

(1) Complies with an earlier standard issued pursuant to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), which is set forth in Appendix D to 36 CFR 1194.1); and

(2) Has not been altered (*i.e.*, a change that affects interoperability, the user interface, or access to information or data) after January 18, 2018.

(f) *Alterations of legacy ICT.* When altering any component or portion of existing ICT, after January 18, 2018, the component or portion must be modified to conform to the current ICT accessibility standards in 36 CFR 1194.1.

#### 39.204 Exceptions.

(a) The requirements in 39.203 do not apply to acquisitions for—

(1) *National security systems.* ICT operated by agencies as part of a national security system, as defined by 40 U.S.C. 11103(a);

(2) *Incidental contract items.* ICT acquired by a contractor incidental to a contract, *i.e.*, for in-house use by the contractor to perform the contract; or

(3) *Maintenance or monitoring spaces.* Status indicators and operable parts for ICT functions that are located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.

(b) The contracting officer shall receive, as a part of the requirements documentation, written confirmation from the requiring activity that an exception, in accordance with paragraphs (a)(1), (2), or (3) of this section applies to the ICT supply or service. This documentation shall be maintained in the contract file.

#### 39.205 Exemptions.

(a) An agency may grant an exemption for the following:

(1) *Undue burden.* When an agency determines the acquisition of ICT conforming with all the applicable ICT accessibility standards would impose an undue burden on the agency, compliance with the ICT accessibility standards is only required to the extent that it would not impose an undue burden. In determining whether conformance to one or more ICT accessibility standards would impose an undue burden, an agency shall consider the extent to which conformance would impose significant difficulty or expense considering the agency resources available to the program or component for which the ICT supply or service is being procured.

(2) *Fundamental alteration.* When an agency determines that acquisition of ICT that conforms with all applicable ICT accessibility standards would result

in a fundamental alteration in the nature of the ICT, such acquisition is required to conform only to the extent that conformance will not result in a fundamental alteration in the nature of the ICT.

(3) *Nonavailability of conforming commercial items.* Where there are no commercial items that fully conform to the ICT accessibility standards, the agency shall procure the supplies or service available in the commercial marketplace that best meets the ICT accessibility standards consistent with the agency's needs.

(b) *Alternative means of access.* An agency shall provide individuals with disabilities access to and use of information and data by an alternative means to meet the identified needs when an exemption in paragraphs (a)(1), (2), or (3) of this section applies.

(c) *Documentation.* When an exemption applies, the contracting officer shall obtain, as part of the requirements documentation, a written determination from the requiring activity explaining the basis for the exemption in paragraphs (a)(1), (2) or (3) of this section. This documentation shall be maintained in the contract file.

(1) *Undue burden.* A determination of undue burden shall address why and to what extent compliance with applicable ICT accessibility standards constitutes an undue burden.

(2) *Fundamental alteration.* A determination of fundamental alteration shall address the extent to which compliance with the applicable ICT accessibility standards would result in a fundamental alteration in the nature of the ICT.

(3) *Nonavailability of conforming commercial items.* A determination of commercial items nonavailability shall include—

(i) A description of the market research performed;

(ii) A listing of the requirements that cannot be met; and

(iii) The rationale for determining that the ICT to be procured best meets the ICT accessibility standards in 36 CFR 1194.1, consistent with the agency's needs.

[FR Doc. 2020-05867 Filed 3-30-20; 8:45 am]

**BILLING CODE 6820-EP-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 273

[Docket No. FRA-2019-0069]

RIN 2130-AC85

#### Metrics and Minimum Standards for Intercity Passenger Rail Service

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA proposes metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. Consistent with the statutory mandate, FRA and Amtrak jointly developed the proposed metrics and minimum standards.

**DATES:** Written comments on this proposed rule must be received on or before June 1, 2020. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA intends to hold a public hearing to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. The date and location of the hearing will be set forth in a forthcoming notice in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by the docket number FRA-2019-0069 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments;

- *Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590; or

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130-AC85). Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in

the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kristin Ferriter, Transportation Industry Analyst, Office of Railroad Policy and Development, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone (202) 493–0197); or Zeb Schorr, Assistant Chief Counsel, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone (202) 493–6072).

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**I. Executive Summary**

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 jointly to develop new or improved metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations (the Metrics and Standards).

In compliance with the statutory directive, FRA and Amtrak jointly developed the Metrics and Standards proposed here. The Metrics and Standards are generally organized into four categories: On-time performance

and train delays, customer service, financial, and public benefits.

**II. Background**

*A. PRIIA*

Section 207 of PRIIA requires FRA and Amtrak to act jointly, in consultation with the Surface Transportation Board (STB), rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, and groups representing Amtrak passengers, as appropriate, to develop 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 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 also 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.

