method described in paragraph 4.3.2.1 of ANSI/EIA/TIA–579–1991. No variation in loop conditions is required for this measurement since the receive level of a digital telephone is independent of loop length.

(f) The ROLR for either an analog or digital telephone shall first be determined with the receive volume control at its normal unamplified level. The minimum volume control setting shall be used for this measurement unless the manufacturer identifies a different setting for the nominal volume level. The ROLR shall then be determined with the receive volume control at its maximum volume setting. Since ROLR is a loudness rating value expressed in dB of loss, more positive values of ROLR represent lower receive levels. Therefore, the ROLR value determined for the maximum volume control setting should be subtracted from that determined for the nominal volume control setting to determine compliance with the gain requirement.

(g) The 18 dB of receive gain may be exceeded provided that the amplified receive capability automatically resets to nominal gain when the telephone is caused to pass through a proper on-hook transition in order to minimize the likelihood of damage to individuals with normal hearing.

(h) A telephone complies with the Commission's volume control requirements if it is equipped with a receive volume control that provides, through the receiver in the handset or headset of the telephone, 18 dB of Conversational Gain minimum and up to 24 dB of Conversational Gain maximum when measured as described in ANSI/TIA–4965–2012 (Telecommunications—Telephone Terminal Equipment—Receive Volume Control Requirements for Digital and Analog Wireline Telephones). The 18 dB of Conversational Gain minimum must be achieved without significant clipping of the speech signal used for testing.

(i) The 24 dB of Conversational Gain maximum may be exceeded provided the amplified receive capability automatically resets to a level less than 18 dB of Conversational Gain when the telephone is caused to pass through a proper on-hook transition in order to minimize the likelihood of damage to individuals with normal hearing.

(j) These incorporations by reference of paragraph 4.1.2 (including table 4.4) of American National Standards Institute (ANSI) Standard ANSI/EIA–470–A–1987, paragraph 4.3.2 of ANSI/EIA/TIA–579–1991, and ANSI/TIA–4965–2012 were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be purchased from the American National Standards Institute (ANSI), Sales Department, 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900, or *http://global.ihs.com/.* Copies also may be inspected during normal business hours at the following locations: Consumer and Governmental Affairs Bureau, Reference Information Center, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These standards may also be viewed on the ''ANSI Incorporated by Reference (IBR) Portal'' at *http://ibr.ansi.org/.*

(k) Manufacturers and other responsible parties of telephones subject to this rule shall engage in consultation with people with hearing loss and their representative organizations for the purpose of assessing the effectiveness of the standard adopted pursuant to paragraph (j) of this section. Such consultation shall include testing a sample of products certified to be compliant with the revised standard to evaluate whether products compliant with such standard are providing a uniform and appropriate range of volume to meet the telephone needs of consumers. Such consultation and testing shall occur by [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], pursuant to paragraph (j) of this section, with follow-up every three years thereafter to assess the impact of these technological changes.

■ 14. Amend § 68.320 by revising paragraph (e) to read as follows:

**§ 68.320 Supplier's Declaration of Conformity.**

* * * * *

(e) No person shall use or make reference to a Supplier's Declaration of Conformity in a deceptive or misleading manner or to convey the impression that such a Supplier's Declaration of Conformity reflects more than a determination by the responsible party that the device or product has been shown to be capable of complying with the applicable technical.

■ 15. Amend § 68.324 by adding paragraphs (e) introductory text and (g) to read as follows:

**§ 68.324 Supplier's Declaration of Conformity requirements.**

* * * * *

(e) For terminal equipment that is directly connected to the public switched telephone network:

* * * * *

(g) For ACS telephonic CPE subject to a Supplier's Declaration of Conformity, the responsible party shall make a copy of the Supplier's Declaration of Conformity freely available to the general public on its company Web site.

[FR Doc. 2015–31368 Filed 12–24–15; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Part 1040

**[Docket No. EP 726]**

## On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board (Board) is proposing a definition of ''on-time performance'' for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA).

**DATES:** Comments are due by February 8, 2016. Reply comments are due by February 29, 2016.

**ADDRESSES:** Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the ''E–FILING'' link on the Board's Web site, at ''*http://www.stb.dot.gov.*'' Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 726, 395 E Street SW., Washington, DC 20423–0001.

