL       |
|      |         |     | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |                      |
|      |         |     | <b>292</b>                    | <b>26</b>                             | <b>0</b>                        | <b>12</b>              | <b>330</b>                         |                      |

### Difference between current and temporary proposal

| PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart | Station              |
|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|--------|----------------------|
|                               |                                       |                                 |                        |                                    | 0      | Chicago, IL          |
| -2                            | 0                                     | 0                               | 0                      | -2                                 | -2     | XCS - 16th Street    |
| 1                             | 0                                     | 0                               | 0                      | -1                                 | -1     | Homewood, IL         |
| 3                             | 5                                     | 0                               | 0                      | 7                                  | 7      | Kankakee, IL         |
| 1                             | 3                                     | 0                               | 0                      | 11                                 | 11     | Gilman, IL           |
| 3                             | 0                                     | 0                               | 0                      | 14                                 | 14     | Rantoul, IL          |
| 1                             | 15                                    | 0                               | 0                      | 30                                 | 30     | Champaign-Urbana, IL |
| 0                             | 0                                     | -5                              | 0                      | 25                                 | 25     | XTI - Tolono         |
| 5                             | 0                                     | 0                               | 0                      | 30                                 | 30     | Mattoon, IL          |
| 3                             | 0                                     | 0                               | 0                      | 33                                 | 33     | Effingham, IL        |
| 2                             | 0                                     | 0                               | 0                      | 35                                 | 35     | Centralia, IL        |
| 0                             | 0                                     | 0                               | 0                      | 35                                 | 35     | Du Quoin, IL         |
| -3                            | -23                                   | -9                              | 0                      | 0                                  | 0      | Carbondale, IL       |
| <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |        |                      |
| <b>14</b>                     | <b>0</b>                              | <b>-14</b>                      | <b>0</b>               | <b>0</b>                           |        |                      |

## Illini/Saluki Train 392

### Current Schedule

| RR   | Mileage | PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart  | Station                  |
|------|---------|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|---------|--------------------------|
| CNIC | 0.0     |                               |                                       |                                 |                        |                                    | 4:15 PM | Carbondale, IL CT        |
| CNIC | 20.3    | 20                            | 0                                     |                                 | 1                      | 4:35 PM                            | 4:36 PM | Du Quoin, IL             |
| CNIC | 55.7    | 31                            | 0                                     |                                 | 1                      | 5:07 PM                            | 5:08 PM | Centralia, IL            |
| CNIC | 108.9   | 43                            | 0                                     |                                 | 1                      | 5:51 PM                            | 5:52 PM | Effingham, IL            |
| CNIC | 135.7   | 23                            | 0                                     |                                 | 1                      | 6:15 PM                            | 6:16 PM | Mattoon, IL (Charleston) |
| CNIC |         | 27                            |                                       | 5                               |                        | 6:48 PM                            | 6:48 PM | XTI - Tolono             |
| CNIC | 180.3   | 8                             | 0                                     |                                 | 3                      | 6:56 PM                            | 6:59 PM | Champaign-Urbana, IL     |
| CNIC | 194.3   | 12                            | 0                                     |                                 | 1                      | 7:11 PM                            | 7:12 PM | Rantoul, IL              |
| CNIC | 227.0   | 25                            | 0                                     |                                 | 1                      | 7:37 PM                            | 7:38 PM | Gilman, IL               |
| CNIC | 252.2   | 21                            | 0                                     |                                 | 1                      | 7:59 PM                            | 8:00 PM | Kankakee, IL             |
| CNIC | 284.6   | 27                            | 0                                     |                                 | 2                      | 8:27 PM                            | 8:29 PM | Homewood, IL             |
| AMT  | 306.7   | 28                            | 26                                    |                                 |                        | 9:23 PM                            | 9:23 PM | XCS - 16th Street        |
| AMT  | 308.9   | 17                            | 0                                     | 5                               |                        | 9:45 PM                            |         | Chicago, IL CT           |
|      |         | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |         |                          |
|      |         | <b>282</b>                    | <b>26</b>                             | <b>10</b>                       | <b>12</b>              | <b>330</b>                         |         |                          |