The Metrics and Standards also relate to Section 213 of PRIIA. 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. 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 the STB 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. After protracted litigation, 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 of voiding in part 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 on June 3, 2019). As a result, in July 2019, FRA and Amtrak once again began the process of developing joint Metrics and Standards as required by Section 207(a).

For reference, FRA will place a copy of the 2010 Metrics and Standards in the docket for this rulemaking (FRA–2019–0069). The 2010 Metrics and Standards were organized into five categories—financial, on-time performance, train delays, other service quality, and public benefits—and set forth multiple on-time performance and train delays standards. FRA received comments on each of these categories, with on-time performance and train delays receiving the most attention.

The 2010 Metrics and Standards differ from the Metrics and Standards proposed in this rulemaking in several ways, including the following:

- (1) The 2010 Metrics and Standards set forth 3 on-time performance metrics and standards—effective speed, endpoint, and all-stations;
- (2) the 2010 Metrics and Standards set forth standards in connection with the train delays metrics (e.g., 900 minutes per 10,000 train-miles for host-responsible train delays);
- (3) the 2010 Metrics and Standards set forth standards in connection with many of the service quality metrics (e.g., 90 percent by 2014) and set forth metrics regarding equipment reliability and customer comments received;

(4) the 2010 Metrics and Standards set forth standards in connection with the financial metrics (e.g., continuous year-over-year improvement) and set forth financial metrics regarding adjusted loss per passenger-mile and long-term avoidable operating loss per passenger mile; and

(5) the 2010 Metrics and Standards did not include metrics regarding missed connections, service availability, average minutes late per late customer, and cost recovery.

This NPRM sets forth a single on-time performance standard (customer on-time performance). FRA believes this single standard is the most effective manner to achieve dedicated focus on improving on-time performance. FRA invites comments on whether any metrics or standards included in the 2010 Metrics and Standards should be included.

### C. Stakeholder Consultation

Consistent with Section 207(a), FRA and Amtrak consulted with many stakeholders to develop the Metrics and Standards proposed in this NPRM.

Specifically, in August and September, 2019, FRA met separately 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 Department of Transportation (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. FRA and Amtrak also sought input from other potentially interested entities who did not express interest in consulting at that time.

### D. FRA and Amtrak Joint Development

In compliance with Section 207 of PRIIA, FRA and Amtrak jointly developed the Metrics and Standards proposed in this NPRM, in consultation with the stakeholders described in subsection (C) above.

### E. 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 would be issued after 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 was published on July 10, 2020, 3 months after that date would be October 10, 2020, and the first full calendar quarter after that would run from January 1, 2021 to March 31, 2021.

## III. Customer On-Time Performance

This NPRM proposes to measure the on-time performance (OTP) element of intercity passenger train performance using the customer OTP metric, defined as the percentage of all customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time, reported by train and by

route. 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.

FRA recognizes that the proposed customer OTP metric should be accompanied by metrics that provide additional useful information about a train's performance. There are factors that could contribute to poor OTP on a route 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. Since the customer OTP metric does not easily distinguish performance on individual host railroads (including Amtrak), this NPRM also proposes metrics to measure the degree of customer lateness and train delays to provide more information about the customer experience and train performance on an individual host railroad.<sup>1</sup>

The customer OTP metric would be calculated as follows: The total number of customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time divided by the total number of customers on such intercity passenger rail train.<sup>2</sup> For example:

<sup>1</sup> To the customer, there may be no discernable difference as to whether they are in one host railroad's territory or another's while traveling on a route. However, most intercity passenger rail routes involve interchanges between one or more host railroads. Thus, as stated, FRA proposes metrics that measure both route-level performance that reflect the customer experience, as well as metrics that more directly relate to the individual host railroads within the route segments that they control.

<sup>2</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. Customers on bus bridges (transportation on buses for a portion of a regularly scheduled train route) are excluded from the calculation. If the time that a train arrives at a station is not recorded, ticketed customers detraining at that station are excluded from the customer OTP calculation.

$$\text{Customer OTP} = \frac{\text{Customers Arriving at Detraining Point within 15 Minutes of Scheduled Arrival Time}}{\text{Total Number of Customers}}$$

The following table provides a hypothetical customer OTP calculation for a single train over two 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 Late	Status	Customer Arrivals	OT Customers	Minutes Late	Status	Customer Arrivals	OT Customers	Customer Arrivals	OT Customers
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
EWR	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>
Customer OTP				<b>100%</b>				<b>68%</b>		<b>84%</b>

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 straight average of the daily numbers.

