Investigation of Substandard Amtrak Performance Under Section 213 of The Passenger Rail Investment and Improvement Act of 2008

What A Long, Strange Trip It’s Been

February 27, 2017
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Overview

- What are 213 Investigations?
- Why you might care about 213 Investigations
- Report on two separate freight railroad legal challenges to prevent 213 Investigations
What are 213 Investigations?

- In PRIIA (2008), Congress gave the STB new authority to investigate the causes of substandard Amtrak performance.
- The new authority was in Section 213 of PRIIA and is codified in 49 USC 24308(f).
Why you might care about 213 Investigations

- 213 Investigations have the potential to lead to dramatically improved Amtrak service
Why you might care about 213 Investigations

- STB would determine whether Amtrak delays are due to causes that could reasonably be addressed by a host railroad (i.e., freight railroad hosting Amtrak) or Amtrak.
- STB would make recommendations to improve Amtrak service, quality, and on-time performance.
- STB could award money damages if it determines that delays are due to a host railroad's failure to provide preference to Amtrak.
Two Railroad Efforts to Block 213 Investigations

PRIIA 213 (49 USC 24308(f)) –

➢ “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…,” … the Surface Transportation Board shall investigate.

➢ OTP Trigger and Metrics Trigger.
Metrics Trigger

- “If ... the service quality of intercity passenger train operations for which minimum standards are established under Section 207 ... fails ...” STB shall investigate.

- Refers to PRIIA Section 207 standards ("metrics") that were jointly promulgated by the Federal Railroad Administration and Amtrak.
Metrics Trigger Litigation

USDC DC 05-03-12 → DC CIR 02-09-13 → SC 03-09-15

USDC DC 04-29-16 ← DC CIR 02-09-13 ← SC 03-09-15

MAKING IT HAPPEN.
Metrics Trigger Litigation
OTP Trigger

➤ “If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters”... STB shall investigate.

➤ 12-19-14 STB grants the Amtrak’s Motion to Amend the Complaint in one 213 Investigation (Amtrak/CN) to move from Metrics Trigger to OTP Trigger.
OTP Trigger Litigation

- Railroads (AAR) Petitioned for Rulemaking on OTP Definition:
  - The only trigger is the metrics trigger (preserved)
  - If you disagree, you should have a rulemaking on how to define 80% OTP
OTP Trigger Litigation

- STB granted the Petition for Rulemaking

- STB issued a proposed rule defining OTP at the End Station (Endpoint OTP)
  - Amtrak and others sought an All Station OTP measurement

- STB issued and All Station OTP Definition

- Railroads appealed
Challenges to OTP Rule

- Appeals consolidated in Eighth Circuit
- Railroads – argued no separate OTP Trigger and therefore no STB authority to promulgate the OTP Rule
  - Also argued the OTP Rule was arbitrary/capricious
- STB – argued two triggers, STB has authority to define OTP and rule entitled to *Chevron* deference.
- Oral Argument was 2-8-17.
What Could Happen Next

- Eight Circuit could:
  - Hold that there is no OTP Trigger and invalidate the OTP Rule
  - Hold that there is an OTP Trigger and uphold the OTP Rule, in which case both pending 213 investigations could move forward
  - Hold there is an OTP Trigger, but invalidate the OTP Rule anyway (seems unlikely)

- US District Court for DC could:
  - Sever the arbitration provision; then FRA and Amtrak could re-promulgate metrics, assuming AAR does not get a stay pending challenge.
  - Deny to sever the arbitration.
What Could Happen Ultimately

- We could have no 213 investigations if the Railroads win in both Courts.
- We could have 213 investigations now under the OTP Rule and later under new metrics if the Gov’t wins both cases.
- We could have 213 investigations just under the OTP Rule if the Gov’t wins in the Eighth Circuit but the Railroads win in the District Court.
- We could have no 213 investigations now but Metrics trigger investigations in future years if the Railroads win in the Eighth Circuit but the Gov’t wins in the District Court.
STB Composition
Links Relevant To Cases Discussed

- US District Court, DC (11-1499) - see docket sheet attached. (US District Court DC has older version of PACER which does not have static links for their docket sheets.)


- 8th Circuit (16-3307) docket - https://ecf.ca8.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&caseNum=16-3307&incOrigDkt=Y&incDktEntries=Y
Thank You

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