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart  | Station                  |
|------|---------|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|---------|--------------------------|
| CNIC | 0.0     |                               |                                       |                                 |                        |                                    | 4:15 PM | Carbondale, IL CT        |
| CNIC | 20.3    | 19                            | 0                                     |                                 | 1                      | 4:34 PM                            | 4:35 PM | Du Quoin, IL             |
| CNIC | 55.7    | 31                            | 0                                     |                                 | 1                      | 5:06 PM                            | 5:07 PM | Centralia, IL            |
| CNIC | 108.9   | 48                            | 0                                     |                                 | 1                      | 5:55 PM                            | 5:56 PM | Effingham, IL            |
| CNIC | 135.7   | 26                            | 0                                     |                                 | 1                      | 6:22 PM                            | 6:23 PM | Mattoon, IL (Charleston) |
| CNIC |         | 31                            |                                       | 0                               |                        | 6:54 PM                            | 6:54 PM | XTI - Tolono             |
| CNIC | 180.3   | 8                             | 6                                     |                                 | 3                      | 7:08 PM                            | 7:11 PM | Champaign-Urbana, IL     |
| CNIC | 194.3   | 14                            | 0                                     |                                 | 1                      | 7:25 PM                            | 7:26 PM | Rantoul, IL              |
| CNIC | 227.0   | 28                            | 0                                     |                                 | 1                      | 7:54 PM                            | 7:55 PM | Gilman, IL               |
| CNIC | 252.2   | 22                            | 0                                     |                                 | 1                      | 8:17 PM                            | 8:18 PM | Kankakee, IL             |
| CNIC | 284.6   | 28                            | 15                                    |                                 | 2                      | 9:01 PM                            | 9:03 PM | Homewood, IL             |
| AMT  | 306.7   | 27                            | 0                                     |                                 |                        | 9:30 PM                            | 9:30 PM | XCS - 16th Street        |
| AMT  | 308.9   | 15                            | 0                                     | 0                               |                        | 9:45 PM                            |         | Chicago, IL CT           |
|      |         | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |         |                          |
|      |         | <b>297</b>                    | <b>21</b>                             | <b>0</b>                        | <b>12</b>              | <b>330</b>                         |         |                          |

### Difference between current and temporary proposal

| PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart | Station                  |
|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|--------|--------------------------|
|                               |                                       |                                 |                        |                                    | 0      | Carbondale, IL CT        |
| -1                            | 0                                     | 0                               | 0                      | -1                                 | -1     | Du Quoin, IL             |
| 0                             | 0                                     | 0                               | 0                      | -1                                 | -1     | Centralia, IL            |
| 5                             | 0                                     | 0                               | 0                      | 4                                  | 4      | Effingham, IL            |
| 3                             | 0                                     | 0                               | 0                      | 7                                  | 7      | Mattoon, IL (Charleston) |
| 4                             | 0                                     | -5                              | 0                      | 6                                  | 6      | XTI - Tolono             |
| 0                             | 6                                     | 0                               | 0                      | 12                                 | 12     | Champaign-Urbana, IL     |
| 2                             | 0                                     | 0                               | 0                      | 14                                 | 14     | Rantoul, IL              |
| 3                             | 0                                     | 0                               | 0                      | 17                                 | 17     | Gilman, IL               |
| 1                             | 0                                     | 0                               | 0                      | 18                                 | 18     | Kankakee, IL             |
| 1                             | 15                                    | 0                               | 0                      | 34                                 | 34     | Homewood, IL             |
| -1                            | -26                                   | 0                               | 0                      | 7                                  | 7      | XCS - 16th Street        |
| -2                            | 0                                     | -5                              | 0                      | 0                                  | 0      | Chicago, IL CT           |
| <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |        |                          |
| <b>15</b>                     | <b>-5</b>                             | <b>-10</b>                      | <b>0</b>               | <b>0</b>                           |        |                          |