In addition, FRA is proposing a minimum standard for customer OTP of 80 percent for any 2 consecutive calendar quarters. FRA is proposing only one standard in connection with the OTP and train delays metrics to promote clarity and compliance. FRA emphasizes that 80 percent would be a minimum standard, and FRA would expect that some intercity passenger rail services should reliably achieve a higher standard of performance. The proposed 80 percent customer OTP standard is consistent with the statutory requirement in 49 U.S.C. 24308(f)(1).

**IV. OTP, Train Schedules, and STB Investigations of Performance**

*A. In General*

The proposed Metrics and Standards are connected to STB’s investigation of substandard intercity passenger train performance under 49 U.S.C. 24308(f) “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.”

Specifically, the proposed customer OTP metric and standard would inform when STB could initiate such an investigation and the proposed train delays metrics would likely be relevant to the investigation itself. In addition, § 24308(f) states that, “[a]s part of its investigation, the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays.”

A train’s schedule can affect the performance of a train. As a result, and as recognized in § 24308(f), a train’s schedule can be relevant to an STB investigation. FRA believes it is helpful here to describe the relationship between a train schedule and its OTP, as well as several important train scheduling principles, and how these issues may ultimately inform an STB investigation of substandard intercity passenger train performance.

*B. OTP and Train Schedules*

The proposed Metrics and Standards in part seek to measure intercity passenger train OTP and to set a minimum OTP standard. Where a train’s OTP is measured against the train schedule provided to the public (the published train schedule), the train’s schedule should be aligned with the particular OTP measure used to evaluate the train’s performance.

As discussed, this NPRM proposes a customer OTP metric and standard. Train schedules, and, in particular, the distribution of the recovery time

element of those schedules, should be aligned with the customer OTP metric. Historically, Amtrak’s published train schedules have not been designed with a customer OTP metric in mind. As such, FRA recommends that Amtrak and the host railroads identify the current Amtrak published train schedules that do not currently align fully with the customer OTP metric and discuss how to align them.<sup>3</sup> To facilitate this collaboration, FRA would suggest emphasizing the 3 train schedule principles in section (C) below.<sup>4</sup>

*C. Train Schedule Principles*

FRA has identified the following 3 train schedule principles: (1) Redistribute recovery time in the published train schedules to improve alignment with the proposed customer OTP metric; (2) when supported, modify the published train schedule to accommodate temporarily changed conditions on the rail line; and (3) when supported, modify the published train schedule to accommodate long-term or permanently changed conditions on the rail line.<sup>5</sup> Each principle is further

<sup>3</sup> It should be noted that schedules are agreed upon by Amtrak and the host railroads as part of their bilateral access and service agreements.

<sup>4</sup> These principles are purely for the purpose of facilitation. FRA is not requiring that the parties use them.

<sup>5</sup> FRA recognizes that Amtrak and individual host railroads have existing agreements that contain agreed-upon schedules as well as procedures and processes for modifying those schedules, and that those agreements remain in place and are not altered or negated by any principle proposed in this

described below. The defined terms below are used to ensure a consistency of understanding (and are for the sole purpose of describing terms used in the OTP, Train Schedules, and STB Investigations of Performance section of this preamble).

#### 1. Definitions

a. “Dwell time” means the scheduled time assigned to stations and servicing stops to account for normal work, including handling passengers and baggage, scheduled switching of equipment in or out of consist, scheduled locomotive and train servicing, and scheduled crew changes.

b. “Host railroad” means any railroad over which intercity passenger trains operate.

c. “Miscellaneous time” means a time classification other than Pure Running Time, Dwell Time, or Recovery Time that may be added to a schedule on a route-specific basis (such as planned meets with other Amtrak trains).

d. “Pure running time” or “PRT” means the minimum amount of time required for a train to operate between two locations via its normal routing. PRT of a route is the sum of the PRTs of location-to-location segments on the route. PRT is based solely on the physical characteristics of the route and train attributes. Segment (and route) characteristics include distance, track gradient, speed limits (including permanent, but not temporary, speed restrictions), signal aspects, and acceleration/deceleration time required at stations. Train attributes include the number and weight of cars in the train, the horsepower per ton ratio, and the acceleration/deceleration capabilities of the equipment.

e. “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.

f. “Replay” means an electronic recreation and display of train movements and dispatcher’s actions over a period of time on a track diagram emulating the dispatcher’s working screen. This data file can be played back at various speeds for the purpose of reviewing track occupancy, movement authority, and train movement information.

NPRM. FRA also recognizes that there are contractual and statutory remedies for parties to those agreements to pursue in the event of a dispute regarding the terms of those agreements, including terms regarding performance, and nothing in this NPRM would be intended to conflict with those remedies. It should also be noted that § 207(c) states that, to the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards into their access and service agreements.

g. “Schedule skeleton” means a schedule grid used by Amtrak and host railroads to communicate: (i) The public schedule of an Amtrak train; and (ii) 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.

