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DOCKET NO. NOR 42175

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COMPLAINT AND PETITION OF THE NATIONAL RAILROAD PASSENGER CORP.
UNDER 49 U.S.C. § 24308(f)–FOR SUBSTANDARD PERFORMANCE OF
AMTRAK’S SUNSET LIMITED TRAINS 1 AND 2

COMPLAINT AND PETITION FOR BOARD INVESTIGATION AND OTHER RELIEF

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Pursuant to Section 213 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, 122 Stat. 4848, 4925-27 (2008) (codified at 49 U.S.C. § 24308(f) and hereafter “Section 213”), the National Railroad Passenger Corporation (“Amtrak”) brings this complaint and petition to initiate an investigation by the Surface Transportation Board (the “STB” or “Board”) into the substandard customer on-time performance of Amtrak’s Sunset Limited Service, including Amtrak Trains 1 and 2 (together, the “Sunset Limited Trains”), and to award Amtrak damages and other appropriate relief. By and through its undersigned counsel, Amtrak alleges as follows:

PRELIMINARY STATEMENT

1. The public bargain that created Amtrak, and that relieved the freight railroads of the obligation to operate unprofitable intercity passenger rail service, included an important condition: freight railroads are required to provide Amtrak passengers traveling over their rail lines with “preference” over freight transportation. This requirement was consistent with longstanding industry practice. When freight railroads operated their own passenger trains before the creation of Amtrak, they recognized that prioritizing trains carrying passengers over slower freight trains carrying cargo was critical to providing a viable and reliable passenger service.

2. Unfortunately, after their passenger rail obligations were transferred to Amtrak, many freight railroads' commitments to providing preference to passenger trains eroded. Those railroads regularly prioritized freight over passengers, notwithstanding the statutory command to provide Amtrak with preference. After decades of observing freight railroads fail to honor Amtrak's right to preference, Congress passed two provisions to address this problem in the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"): Section 207, which directed Amtrak and the Federal Railroad Administration ("FRA") together to develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations and Section 213, which set forth a new process for the Board to investigate the causes of substandard on-time performance and to award relief to Amtrak.

3. In this action, Amtrak invokes the procedures that Congress set forth in Section 213 for the Board to investigate the causes of substandard on-time performance for Amtrak's eastbound and westbound Sunset Limited Trains.

4. The Sunset Limited is a long-distance passenger rail service that runs three times weekly between New Orleans, Louisiana and Los Angeles, California. It travels for most of that route over track that is hosted by Union Pacific Railroad Company ("UP").

5. The metrics and standards that FRA promulgated under Section 207 appropriately focus on the experience of Amtrak's customers in measuring the performance of intercity passenger trains. These metrics and standards seek to ensure that at least eighty percent of all customers on an intercity passenger train arrive at their detraining points no later than fifteen minutes after their scheduled arrival times. The Sunset Limited's performance under this standard is abysmal.

6. In every quarter since the standard became applicable on October 1, 2021, the westbound Sunset Limited, Amtrak Train #1 (“Sunset Limited 1”), has failed to meet the applicable standards by wide margins. Customer On-Time Performance (“COTP”) was forty percent in the first fiscal quarter of 2022. That figure was even lower in subsequent quarters, declining to twenty-four percent in the second fiscal quarter of 2022, **ten percent** in the third fiscal quarter of 2022, and **eleven percent** in the fourth fiscal quarter of 2022.

7. The eastbound Sunset Limited, Amtrak Train #2 (“Sunset Limited 2”) has also demonstrated poor and deteriorating COTP. COTP for the Sunset Limited 2 was forty percent in the first fiscal quarter of 2022. That figure declined to thirty-five percent in the second fiscal quarter of 2022, **eleven percent** in the third fiscal quarter of 2022, and **seven percent** in the fourth fiscal quarter of 2022.

8. The substandard on-time performance of the Sunset Limited Trains is due largely to causes that can and should be addressed by UP. These include the extraordinary amount of freight train interference (“FTI”) that Sunset Limited Trains encounter on lengthy segments of the Sunset Limited service hosted by UP;¹ the use of enterprise-wide dispatching algorithms, policies, and/or practices that deny Sunset Limited Trains their statutory right to preference; and other UP operational practices that result in systemic violations of Amtrak’s rights. As a result of these practices, and over the recently concluded fiscal year, UP imposed on the average Sunset Limited Train **more than 15 instances of FTI per trip**, resulting in **more than 4 hours of delay for Amtrak passengers per trip**.

9. UP has failed to provide Amtrak with its statutory right to preference and has demonstrated an ongoing pattern and practice of imposing delay and FTI that adversely affects

¹ FTI is one form of host-responsible delay and is the primary form of such delay on UP segments of the Sunset Limited, as discussed in detail below.

Amtrak's service. More specifically, UP has routinely prioritized freight trains over Sunset Limited Trains, including when resolving meets and passes, when determining access to main lines, and when otherwise failing to ensure that tracks are available for the scheduled and infrequent transit of Sunset Limited Trains. Due in large part to these unlawful practices, the Sunset Limited is currently the worst-performing route for customers on Amtrak's network. In fact, in August 2022, Sunset Limited Trains had the worst monthly on-time performance recorded since Amtrak started measuring COTP monthly in October 2016. Those Sunset Limited Trains were also among the worst-performing trains in Amtrak's history.

10. Amtrak therefore requests that the Board initiate an investigation, and additionally requests that the Board award damages and prescribe reasonable and appropriate equitable relief to remedy violations of Amtrak's statutory rights. These steps are necessary to bring Sunset Limited Trains up to applicable performance standards and to ensure that the Federal Government's aims for intercity passenger rail service are satisfied.

BACKGROUND

Background on the Sunset Limited Host Railroads

A. Amtrak

11. Amtrak is incorporated in the District of Columbia. Its principal place of business is located at 1 Massachusetts Avenue, N.W., Washington, DC 20002.

12. In 1970, Congress created Amtrak pursuant to the Rail Passenger Service Act ("RPSA") to assume the passenger rail service that private railroad companies had long been legally required to operate as common carriers. 49 U.S.C. § 24101 *et seq.* Pursuant to RPSA, Congress tasked Amtrak with providing "efficient and effective intercity passenger rail mobility consisting of high quality service." 49 U.S.C. § 24101(b). Congress also tasked Amtrak with

achieving a system-wide average train speed of sixty miles per hour and ensuring station arrivals within fifteen minutes of the times published in Amtrak schedules. 49 U.S.C. § 24101(c).

13. Except for tracks in the Northeast Corridor of the United States and in Western Michigan, Amtrak generally does not own the rail lines over which its passenger trains operate. Rather, Amtrak trains operate primarily over tracks owned and controlled by host railroads. Host railroads control the movement of Amtrak trains operating on their rail lines through dispatching decisions that are, based upon information and belief, managed and made based on enterprise-wide company policies. Thus, in order to ensure that passengers remain on schedule, Amtrak must depend on host railroads to dispatch Amtrak's trains appropriately and in accordance with governing law.

B. Union Pacific

14. Based upon information and belief, Union Pacific Railroad Company is a Delaware corporation with its principal place of business in Omaha, Nebraska. UP is a wholly owned subsidiary, and the principal operating company of, the Union Pacific Corporation, a Utah corporation with its principal place of business in Omaha, Nebraska.

15. UP operates approximately 32,452 miles of track and has approximately 32,000 employees.² UP has a long history of strong financial performance, even when its own operational performance has flagged. Union Pacific Corporation has paid dividends on its common stock for 123 consecutive years, including dividends in each of the seven most recent financial quarters—

² *Company Overview*, Union Pacific Corp., https://www.up.com/aboutup/corporate_info/uprrover/index.htm (last visited Oct. 4, 2022).

and has achieved ten percent year-over-year increases in the second and fourth quarters of 2021 and second quarter of 2022.³

16. According to Lance Fritz, chairman, president and CEO of both Union Pacific Corporation and Union Pacific Railroad Company, 2021 was UP's "most profitable year ever."⁴ That was made possible through strong fourth quarter performance "leveraging [UP's] great rail franchise to generate positive business mix and core pricing gains, despite ongoing global supply chain challenges that impacted volumes."⁵ The company closed out calendar year 2021 with an operating revenue of \$21.8 billion and net operating income of \$9.3 billion, an increase of fifteen percent over the previous year.⁶ Notwithstanding its record profits in 2021, UP has recently affirmed that it wants to increase profits even further.⁷ And through the first nine months of 2022, Union Pacific spent \$7.9 billion on share buybacks and dividends.⁸

17. UP has implemented a railroad operating strategy called Precision Scheduled Railroading ("PSR"). UP defines PSR as a shift in focus from "moving trains" to "moving cars" in order to produce a scheduled, balanced network that "increases asset utilization, improves service reliability and is . . . more efficient . . ."⁹ UP claims that it adopted PSR to "deliver[] a

³ See News Releases, Union Pacific Corp., <https://www.up.com/media/releases/> (last visited Nov. 14, 2022); Press Release (Feb. 4, 2021); Press Release (May 13, 2021); Press Release (July 29, 2021); Press Release (Dec. 10, 2021); Press Release (Feb. 3, 2022); Press Release (May 12, 2022); Press Release (July 28, 2022).

⁴ Press Release, Union Pacific Corp., *Union Pacific Reports Fourth Quarter and Full Year 2021 Results* (Jan. 20, 2022), <https://www.up.com/media/releases/4q21-earnings-nr210120.htm>.

⁵ *Id.*

⁶ *Id.*

⁷ Thomas Black, *Union Pacific CEO Goes Off the Rails Chasing Profits*, Bloomberg (Oct. 20, 2022), <https://www.bloomberg.com/opinion/articles/2022-10-20/union-pacific-earnings-ceo-lance-fritz-goes-off-the-rails-chasing-profits?leadSource=uverify%20wall>.

⁸ Union Pacific Corporation Q3 2022 Earnings Call at 8 (Oct. 20, 2022) (statement of Jennifer Hamann); *accord* Thomas Black, *Union Pacific CEO Goes Off the Rails Chasing Profits*, Bloomberg (Oct. 20, 2022), <https://www.bloomberg.com/opinion/articles/2022-10-20/union-pacific-earnings-ceo-lance-fritz-goes-off-the-rails-chasing-profits?leadSource=uverify%20wall>.

⁹ *What Is Precision Scheduled Railroading?*, Track Record by Union Pacific (Sept. 17, 2019), <https://www.up.com/customers/track-record/tr091019-precision-scheduled-railroading.htm>.

better customer experience”¹⁰ and that, under PSR, “the focus on moving cars takes precedence” over train length.¹¹ In reality, PSR results in UP operating much *longer* trains that cannot fit into many sidings on UP’s own single track lines.¹² UP has publicly emphasized that its PSR strategy is “driving strong financial performance and enabling significant shareholder returns.”¹³

18. Based upon information and belief,¹⁴ UP operationalizes PSR through enterprise-wide dispatching policies and directions that are conceived, conveyed, and supervised through several levels of management, to advance business objectives like maximizing freight revenue and enhancing profitability. These cost and other business objectives are manifest through dispatching decisions. While some of those dispatching decisions are still made by UP management employees,¹⁵ UP has in recent years implemented a computer-aided dispatching system.¹⁶ That system, called CADX, was developed by UP and automates most train movements using

¹⁰ Union Pacific Corp. Annual Report (Form 10-K) at 7 (Feb. 5, 2021), https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_up_10k_02052021.pdf.

¹¹ *What Is Precision Scheduled Railroading?*, Track Record by Union Pacific (Sept. 17, 2019), <https://www.up.com/customers/track-record/tr091019-precision-scheduled-railroading.htm>.

¹² One commentator recently observed that “[o]n subdivisions where long sidings are few and far between, the non-fitter trains extend meet delays.” The same commentator noted that long trains “encounter more frequent mechanical problems” and can cause delays on double-track main lines, including “by taking longer to enter and exit permanent and temporary speed restrictions.” The commentator concluded that, notwithstanding “all this collateral damage” some Class I freights continue to run long trains “because they care more about the operating ratio and investors than they do about providing reliable service.” Bill Stephens, *Railroads have a Shortsighted Attraction to Extremely Long Trains: Analysis*, Trains.com (Nov. 17, 2022), <https://www.trains.com/trn/news-reviews/news-wire/railroads-have-a-shortsighted-attraction-to-extremely-long-trains-analysis/>.

¹³ *2021 Investor Day*, Union Pacific, https://www.up.com/cs/groups/public/@uprr/@corprel/documents/up_pdf_natedocs/pdf_up_inv-day-infographic.pdf (capitalization omitted). Although PSR may drive better financial performance for private railroads, one recent critic noted that its implementation has not enhanced precision or scheduling, and proposed capping the length of trains to mitigate (not eliminate) the wide range of problems that longer trains have created. See Justin Rocznik, *Mismanagement and Monster Trains Have Wrecked American Rail*, N.Y. Times (Oct. 9, 2022), <https://www.nytimes.com/2022/10/09/opinion/business-economics/freight-train-mismanagement.html>.

¹⁴ All allegations in this paragraph are based upon information and belief.

¹⁵ See, e.g., *Union Pacific Reduces Train Dispatcher Ranks By More Than 10%*, Trains.com (Sept. 4 2020), <https://www.trains.com/trn/news-reviews/news-wire/union-pacific-reduces-train-dispatcher-ranks-by-more-than-10/>.

¹⁶ *How Does Train Dispatching Work?*, Track Record by Union Pacific (Mar. 23, 2021), <https://www.up.com/customers/track-record/tr030921-how-does-train-dispatching-work.htm>.

“sophisticated algorithms,”¹⁷ which decide what trains receive priority on UP-hosted tracks and have been programmed based on policies, objectives, and instructions developed by or consistent with direction provided by UP’s senior leadership.¹⁸

19. UP’s annual reports and filings with the Securities and Exchange Commission do not include any information about UP’s obligations to host intercity passenger rail service. In a recent press release, UP noted that it had been “labeled by some as hostile to Amtrak,” and stated that Amtrak is engaged in a “unilateral push to expand passenger service” that is “coming on top of a July 9[, 2021] Presidential Executive Order that ‘encourages’ the independent Surface Transportation Board (STB) to enforce passenger preference on host freight railroads.” UP has stated that “with a stricter on-time performance standard enacted last year, there is no spirit of partnership in this type of directive.” UP further stated that it believes in the “power of partnership” and “not command-and-control, top-down preferences.”¹⁹

C. Other Sunset Limited Hosts

20. In addition to UP, several other railroads host Amtrak’s Sunset Limited Trains, though for much shorter segments of the route (as described more fully below).

