



**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**

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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

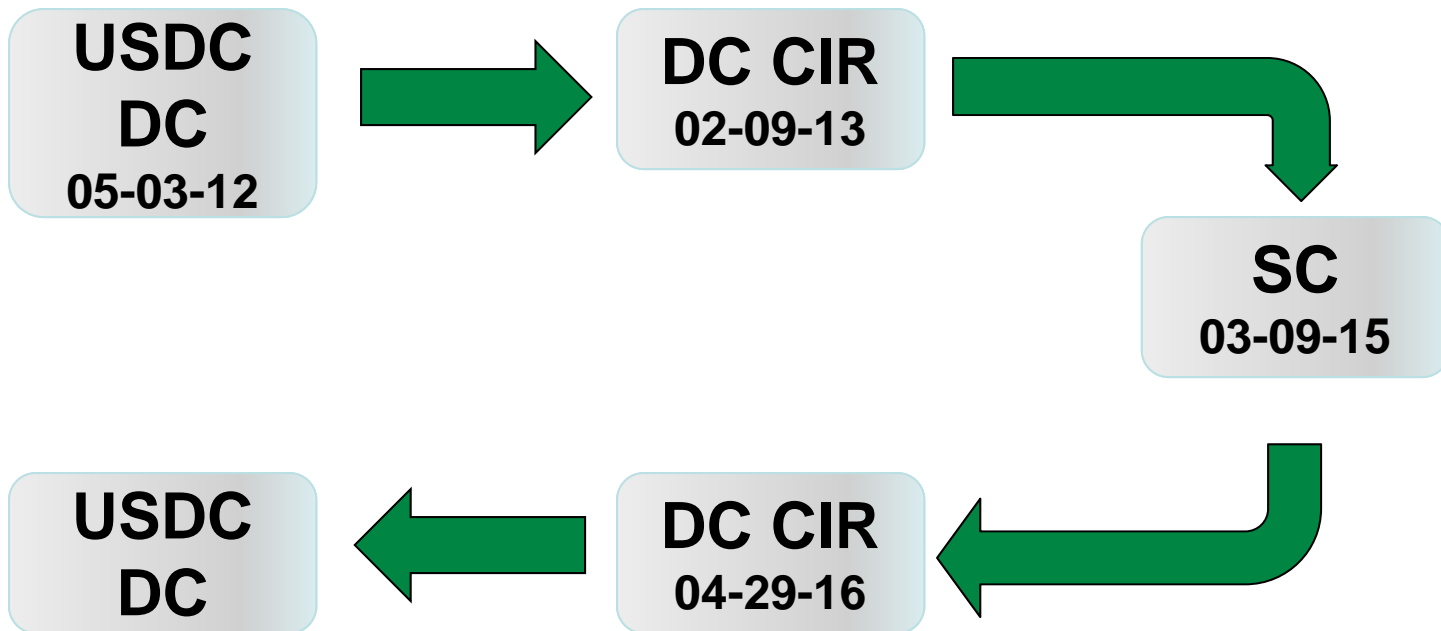
PRIIA 213 (49 USC 24308(f)) –

- “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



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# Metrics Trigger Litigation



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# 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 an 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.

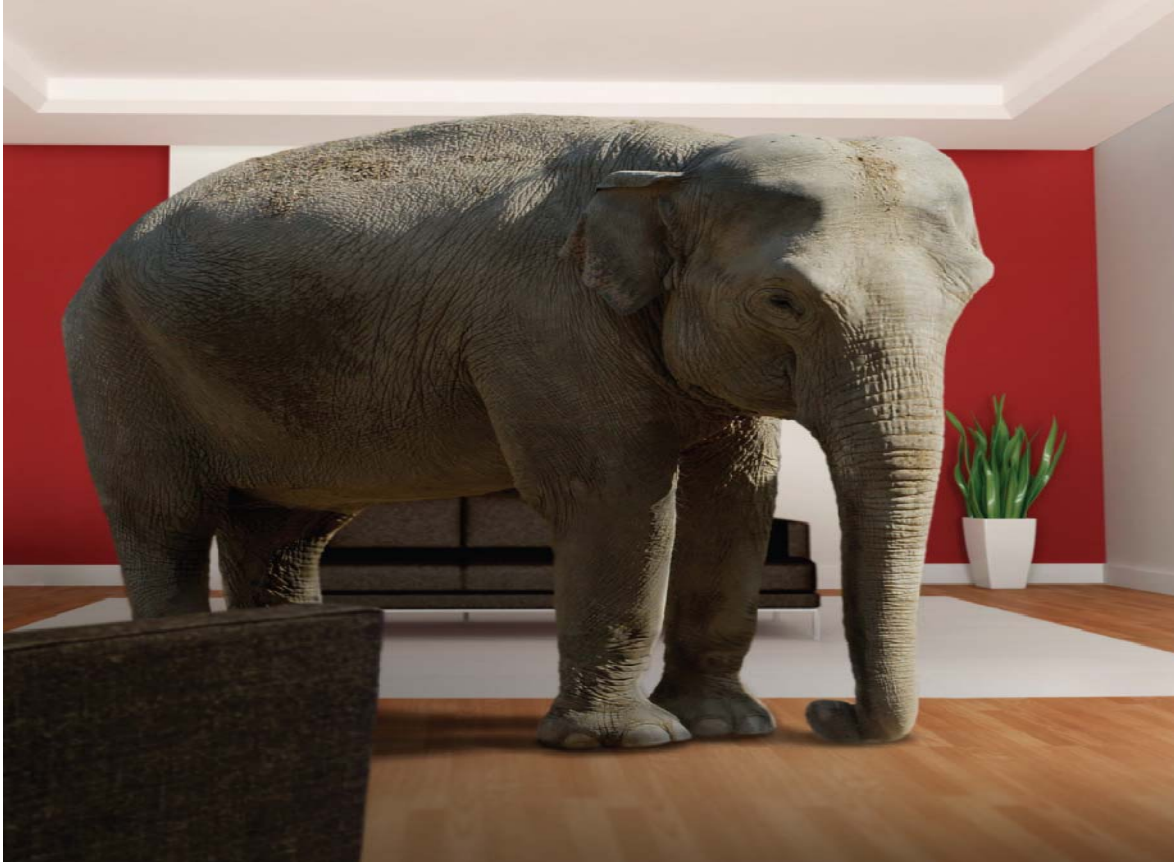
# What Could Happen Next

- **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



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# 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.)
- US Supreme Court (16A531) docket - <https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16a531.htm>
- 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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