#### 2. Train Schedule Principle: Recovery Time Redistribution

Published train schedules that are not currently aligned with the proposed customer OTP metric should be adjusted by redistributing the current recovery time. Recovery time redistribution should not add time to the current published train schedule.

#### 3. Train Schedule Principle: Temporary Modifications

When supported, a published train schedule should be modified to accommodate temporary changed conditions on the rail line. Temporary modifications are typically for a period of less than 3 months and may include: Major maintenance and construction projects;<sup>6</sup> expected and unexpected environmental conditions or disruptions; and factors outside of the direct control of the host railroad. Aligning the published train schedule with such changed conditions provides a more predictable travel experience for the customer.

Temporary schedule modification requests should be supported by: (i) A current and proposed schedule skeleton; (ii) a detailed description of the temporary conditions, including: The specific location of the temporary conditions; the circumstances surrounding the temporary conditions; any operational adjustments implemented or planned for implementation for any trains (freight or passenger) in response to the temporary

<sup>6</sup> Major maintenance and construction projects are typically characterized by sufficient scale and scope that: (i) Resulting delays from the project cannot be absorbed by existing recovery time; (ii) the project is performed by “system” gangs rather than “division” gangs; (iii) the host railroad is modifying freight schedules to accommodate the project; (iv) the project duration is at least 4 days; (v) the project is planned sufficiently in advance to allow at least 4 weeks advance notice to Amtrak to allow schedules to be adjusted and passengers notified, as appropriate; and (vi) the project work is limited in both time and geography (the project has dedicated resources, a timeline, and a planned conclusion date).

conditions; any infrastructure modifications implemented or planned for implementation in response to the temporary conditions; and the expected duration of the temporary conditions; and (iii) where available, (A) replay files from the host railroad’s dispatching systems that are sufficient to demonstrate the change in condition for the Amtrak route, (B) data to support operations analyses of current and proposed conditions, including traffic data, analysis inputs and assumptions, data relating to capital expenditures affecting capacity, or other equivalent data, and (C) data collected through field checks.<sup>7</sup>

#### 4. Train Schedule Principle: Long-Term and Permanent Modifications

When supported, a published train schedule should be modified to accommodate long-term or permanently changed conditions on the rail line. Long-term and permanent modifications have an expected duration of 6 months or more. For example, a long-term or permanent change in conditions may include: Changes to the physical characteristics of the rail lines of the host railroad, or factors outside of the direct control of the host railroad. Aligning the published train schedule with such changed conditions provides a more predictable travel experience for the customer.

Long-term and permanent schedule modification requests should be supported by: (i) A current and proposed schedule skeleton for the affected train; (ii) a detailed description of the long-term or permanent change of conditions; and (iii) where available, (A) 36 months of replay files from the host railroad’s dispatching system that are sufficient to demonstrate the change in condition on the Amtrak route, (B) data to support operations simulation analyses of current and anticipated future conditions, including traffic data, analysis inputs and assumptions, data relating to capital expenditures affecting capacity, or other equivalent data, and (C) data collected through field checks.

#### D. FRA Engagement

FRA understands that implementing these principles may be challenging. To assist, FRA invites Amtrak and the host railroads to meet with FRA on an as-needed basis regarding their progress.

#### E. FRA Reporting

As discussed above, FRA’s first quarterly report on intercity passenger

<sup>7</sup> A field check is a technique used to evaluate the performance of an Amtrak train, typically by riding onboard the Amtrak locomotive.

train performance would cover the first full calendar quarter 3 months after the date of publication of the final rule in the **Federal Register**. From that full calendar quarter onward, whether or not a train schedule is modified, that train's performance may be the subject of an investigation under 49 U.S.C. 24308(f) if the customer OTP averages less than 80 percent for any 2 consecutive calendar quarters.<sup>8</sup>

#### *F. STB Investigations of Train Performance*

In light of the relationship between this NPRM and STB's train performance investigations, FRA invites STB to submit comments regarding the NPRM. In particular, FRA encourages any suggested revisions and/or clarifications (to the NPRM's preamble and/or regulatory text) that could improve STB's ability to conduct a train performance investigation.

FRA believes that certain information could be particularly relevant to STB in determining whether and to what extent delays or failures to achieve minimum standards are due to causes that could reasonably be addressed by a host railroad or by the intercity passenger rail operator. For example, host railroad dispatching records and replay files may be quite relevant to such an inquiry. In addition, if published train schedules are relevant to a performance investigation, then it would be useful for STB to examine evidence in connection with the scheduling principles described above.

### **V. Section-by-Section Analysis**

#### *Section 273.1 Purpose*

This section provides that the proposed rule would carry out the statutory mandate in Section 207 of the Passenger Rail Investment and Improvement Act of 2008 requiring FRA and Amtrak jointly to develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations.