21. Based upon information and belief, BNSF Railway, Inc. (“BNSF”) is a Delaware corporation with its principal place of business in Fort Worth, Texas.

¹⁷ *How Does Train Dispatching Work?*, Track Record by Union Pacific (Mar. 23, 2021), <https://www.up.com/customers/track-record/tr030921-how-does-train-dispatching-work.htm> (“For the most part, train movements are automated using sophisticated algorithms.”); *Team Effort Leads to Successful Computer-Aided Dispatching Cutover*, Union Pacific (Nov. 16, 2021), https://www.up.com/aboutup/community/inside_track/cadx-cutover-211116.htm (indicating that Computer-Aided Dispatching system was developed in-house).

¹⁸ Based upon information and belief, even before UP adopted PSR, it developed dispatching policies at an enterprise level, in order to provide dispatchers with clear direction, and to enable them to make decisions based on company-wide policy.

¹⁹ Wes Lujan, *Freight and Passenger Rail Work Better as Partners*, Inside Track by Union Pacific (July 30, 2021), https://www.up.com/aboutup/community/inside_track/freight-passenger-rail-better-partners.htm.

22. Based upon information and belief, Canadian National Railway Company is a Canadian company headquartered in Montreal. It operates in the United States through subsidiaries Grand Trunk Western Railroad Company and Illinois Central Railroad Company. Those subsidiaries are incorporated in Michigan and Illinois, respectively, and have their principal place of business in the same states. Canadian National Railway Company and these subsidiaries are collectively referred to in this Complaint as “CN.”

23. Based upon information and belief, the Southern California Regional Rail Authority (“SCRRA”) is a Joint Powers Authority established under California law.

Background on the Sunset Limited Service

24. The Sunset Limited is the oldest continuously operating, named passenger train in the United States, introduced initially in 1894 by the Southern Pacific Railroad and continued by Amtrak upon its formation in 1971. The Sunset Limited has historically run between New Orleans, Louisiana and Los Angeles, California with service extended to Orlando, Florida or Miami, Florida from 1993 until 2005.

25. Today, the Sunset Limited Trains operate three times per week in each direction along the 1,997-mile route between New Orleans, Louisiana and Los Angeles, California. Each Sunset Limited Train makes twenty-two scheduled station stops along the southern border of the United States, including at the following locations:

State	Stations
Louisiana	New Orleans, Schriever, New Iberia, Lafayette, Lake Charles
Texas	Beaumont, Houston, San Antonio, Del Rio, Sanderson, Alpine, El Paso
New Mexico	Deming, Lordsburg
Arizona	Benson, Tucson, Maricopa, Yuma
California	Palm Springs, Ontario, Pomona, Los Angeles

26. Sunset Limited Trains operate pursuant to a schedule skeleton, which is appended to this Complaint and Petition as Appendix A. The host railroads for the Sunset Limited Trains are UP, BNSF, SCRRA, Amtrak, and CN.²⁰

27. For the Sunset Limited 1 (westbound), Amtrak hosts service for the first 4.2 miles, beginning at New Orleans Union Passenger Terminal and concluding at Southport Junction. From there, CN assumes host status for 2.2 miles until the train arrives at East Bridge Junction. Between East Bridge Junction and a location called “Live Oak” (near Waggaman, Louisiana), UP serves as the contractual host for 9.6 miles.²¹ After Live Oak, the Sunset Limited travels across 190.4 miles of BNSF-hosted track until it arrives at Iowa Junction (near Lake Charles, Louisiana). From there, the train is hosted by UP for the bulk of its journey—1,774.4 miles. The Sunset Limited concludes its journey on a final 12.6-mile portion of track hosted by SCRRA (also referred to as “Metrolink”), running from El Monte, California to Los Angeles Union Station.²² Handoffs between host railroads occur at the same locations for the eastbound Sunset Limited 2 and maps showing both routes and handoff locations are below.

²⁰ Hosts are identified in descending order of train miles hosted, with UP hosting the most and CN hosting the fewest miles along the route.

²¹ During this portion of its journey, the Sunset Limited typically spends approximately 4.5 miles on BNSF tracks.

²² During this portion of its journey, the Sunset Limited typically spends approximately 11 miles on UP tracks.

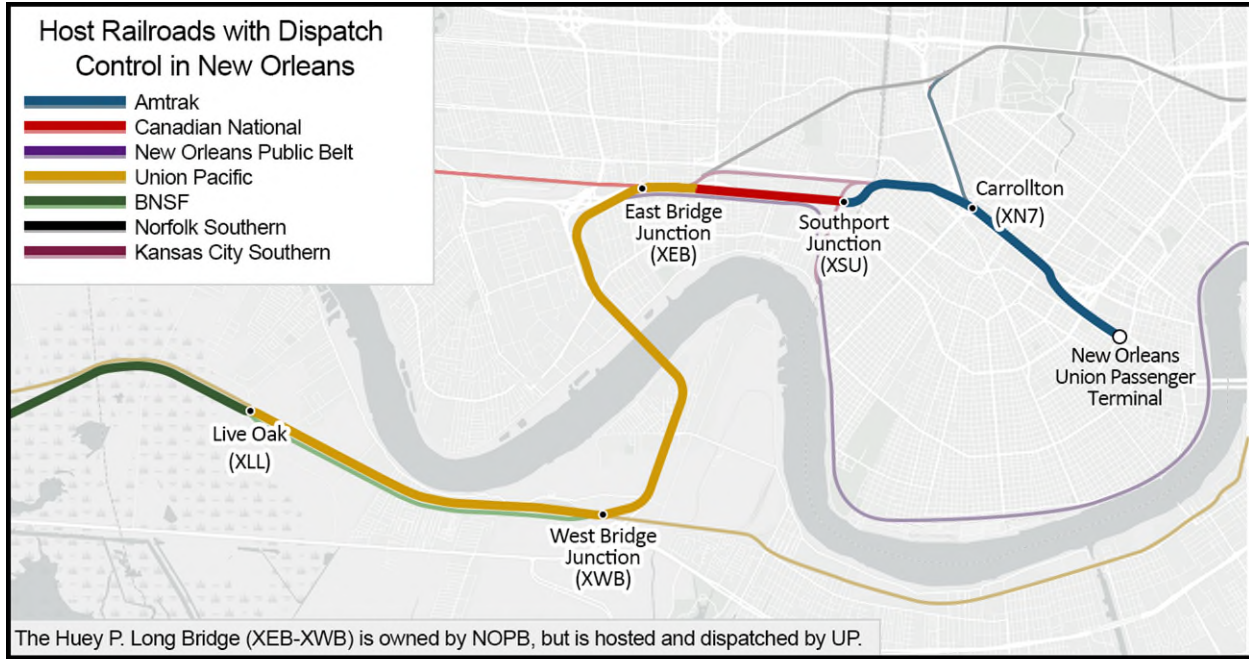
Map 1: Entire Sunset Limited Route



Map 2: Louisiana Handoffs for Sunset Limited Route



Map 3: New Orleans Area Handoffs for Sunset Limited Route



28. Although BNSF is Amtrak’s host railroad on the approximately 190-mile stretch of track between Live Oak, Louisiana and Iowa Junction, Louisiana (the “Live Oak-Iowa Junction Segment”), that segment has been jointly owned by BNSF and UP since 1998.²³ So too has the 147.5 mile segment between Iowa Junction and Dawes, Texas, on which UP serves as host.²⁴ Pursuant to the agreement creating joint ownership, BNSF and UP established a regional and joint dispatching center in Spring, Texas to allow the railroads to share dispatching responsibility and coordinate traffic on lines around Houston, Texas and the jointly owned line between Houston and New Orleans. As a result of the Agreement, and based on information and belief, UP either exclusively or jointly owns and controls nearly all of the 1,997-mile Sunset Limited route.

²³ See *The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company—Acquisition Exemption—Lines Between Dawes, TX, and Avondale, LA*, 63 Fed. Reg. 51991 (Sept. 29, 1998).

²⁴ Dawes is just east of Houston.

29. The Sunset Limited Route has a mix of single- and double-main line track. For example, much of the route from Lake Charles, Louisiana to El Paso, Texas consists of a single main line with frequent passing sidings. From El Paso to Maricopa, Arizona, the route is double-tracked. Then, from Maricopa through Los Angeles, California, the route alternates between double track and single-main track (with frequent passing sidings).

30. The Sunset Limited Route has a total of 126 sidings on the UP-hosted portion of the route between Iowa Junction and El Monte, California. However, of the 126 sidings, only twenty-four exceed 10,000 feet. None of the sidings that exceed 10,000 feet is located in the nearly 89-mile stretch between El Paso, Texas and Deming, New Mexico. And just two of the sidings that exceed 10,000 feet are located in the more than 640-mile stretch between Deming and El Monte.

Background on the Legal Protection for Passenger Rail

31. Through multiple enactments, particularly RPSA and PRIIA, Congress set forth legal protections for passenger rail and established parameters that govern the relationship between Amtrak and its host railroads.

A. Amtrak's Statutory Right To Preference Over Freight Transportation

32. The practice of giving preference to passenger trains existed long before Amtrak's inception, as a voluntary policy established by railroads for their own passenger service.²⁵ That policy was reflected in the private railroads' practice of designating their own passenger trains as "First Class" trains in employee timetables, which required dispatchers to give passenger trains priority over freight trains. Remarkably, on a particular railroads' failure to provide adequate

²⁵ *Review and Refunding of Rail Passenger Service Act (Part 2): Hearings on H.R. 709 et al. Before the Subcomm. on Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce, 92d Cong. 744 (1971)* (Statement of Congressman Adams) (summarizing prior testimony).

intercity passenger service, the Board's Predecessor, the Interstate Commerce Commission ("ICC"), observed that "passenger trains should not be relegated to a second-class service by comparison with routine freight trains."²⁶

33. As part of the grand bargain that created Amtrak and relieved private railroads of their common carrier passenger service obligation, Congress expected that the priority accorded to passenger trains would continue. At least some railroads publicly acknowledged that expectation. Indeed, in a 1971 hearing to address Amtrak performance, the presidents of four host railroads affirmed to Congress their commitment to *voluntarily* provide Amtrak passenger trains with "priority" or "preference" over freight trains. For example, the President of Santa Fe Railway—a predecessor to BNSF—told Congress that "this railroad company traditionally has given passenger train operations preference over freight service and would continue to afford Amtrak trains such priority."²⁷

34. Notwithstanding historical practice and congressional expectations, once railroads were relieved of the obligation to provide passenger service themselves, many began to sidetrack passenger trains to allow what they considered to be a more efficient flow of freight. In the three years following the creation of Amtrak, the average performance of long-distance passenger trains plummeted from over seventy percent on-time performance in 1972 to thirty-five percent in 1973.²⁸

²⁶ *Adequacies – Passenger Service – Southern Pacific Co. Between California and Louisiana*, 355 I.C.C. 415, 434 (1969).

²⁷ *Review and Refunding of Rail Passenger Service Act (Part 2): Hearings on H.R. 709 et al. Before the Subcomm. on Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce*, 92d Cong. 670 (1971) (Statement of John S. Reed, President, Santa Fe Railway).

²⁸ *Financial Assistance to Amtrak: Hearings on H.R. 8351 Before the Subcomm. on Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce*, 93d Cong. 29-32 (1973).

35. As a result, just thirty-six months after the creation of Amtrak, Congress was forced to enact into law an explicit obligation for the freight railroads to grant Amtrak preference over freight traffic on any rail line, crossing, or junction,²⁹ with the intent to address freight train interference with passenger rail.³⁰

36. Pursuant to that statutory preference obligation, host railroads must prioritize Amtrak trains over freight transportation, subject to very limited exceptions. This statutory right to “preference” over freight transportation is essential to Amtrak’s operations. Without it, host railroads would be incentivized to direct their dispatchers to prioritize freight trains over Amtrak passenger trains, with disastrous consequences for intercity rail passenger service throughout the country.

37. Exceptions to Amtrak’s statutory preference right are therefore narrow: (1) when there is an emergency, or (2) when, upon petition by the host railroad, the Board has issued an order creating an exception to the preference requirement. To issue such an order, the Board must find that without the exception, granting Amtrak preference in a particular segment “materially will lessen the quality of freight transportation provided to shippers.”³¹ No host railroad has ever petitioned for such an order, and the Board has never made a finding that providing preference for Amtrak service will materially lessen the quality of freight transportation provided to shippers.

²⁹ Amtrak Improvement Act of 1973, Pub. L. No. 93-146, § 10(2), 87 Stat. 548, 552 (codified at 49 U.S.C. § 24308(c)).

³⁰ The ICC also identified the almost immediate failure of freight railroads to accord Amtrak passenger trains preference once they were no longer operating those trains themselves, and proposed a regulation to prohibit sidetracking passengers for freight, except in case of emergency. *Adequacy of Intercity Rail Passenger Service*, 36 Fed. Reg. 23636, 23638 (proposed Dec. 11, 1971). The Commission observed that, even where passenger trains initially received priority, they might lose it if at all late, and so get side-tracked time and again for freight trains. *Adequacy of Intercity Rail Passenger Service*, Ex Parte No. 277 (Sub-No. 1), 344 I.C.C. 758, 779 (1973).

³¹ 49 U.S.C. § 24308(c).

Thus, all host railroads are under an ongoing statutory obligation to ensure that “Amtrak has preference over freight transportation in using a rail line, junction, or crossing.”³²

38. Historically, only the Department of Justice could enforce Amtrak’s preference rights by bringing a civil action in federal district court to enjoin host railroads from violating the preference statute.³³ However, additional remedies were created by PRIIA, as discussed below.

B. Statutory and Regulatory Protections for On-Time Performance

39. Congress enacted PRIIA on October 16, 2008 “to promote the expansion and improvement of intercity passenger rail service,”³⁴ and to address concerns about “poor service, unreliability, and delays resulting from freight traffic congestion.”³⁵

40. Under the statute, if the COTP of an intercity passenger train drops below eighty percent for any two consecutive quarters, and upon the filing of a complaint, the Board is required to investigate the causes of delay.³⁶ The Board may also initiate such an investigation on its own initiative.

41. As part of an investigation under Section 213, “the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays.”³⁷ Additionally, in making its determination or carrying out its investigation,

³² *Id.*

³³ 49 U.S.C. § 24103(a). The Department of Justice has initiated only one such action, *United States v. Southern Pacific Railway Co.*, No. 79-3394 (D.D.C. 1979), which was targeted at the failure of Southern Pacific Transportation Company, UP’s predecessor, to provide preference to passengers on the Sunset Limited. The Sunset Limited was also the subject of a 1968 ICC proceeding, during with the Commission noted complaints concerning the poor on-time performance of the train, instances “of the Sunset being switched to a siding to permit a freight train to pass[,] and [instances] of scheduling which requires the Sunset to follow a freight train along part of the route.” *Southern Pacific Company Discontinuance of Trains Nos. 1 and 2 between Los Angeles, California, and New Orleans, Louisiana*, 333 I.C.C. 783, 797 (1968). As these two cases illustrate, problems with the Sunset Limited are not new.