Copies of written comments and replies will be posted to the Board's Web site and will be available for viewing and self-copying at the Board's Public Docket Room, Room 131. Copies will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Zimmerman at (202) 245–0386. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** By decision served on May 15, 2015, the

Board instituted a rulemaking proceeding to define ''on-time performance'' for purposes of Section 213 of PRIIA, 49 U.S.C. 24308(f). The Board instituted this proceeding in response to a petition for rulemaking filed by the Association of American Railroads (AAR). Any rule promulgated in this proceeding would apply to complaints under 24308(f) currently pending before the Board, as well as future complaints or investigations under that section.[1]

*Background.* The National Railroad Passenger Corporation (Amtrak) was established by Congress in 1970 to preserve passenger services and routes on the Nation's railroads. *See Lebron* v. *Nat'l R.R. Passenger Corp.,* 513 U. S. 374, 383–384 (1995); *Nat'l R.R. Passenger Corp.* v. *Atchison, Topeka, & Santa Fe R.R.,* 470 U. S. 451, 454 (1985); *see also Rail Passenger Serv. Act of 1970,* Public Law 91–518, 84 Stat. 1328 (1970). As a condition of relieving the freight railroads of their common carrier obligation to provide passenger service, Congress required that the freight railroads permit Amtrak to operate over their tracks and use their facilities. *See* 45 U.S.C. 561, 562 (1970 ed.). Since 1973, Congress has required freight railroads to give Amtrak trains preference over freight trains when using the lines and facilities of freight railroads: ''Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing. . . .'' 49 U.S.C. 24308(c); *see* Amtrak Improvement Act of 1973, Public Law 93–146, 10(2), 87 Stat. 552 (initial version).

In 2008, Congress enacted PRIIA to address, among other things, issues related to the performance of passenger rail service, including the concern that one cause of Amtrak's inability to achieve reliable on-time performance was the failure of host freight railroads to honor Amtrak's right to preference. *See Passenger Rail Inv. & Improvement Act,* Public Law 110–432, Div. B, 122 Stat. 4907 (2008); S. Rep. No. 67, 110th Cong., 1st Sess. 25–26 (2007). Section 207 of PRIIA charged Amtrak and the Federal Railroad Administration (FRA) with ''jointly'' developing new, or improving existing, metrics and standards for measuring the performance of intercity passenger rail operations, including on-time performance and train delays incurred on host railroads.

Under Section 213(a) of PRIIA, if the on-time performance of any intercity passenger train averages less than 80% for any two consecutive calendar quarters, the Board may initiate an investigation, or Amtrak and other eligible complainants may file a complaint with the Board requesting that the Board initiate an investigation. The purpose of such an investigation is to determine whether and to what extent delays are due to causes that could reasonably be addressed by the passenger rail operator or the host railroad. Following the investigation, should the Board determine that Amtrak's substandard performance is ''attributable to'' the rail carrier's ''failure to provide preference to Amtrak over freight transportation as required'' by 49 U.S.C. 24308(c), the Board may choose to ''award damages'' or other appropriate relief from a host railroad to Amtrak. 49 U.S.C. 24308(f)(2). If the Board finds it appropriate to award damages to Amtrak, Amtrak must use the award ''for capital or operating expenditures on the routes over which delays'' were the result of the host railroad's failure to grant the statutorily required preference to passenger transportation. 49 U.S.C. 24308(f)(4).

On August 19, 2011, AAR filed a lawsuit in the United States District Court for the District of Columbia challenging the constitutionality of Section 207 of PRIIA. *See Ass'n of Am. R.Rs.* v. *Dep't of Transp.,* 865 F. Supp. 2d 22 (D.D.C. 2012). On January 19, 2012, prior to the issuance of a decision in that case, Amtrak filed a complaint with the Board pursuant to Section 213 of PRIIA in Docket No. NOR 42134, requesting that the Board initiate an investigation into alleged ''substandard performance of Amtrak passenger trains'' on certain rail lines owned by CN.[2] Amtrak's complaint was subsequently held in abeyance for the purposes of mediation; the mediation period expired on October 4, 2012. Later, the Board granted the parties' request that the case again be held in abeyance to permit them to continue discussions and potentially reach a settlement. This abeyance was extended several times; most recently, on August 19, 2013, the Board extended the abeyance period to July 31, 2014, which the parties argued was warranted by their ongoing discussions and to provide additional time that may be necessary for final resolution of the lawsuit challenging the constitutionality of Section 207(a) of PRIIA. Ultimately, however, the mediation and discussions were unsuccessful.