#### *Section 273.3 Definitions*

This section contains the definitions FRA proposes to use in this rule for the following terms: Adjusted operating expenses; adjusted operating revenue; Amtrak; Amtrak's customer satisfaction

survey; Amtrak-responsible delays; avoidable operating costs; fully allocated core operating costs; host-responsible delays; not well-served communities; passenger revenue; and third party delays.

This section proposes to define the term "adjusted operating expenses" to mean Amtrak's operating expenses adjusted to exclude certain 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).

This section proposes to define the term "adjusted operating revenue" to mean 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.

This section proposes to define the term "Amtrak" to mean the National Railroad Passenger Corporation.

This section proposes to define the term "Amtrak's customer satisfaction survey" to mean a market-research survey that measures Amtrak's satisfaction score as measured by specific service attributes that cover the entire customer journey.

This section proposes to define the term "Amtrak-responsible delays" to mean 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.

This section proposes to define the term "avoidable operating costs" to mean costs incurred by Amtrak to operate train service along a route that would no longer be incurred if the route were no longer operated.

This section proposes to define the term "fully allocated core operating costs" to mean 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.

This section proposes to define the term "host-responsible delays" to mean

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.

This section proposes to define the term "not well-served communities" to mean 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.<sup>9</sup>

This section proposes to define the term "passenger revenue" to mean 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.

This section proposes to define the term "third party delays" to mean 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 unused recovery time.

#### *Section 273.5 On-Time Performance and Train Delays*

Paragraph (a)(1) of this section proposes 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 within 15 minutes of their published scheduled arrival time, reported by train and by route.

Paragraph (a)(2) of this section proposes 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 (b) of this section proposes that the train delays metric is the total

<sup>8</sup> This NPRM would not require published train schedule modifications or implementation of the published train schedule principles. Rather, these principles would be intended as a resource, and a starting point, for Amtrak and the host railroads to discuss train schedules (in the context of their existing bilateral access and service agreements). It is possible that Amtrak and one or more host railroad may not agree to modify certain train schedules.

<sup>9</sup> The proposed definition relies on research completed by the Bureau of Transportation Statistics on access to intercity transportation in rural areas. For this research, large airports are defined as airports with at least 0.25 percent of total U.S. passenger boardings in a year. See <https://datahub.transportation.gov/stories/s/gr9y-9gjq>.

minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third party delays, for the host railroad territory within each route. Minutes of delay are measured against a route's pure running time and provide information about train delays that may signal a need to modify operating practices, make infrastructure investments, or investigate other issues that Amtrak and a host railroad could use to improve train performance. Train delays for the Northeast Corridor (NEC) would also be reported.

Paragraph (c) of this section proposes 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. The metric is calculated by dividing minutes of delay (both Amtrak-responsible delays and host-responsible delays) by the number of Amtrak train miles operated over a host railroad multiplied by 10,000, for the host railroad territory within each route. 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. Train delays per 10,000 train miles for the NEC would also be reported. FRA invites comments on alternative methods for comparing delay minutes among different hosts and routes.

Paragraph (d) of this section proposes that the average minutes late per late customer metric is the average minutes late that late customers arrive at their detraining stations, reported by route. This metric excludes on-time customers that arrive within 15 minutes of their scheduled time. This metric provides information about the severity of lateness encountered by Amtrak customers on each route.

#### *Section 273.7 Customer Service*

Paragraph (a) of this section proposes 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 their most recent trip, by route, shown both adjusted for performance and not adjusted for performance. Amtrak's customer satisfaction survey is a market-research survey that measures more than fifty specific service attributes that cover the entire customer journey. FRA will place the customer satisfaction survey in the docket for this rulemaking

(FRA-2019-0069). 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 proposed in this NPRM. However, in the event Amtrak changes the survey, the new survey would continue to seek information in connection with the proposed customer satisfaction metrics (a survey change would just modify how the survey solicits this information). FRA seeks comment on whether the customer satisfaction survey should include any additional questions to inform a better understanding of customer satisfaction.

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, 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 would be provided to reflect the responses of all Amtrak customers.

Paragraph (b) of this section proposes that the Amtrak personnel metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of Amtrak personnel on their most recent trip, by route, updated on an annual basis.

Paragraph (c) of this section proposes that the information given metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of information provided by Amtrak on their most recent trip, by route, updated on an annual basis.

Paragraph (d) of this section proposes that the on-board comfort metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board comfort on their most recent trip, by route, updated on an annual basis.

Paragraph (e) of this section proposes that the on-board cleanliness metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board cleanliness on their most recent trip, by route, updated on an annual basis.

Paragraph (f) of this section proposes 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, updated on an annual basis.