³⁴ S. Rep. No. 110-67, at 7 (2007).

³⁵ *Dep’t of Transp. v. Ass’n of Am. R.R.s*, 575 U.S. 43, 47 (2015)

³⁶ 49 U.S.C. § 24308(f).

³⁷ *Id.* § 24308(f)(1).

the Board “shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality and on-time performance of the train.”³⁸

42. If the Board determines that delays or the failure to achieve on-time performance minimum standards “are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation,” then the Board can “award damages against the host rail carrier” and prescribe other relief that it determines to be “reasonable and appropriate.”³⁹ In awarding damages and prescribing other relief, the Board must consider “such factors as—the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.”⁴⁰ Any damages that are awarded must be used “for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier’s failure to provide preference to Amtrak over freight transportation.”⁴¹

C. FRA Has Adopted Metrics and Standards To Evaluate On-Time Performance

43. Section 207 of PRIIA provides for the development of metrics and standards that measure intercity passenger train performance and that assist the Board in conducting oversight of on-time performance.⁴² At a minimum, the metrics must include measures of “on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier.”⁴³

³⁸ *Id.*

³⁹ *Id.* § 24308(f)(2).

⁴⁰ *Id.* § 24308(f)(3)

⁴¹ *Id.* § 24308(f)(4).

⁴² Pub. L. No. 110-432, § 207, 122 Stat. at 4916; *see also* S. Rep. No. 110-67, at 7 (2007).

⁴³ Pub. L. No. 110-432, § 207, 122 Stat. at 4916.

44. Following the conclusion of protracted litigation initiated by the host railroads over the constitutionality of PRIIA’s provisions, FRA and Amtrak began developing the current metrics and standards in July 2019. After consulting extensively with numerous stakeholders, FRA published a Notice of Proposed Rulemaking. During that rulemaking, FRA again met and consulted with various stakeholders—including Class I railroads, States, and the Board. The freight railroads participated significantly in the proceeding, both individually and through the American Association of Railroads (“AAR”). For example, the AAR submitted comments on behalf of the Class I freight railroads, and UP (among other Class I freight railroads) also submitted its own supplemental comments. FRA reviewed those comments before promulgating a final rule on November 16, 2020 (the “Final Rule”).⁴⁴

1. Overview of Key Provisions in the Final Rule

45. To measure Amtrak on-time performance, the Final Rule established a customer on-time performance metric (“COTP Metric”). Additionally, to monitor the sufficiency of on-time performance, the Final Rule established a customer on-time performance minimum standard (“COTP Minimum Standard” or “Minimum Standard”).⁴⁵ Together, the COTP Metric and Minimum Standard provide a basis for determining whether an investigation into passenger train performance is warranted.

46. To promote compliance with the COTP Minimum Standard, FRA established procedures for Amtrak and its host railroads to jointly certify whether a published train schedule is aligned with the Minimum Standard. FRA deferred application of the Minimum Standard until July 1, 2021 to provide Amtrak and host railroads with time to negotiate any necessary

⁴⁴ *Metrics and Minimum Standards for Intercity Passenger Rail Service*, 85 Fed. Reg. 72971, 72974 (Nov. 16, 2020) (“Final Rule”). The metrics and minimum standards are codified at 49 C.F.R. pt. 273.

⁴⁵ Final Rule, 85 Fed. Reg. at 72974.

modifications to published train schedules. FRA further deferred application of the Minimum Standard until October 1, 2021 if Amtrak or a host railroad disputed a schedule before May 17, 2021.⁴⁶

47. To assist the Board in determining the cause of any failure to satisfy the Minimum Standard, the Final Rule established metrics to measure train delays, station performance, and host running time (together, “Supplemental Metrics”).⁴⁷ These Supplemental Metrics were intended “to provide more information about the customer experience, train performance on individual host railroads, and the minutes and causes of delay.”⁴⁸ For example, an intercity passenger train hosted by multiple railroads may experience substandard on-time performance while operating over one host’s track, but not on another. And an intercity passenger train may experience more interference from freight trains on one host railroad than another. The Supplemental Metrics can provide information about these and other factors that contribute to delays, and that may not be evident from the COTP Metric and Minimum Standard alone.

2. Customer On-Time Performance Metric and Minimum Standard

48. The COTP Metric establishes when a passenger train is considered on-time. It is defined as “the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route.”⁴⁹ It is calculated by taking “[t]he total number of customers on an intercity

⁴⁶ 49 C.F.R. § 273.5(a)(3)(ii) (“If a train schedule is a disputed schedule on or before May 17, 2021, then the customer on-time performance standard for the disputed schedule shall apply beginning on the second full calendar quarter after May 17, 2021.”); *see also* Final Rule, 85 Fed. Reg. at 72975 (“FRA also understands that in some instances the alignment of a train schedule with the customer OTP metric may require additional time. As such, if Amtrak and a host railroad do not agree on a new train schedule and the schedule is reported as a disputed schedule on or before May 17, 2021, then the customer OTP standard for the disputed schedule shall apply beginning on the second full calendar quarter after May 17, 2021.”).

⁴⁷ Final Rule, 85 Fed. Reg. at 72981. The train delay, station performance, and host running time metrics are collectively referred to as “Supplemental Metrics.”

⁴⁸ *Id.* (footnote omitted).

⁴⁹ 49 C.F.R. § 273.5(a)(1).

passenger rail train who arrive at their detraining point no later than 15 minutes after their published arrival time,” and dividing that figure by “the total number of customers on the intercity passenger train.”⁵⁰ So that it can calculate the COTP Metric, Amtrak carefully collects and compiles this data for every train it operates.⁵¹ It does so using an automated system that is described below. The data and resulting calculations are reported to FRA on a quarterly basis.

49. By accounting for all passengers and all stations, the COTP Metric appropriately focuses “on intercity passenger train performance as experienced by the customer,” while recognizing “the relative importance of reliability at stations serving more passengers.”⁵²

50. In addition to defining the COTP Metric, the Final Rule established the COTP Minimum Standard. Consistent with PRIIA, the Minimum Standard is eighty percent for any two consecutive calendar quarters.⁵³ In order to promote clarity and compliance, FRA declined to promulgate any other minimum standards with respect to on-time performance.⁵⁴

51. Together, the COTP Metric and Minimum Standard require that eighty percent of all customers on an intercity passenger train arrive at their detraining points no later than fifteen minutes after their scheduled arrival times for any two consecutive calendar quarters.⁵⁵ Moreover, in promulgating the COTP Metric and Minimum Standard, FRA emphasized that it expects at least some intercity passenger rail services to “reliably achieve a higher standard of performance.”⁵⁶

⁵⁰ Final Rule, 85 Fed. Reg. at 72974.

⁵¹ *Infra* ¶ 49.

⁵² Final Rule, 85 Fed. Reg. at 72974, 72976.

⁵³ 49 C.F.R. § 273.5(a)(2).

⁵⁴ Final Rule, 85 Fed. Reg. at 72974, 72975.

⁵⁵ 49 C.F.R. § 273.5(a)(1)-(2).

⁵⁶ Supplementary Information to the Final Rule, 85 Fed. Reg. at 72975; *see also id.* at 72977 (reiterating that “FRA expects many services to operate more reliably” than the minimum standard requires).

3. Train Delays

52. To help identify the specific causes of passenger train delays, the Final Rule adopted a train delay metric (“Train Delay Metric”). The Train Delay Metric categorizes minutes of delay as Amtrak-responsible delays, host-responsible delays, or third-party delays for the host railroad territory within each route.

53. Amtrak-responsible delays include, among other things, passenger-related delays at stations, Amtrak equipment failures, holding for connections, and other types of delay. Third-party delays include, among other things, police activity, trespasser delays, drawbridge openings, and weather-related delays. Host-responsible delays include, among other things, freight train interference, slow orders, signals, routing, and maintenance of way operations.⁵⁷

54. The leading cause of host-responsible delay, which is at the root of this proceeding, is FTI. FTI occurs when an Amtrak train is stopped or slowed due to meeting or being forced to follow a freight train. For example, an FTI delay occurs when a host railroad’s dispatcher: (i) stops an Amtrak train to allow a freight train to proceed first; (ii) requires an Amtrak train to operate behind a slower freight train; (iii) requires an Amtrak train to stop behind a stationary freight train; or (iv) forces an Amtrak train to wait in a siding while a slower freight train passes on the main line.

55. The Train Delay Metric is reported based on delay codes and minutes that are recorded by on-board Amtrak personnel while an Amtrak train is running. Amtrak maintains a delay code for each category of Amtrak-responsible delay, host-responsible delay, and third-party responsible delay set out in FRA’s on-time performance regulations. Amtrak conductors

⁵⁷ Tables reflecting the complete list of delays and codes used to record them are attached as Appendix A to this Complaint. Where Amtrak operates as the host railroad for some or all segments of a service, it must report Amtrak-responsible delays, Amtrak’s host-responsible delays, and the sum of Amtrak-responsible delays and Amtrak’s host-responsible delays.

nationwide use these delay codes to track and record the cause of delays on each Amtrak passenger train. Using the Electronic Delay Reporting (“eDR”) application on an electronic mobile device, Amtrak conductors on each train input a delay code or codes and assign delay minutes to those codes each time the train is delayed. Additionally, eDR allows Amtrak conductors to input their direct observations about each delay, as well as any information that conductors obtain from train bulletins, radio communications, train crews, dispatchers, engineers, maintenance-of-way foremen, or other relevant sources. All conductor delay reporting is transmitted in real-time to Amtrak systems.⁵⁸

56. While conductors are responsible for coding the nature of a delay, and may incorporate further observations about its cause, conductors ordinarily are *not* responsible for identifying when a delay has occurred. Rather, the eDR program automatically does so by comparing Pure Running Time⁵⁹ and Dwell Time⁶⁰ to the actual amount of time that has elapsed on a train’s journey. Where there is a time discrepancy between the planned and actual journeys, the system then prompts the conductor to code the detected delays.⁶¹ Only where delays in a segment are caused by multiple factors requiring different codes are Amtrak conductors required to assign specific delay minutes. If events disrupt the operation of eDR, the program enables conductors to manually enter arrival and departure times and prompts the conductor to code any identified delay(s).

⁵⁸To ensure consistency and quality control, a limited number of qualified Amtrak personnel have access and editing rights to this data after conductors have recorded it, as discussed below.

⁵⁹ Pure Running Time is the amount of time, in minutes, that a passenger train is expected to take without impedance to transit between two identified points on a track.

⁶⁰ Dwell Time is the amount of time, in minutes, that a passenger train needs to wait at a station while all necessary station operations take place

⁶¹ *See also* Final Rule, 85 Fed. Reg. at 72982 (“In fact, Amtrak currently uses an automated electronic delay reporting system based primarily on a GPS-based system that automatically logs arrival, departure, and passing times at stations and other locations, and calculates the number of minutes of delay above pure run time within each segment of an Amtrak route.”).

57. Amtrak provides its conductor delay reporting data to its host railroads, which are asked to review the data for accuracy and to propose any appropriate modifications. This process is essential because Amtrak is required, under the on-time performance regulations, to report the number of host-responsible delays that are disputed by the host railroad and not subsequently revised by Amtrak.⁶² When a host disputes what Amtrak has characterized as a host-responsible delay, and Amtrak determines that the disputed entry requires correction for control and accuracy purposes, qualified Amtrak personnel authorized to implement the correction amend the reported delay accordingly. Moreover, Amtrak maintains, in the regular course of business, records reflecting any revision to the length or nature of a reported delay. The Final Rule contemplated this procedure to “ensure[] transparent reporting” without “prescribing an additional process for the parties to use to reach agreement or inserting FRA in the process to adjudicate disputes,” and in direct response to commenter “concern about Amtrak’s identification of root causes of delay.”⁶³

58. Since the Sunset Limited became subject to the COTP Minimum Standard on October 1, 2021, 99.8 percent of host-responsible delays have gone undisputed. And until the final quarter of fiscal year 2022, the only host on the Sunset Limited Route to challenge delays was UP. Over the course of fiscal year 2022, UP disputed just 169 of the 109,100 host-responsible delay minutes incurred on its segments of the service.⁶⁴

4. Train Delays Per 10,000 Train Miles

59. To allow comparisons of performance across routes of varying length, and between different hosts on the same route, the Final Rule adopted a Train Delays per 10,000 Train Miles

⁶² 49 C.F.R. § 273.5(d).

⁶³ Final Rule, 85 Fed. Reg. at 72982.

⁶⁴ The only other remaining dispute as to Fiscal Year 2022 concerns an 11-minute delay, which SCRRRA maintains should be charged to UP.

Metric.⁶⁵ This metric must be reported for all Amtrak-responsible and host-responsible delays for the host railroad within each route.⁶⁶ Amtrak calculates the Train Delays per 10,000 Train Miles Metric using its same eDR system and reports these figures to FRA on a quarterly basis. FRA, in turn, publishes its own quarterly report pursuant to Section 207 of PRIIA, which reflects this data and other metrics, including delay minutes, station performance, and financial metrics, among others.⁶⁷

5. Station Performance

60. To provide information about the location of performance problems, the Final Rule adopted a Station Performance Metric.⁶⁸ One component of the Station Performance Metric is the number of late passengers at each station. This component of the Station Performance Metric defines as late any passenger who arrives at their detraining station more than fifteen minutes after their scheduled arrival time. It reveals more precisely where on-time performance issues exist on the Sunset Limited Route. Another component of the Station Performance Metric is the average number of minutes late that late customers arrive at their detraining stations. This component excludes passengers who arrive no later than fifteen minutes after their scheduled time and reveals more precisely the severity of on-time performance issues experienced at each station along the Sunset Limited route.⁶⁹ Amtrak calculates the Station Performance Metric using data collected through eDR. Amtrak then reports the data and figures to FRA on a quarterly basis.

⁶⁵ Final Rule, 85 Fed. Reg. at 72984.

⁶⁶ 49 C.F.R. § 273.5(e).

⁶⁷ See *Intercity Passenger Rail Service Quality and Performance Reports* at 7, Fed. R.R. Admin., <https://railroads.dot.gov/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and-performance-reports> (last updated Oct. 27, 2022).