Meanwhile, on May 31, 2012, the District Court upheld the constitutionality of Section 207. *Ass'n of Am. R.Rs.* v. *Dep't of Transp.,* 865 F. Supp. 2d at 25. AAR then appealed to the United States Court of Appeals for the District of Columbia Circuit (the D.C. Circuit). The D.C. Circuit reversed the District Court, holding that Section 207 of PRIIA impermissibly delegates regulatory authority to a ''private entity'' (Amtrak) and, therefore, is an unconstitutional delegation of legislative power. *Ass'n of Am. R.Rs. v. Dep't of Transp.,* 721 F.3d 666 (D.C. Cir. 2013). The D.C. Circuit's decision was then appealed to the United States Supreme Court, which agreed to review the case.

While review was pending before the Supreme Court, on August 29, 2014, Amtrak filed a motion to amend its complaint against CN in Docket No. 42134 (the ''Illini/Saluki'' case). Specifically, Amtrak sought to narrow the focus of the complaint to the performance of Amtrak's Illini/Saluki service rather than all of the Amtrak services on lines owned by CN addressed in the original complaint. In addition, on November 17, 2014, Amtrak filed a new complaint under Section 213 of PRIIA in Docket No. NOR 42141, alleging ''substandard performance of Amtrak's Capitol Limited service between Chicago, IL and Washington, D.C.'' on rail lines owned by CSX Transportation, Inc. and Norfolk Southern Railway Company (the ''Capitol Limited'' case).[3]

On December 19, 2014, while the Supreme Court case was still pending, the Board issued a decision in the Illini/Saluki case (December 2014 Decision) (1) granting Amtrak's motion to amend its complaint against CN, and (2) concluding that the pending court litigation involving the constitutionality of Section 207 did not preclude Amtrak's complaint before the Board from moving forward. The Board also directed the parties to provide arguments and replies addressing how to construe the term ''on-time performance'' as the term is used in Section 213. In dissent, Commissioner Begeman stated that the Board would best fulfill its obligations under the law by initiating a rulemaking to establish clear standards by which on-time

[1] AAR requested a rulemaking only if the Board did not grant Canadian National Railway's (CN's) petition for reconsideration in Docket No. NOR 42134 and the motions to dismiss in Docket No. NOR 42141—the two complaint cases under 24308(f) now pending before the Board. While the Board has not ruled on those pleadings, the Board decided to institute a rulemaking proceeding and invite public participation because AAR's petition raised a number of important issues.

[2] Amtrak Complaint, NOR 42134, at 2 (Jan. 19, 2012).

[3] Amtrak Complaint, NOR 42141, at 2 (Nov. 17, 2014).

performance cases could be fairly processed.

CN filed a petition for reconsideration in the Illini/Saluki case on January 7, 2015. AAR also submitted a conditional petition for rulemaking in this docket on January 15, 2015. In response, the Board, on January 16, 2015, served a decision postponing the filing deadlines in the Illini/Saluki case established by the December 2014 Decision, pending further order of the Board. In the Capitol Limited case, the Board served a decision on April 7, 2015, directing the parties to engage in mediation. The mediation period concluded on August 14, 2015, without success.

On March 9, 2015, the Supreme Court reversed the D.C. Circuit's decision, finding that Amtrak is a governmental entity for purposes of analyzing the constitutional issues surrounding the delegation of authority in Section 207. *Dep't of Transp.* v. *Ass'n of Am. R.Rs.,* 135 S. Ct. 1225 (2015). However, the Court remanded the case to the D.C. Circuit for consideration of AAR's other arguments regarding the constitutionality of Section 207, which the D.C. Circuit had declined to reach. *Id.* at 1234. Currently, the legality of Section 207 of PRIIA remains in dispute.