## Illini/Saluki Train 393

### Current Schedule

| RR   | Mileage | PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart  | Station              |
|------|---------|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|---------|----------------------|
| AMT  | 0.0     |                               |                                       |                                 |                        |                                    | 4:05 PM | Chicago, IL          |
| CNIC | 2.2     | 13                            |                                       |                                 |                        | 4:18 PM                            | 4:18 PM | XCS - 16th Street    |
| CNIC | 24.3    | 26                            | 0                                     |                                 | 2                      | 4:44 PM                            | 4:46 PM | Homewood, IL         |
| CNIC | 56.7    | 25                            | 0                                     |                                 | 1                      | 5:11 PM                            | 5:12 PM | Kankakee, IL         |
| CNIC | 81.9    | 21                            | 0                                     |                                 | 1                      | 5:33 PM                            | 5:34 PM | Gilman, IL           |
| CNIC | 114.6   | 25                            | 0                                     |                                 | 1                      | 5:59 PM                            | 6:00 PM | Rantoul, IL          |
| CNIC | 128.6   | 12                            | 0                                     |                                 | 3                      | 6:12 PM                            | 6:15 PM | Champaign-Urbana, IL |
| CNIC |         | 10                            |                                       | 5                               |                        | 6:30 PM                            | 6:30 PM | XTI - Tolono         |
| CNIC | 173.2   | 24                            | 0                                     |                                 | 1                      | 6:54 PM                            | 6:55 PM | Mattoon, IL          |
| CNIC | 200.0   | 23                            | 0                                     |                                 | 1                      | 7:18 PM                            | 7:19 PM | Effingham, IL        |
| CNIC | 253.2   | 46                            | 0                                     |                                 | 1                      | 8:05 PM                            | 8:06 PM | Centralia, IL        |
| CNIC | 288.6   | 32                            | 0                                     |                                 | 1                      | 8:38 PM                            | 8:39 PM | Du Quoin, IL         |
| CNIC | 308.9   | 21                            | 26                                    | 9                               |                        | 9:35 PM                            |         | Carbondale, IL       |
|      |         | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |         |                      |
|      |         | <b>278</b>                    | <b>26</b>                             | <b>14</b>                       | <b>12</b>              | <b>330</b>                         |         |                      |

### Proposed Temporary Schedules (based on Amtrak June 2020 Proposal)

| RR   | Mileage | PRT                           | Recovery<br>Minutes                   | Misc.<br>Adjust.                | Dwell<br>Minutes       | Arrive                             | Depart  | Station              |
|------|---------|-------------------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|---------|----------------------|
| AMT  | 0.0     |                               |                                       |                                 |                        |                                    | 4:05 PM | Chicago, IL          |
| CNIC | 2.2     | 11                            |                                       |                                 |                        | 4:16 PM                            | 4:16 PM | XCS - 16th Street    |
| CNIC | 24.3    | 27                            | 0                                     |                                 | 2                      | 4:43 PM                            | 4:45 PM | Homewood, IL         |
| CNIC | 56.7    | 28                            | 5                                     |                                 | 1                      | 5:18 PM                            | 5:19 PM | Kankakee, IL         |
| CNIC | 81.9    | 22                            | 3                                     |                                 | 1                      | 5:44 PM                            | 5:45 PM | Gilman, IL           |
| CNIC | 114.6   | 28                            | 0                                     |                                 | 1                      | 6:13 PM                            | 6:14 PM | Rantoul, IL          |
| CNIC | 128.6   | 13                            | 15                                    |                                 | 3                      | 6:42 PM                            | 6:45 PM | Champaign-Urbana, IL |
| CNIC |         | 10                            |                                       | 0                               |                        | 6:55 PM                            | 6:55 PM | XTI - Tolono         |
| CNIC | 173.2   | 29                            | 0                                     |                                 | 1                      | 7:24 PM                            | 7:25 PM | Mattoon, IL          |
| CNIC | 200.0   | 26                            | 0                                     |                                 | 1                      | 7:51 PM                            | 7:52 PM | Effingham, IL        |
| CNIC | 253.2   | 48                            | 0                                     |                                 | 1                      | 8:40 PM                            | 8:41 PM | Centralia, IL        |
| CNIC | 288.6   | 32                            | 0                                     |                                 | 1                      | 9:13 PM                            | 9:14 PM | Du Quoin, IL         |
| CNIC | 308.9   | 18                            | 3                                     | 0                               |                        | 9:35 PM                            |         | Carbondale, IL       |
|      |         | <b>Total<br/>Pure<br/>Run</b> | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |         |                      |
|      |         | <b>292</b>                    | <b>26</b>                             | <b>0</b>                        | <b>12</b>              | <b>330</b>                         |         |                      |