⁶⁸ Final Rule, 85 Fed. Reg. at 72986.

⁶⁹ 49 C.F.R. § 273.5(f). The metric also requires that Amtrak report the total number of detraining passengers at each station.

6. Host Running Time.

61. To provide more information about “the performance of a host railroad against the time allowed in the schedule,” and to provide “more insight into a host railroad’s operating impact on OTP,”⁷⁰ the Final Rule established a Host Running Time Metric.⁷¹ The Host Running Time Metric is defined as the “average actual running time and the median actual running time compared with the scheduled running time between the first and final reporting points for a host railroad,” as set forth in the Amtrak schedule skeleton.⁷² These figures must be reported by train. Although the metric does not explain or assign responsibility for delays, FRA has noted that this metric “is an indication of which host railroads may be responsible for chronic performance below standard and which ones are not.”⁷³ Amtrak calculates the Host Running Time Metric using data collected through eDR. Amtrak then reports the data and figures to FRA on a quarterly basis.

62. Because the Host Running Time Metric analyzes performance against the time allowed for in the Amtrak schedule skeleton, it must be evaluated with an eye towards the amount and distribution of recovery and other additional time that enables a passenger train to make up time.⁷⁴ Put differently, because the Host Running Time Metric requires comparison between the first and final reporting points for each host railroad,⁷⁵ and because Amtrak schedule skeletons may include recovery time, excess dwell time, and miscellaneous time at intermediate station stops

⁷⁰ Final Rule, 83 Fed. Reg. at 72983.

⁷¹ Final Rule, 85 Fed. Reg. at 72983.

⁷² 49 C.F.R. § 273.5(g). A “[s]chedule skeleton” is “a schedule grid used by Amtrak and host railroads to communicate the public schedule of an Amtrak train and the schedule of operations of an Amtrak train on host railroads.” 49 C.F.R. § 273.3.

⁷³ Final Rule, 85 Fed. Reg. at 72983.

⁷⁴ Recovery time is the amount of time above and beyond that required for a train to run from one station to the next, which is built into a train schedule ensure that the train can continue to run on-time even if it encounters some delays along the route.

⁷⁵ 49 C.F.R. § 273.5(g).

or before a handoff, the metric can obscure the delays that Amtrak customers experience between those two points.

63. The Host Running Time Metric encompasses two distinct measures of performance: average actual run time and median actual running time. Both metrics provide valuable information. Average actual run time allows the Board to evaluate the impact that the worst-performing Sunset Limited Trains have on the passenger experience. Median running time allows the Board to assess the more typical experience that passengers have on the service. In this respect, the median running time is more closely aligned with the customer-centric on-time performance metric.

7. Aligning Schedules with the Customer On-Time Performance Metric and Standard

64. Although the COTP Metric and Minimum Standard were promulgated in the Final Rule on November 16, 2020, the Rule deferred application of the Minimum Standard to intercity passenger trains until July 1, 2021, so that Amtrak and host railroads could align historic train schedules with the new Metric and Minimum Standard (as needed).⁷⁶

65. To encourage the parties to implement train schedules aligned with the COTP Metric and Minimum Standard, the Final Rule adopted regulations related to the certification of train schedules. Under the regulations, a published train schedule can fall into one of three categories: certified, uncertified, or disputed.⁷⁷

66. A certified schedule is a “published train schedule that Amtrak and the host railroad jointly certify is aligned with the customer on-time performance metric and standard.”⁷⁸ A disputed schedule is one for which Amtrak or a host railroad seek a specific change through non-

⁷⁶ *Id.* § 273.5(a)(3)(i)-(ii).

⁷⁷ *Id.* § 273.5(c)(1).

⁷⁸ *Id.* § 273.3.

binding dispute resolution that is initiated as of a certain date. An uncertified schedule is one that has not been reported as certified or disputed.

67. Under the on-time performance regulations, Amtrak is required to regularly report to FRA the number of certified schedules, uncertified schedules, and disputed schedules, which are reported by train, by route, and by host railroad. Additionally, to further encourage the parties to certify schedules, the regulations require Amtrak and a host railroad to transmit monthly letters signed by their respective chief executive officers to Congress and others explaining schedules that remain uncertified.⁷⁹

68. When schedules are agreed upon, Amtrak and the host railroads jointly certify that the schedule is “aligned with the customer on-time performance metric and standard” in a notice to the FRA Administrator.⁸⁰ For all schedules certified or uncertified before May 17, 2021, the COTP Minimum Standard became effective on July 1, 2021. If Amtrak and a host railroad were unable to agree that a particular train schedule was aligned with the COTP Metric and Minimum Standard, and timely reported their dispute, the effective date of the COTP Metric and Minimum Standard was deferred until October 1, 2021.⁸¹

69. Once the parties certify that a published schedule is aligned with the COTP Metric and Minimum Standard, the Minimum Standard remains in effect for the certified schedule, which is only subject to modification if the modification is jointly agreed to by Amtrak and the host railroad.⁸²

⁷⁹ *Id.* § 273.5(c)(1)-(2).

⁸⁰ *Id.* § 273.3.

⁸¹ *Id.* § 273.5(a)(3)(i)-(ii).

⁸² *Id.* § 273.5(c)(3).

All Host Railroads, Except For UP, Have Certified That Both Sunset Limited Train Schedules Are Aligned With The Customer On-Time Performance Minimum Standard

70. Since issuance of the Final Rule, Amtrak and its host railroad partners have certified more than ninety-four percent of published train schedules.

71. The published train schedules for the Sunset Limited Trains have been certified by each host railroad along the route, except for UP. Amtrak reported that CN had certified the published train schedule for its portion of the Sunset Limited Route in a notice dated April 16, 2021. Amtrak also reported that BNSF and SCRRRA had certified the published train schedules for their portions of the Sunset Limited Routes in notices dated May 17, 2021 and November 16, 2021, respectively. UP continues to dispute that the published train schedules for the Sunset Limited Trains are aligned with the COTP Metric and Minimum Standard, notwithstanding the fact (described more fully below) that both schedules contain a significant amount of recovery time for the sole purpose of helping host railroads run the Sunset Limited Trains to schedule.

72. Consistent with the Final Rule, Sunset Limited Trains 1 and 2 have been subject to the COTP Minimum Standard since October 1, 2021.⁸³

BASIS FOR COMPLAINT AND PETITION

The Sunset Limited Trains Experience Substandard On-Time Performance Because of Issues that Could Reasonably Be Addressed By UP

A. The Sunset Limited Trains Have Failed To Meet The Customer On-Time Performance Minimum Standard In Every Quarter Since Becoming Subject to the Minimum Standard.

73. The Sunset Limited Trains unambiguously meet the statutory requirements for a mandatory Board investigation because their COTP is well below the Minimum Standard.

⁸³ *Id.* § 273.5(a)(3)(ii).

74. Sunset Limited 1 has failed to meet the COTP Minimum Standard of eighty percent for at least two consecutive calendar quarters since the Minimum Standard became applicable to the train on October 1, 2021, as shown below:

- a. 1Q22: 40%
- b. 2Q22: 24%
- c. 3Q22: 10%
- d. 4Q22: 11%

75. Sunset Limited 2 has also failed to meet the COTP Minimum Standard of eighty percent for at least two consecutive calendar quarters since the minimum standard became applicable to the train on October 1, 2021, as shown below:

- a. 1Q22: 40%
- b. 2Q22: 35%
- c. 3Q22: 11%
- d. 4Q22: 7%

76. Figures 1 and 2 below provide further information about the substandard COTP of each Sunset Limited Train.⁸⁴ Figure 1 provides further information about Sunset Limited 1. The figure provides information dating back to October 1, 2021, when Sunset Limited 1 became subject to the COTP Minimum Standard. The figure reports the number of on-time and late arriving customers under the COTP Metric. To demonstrate just how poorly Sunset Limited 1 train has

⁸⁴ In preparing its Complaint and Petition, Amtrak discovered that its data (i) inadvertently excludes a small number of customers travelling on Sunset Limited Trains that were suspended in transit west of San Antonio, (ii) inadvertently includes a small number of customers who arrived on-time in New Orleans from points east of New Orleans, and (iii) inadvertently includes a small number of customers who transferred from the Texas Eagle to the Sunset Limited at San Antonio. Amtrak is implementing process improvements to address these issues, which do not meaningfully affect the figures reported in this Complaint and Petition.

performed, the figure also reports the number of late-arriving customers in different intervals.

Since Sunset Limited 1 became subject to the Minimum Standard:

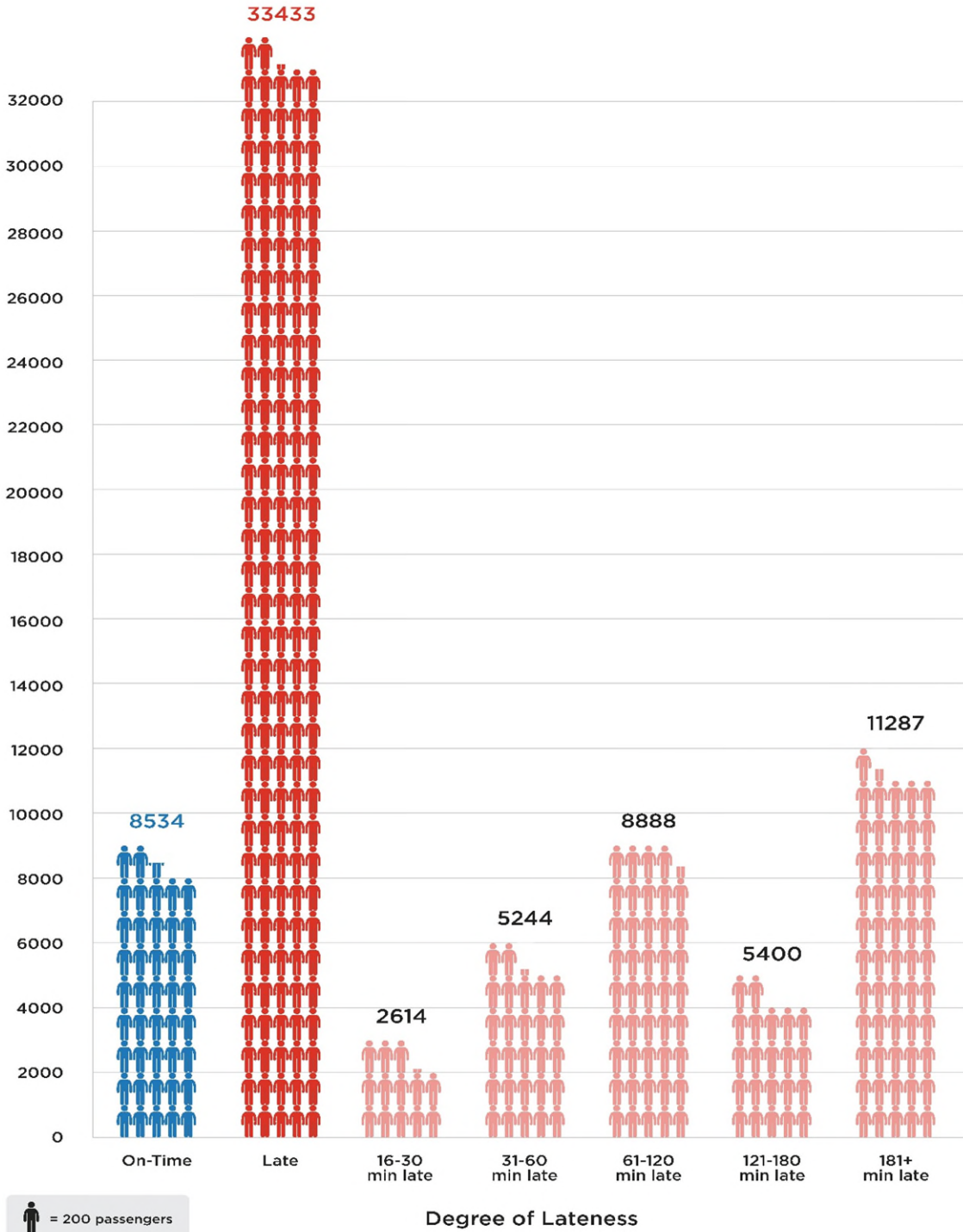
- a. Eighty percent of passengers (33,433 individuals) arrived more than fifteen minutes late to their destination;⁸⁵
- b. Sixty-one percent of passengers (25,575 individuals) arrived more than one hour late to their destination;
- c. Twenty-seven percent of passengers (11,287 individuals) arrived more than three hours late to their destination.

[Remainder of Page Intentionally Blank; Figure 1 Follows]

⁸⁵ Figure 1 includes a small number of passengers (222 total) who detrained because a train was cancelled en-route. All but three of those individuals arrived on time to their final destination and Amtrak has conservatively concluded that the three late passengers arrived at their final destination only 16-30 minutes late.