FRA seeks comment on whether the customer service category of metrics should include metrics with quantitative measurements that are not based on a survey score (e.g., a metric measuring time taken for the boarding process, time in line waiting for customer service, or time on hold waiting for customer service).

#### *Section 273.9 Financial*

Paragraph (a) of this section proposes that the cost recovery metric is Amtrak's adjusted operating revenue divided by Amtrak's adjusted operating expense. This metric would be reported at the corporate level/system-wide and for each route and would be reported in constant dollars of the reporting year based on the Office of Management and Budget's gross domestic product chain deflator.

Paragraph (b) of this section proposes 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 would be 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.

Paragraph (c) of this section proposes that 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. 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.

Paragraph (d) of this section proposes that the ridership metric is the number of passenger-miles divided by train-miles for each route. The proposed metric measures the average number of passengers on each of the route’s trains.

The definitions of terms in section 273.9 are only intended to apply to this NPRM and Amtrak financial reporting herein.

#### *Section 273.11 Public Benefits*

Paragraph (a) of this section proposes that the connectivity metric is the percent of passengers connecting to and from other Amtrak routes, updated on an annual basis. The metric will report passengers making connections between NEC, State-supported, and long distances routes, or any combination thereof. Under this metric, a connection would mean 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 proposed connectivity metric would provide connectivity information for the entire Amtrak network, including by route for long distance routes.

Paragraph (b) of this section proposes 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 one daily train frequency, can result in a significant impact to the customer.

Paragraph (c) of this section proposes that the community access metric is the percent of Amtrak passenger-trips to and from not well-served communities, updated on an annual basis.

Paragraph (d) of this section proposes 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, would show only those trains that arrive or depart between 5:00 a.m. and 11:00 p.m.

## **VI. Regulatory Impact and Notices**

### *A. Executive Order (E.O.) 12866, E.O. 13771, and DOT Regulatory Policies and Procedures*

This rule is not a significant regulatory action within the meaning of Executive Order 12866 and DOT regulatory policies and procedures,<sup>10</sup> and is not subject to the requirements of Executive Order 13771. FRA has provided an assessment of the costs and cost savings expected to result from implementation of this proposed rule below.

As described, FRA and Amtrak jointly developed metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations (the Metrics and Standards) 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 metric, the Metrics and Standards proposed in this NPRM would 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. As a result of the NPRM’s customer OTP 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 such schedule modifications, and Amtrak may consequently revise the published train schedules.

For purposes of this analysis, FRA assumed that Amtrak and each of the host railroads would meet twice 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 would not likely be involved in revising schedules, as Amtrak only operates over those

<sup>10</sup> See 5 CFR part 5.

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.

As to the other 23 host railroads, schedule discussions would add time to the current regular meetings held with Amtrak. FRA estimates that such schedule alignment discussions would require an additional ten hours of time for each meeting between Amtrak and a host railroad. FRA estimates that Amtrak would have approximately three employees at each meeting, while host railroads would have approximately three employees at each meeting. FRA estimates the additional meeting time cost to Amtrak would be approximately \$70,107,<sup>11</sup> while the additional meeting time cost to host railroads would be approximately \$59,457.<sup>12</sup> That cost would be borne both by Amtrak and the host railroads. Further, to prepare for these meetings, Amtrak and the 23 host railroads would 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. FRA estimates that the cost of this groundwork to Amtrak to be \$27,279<sup>13</sup> and the cost to the host railroads to be \$20,459.<sup>14</sup>

All costs would be incurred during the first year. The total cost of this proposed rule would be approximately \$177,303.<sup>15</sup> Over a 10-year analysis period, the annualized cost would be approximately \$25,244 (present value, 7 percent) and \$20,785 (present value, 3 percent).

This proposed rule may result in lower operational costs for Amtrak to

<sup>11</sup> 23 meetings \* 10 hours per meeting \* [Amtrak employees' wages: (\$114.52 burdened wage rate, STB Group #100 Executives, Officials, & Staff Assistants \* 2 employees) + (\$75.78 burdened wage rate, STB Group #200, Professional & Administrative \* 1 employee)] = \$70,108.

<sup>12</sup> 23 meetings \* 10 hours per meeting \* [Host railroads' employees' wages: (\$114.52 burdened wage rate, STB Group #100 Executives, Officials, & Staff Assistants \* 1 employee) + (\$75.78 burdened wage rate, STB Group #200, Professional & Administrative \* 1 employee) + (\$68.22 burdened wage rate, STB Group #500, Transportation (Other than Train & Engine) \* 1 employee)] = \$59,457.

<sup>13</sup> 3 employees \* 40 hours per week \* 12 weeks \* \$75.78 burdened wage rate, STB Group #200, Professional & Administrative \* 25% (percent of time spent on work related to schedule adjustments and preparation for meetings) = \$27,279.