### Difference between current and temporary proposal

| PRT                           | Recovery<br>Minutes | Misc.<br>Adjust.                      | Dwell<br>Minutes                | Arrive                 | Depart                             | Station              |
|-------------------------------|---------------------|---------------------------------------|---------------------------------|------------------------|------------------------------------|----------------------|
|                               |                     |                                       |                                 |                        | 0                                  | Chicago, IL          |
| -2                            | 0                   | 0                                     | 0                               | -2                     | -2                                 | XCS - 16th Street    |
| 1                             | 0                   | 0                                     | 0                               | -1                     | -1                                 | Homewood, IL         |
| 3                             | 5                   | 0                                     | 0                               | 7                      | 7                                  | Kankakee, IL         |
| 1                             | 3                   | 0                                     | 0                               | 11                     | 11                                 | Gilman, IL           |
| 3                             | 0                   | 0                                     | 0                               | 14                     | 14                                 | Rantoul, IL          |
| 1                             | 15                  | 0                                     | 0                               | 30                     | 30                                 | Champaign-Urbana, IL |
| 0                             | 0                   | -5                                    | 0                               | 25                     | 25                                 | XTI - Tolono         |
| 5                             | 0                   | 0                                     | 0                               | 30                     | 30                                 | Mattoon, IL          |
| 3                             | 0                   | 0                                     | 0                               | 33                     | 33                                 | Effingham, IL        |
| 2                             | 0                   | 0                                     | 0                               | 35                     | 35                                 | Centralia, IL        |
| 0                             | 0                   | 0                                     | 0                               | 35                     | 35                                 | Du Quoin, IL         |
| -3                            | -23                 | -9                                    | 0                               | 0                      | 0                                  | Carbondale, IL       |
| <b>Total<br/>Pure<br/>Run</b> |                     | <b>Total<br/>Recovery<br/>Minutes</b> | <b>Total<br/>Misc.<br/>Adj.</b> | <b>Total<br/>Dwell</b> | <b>Total<br/>Schedule<br/>Time</b> |                      |
| <b>14</b>                     |                     | <b>0</b>                              | <b>-14</b>                      | <b>0</b>               | <b>0</b>                           |                      |

## **Attachment 5**

**Comparison of Schedule Times for Routes Between 200-400 miles**

| <b>Service*</b>                          | <b>Endpoints</b>             | <b>Distance (miles)</b> | <b>Average Schedule Time (mins)**</b> | <b>Ratio of Schedule Time to Distance</b> |
|--|------------------------------|-------------------------|---------------------------------------|---|
| Illinois Zephyr                          | Chicago – Quincy             | 258                     | 262                                   | 1.01                                      |
| <b>Illini/Saluki (current)</b>           | Chicago – Carbondale         | <b>309</b>              | <b>330</b>                            | <b>1.07</b>                               |
| San Joaquin                              | Bakersfield - Sacramento     | 282                     | 318                                   | 1.13                                      |
| <b>Illini/Saluki (CN proposal)</b>       | Chicago – Carbondale         | <b>309</b>              | <b>357</b>                            | <b>1.15</b>                               |
| Lincoln                                  | Chicago - St. Louis          | 284                     | 333                                   | 1.17                                      |
| Heartland Flyer                          | Oklahoma City - Fort Worth   | 206                     | 242                                   | 1.17                                      |
| San Joaquin                              | Bakersfield – Oakland        | 315                     | 371                                   | 1.18                                      |
| Wolverine                                | Chicago – Pontiac            | 304                     | 364                                   | 1.20                                      |
| MO River Runner                          | St. Louis - Kansas City      | 283                     | 340                                   | 1.20                                      |
| Blue Water                               | Chicago - Port Huron         | 319                     | 388                                   | 1.22                                      |
| Cascades                                 | Seattle – Eugene             | 311                     | 383                                   | 1.23                                      |
| Ethan Allen                              | Rutland, VT - New York City  | 241                     | 337                                   | 1.40                                      |
| Adirondack                               | Rouses Point - New York City | 332                     | 473                                   | 1.42                                      |
| Pacific Surfliner                        | San Diego - San Luis Obispo  | 350                     | 521                                   | 1.49                                      |
| Pacific Surfliner                        | San Diego – Goleta           | 240                     | 378                                   | 1.58                                      |
| <b>Average (excluding Illini/Saluki)</b> |                              | <b>287</b>              | <b>362</b>                            | <b>1.26</b>                               |

Source: Amtrak's June 2018 System Timetable.