Figure 1: Substandard COTP for Sunset Limited 1

**Aggregate Status of Detraining Passengers (Lateness)
Sunset Limited 1 FY2022**



77. Figure 2 provides further information about Sunset Limited 2. The figure provides information dating back to October 1, 2021, when Sunset Limited 2 first became subject to the Minimum Standard. The figure reports the number of on-time and late arriving customers under the COTP Metric. To show just how poorly Sunset Limited 2 has performed, the figure reports the number of late-arriving customers in different intervals. Since Sunset Limited 2 became subject to the Minimum Standard:

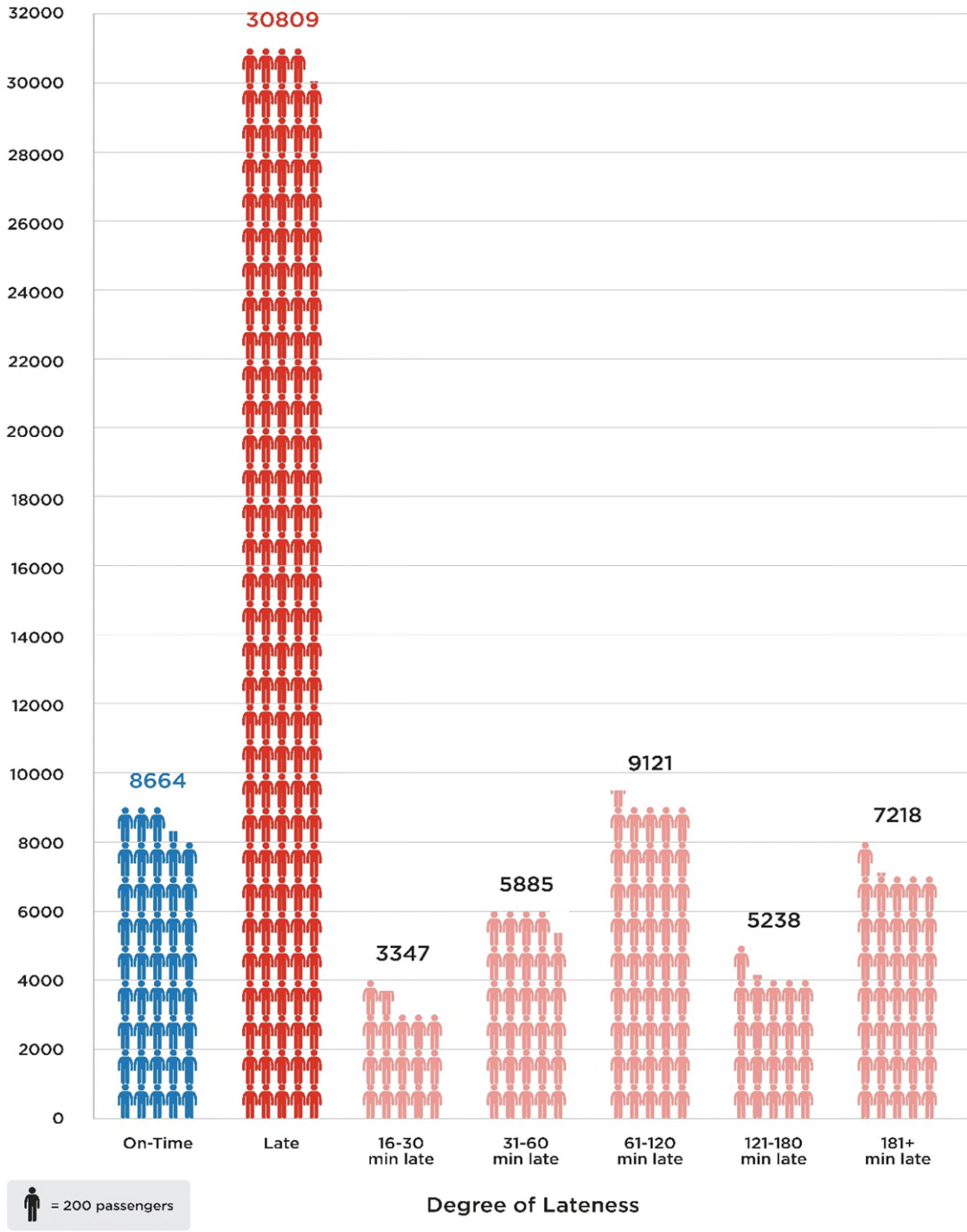
- a. Seventy-eight percent of passengers (30,809 individuals) arrived more than fifteen minutes late to their destination;⁸⁶
- b. Fifty-five percent of passengers (21,577 individuals) arrived more than one hour late to their destination;
- c. Eighteen percent of passengers (7,218 individuals) arrived more than three hours late to their destination.

[Remainder of Page Intentionally Blank; Figure 2 Follows]

⁸⁶ Figure 2 includes a small number of passengers (7 total) who detrained because a train was cancelled en-route. All arrived on time to their final destination.

Figure 2: Substandard COTP for Sunset Limited 2

**Aggregate Status of Detraining Passengers (Lateness)
Sunset Limited 2 FY2022**



78. As Figures 1 and 2 demonstrate, the Sunset Limited Trains have exhibited substandard customer on-time performance since the COTP Minimum Standard became applicable to each train.

79. The Sunset Limited Trains also exhibited substandard COTP in prior years. Although the COTP Metric and Minimum Standard did not take effect until October 1, 2021 for the Sunset Limited, Amtrak measured performance using this metric for fiscal years 2017-2021 as a means of providing additional context for the analysis here. During that time, the Sunset Limited Service never even came close to satisfying the Minimum Standard, as shown below:

- a. 2021: 27%
- b. 2020: 30%
- c. 2019: 20%
- d. 2018: 45%
- e. 2017: 55%⁸⁷

80. Given these unmistakable trends, there is no indication that COTP on the Sunset Limited Trains will improve absent the Board's intervention. In fact, in August 2022, COTP on the Sunset Limited Trains dropped to 4.6 percent, notching the *worst monthly customer on-time performance since Amtrak began measuring COTP in 2016*. The Sunset Limited Train's 21.2 percent COTP from October 2021 to September 2022 is the *worst performance for any route* in the entire Amtrak network during that time.

⁸⁷ Amtrak calculated and published its 2017 and 2018 "Host Railroad Report Card" using a different on-time performance metric. Amtrak has calculated and here reports on-time performance based on the metric adopted by FRA, as published in quarterly reports posted on FRA's website: *Intercity Passenger Rail Service Quality and Performance Reports*, Fed. R.R. Admin, <https://railroads.dot.gov/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and-performance-reports> (last updated Oct. 27, 2022).

81. The significant delays that plague the Sunset Limited Service have had substantial adverse effects on Amtrak's passengers. Just since the fourth fiscal quarter of 2021, Amtrak has received hundreds of complaints from passengers who were affected by Sunset Limited Train delays, which have gone far beyond minor inconveniences. Passengers have been deprived of portions of their vacations, lost valuable work time, missed job opportunities, and experienced the general frustration and inconvenience of unnecessarily slow travel.

82. One Sunset Limited customer summed up their frustration to Amtrak as follows:

You are nothing but a shame for America. I had 7+ hours delay in one segment and another 7+ hours delay in another segment in trains. These are the only 2 segments that I have traveled so far. My plans have been ruined, I had to have my friends wait for hours for me, I had to cut out parts of my planned trip. Awful. Awful. Awful.

83. Serial delays caused by freight traffic affect Amtrak's ability to serve existing customers and to secure new ones by upending Amtrak's ability to provide reliable service to residents of this region. As Sunset Limited customers have pointed out directly to Amtrak:

Customer 1: "The Amtrak personnel was very friendly and helpful; the amenities of the train were comfortable and convenient. The only negative aspect was that we were 3 1/2 hours delayed due to long waits starting in Houston, TX, Beaumont and in New Orleans, LA. The reason for the delays were freight trains crossing our path! Just by luck and God's help, I was able to get into my hotel in New Orleans at 1:00 am (original arriving time: 9:30 pm), instead of sleeping on a bench at the train station. I realize, it is not Amtrak's fault, but it is very inconvenient, if the train is often delayed."

Customer 2: "The onboard personnel was good. The 5 hour delay was disturbing waiting for the train to arrive from New Orleans. The over 8 hour delay from Beaumont to San Antonio was the worst travel experience to date of all my trips with Amtrak. The delay of over 12 hours total made us miss our connecting train to Chicago. The hotel accommodation was unacceptable while in San Antonio. The missed train caused a late arrival in Chicago where the hotel we were to stay marked us as a NO SHOW even after calling them on April 5th to inform them that we wouldn't arrive until April 7th. This has caused a nightmare because OUR prepaid hotel cost of

\$430 for 4 nights, as of right now, has been kept. We weren't allowed to check-in to the hotel without a new reservation of over \$500 more for 3 nights in addition to keeping our \$430. As you can see our choice to use Amtrak as our mode of transportation is costing us heavily. For this reason, I hesitate to recommend you."

Customer 3: "The 5 hour delay on a 9 hour trip was egregious. I understand the issue with freight. However, I heard from others in the train that this Houston to New Orleans leg of the sunset limited is often extremely delayed. It would be better to advertise this possible delay at the point of purchase if it is a repetitive issue to allow folks to plan."

Customer 4: "The trip took hours longer than I expected. At one point the train stopped and waited for three separate freight trains to pass. I thought passenger trains had priority over freight trains, but it wasn't what I witnessed."

Customer 5: "There needs to be a way passenger trains don't have to be delayed so often and so much for freight trains."

Customer 6: "Didn't make it to close a deal on a house. A man came all the way from Georgia to sit around after he clearly expressed to me that he had a flight back home at 7:30 that night[.] I told him I would arrive around 11:10 as the schedule stated[,] but give me until 2 pm latest because of freight traffic. That was no problem...I made it to the meeting place at 7 pm [and] he had already left...thank you Amtrak."

B. The Substandard On-Time Performance of Sunset Limited Trains is Driven by Causes that Could Reasonably be Addressed by UP.

84. The substandard performance of Sunset Limited Trains is driven by issues that could reasonably be addressed by UP, which serves as the contractual host for eighty-nine percent of the track miles of the Sunset Limited Route and has sole or joint ownership over more than ninety-eight percent of the Sunset Limited Route.⁸⁸

⁸⁸ Consistent with its operating agreements and reporting to FRA, Amtrak throughout its Complaint and Petition calculates Train Delay, Train Delay per 10,000 Train Miles, Station On-Time Performance, Host Running Time, and all other metrics by associating segments of track with their contractual hosts. Although the analysis here shows that Sunset Limited delays are primarily driven by UP, the results may even understate UP's role. For example, UP is also partially responsible for delays experienced on the jointly owned and jointly dispatched Live Oak-Iowa Junction Segment. The reporting also may understate the role of BNSF in delays that occur between Iowa Junction and

1. Sunset Limited Trains Experience An Extraordinary Amount of Host-Responsible Delay on UP-Hosted Segments of the Service.

85. Train delay data demonstrates that substandard on-time performance on the Sunset Limited Trains is driven by UP. As alleged below, Amtrak passengers experience an extraordinary and untenable amount of host-responsible delay on the two UP-hosted segments of the Sunset Limited Route, *i.e.*, the 9.6-mile stretch between East Bridge Junction and Live Oak (in Louisiana), and the 1,774.4-mile stretch between Iowa Junction and El Monte (together, the “UP-Hosted Segments”). Remedying this obstacle to delivering satisfactory on-time performance requires Board intervention.

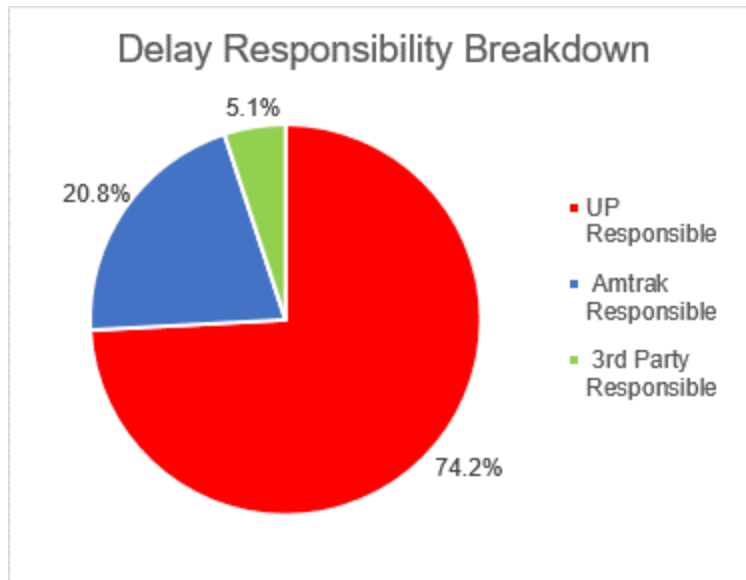
86. The overwhelming majority of delays that Sunset Limited Trains encounter occur on the UP-Hosted Segments. In fact, since the COTP Minimum Standard became applicable to the Sunset Limited, eighty-seven percent of all delays that passengers experience have occurred on UP-Hosted Segments.⁸⁹

87. Most delays that occur on the UP-Hosted Segments are host-responsible delays. As illustrated in Figure 3 below, during the period of October 1, 2021 through September 30, 2022, approximately seventy-four percent of delays on UP segments of the Sunset Limited were host-responsible delays. By contrast, just twenty-one percent of delays that Sunset Limited Trains encountered on the UP segments were Amtrak-responsible delays, and less than five percent of delays that Sunset Limited Trains encountered were third-party-responsible delays.

Houston. In all events, Amtrak’s analysis demonstrates that the Board’s investigation should likely focus on UP, given that it exclusively owns and controls more than 82% of the Sunset Limited route miles and jointly owns or controls more than 16% of the remaining route miles, giving it a primary or co-equal role in almost every segment of the Sunset Limited service.

⁸⁹ For purposes of calculating the percentage of delays attributable to hosts, Amtrak, and third-parties, Amtrak excludes “NOD” delays, which reflect unused recovery time.

Figure 3: Delay Responsibility Breakdown on UP-Hosted Segments in FY 2022



88. The actual amount of host-responsible delays that Amtrak passengers experience on the UP-Hosted Segments helps explain why the Sunset Limited Trains have failed the COTP Minimum Standard in four successive fiscal quarters. Over the last four fiscal quarters, Amtrak passengers have experienced an average of *357.5 host-responsible delay minutes per trip on the UP-Hosted Segments*. For Sunset Limited 1, that figure was 366.5 minutes, and for Sunset Limited 2, that figure was 348.5 minutes.⁹⁰

89. The amount of Host-Responsible Delay Minutes per trip on the UP-Hosted Segments is even more alarming when evaluated on a quarter-by-quarter basis. As Table 1 illustrates, the number of Host Responsible Delay Minutes per trip experienced on the UP-Hosted Segments has risen in each successive quarter.

⁹⁰ These figures were computed by dividing the total number of Host-Responsible Delay Minutes on the UP segment by the total number of trips on the UP segment, across all four quarters. Because the number of trips per quarter may differ, the resulting figure is slightly different (and more accurate) than averaging the per-quarter figures reflected in Table 1.