<sup>14</sup> \$27,279 (Amtrak labor cost for schedule adjustments) \* 75% (estimated amount of time spent by host railroads in relation to Amtrak's cost) = \$20,459.

<sup>15</sup> \$129,569 (cost of meetings) + \$27,279 (Amtrak preparation cost) + \$20,459 (Host railroads' preparation cost) = \$177,303.

the extent it results in improved OTP, which would potentially reduce labor costs, fuel costs, and expenses related to passenger inconvenience, as well as providing benefits to riders from improved travel times and service quality. FRA seeks comments on this assumption and other potential effects of the proposed rule.

Using the third and fourth quarters of fiscal year 2019 as representative performance information, 35 of 45 Amtrak routes performed below 80 percent customer OTP for these two consecutive calendar quarters. With that said, the schedules for at least some of these routes were likely not aligned to a customer OTP metric. FRA seeks comment on how the proposed rule would impact the number of Amtrak routes in compliance with the proposed customer OTP standard.

Due to the difficulty in precisely quantifying future benefits to rail routes for 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 increased revenue that may result from the proposed rule. FRA seeks comments as to any other benefits that could result from the rule, as well as any other quantifiable costs.

#### *B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment*

The Regulatory Flexibility Act of 1980 (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. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities.

Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all information and comments received in the public comment process when making a determination regarding the economic impact on small entities.

#### 1. Reasons for Considering Agency Action

The Metrics and Standards are being proposed to comply with 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. This NPRM proposes a customer on-time performance (OTP) metric to measure intercity passenger train performance, and proposes to define the customer OTP metric as the percentage of all customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time.

#### 2. A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

Section 207 requires FRA and Amtrak jointly to develop new or improve existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. As required by Section 207(b), FRA would publish a quarterly report on the performance and service quality of intercity passenger train operations based on the Metrics and Standards proposed in this NPRM. The proposed Metrics and Standards are intended to measure intercity passenger train performance and service quality. The proposed Metrics and Standards may lead to improvements in intercity passenger train performance and service quality.

#### 3. A Description of, and Where Feasible, an Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. "Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short line railroad" with fewer than 500 employees, or a "commuter rail system" with annual receipts of less than seven million dollars. See "Size Eligibility

Provisions and Standards,” 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, 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).

The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. The current threshold is \$39.2 million or less.<sup>16</sup> FRA is using this definition for the proposed rule. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, rail equipment supplier, or other respondent is a small entity.

This proposed rule would impact Amtrak and Amtrak’s host railroads. This rule would establish a new on-time performance metric, which would likely result in revisions to some of Amtrak’s published train schedules. Amtrak is not a small entity and the majority of host railroads are Class I railroads or State Departments of Transportation, none of which are small entities. There are currently twelve host railroads that are small entities, including approximately eight switching and terminal railroads and four short line or regional railroads. There are approximately 695 class III railroads on the general system. Therefore, the twelve small entities potentially affected by this proposed rule would not be considered a substantial number of small entities.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

This NPRM does not require published train schedule modifications.

However, FRA assumes that, as a result of the Metrics and Standards, Amtrak would engage with many host railroads to discuss potential published train schedule adjustments to align the schedules with the proposed 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 would be very minimal. The switching and terminal railroads would not likely be burdened by this proposed 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 would take place at that time. It is likely that no schedule adjustments would be required along those routes.

As for the four short line and regional railroads, Amtrak has limited stops along those routes so, similarly, discussions regarding published train schedule adjustments would also be brief. Those railroads also already meet with Amtrak on a periodic basis and discussions regarding schedules would 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 proposed customer OTP metric, the NPRM would not be an additional burden on Amtrak or the host railroads. Amtrak already collects the data to support these new metrics; therefore, there would be no additional burden.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rules that duplicate, overlap with, or conflict with the proposed regulations in this NPRM. FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact on any small entities that would result from the adoption of the proposed language in this NPRM. FRA particularly encourages small entities that could potentially be impacted by the proposed amendments to participate in the public comment process. FRA will consider all comments received during the public comment period for this NPRM when making a final determination of the rule’s economic impact on small entities.

6. A Description of Significant Alternatives to the Rule

As required by Section 207 of PRIIA, FRA is proposing the Metrics and Standards. The main alternative to this rulemaking would be to maintain the status quo (*i.e.*, do nothing). However, as required by PRIIA, FRA must develop the Metrics and Standards. The number of entities affected by this proposed rule would not be substantial. FRA anticipates that the impact on those small entities would be very minimal.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C 3501–3520, and its implementing regulations, 5 CFR part 1320, when information collection requirements pertain to nine or fewer entities, Office of Management and Budget (OMB) approval of the collection requirements is not required. Here, information collection only pertains to one railroad, Amtrak. Therefore, OMB approval of the paperwork collection requirements in this proposed rule is not required.