As noted, on May 15, 2015, the Board instituted this rulemaking proceeding in response to a petition filed by AAR. In that decision, the Board stated that it intended to issue a notice of proposed rulemaking and a procedural schedule in a subsequent decision. The Board found persuasive the arguments regarding the advantages of rulemaking in this situation: There are multiple on-time performance cases pending in which the Board's definition could apply; it would be efficient to obtain the full range of stakeholder perspectives in one docket, rather than piecemeal on a case-by-case basis; and defining on-time performance by rulemaking would provide clarity regarding the trigger for potential adjudications and would avoid the potential relitigation of the issue in each case, thereby conserving party and agency resources.

*The Proposed Rule.* The proposed rule's definition of on-time performance, which is derived from a previous definition of on-time performance used by the Interstate Commerce Commission (ICC), reads as follows:

> a train is deemed to be ''on time'' if it arrives at its final destination within five minutes of its scheduled arrival time per one hundred miles of operation (capped at 30 minutes).

The ICC's on-time performance regulations (former 49 CFR 1124.6) provided that an intercity passenger train ''shall arrive at its final terminus no later than 5 minutes after scheduled arrival time per 100 miles of operation, or 30 minutes after scheduled arrival time, whichever is the less.'' The ICC explained that ''[t]he public should be able to rely on the established train schedule so that plans can be made with a modicum of certainty and trains may once again be attractive to travelers for whom on-time performance is imperative.'' *Adequacy of Intercity Rail Passenger Serv.,* 344 I.C.C. 758, 776 (1973).[4] We believe that the ICC's prior sentiment is equally valid today.

Under Section 1040.2 of the proposed rule, *Definition of ''On Time,''* a train would be considered ''on time'' if it arrives at its final terminus no more than five minutes after its scheduled arrival time for each 100 miles the train operated, or 30 minutes after its scheduled arrival time, whichever is less. Section 1040.3 of the proposed rule, *Table of Maximum Allowances,* sets forth the following table specifying the maximum number of minutes after a scheduled arrival time that an ''on-time'' train may arrive at its final terminus for each distance-variable band.

| Distance operated (miles) | | Maximum allowance (minutes) |
|---|---|---|
| Over | Up to and including | |
| 0 | 100 | 5 |
| 100 | 200 | 10 |
| 200 | 300 | 15 |
| 300 | 400 | 20 |
| 400 | 500 | 25 |
| 500 | No limit | 30 |

As set forth in the table, a train operating up to 100 miles would be ''on time'' if it arrives at its final terminus no more than five minutes after its scheduled arrival time. Likewise, a train operating over 100 miles but no more than 200 miles would be considered ''on time'' if it arrives at its final terminus no more than 10 minutes after its scheduled arrival time, and a train operating a distance over 500 miles would be considered ''on time'' if it arrives at its final terminus no more than 30 minutes after its scheduled arrival time.

The proposed rule also provides a framework for calculating quarterly on-time performance for purposes of filing or initiating a complaint. As proposed in Section 1040.4, *Calculation of Quarterly On-Time Performance,* on-time performance would be calculated as a percentage for each individual calendar quarter (*e.g.,* January 1 through March 31, April 1 through June 30, and so on) by dividing the total number of ''on-time'' trains that calendar quarter, as determined by distance-variable thresholds in Sections 1040.2 and 1040.3, by the total number of trains that operated during that calendar quarter. Trains that did not operate from scheduled origin to scheduled destination would be excluded from this calculation.[5] If the on-time performance percentage, calculated as described above, falls below 80% in each calendar quarter for two consecutive calendar quarters, an eligible complainant could file a complaint requesting an investigation pursuant to Section 213(a) of PRIIA, or the Board could initiate an investigation on its own.

The Board proposes to adopt the ICC's definition because relying on a comparison between Amtrak's scheduled arrival time and the time an Amtrak train actually arrives at its final destination would be clear and relatively easy to apply. In particular, adoption of this definition would simplify the record-keeping and production of evidence that may otherwise be necessary for Amtrak and the host carriers if on-time performance were defined using a number of additional factors, such as the amount of delay at intermediate stops or construction on the host carrier's line.