Table 1: Total Host-Responsible Delay on UP Segments of Sunset Limited Service

Host-Responsible Delay Minutes Per Trip UP Hosted Segments		
Fiscal Quarter	SL1	SL2
1Q22	289.6	285.9
2Q22	361.6	297.3
3Q22	403.3	404.9
4Q22	415.8	410.7

90. All told, Sunset Limited passengers have, over the last four calendar quarters, experienced a staggering amount of Host-Responsible Delay on the UP-Hosted Segments, totaling nearly 110,000 minutes. That amounts to more than 88 percent of all Host-Responsible Delay Minutes on the service. This is nearly eleven weeks of time that passengers could have spent on things other than delayed travel.⁹¹

91. Under the Final Rule, Amtrak also maintains data on the amount of Host-Responsible Delay per 10,000 Train Miles. Although that metric provides limited insight into performance on very short segments of track, it is nevertheless informative in evaluating performance along the UP-Hosted Segments, which covers roughly eighty-nine percent (1,784 track miles) of the Sunset Limited Service. Based on Amtrak’s experience, when host railroads reduce the amount of Host-Responsible Delay per 10,000 Train Miles below 900 minutes, the passenger train service generally will achieve compliance with the COTP Minimum Standard. However, Sunset Limited Trains experienced between 1,632 and 2,353 minutes of Host-Responsible Delay Per 10,000 Train Miles on the UP-Hosted Segments in each quarter. In other words, Sunset Limited Trains traversing the UP-Hosted Segments grossly exceeded the amount of

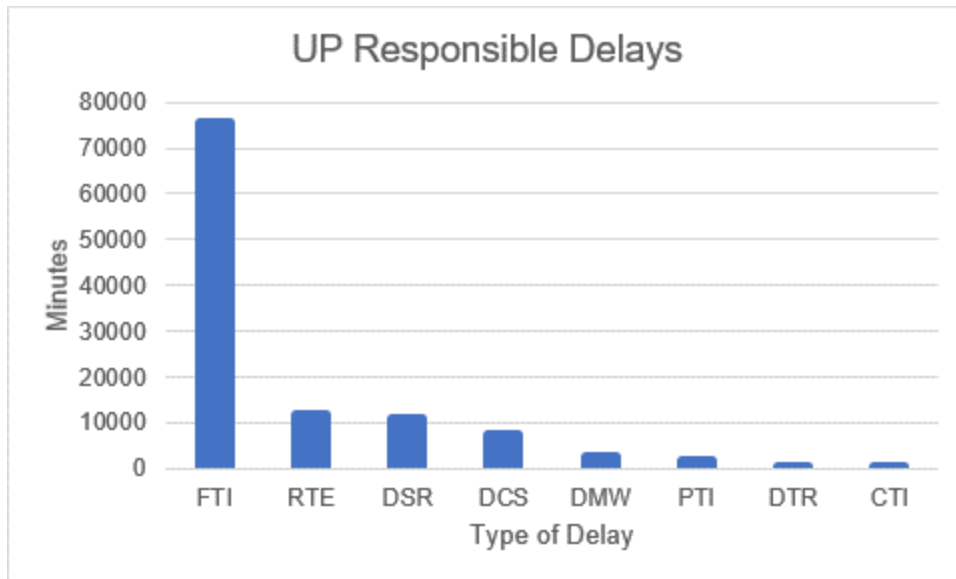
⁹¹ During the 2022 fiscal year, Sunset Limited passengers encountered between 1.1 and 8.3 minutes of Host-Responsible Delay per trip on the Amtrak, CN, and SCRRA segments of the Sunset Limited service. Although passengers encountered more Host-Responsible Delay on the BNSF segment of the service, that segment is jointly owned and dispatched by UP. *See supra* ¶ 25.

Host-Responsible Delay Per 10,000 Train Miles associated with satisfactory on-time performance, reinforcing the conclusion that the Sunset Limited’s substandard on-time performance is driven by issues on the UP-Hosted Segments.

2. Sunset Limited Trains Experience Significant Freight Train Interference on UP-Hosted Segments of the Service.

92. Both Sunset Limited Trains experience a tremendous and disproportionate amount of FTI when traversing the UP-Hosted Segments. As reflected in Figure 4 below, the amount of FTI that Sunset Limited Trains encounter on UP-Hosted Segments dwarfs the amount of other Host-Responsible Delay that the trains encounter.

Figure 4: Breakdown of Host-Responsible Delay on UP-Hosted Segments During FY 2022



93. Interference from UP freight trains is the leading cause of the substandard on-time performance of Sunset Limited 1. Since Sunset Limited 1 became subject to the COTP Minimum Standard, passengers have experienced a staggering 56,436 minutes of total host-responsible delay on the UP segment. Seventy-two percent of those minutes were attributable to FTI. In fact, during the same period, *UP has caused FTI delays on 100 percent of Sunset Limited 1 trips, averaging*

over four hours of FTI delay per trip and totaling more than 40,551 minutes of FTI delay on the UP-Hosted Segments of the route.

94. Interference from UP freight trains is also the leading cause of the substandard on-time performance of Sunset Limited 2. Since Sunset Limited 2 became subject to the COTP Minimum Standard, passengers have experienced 53,323 minutes of host-responsible delay on the UP segment. Sixty-five percent of those delay minutes were attributable to FTI, and *UP imposed FTI delays on every single trip, for an average of almost four hours per trip and more than 34,890 minutes of FTI delay across all trips.*

95. Many of the FTI delays on this route occur when UP dispatches Sunset Limited Trains behind freight trains, which forces Sunset Limited Trains to follow slower freight trains and results in hours of delay for passengers. Other FTI delays on the route occur when UP forces Sunset Limited Trains to wait in sidings for long periods of time while freight trains are allowed to pass. Still other FTI delays occur because UP dispatchers stop a Sunset Limited Train so that a freight train can proceed first. Based upon information and belief, these dispatching decisions are either made by UP's proprietary CADX software, which relies on algorithms programmed to effectuate business objectives like maximizing freight revenue, or by management-level employees acting in furtherance of enterprise-wide objectives like maximizing freight revenue. In either event, and also based upon information and belief, dispatching decisions are based on business objectives, policies, and plans conceived by the senior leadership of UP, and communicated to management-level employees responsible for overseeing, making, or programming CADX to make dispatching decisions.⁹²

⁹² Amtrak is aware that the Board has noticed a public hearing with UP regarding its increased use of embargoes to manage rail traffic congestion, which may shed additional light on operational issues that contribute to the substandard performance of Sunset Limited Trains operating on the UP network.

96. Sunset Limited Trains experience an inordinate amount of FTI across the UP-Hosted Segments. While FTI is often clustered around major metropolitan areas (particularly Houston), the sheer amount of FTI across the entire UP-Hosted Segments makes it impossible for Amtrak to plan for, or respond to, this recurring problem. Moreover, as alleged in further detail below, the frequency, magnitude, and nature of the FTI that UP imposes on Sunset Limited passengers is a strong indicator that UP has regularly violated Amtrak's statutory preference rights. Indeed, FTI accounted for approximately sixty-nine percent of all host-responsible delay minutes on the UP-Hosted Segments, nearly two-to-three times the percentage experienced on the next-highest host segments of the service.

3. Host Running Time Data Provides A Strong Indication That Delays on the UP-Hosted Segments of the Sunset Limited Route Cause Substandard On-Time Performance.

97. The Host Running Time Metric is intended to provide more information about "the performance of a host railroad against the time allowed for in the schedule," and to provide "more insight into a host railroad's operating impact on OTP."⁹³ The metric can be especially informative where, as on the Sunset Limited, there are multiple hosts along a route. In this case, the Host Running Time Metric confirms that passengers on Sunset Limited 1 experience substandard on-time performance when traversing UP tracks. The Host Running Time Metric also underscores that UP has a devastating impact on the customer on-time performance of Sunset Limited 2.

98. *Sunset Limited 1.* The Sunset Limited 1 travels across two distinct portions of the UP network en route to Los Angeles. The Host Running Time Metric makes two things clear: (i) the Sunset Limited incurs delays on the first 9.6 mile stretch of UP-hosted and dispatched track

⁹³ Final Rule, 85 Fed. Reg. at 72983.

between East Bridge Junction and Live Oak; and (ii) delays spiral out of control when the Sunset Limited traverses the second, far longer stretch of UP-hosted track notwithstanding the extraordinary amount of recovery time, miscellaneous time, and extended dwell time built into the Sunset Limited 1 schedule.⁹⁴

99. The second, longer stretch of UP-hosted track extends for 1,774.4 miles.⁹⁵ During that stretch, which runs between Iowa Junction and El Monte, the median Sunset Limited 1 has run significantly (between 58-140 minutes) behind schedule for three successive quarters. The average Sunset Limited 1 fared even worse, encountering between 113-213 minutes of delay. These figures demonstrate that UP has utterly failed to help recover passenger trains that experience disruption in transit to Iowa Junction, instead driving additional delays, and causing catastrophic disruptions to Sunset Limited 1 Service.

100. Host Running Time for all segments of Sunset Limited 1 is reported in Table 2, below. Table 2 shows the average and median number of minutes that Sunset Limited Trains have run ahead of schedule (reflected in negative minutes) and behind schedule (reflected in positive minutes). The total number of minutes that Sunset Limited 1 is meant to spend on each of the segments is indicated in parentheses. UP-Host Segment 1 refers to the 9.6 mile stretch of UP-hosted and dispatched track between East Bridge Junction and Live Oak, while UP Host Segment 2 refers to the longer 1,744.4 track mile stretch between Iowa Junction and El Monte.⁹⁶

⁹⁴ Miscellaneous time enables Amtrak and host railroads to build into a passenger train schedule additional time to meet particular needs. Extended dwell time is the time above and beyond that required to entrain passengers, detrain passengers, and address any technical or logistical issues that an Amtrak Train might encounter while in-station.

⁹⁵ Between these UP-hosted portions of the Sunset Limited route, trains must traverse the Live Oak-Iowa Junction segment. Station performance data indicates that Sunset Limited 1 tends to encounter delays that reduce on-time performance during this portion of the service, which is hosted by BNSF but jointly owned and dispatched by UP.

⁹⁶ In its reporting to FRA, Amtrak associates late departure minutes on Train 1 with Amtrak's running time and aggregates UP Host Segments 1 and 2. Amtrak provides more granular reporting here, in case helpful to the Board.

Table 2: Train 1 Amount Over or Under Scheduled Run Time⁹⁷

Fiscal Quarter	Calendar Months	Late Departure Mins	Amtrak Host Segment (15)	CN Host Segment (5)	UP Host Segment 1 (34)	BNSF Host Segment (268)	UP Host Segment 2 (2323)	SCRRA Host Segment (30)
1Q22 Average	Oct-Dec 21	6	-3	11	16	1	9	-1
1Q22 Median		0	-5	5	10	-9	-27	-5
2Q22 Average	Jan-Mar 22	0	-2	8	10	-14	113	-1
2Q22 Median		0	-4	6	10	-21	58	-4
3Q22 Average	Apr-Jun 22	7	-1	10	14	-5	213	0
3Q22 Median		0	-4	6	10	-14.5	140	-3
4Q22 Average	July-Sep 22	22	-3	10	13	-15	159	3
4Q22 Median		0	-4	6	4	-21	140	-2

101. UP’s operating impact on the Sunset Limited 1 is even more pronounced when one considers recovery, miscellaneous, and extended dwell time. There are more than *five hours of recovery and miscellaneous time* built into the second and longer UP-hosted stretch of the Sunset Limited 1 route.⁹⁸ Additionally, Amtrak has placed *160 minutes of extended dwell time* in San Antonio, Texas, allowing the train to recover schedule and to help UP meet the scheduled runtime for Sunset Limited 1.⁹⁹ In other words, UP has a devastating operating impact on the Sunset Limited, even though it benefits from significant recovery, miscellaneous, and extended dwell

⁹⁷ Initial Terminal Delays (ITI) increased in the fourth quarter of 2022 due to late-arriving Sunset Limited 2 trains at New Orleans. Prior to the most recent quarter, Amtrak was able to mitigate the effect of late arriving Sunset Limited 2 trains by reallocating “buffer” cars and cars from Amtrak’s City of New Orleans train to create a Sunset Limited 1 train that could depart on time. Amtrak is no longer able to reallocate cars in this manner, with the consequence that when the Sunset Limited 2 train arrives very late, the Sunset Limited 1 train will necessarily depart late.

⁹⁸ See Amtrak Schedule Skeleton, attached as Appendix A.

⁹⁹ Because the Sunset Limited 1 is typically late to San Antonio, is typically dwells for just 114 of the 160 scheduled minutes.

time, each built into the schedule for the express purpose of providing additional scheduling “cushion” to alleviate substandard on-time performance.

102. *Sunset Limited 2*. As alleged below, the enormous delays that *Sunset Limited 2* encounters on UP trackage result in abysmal COTP. Indeed, when *Sunset Limited 2* hits UP tracks in El Monte, there is an immediate and precipitous decline in on-time performance. However, the schedule for *Sunset Limited 2* provides for a considerable amount of recovery time, miscellaneous time, and extended dwell time on the UP-hosted portion of *Sunset Limited* service between El Monte and Iowa Junction. In addition to providing numerous opportunities for *Sunset Limited 2* to make up time against the schedule en route, the *Sunset Limited 2* schedule provides for sixty-nine minutes of recovery time at Iowa Junction, the location where UP hands the *Sunset Limited* off to BNSF.¹⁰⁰ This significant amount of schedule recovery time placed at the hand-off between BNSF and UP, which effectively reduces its contractual penalty payments to Amtrak, may leave an impression that UP is running *Sunset Limited 2* on or close to schedule. It is not.

103. Table 3 illustrates the point. It appears to show that the median *Sunset Limited 2* was ahead of its scheduled runtime when leaving the 1,774-mile stretch of UP track at Iowa Junction, for the first and second quarters of the fiscal year. But remove the sixty-nine minutes of host-endpoint recovery time built into the *Sunset Limited 2* schedule, and it becomes clear that the median *Sunset Limited 2* was well behind schedule, notwithstanding the 129 minutes of recovery and extended dwell time provided in San Antonio for the purpose of resetting the *Sunset Limited 2* schedule.

104. Notwithstanding these limitations, the Host Running Time Metric underscores that UP has a significant adverse operating impact on the *Sunset Limited 2* in several respects.

¹⁰⁰ No passengers detrain at Iowa.

105. *First*, and despite the significant scheduling accommodations that Amtrak has made, the average Sunset Limited 2 has been late when exiting the 1,774-mile stretch of UP track in the last four fiscal quarters.

106. *Second*, performance on the 1,774-mile stretch of UP track that drives COTP for the Sunset Limited 2 is getting much worse. In the third fiscal quarter of 2022, the median Sunset Limited 2 was ninety-one minutes late when transiting from UP- to BNSF-hosted track at Iowa Junction. In other words, regardless of the hours of host-endpoint and additional scheduling accommodations, the median train was still more than an hour and a half late when it reached BNSF, destroying any meaningful prospect of delivering adequate COTP. Performance remained dreadful in the most recent fiscal quarter, with the median Sunset Limited 2 running seventy-two minutes behind schedule when handed-off to BNSF at Iowa Junction.¹⁰¹

107. *Third*, UP has failed to recover time after receiving Sunset Limited 2 at Live Oak. In fact, the median Sunset Limited 2 requires eighteen to twenty-three additional minutes to transit across this short portion of UP-hosted track, with the average train requiring well more than double the scheduled run time to complete the trip.

108. Understood in context, the Host Running Time Metric provides further confirmation that UP is driving the substandard on-time performance of Sunset Limited 2.