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 NPRM under the principles and criteria contained in Executive Order 13132. This NPRM could affect State and local governments to the extent that they sponsor, or

<sup>16</sup> The current Class III revenue threshold is \$39,194,876 or less. See <https://www.stb.gov/econdata.nsf/M%20Railroad%20Revenue%20Deflator%20Factors?OpenPage>.

exercise oversight of, intercity passenger rail service. Because this proposed rule is required by Federal statute, the consultation and funding requirements of Executive Order 13132 do not apply.

In sum, FRA has analyzed this proposed rule under the principles and criteria in Executive Order 13132. As explained above, FRA has determined this proposed rule has no federalism implications. Therefore, preparation of a federalism summary impact statement for this proposed rule is not required.

#### *E. Environmental Impact*

FRA has evaluated this proposed 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 proposed 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 proposed regulation that would trigger the need for a more detailed environmental review. The purpose of this rulemaking is to propose metrics and standards to measure the performance and service quality of intercity passenger train operations. FRA does not anticipate any environmental impacts from this proposal and finds there are no unusual circumstances present in connection with this proposed rule.

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to effect 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 proposed 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 proposed rule under the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would 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 proposed 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 proposed rule in accordance with Executive Order 13211. FRA has determined that the proposals in this rule are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this proposed 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 particular 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 determined this proposed 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 proposed rule on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979.

#### K. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

#### List of Subjects in 49 CFR Part 273

Railroads, Transportation.

#### The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

- 1. Add a new 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; and 49 CFR 1.89.

#### § 273.1 Purpose.

The purpose of this part is to carry out the statutory mandate in Section 207 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110–432, 122 Stat. 4916–4917 (Oct. 16, 2008) requiring metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations.

#### § 273.3 Definitions.

As used in this part—

**Adjusted operating expenses** means Amtrak’s operating expenses adjusted to exclude certain 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 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.

**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-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.

**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 unused recovery time.

#### § 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 within 15 minutes of 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.

(b) **Train delays.** The train delays metric is the total minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third party delays, for the host railroad territory within each route.

(c) **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.

(d) **Average minutes late per late customer.** The average minutes late per late customer metric is the average

minutes late that late customers arrive at their detaining stations, reported by route. This metric excludes on-time customers that arrive within 15 minutes of their scheduled time.

#### § 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 their most recent trip, by route.

(b) *Amtrak personnel.* The Amtrak personnel metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of Amtrak personnel on their most recent trip, by route, updated on an annual basis.

(c) *Information given.* The information given metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of information provided by Amtrak on their most recent trip, by route, updated on an annual basis.

(d) *On-board comfort.* The on-board comfort metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board comfort on their most recent trip, by route, updated on an annual basis.

(e) *On-board cleanliness.* The on-board cleanliness metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board cleanliness on their most recent trip, by route, updated on an annual basis.

(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 review of on-board food service on their most recent trip, by route, updated on an annual basis.

#### § 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 subsidies.

(d) *Ridership.* The ridership metric is the number of passenger-miles divided by train-mile for each 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.

**Ronald L. Batory,**  
Administrator.

[FR Doc. 2020–06245 Filed 3–30–20; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 253

[Docket No. 180220192–8192–01]

RIN 0648–BH82

#### Shipping Act, Merchant Marine, and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The National Marine Fisheries Service (NMFS) withdraws a proposed rule proposing to implement Fisheries Finance Program (FFP) financing of the cost of constructing new fishing vessels. NMFS published the proposed rule in the **Federal Register** on November 2, 2018. After careful consideration, NMFS has decided that the proposed changes discussed in the proposed rule are not warranted at this time.

**DATES:** The proposed rule published on November 2, 2018 (83 FR 55137), is withdrawn as of March 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Elaine Saiz, NMFS, (301) 427–8752, [elaine.saiz@noaa.gov](mailto:elaine.saiz@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In 2016, Congress passed section 302 of the Coast Guard Authorization Act of 2015, which included specific authority for the FFP to finance the construction of fishing vessels in a fishery that is managed under a limited access system. The proposed regulations provided guidance to implement this financing while also protecting fish resources.

NMFS published a proposed rule to implement the financing in the **Federal Register** on November 2, 2018, (83 FR 55137).

Following public comment and consultations with the President’s Office of Management and Budget, NMFS again analyzed the effects of the proposed rule and decided that the changes covered in the proposed rule are not warranted at this time. Therefore, NMFS is withdrawing the proposed rule published in the **Federal Register** on November 2, 2018 (83 FR 55137).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 23, 2020.

**Samuel D. Rauch III,**

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2020–06455 Filed 3–30–20; 8:45 am]

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