\* Each service is comprised of individual trains, each with its own schedule.

\*\* Most services have trains with varying schedule times, requiring the use of an average.

# EXHIBIT 5

| Train #            | Late: 15 | D Stops  | Start  |       |          |         | Finish   |              |          |       |            |            | Schedule Change | Net Edit |
|--------------------|----------|----------|--------|-------|----------|---------|----------|--------------|----------|-------|------------|------------|-----------------|----------|
|                    |          |          | Riders | Late  | Accepted | OTP%    | New Late | New Accepted | New OTP% | Saved | OTP Impact | Relative % |                 |          |
| <b>391 COPY</b>    |          | <b>D</b> | 22718  | 13571 | 9147     | 40.26%  | 4328     | 18390        | 80.95%   | 9243  | 40.69%     | 68.11%     |                 |          |
| <b>Grand Total</b> |          | <b>D</b> | 22718  | 13571 | 9147     | 40.26%  | 4328     | 18390        | 80.95%   | 9243  | 40.69%     | 68.11%     |                 |          |
| 001 - CHI CHI      |          |          | 0      | 0     | 0        | #DIV/0! | 0        | 0            | #DIV/0!  | 0     | #DIV/0!    | #DIV/0!    | 0               | 0        |
| 006 - HMM HMM      |          |          | 14     | 1     | 13       | 92.86%  | 1        | 13           | 92.86%   | 0     | 0.00%      | 0.00%      | 0               | 0        |
| 007 - KKI KKI      |          |          | 401    | 114   | 287      | 71.57%  | 48       | 353          | 88.03%   | 66    | 16.46%     | 57.89%     | 5               | 5        |
| 009 - GLM GLM      |          |          | 81     | 32    | 49       | 60.49%  | 14       | 67           | 82.72%   | 18    | 22.22%     | 56.25%     | 3               | 8        |
| 010 - RTL RTL      |          |          | 228    | 102   | 126      | 55.26%  | 35       | 193          | 84.65%   | 67    | 29.39%     | 65.69%     | 2               | 10       |
| 011 - CHM CHM      |          |          | 12991  | 9114  | 3877     | 29.84%  | 1902     | 11089        | 85.36%   | 7212  | 55.52%     | 79.13%     | 16              | 26       |
| 014 - MAT MAT      |          |          | 1565   | 1226  | 339      | 21.66%  | 389      | 1176         | 75.14%   | 837   | 53.48%     | 68.27%     | 0               | 26       |
| 015 - EFG EFG      |          |          | 880    | 709   | 171      | 19.43%  | 216      | 664          | 75.45%   | 493   | 56.02%     | 69.53%     | 0               | 26       |
| 018 - CEN CEN      |          |          | 841    | 756   | 85       | 10.11%  | 336      | 505          | 60.05%   | 420   | 49.94%     | 55.56%     | 0               | 26       |
| 020 - DQN DQN      |          |          | 375    | 337   | 38       | 10.13%  | 161      | 214          | 57.07%   | 176   | 46.93%     | 52.23%     | 0               | 26       |
| 021 - CDL CDL      |          |          | 5342   | 1180  | 4162     | 77.91%  | 1226     | 4116         | 77.05%   | -46   | -0.86%     | -3.90%     | -26             | 0        |

**CERTIFICATE OF SERVICE**

I, Jerry A. Cuomo, declare under penalty of perjury that the foregoing is true and correct.

Pursuant to 49 § 1104.12, I hereby certify that on the 27<sup>th</sup> day of May, 2022 I have caused to be served a copy of the foregoing Opening Brief of National Railroad Passenger Corporation, upon all parties of record via electronic mail.

Executed on: May 27, 2022

By: *Jerry A. Cuomo*  
Jerry A. Cuomo

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Pursuant to 49 § 1104.12, I hereby certify that on the 27<sup>th</sup> day of May, 2022 I have caused to be served a copy of the foregoing Opening Brief of National Railroad Passenger Corporation, upon the following parties of record via USPS First Class Mail:

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Executed on: May 27, 2022

By: *Jerry A. Cuomo*  
Jerry A. Cuomo