¹⁰¹ Driven by the exceedingly poor performance of particular trains, the average overage for Sunset Limited 2 Trains increased from 118 minutes to 128 minutes in the most recent quarter.

Table 3: Train 2 Amount (Under)Over Scheduled Run Time¹⁰²

Fiscal Quarter	Calendar Months	Late Departure Mins	SCRRA Host Segment (18)	UP Host Segment 2 (2556)	BNSF Host Segment (208)	UP Host Segment 1 (25)	CN Host Segment (5)	Amtrak Host Segment (48)
1Q22 Average	Oct-Dec 21	3	15	13	47	32	5	-28
1Q22 Median		0	5	-17	38	21	3	-28
2Q22 Average	Jan-Mar 22	6	12	6	49	34	5	-25
2Q22 Median		0	6	-23	35	20	4	-26
3Q22 Average	Apr-Jun 22	17	7	118	52	40	5	-28
3Q22 Median		2	6	91	37	23	4	-28
4Q22 Average	July-Sep 22	9	15	128	52	29	6	-28
4Q22 Median		0	9	72	49	18	4	-28

4. Station Performance Data Demonstrates That On-Time Performance of Sunset Limited Trains Drops Precipitously On UP Segments of the Route.

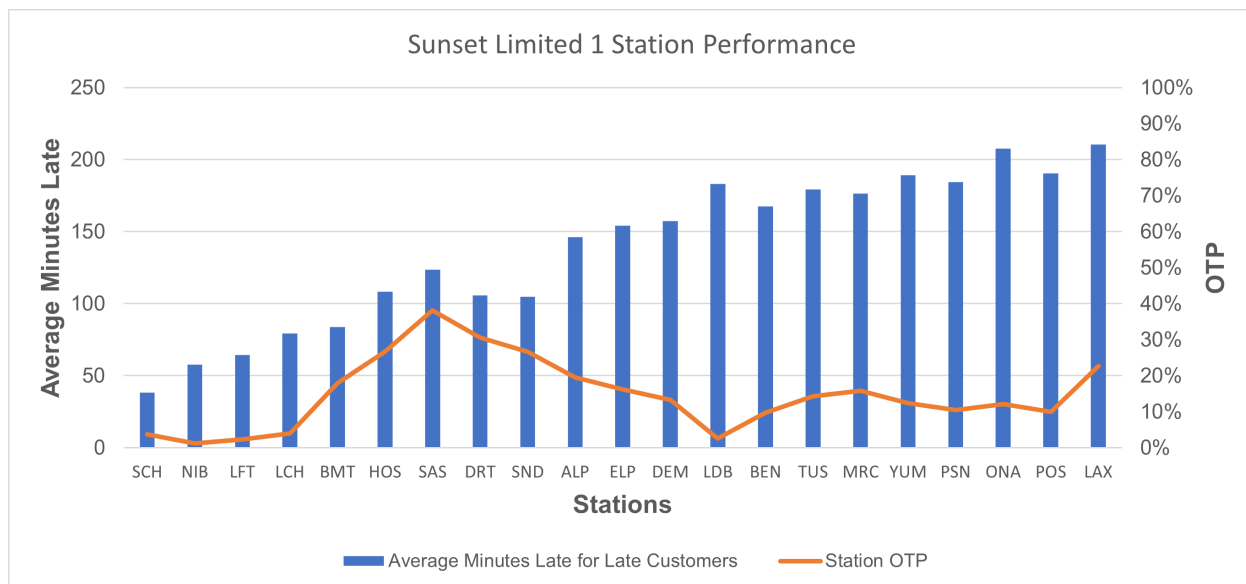
109. The Station Performance Metric provides information about the location and magnitude of on-time performance problems at each location. As shown more granularly below, the Station Performance Metric establishes that the Sunset Limited 1 experiences early route delays, which are driven by stretches of track that are solely or jointly dispatched by UP, and then experiences cascading and severe delays during the remainder of its journey, which occurs on UP-hosted tracks. The Station Performance Metric also confirms that on-time performance typically declines immediately and precipitously once Sunset Limited 2 arrives on the UP network.

110. *Station Performance for Sunset Limited 1.* Station performance data makes two things clear: (i) passengers on Sunset Limited 1 experience substandard on-time performance and

¹⁰² Columns identifying host railroads, including Amtrak, correspond to the segments of track described in Paragraph 24, *supra*. The scheduled run time for each hosted segment is set out in the parentheticals.

severe delays when transiting tracks hosted or dispatched by UP; and (ii) passengers rarely see trains recover from severe delays, even though there is a significant amount of padding built into the schedule.¹⁰³ Both of those trends are reflected in Figure 5 below.

Figure 5: Sunset Limited 1 Station Performance Data for FY 2022



111. As Figure 5 illustrates, Sunset Limited 1 experiences substandard on-time performance at every station along its journey. Substandard on-time performance at stations between New Orleans and Houston is driven by delays that occur on tracks that are exclusively or jointly owned and dispatched by UP.¹⁰⁴ Substandard on-time performance at stations between

¹⁰³ While Sunset Limited 1 also experiences delay early in its route, some of that delay is attributable to UP, which imposes significant host responsible delay and FTI along a segment of track between New Orleans and Schriever. In all, delays incurred before Sunset Limited 1 hits the 1,774-mile stretch of UP track between Iowa and El Monte affects approximately two percent of detraining passengers. Accordingly, Amtrak focuses in this portion of its complaint on that 1,774-mile stretch of UP track, and references to UP segments refer exclusively to segments along that portion of the route.

¹⁰⁴ The segments include a 9.6-mile segment between East Bridge Junction and Live Oak (exclusively dispatched by UP) and a 337.5-mile segment between Live Oak and Dawes, Texas (jointly dispatched by UP and BNSF). See *supra* ¶¶ 27-28.

Houston and Los Angeles is driven by delays that occur on tracks that are exclusively hosted, owned, and dispatched by UP.¹⁰⁵

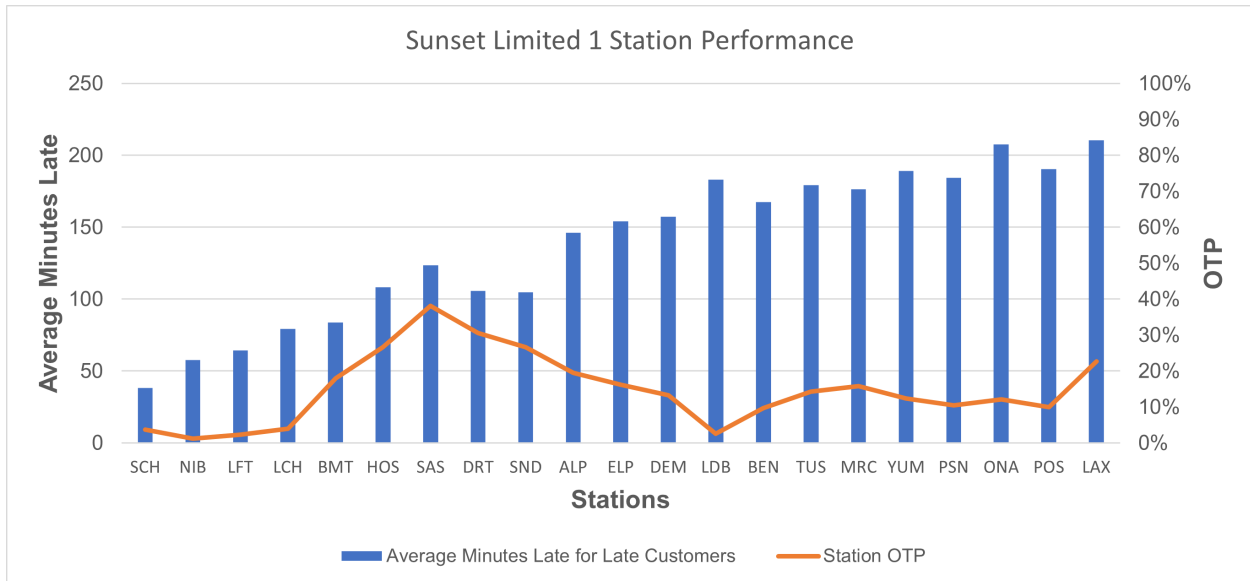
112. Performance in the last two fiscal quarters has been particularly troubling. In the third fiscal quarter of 2022, on-time performance at stations served exclusively by UP peaked at 41 percent in San Antonio. During the same quarter, *on-time performance at several stations served exclusively by UP was zero*. From Lordsburg, New Mexico through Pomona, California, every single Sunset Limited 1 passenger arrived late to their destination. That was the case notwithstanding the considerable recovery and excess dwell time scheduled at San Antonio, for the express purpose of helping the westbound Sunset Limited 1 make up time on the rest of its route.

113. In the fourth fiscal quarter of 2022, station on-time performance at stations served exclusively by UP remained awful, peaking at 34 percent at Houston. UP again *failed to deliver a single passenger on time at certain stations* (Del Rio and Palm Springs), notwithstanding the considerable recovery time and excess dwell time scheduled at San Antonio.

114. In addition to demonstrating that Sunset Limited 1 experiences substandard on-time performance throughout the course of its journey, Figure 5 (reproduced below) demonstrates that passengers experience severe delays, particularly when transiting UP tracks west of Houston.

¹⁰⁵ All but the last 12.6 miles of this trackage is exclusively hosted, owned, and dispatched by UP. The last 12.6 miles of the trackage is hosted by Metrolink.

Figure 5: Sunset Limited 1 Station Performance Data for FY 2022



Indeed, since the COTP Minimum Standard became applicable to Sunset Limited 1, the average minutes late per late customer at stations west of Houston has ranged from **105** minutes late (Sanderson) to **more than two-hundred** minutes late (Ontario; Los Angeles). At all fifteen stations, the average minutes late per late customer exceeded one hundred minutes.¹⁰⁶

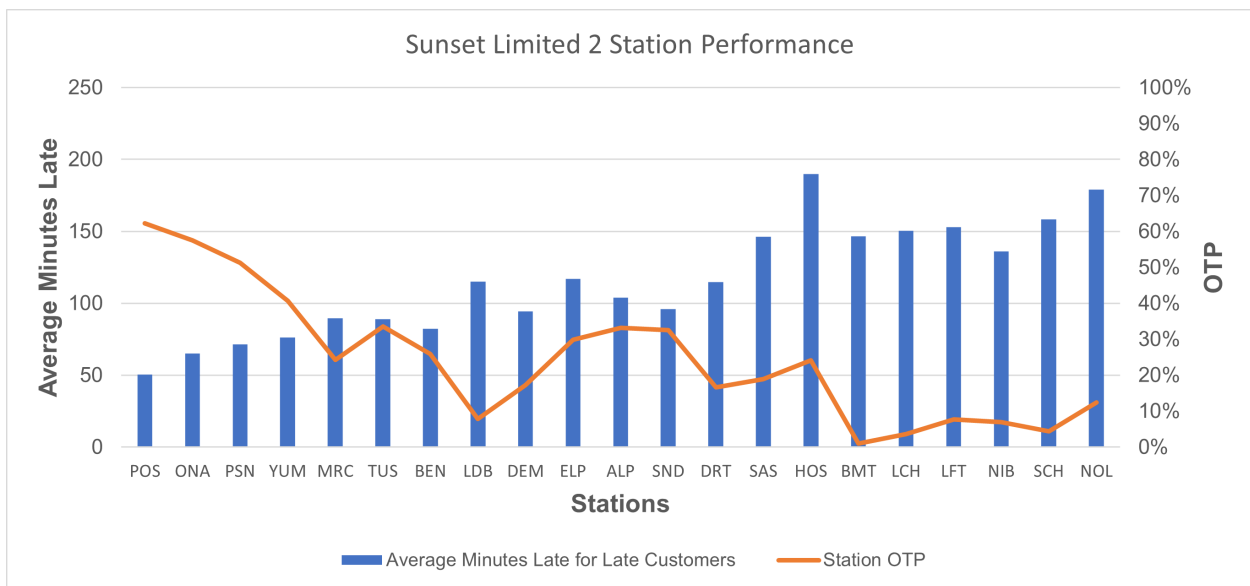
115. UP’s failure to deliver adequate station on-time performance, and its imposition of egregious delays on Sunset Limited passengers, is even more alarming in view of the substantial recovery time, miscellaneous time, and extended dwell time built into the schedule. As outlined above, UP is provided with the benefit of considerable recovery and extended dwell time in San Antonio. Figure 5 demonstrates that UP squanders that additional time. Indeed, UP does not come anywhere close to bringing the Sunset Limited 1 back to adequate on-time performance here. Instead, station on-time performance again collapses after the San Antonio stop. In the most recent

¹⁰⁶ The considerable recovery and excess dwell time scheduled for San Antonio again is wasted, with twelve of the following stations experiencing delays exceeding 100 minutes over the last three fiscal quarters.

quarter, UP failed to deliver a single customer on time to Del Rio, Texas, the stop immediately following San Antonio.

116. *Station Performance for Sunset Limited 2.* Station performance data also demonstrates that UP has a disastrous impact on the on-time performance of Sunset Limited 2. When Sunset Limited 2 leaves Los Angeles, it travels just 12.5 miles before making seventeen station stops on UP-hosted track. As Figure 6 demonstrates, Station on-time performance declines immediately and significantly after Sunset Limited 2 arrives on the UP network.

Figure 6: Sunset Limited 2 Station Performance Data for FY 2022



117. Measured from the date the COTP Minimum Standard became applicable to Sunset Limited 2, UP has failed to deliver adequate on-time performance at a single station. Nor has it come close. Over the last four quarters, station on-time performance has declined to sixty-two percent by the time Sunset Limited 2 reaches Pomona, the very first station on the route. When the Sunset Limited 2 reaches Yuma, the first stop in Arizona, on-time performance has declined to

approximately forty-one percent. And performance never recovers, remaining below (and typically well below) that figure for the remainder of the trip.¹⁰⁷

118. In the fourth fiscal quarter of 2022, delays were even worse. Station-time performance declined to fifty-four percent in Pomona and fourteen percent in Yuma. Performance on the remainder of the route peaked at twenty-two percent (Sanderson), with particularly poor performance in heavy ridership stations like Maricopa (six percent), Tucson (thirteen percent), San Antonio (four percent), and Houston (four percent).

119. Figure 6 also illustrates that UP drives unacceptable delays on Sunset Limited 2. At the very first station stop (Pomona), UP drove delays of fifty minutes per late customer. By San Antonio, the severity of those delays increased to more than one hundred and forty minutes. And by Houston, those delays reached 190 minutes. Because it imposes such severe delays, and because sixty-seven percent of Sunset Limited passengers detrained by Houston in Fiscal Year 2022, UP's dismal performance dooms the on-time performance of Sunset Limited 2.