The Board seeks comments from all interested persons on the proposed rule. Importantly, the Board encourages interested persons to propose and discuss potential modifications or alternatives to the proposed rule. Examples of such alternatives might include, but are not limited to: Factoring into the calculation of on-time performance a train's punctuality at intermediate stops, rather than the final terminus only; implementing alternative tables of maximum allowances with respect to either the distance-variables or the maximum allowance of minutes for each distance-variable band; or calculating the ''on-time'' thresholds under an entirely different methodology, such as approaches that Amtrak or other public agencies and host carriers have implemented. The

[4] Subsequently, in the Amtrak Reorganization Act of 1979, Pub. L. 96–73, 96 Stat. 537, Congress repealed the ICC's adequacy-of-service jurisdiction over Amtrak while establishing an internal Amtrak organization with similar functions. This transfer of responsibilities, however, implied no Congressional judgment on the merits of the ICC's definition of on-time performance.

[5] Thus, excluded from the calculation would be, for example, trains that do not operate, for any reason; trains that terminate prematurely at an intermediate point rather than the scheduled final terminus; and trains that originate at an intermediate point rather than the scheduled origin.

Board will carefully consider all recommended proposals, and may take further comment, if appropriate, in an effort to establish the most meaningful and straightforward definition of on-time performance.

*Procedural Schedule.* On June 12, 2015, Amtrak requested that the Board limit the comment period in this proceeding to 30 days. AAR filed a request for procedural schedule on July 16, 2015, in which it requested that the Board schedule two rounds of pleadings (opening comments and replies) before issuing a proposed rule and allow 45 days for parties to submit each (essentially, an Advanced Notice of Proposed Rulemaking).

The Board will allow six weeks for parties to file opening comments in response to this notice of proposed rulemaking and three weeks for parties to file reply comments. Given the significance of the issue at hand, the Board finds that the 30-day comment period requested by Amtrak would provide insufficient time for parties to provide comments on the proposed rule. A procedural schedule allowing reply comments is appropriate because the Board here invites comments on not only the proposed rule, but potential modifications or alternatives (on which the Board may take further comment if appropriate). This approach is intended to balance the need to provide sufficient opportunity for public comments, as urged in part by AAR, with the need to complete this proceeding as expeditiously as possible.

*Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The proposed regulation would not create a significant impact on a substantial number of small entities. As noted above, host carriers have been required to allow Amtrak to operate over their rail lines since the 1970s. Moreover, an investigation concerning delays to intercity passenger traffic is a function of Section 213 of PRIIA rather than this rulemaking. The proposed rule seeks only to define ''on-time performance'' for the purpose of implementing the rights and obligations already established in Section 213 of PRIIA. Thus, the proposed rule does not place any additional burden on small entities, but rather clarifies an existing obligation.

Even assuming for the sake of argument that the proposed regulation were to create an impact on small entities, which it does not, the number of small entities so affected would not be substantial. The proposed definition of on-time performance would apply in proceedings involving Amtrak, currently the only provider of intercity passenger rail transportation subject to PRIIA, and its host railroads. For almost all of its operations, Amtrak's host carriers are Class I rail carriers,[6] and Class I carriers generally do not fall within the Small Business Administration's definition of a small business for the rail transportation industry.[7] Of a total of approximately 560 smaller carriers that do fall within the SBA's definition of a small entity, only approximately 10 currently host Amtrak traffic.[8] Therefore, the Board certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

This proposal would not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects in 49 CFR Part 1040**

On-time performance of intercity passenger rail service.

[6] Under the Board's regulations, Class I carriers have annual carrier operating revenues of $250 million or more in 1991 dollars (adjusted for inflation using 2014 data, the revenue threshold for a Class I rail carrier is $475,754,803).

[7] The Small Business Administration's Office of Size Standards has established a size standard for rail transportation, pursuant to which a line-haul railroad is considered small if its number of employees is 1,500 or less, and a short line railroad is considered small if its number of employees is 500 or less. 13 CFR 121.201 (industry subsector 482).

[8] This number is derived from Amtrak's Monthly Performance Report for May 2015, historical on-time performance records, and system timetable, all of which are available on Amtrak's Web site.

*It is ordered*:

1. Comments are due by February 8, 2016. Reply comments are due by February 29, 2016.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: December 16, 2015.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

**Brendetta S. Jones,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, subchapter A, of the Code of Federal Regulations by adding part 1040 as follows:

## PART 1040—ON-TIME PERFORMANCE OF INTERCITY PASSENGER RAIL SERVICE

Sec.

1040.1 Purpose.
1040.2 Definition of ''on time.''
1040.3 Table of maximum allowances.
1040.4 Calculation of quarterly on-time performance.

**Authority:** 49 U.S.C. 721 and 24308(f).

### § 1040.1 Purpose.

This section defines ''on-time performance'' for the purpose of implementing Section 213 of the Passenger Rail Investment and Improvement Act of 2008, 49 U.S.C. 24308(f).

### § 1040.2 Definition of ''on time.''

A train is ''on time'' if it arrives at its final terminus no more than five minutes after its scheduled arrival time per 100 miles of operation, or 30 minutes after its scheduled arrival time, whichever is less. This definition shall be implemented in accordance with the table provided in § 1040.3.

### § 1040.3 Table of maximum allowances.

The following table sets forth the maximum number of minutes after the scheduled arrival time that a train may arrive at its final terminus and be considered on time for the purpose of implementing 49 U.S.C. 24308(f).

| Distance operated (miles) | | Maximum allowance (minutes) |
|---|---|---|
| Over | Up to and including | |
| 0 ..... | 100 | 5 |
| 100 ..... | 200 | 10 |

| Distance operated (miles) | | Maximum allowance (minutes) |
|---|---|---|
| Over | Up to and including | |
| 200 ..... | 300 | 15 |
| 300 ..... | 400 | 20 |
| 400 ..... | 500 | 25 |
| 500 ..... | No limit | 30 |

**§ 1040.4 Calculation of quarterly on-time performance.**

In any given calendar quarter, on-time performance shall be calculated as a percentage using the following formula:

(a) The denominator shall be the number of trains that operated during that calendar quarter, excluding any train not operating from its scheduled origin to its scheduled destination; and

(b) The numerator shall be the number of trains included in the denominator that also satisfy the definition of ''on-time performance,'' as set forth in §§ 1040.2 and 1040.3.

[FR Doc. 2015–32411 Filed 12–24–15; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**[Docket No. 150924885–5999–01]**

**RIN 0648–BF38**

## International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for the Area of Overlap Between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS hereby proposes regulations under the Tuna Conventions Act to implement Recommendation C–12–11 of the Inter-American Tropical Tuna Commission (IATTC). Recommendation C–12–11 revises the management regime for the area of overlapping jurisdiction between the IATTC and the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). These proposed regulations provide that the management measures of the IATTC would no longer apply in the area of overlapping jurisdiction, with the exception of regulations governing the IATTC Regional Vessel Register. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** Comments on the proposed rule and supporting documents must be submitted in writing by January 27, 2016.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2015–0158, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0158,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2015–0158'' in the comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2015–0158 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE., Bldg 1, Seattle, WA 98115–0070, or *Regional Administrator.WCRHMS@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rachael Wadsworth, NMFS, West Coast Region, 562–980–4036.

**SUPPLEMENTARY INFORMATION:**

### Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. The full text of the 1949 Convention is available at: *http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf.*

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, highly migratory species of fish in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC has maintained a scientific research and fishery monitoring program for many years, and regularly assesses the status of tuna and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

### International Obligations of the United States Under the Convention

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951–962), as amended on November 5, 2015, by Title II of Public Law 114–81, provides that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out the United States international obligations under the Convention, including recommendations and decisions adopted by the IATTC. The Secretary's authority to promulgate such regulations has been delegated to NMFS.

### Area of Overlap Recommendation

In 2004, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean entered into force. The Convention's area of application (WCPFC Convention Area) overlaps with the IATTC Convention Area. The two convention areas overlap in the Pacific Ocean waters within a rectangular area bounded by 50° S. latitude, 150° W.