C. UP's Delays and Failures to Achieve Minimum Standards are Attributable to UP's Failure to Provide Preference to Amtrak over Freight Transportation

120. UP's performance in handling and dispatching the Sunset Limited Trains over its rail lines is clearly substandard. The staggering amount of host-responsible delay that UP imposes on Sunset Limited passengers and the unacceptable on-time performance along the UP-Hosted Segments are strong indicators that UP has failed to provide preference to Amtrak over freight transportation as required by statute. This is so even though Amtrak has worked in good faith with UP for years to address performance concerns, including by identifying operational adjustments, providing additional recovery time, and providing extended dwell time to help improve

¹⁰⁷ Performance on the eastern end of the UP segment remains very poor, notwithstanding the considerable recovery time in San Antonio. In fact, station on-time performance on a whole-year basis was twenty-four percent at Houston, zero percent at Beaumont, and four percent at Lake Charles.

performance. The failure to provide Amtrak with preference is further evidenced by: (1) UP's unlawful pattern and practice of prioritizing its freight trains over the Sunset Limited Trains, and (2) UP's failure to implement and/or enforce operational procedures that would eliminate, or at least significantly reduce, delays to Amtrak passenger trains.¹⁰⁸

1. Frequent FTI Is a Strong Indication That UP Prioritizes Freight Trains Over Amtrak Passenger Trains in Violation of Amtrak's Statutory Preference Rights

121. The Sunset Limited Trains encounter extraordinary amounts of freight train interference on the UP network. In fact, in the four quarters since the COTP Minimum Standard became applicable to Sunset Limited Trains,¹⁰⁹ UP imposed FTI delays on *every* Sunset Limited Train operating over UP tracks. During the same period, Sunset Limited Trains experienced an average of 15.5 FTI incidents, totaling 245.8 minutes per trip, when transiting UP tracks.

122. The alarming amount of FTI on the UP-Hosted Segments shows no sign of abating: In August 2022, UP FTI delays averaged almost six hours per trip, up fifty-four percent since October 2021. And in September 2022, UP FTI delays rose still higher, averaging more than six hours per trip and up fifty-eight percent over October 2021. UP imposed all of that FTI despite its legal obligation to give Amtrak passenger trains preference over freight transportation when using UP rail lines.

123. The staggering amount of FTI that UP has imposed on Sunset Limited customers has affected customers travelling east and west. Passengers on Sunset Limited 1 have encountered an average of four hours twenty-four minutes of FTI delay *per trip* when on the UP segment of the route, for a staggering total of 302 hours, 45 minutes of FTI delay. Moreover, performance has

¹⁰⁸ These two factors are meant to be exemplary, not exclusive. Additional causes may be uncovered in the course of the Board's investigation.

¹⁰⁹ Unless otherwise indicated, all allegations in this section refer to performance over the last four fiscal quarters.

gotten worse, not better. As reflected in Figure 7 below, FTI surged after the first fiscal quarter of 2022 and remained unacceptably high for the rest of the fiscal year. It will come as no surprise, then, that FTI on the UP-Hosted Segments of the Sunset Limited 1 increased nearly seventeen percent year-over-year.

124. Passengers on Sunset Limited 2 have had a similar experience. Sunset Limited 2 has encountered an average of three hours, forty-five minutes of FTI delay per trip when on the UP-Hosted Segments for a total of 260 hours, 8 minutes of FTI delay. Again, performance has gotten worse. In fact, reflected in Figure 8, Sunset Limited 2 has experienced more FTI delay per trip in each successive quarter of the year, when transiting UP lines. All told, FTI on the UP-Hosted Segments of the Sunset Limited 2 increased more than six percent year-over-year.

Figure 7: Train 1 UP-Hosted FTI Delay Per Trip (FY22)

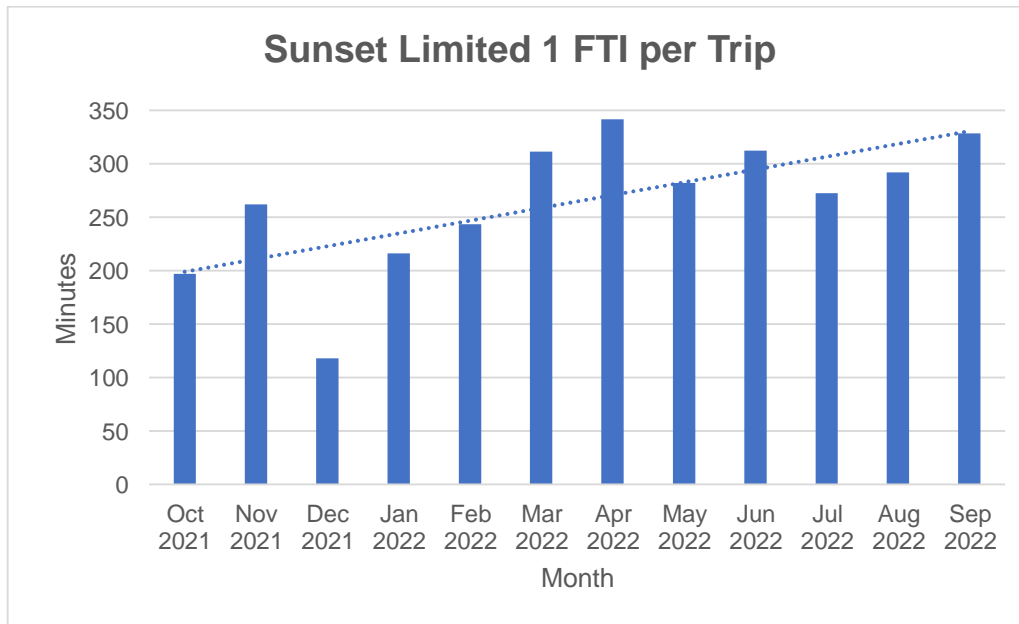
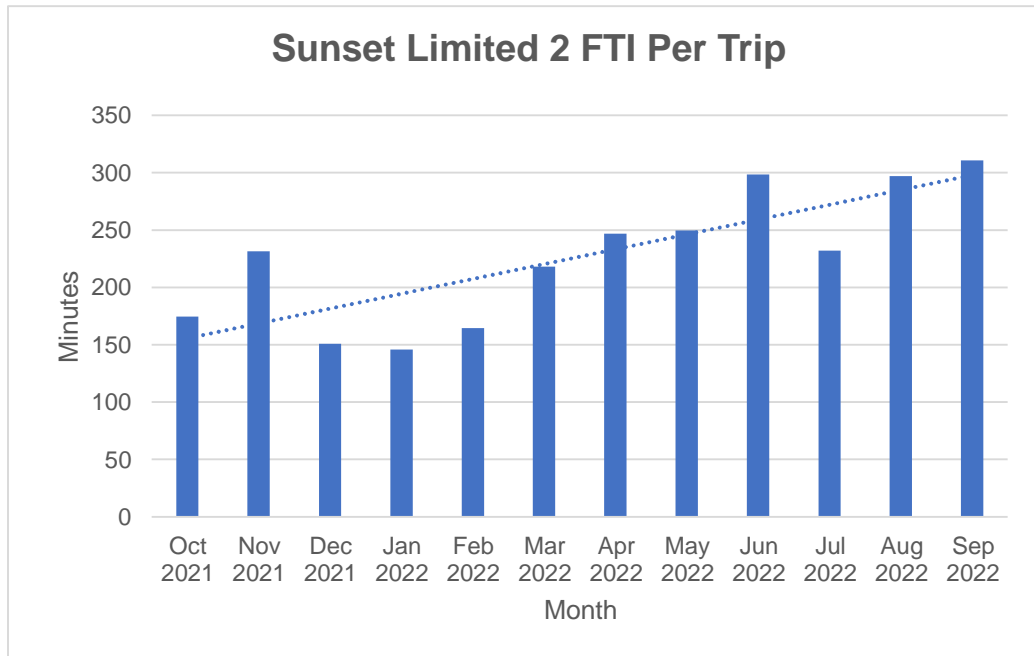


Figure 8: Train 2 UP-Hosted FTI Delay Per Trip (FY22)



125. There is no single segment of track that accounts for the severity of FTI along the UP-Hosted Segments. To be sure, passengers are most likely to encounter long-duration FTI in and around major metropolitan areas, as in the stretch between Houston and Beaumont, where average FTI spikes. However, as shown in Figures 7 and 8 below, Sunset Limited passengers experience significant amounts of FTI across the entirety of the UP-Hosted Segments, heading both westward and eastward.

Figure 9: Total UP-Hosted FTI Delay Hours – Train 1 (FY22)

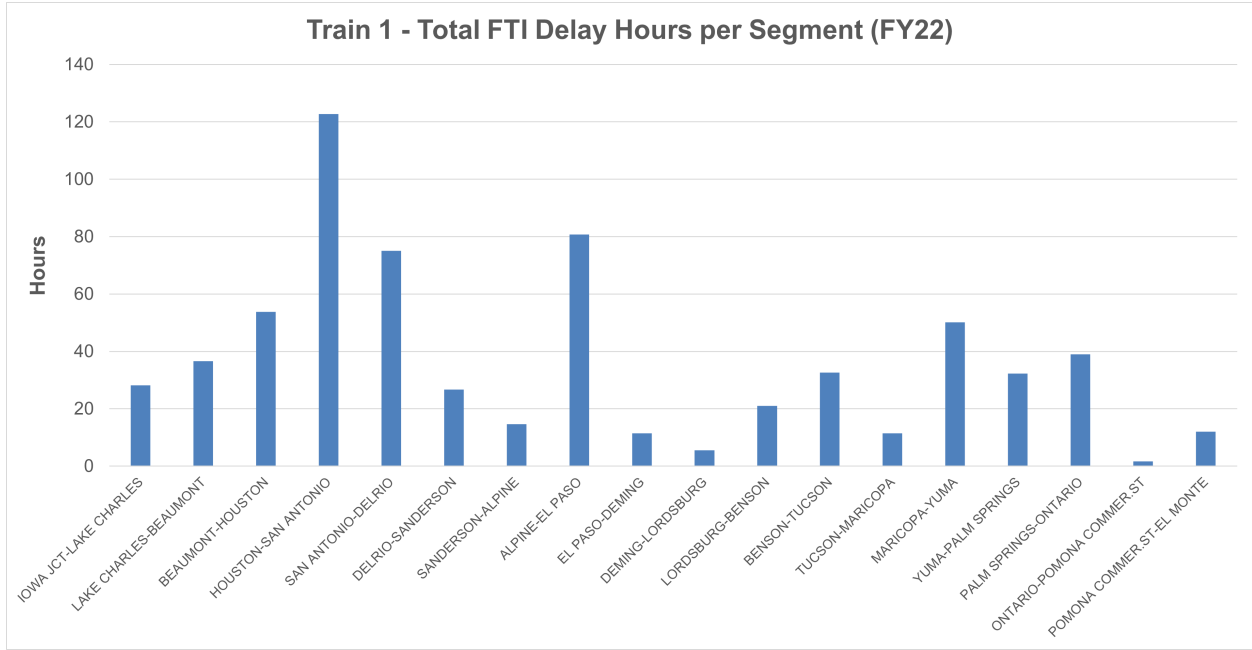
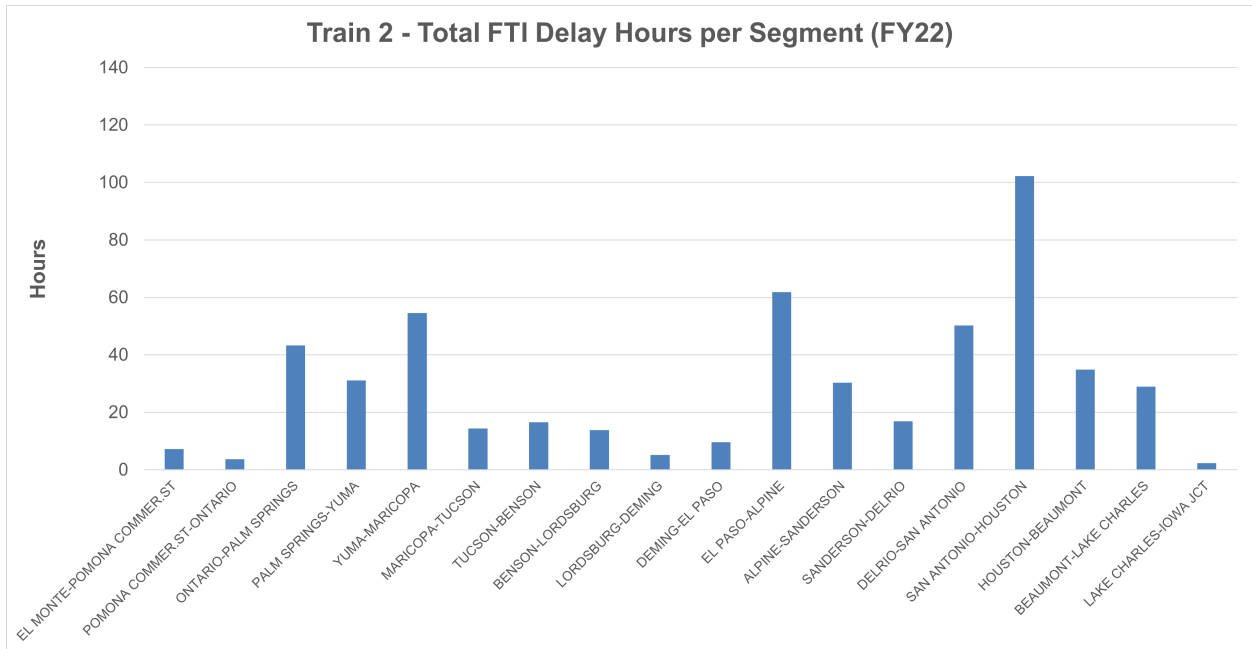


Figure 10: Total UP-Hosted FTI Delay Hours – Train 2 (FY22)



126. Because UP controls the dispatching of traffic over its rail lines, and because freight train interference necessarily involves an Amtrak train being delayed by a freight train—delays

that UP is statutorily obligated to avoid—the frequency of such delays on the UP-Hosted Segments demonstrate that UP is failing to afford Amtrak passenger trains preference as required by statute.

127. Beneath the statistical evidence of FTI on the Sunset Limited lies a series of specific, patterned preference violations, each of which have adverse effects on Amtrak and its passengers. One such practice that Amtrak frequently encounters is that UP regularly requires that Sunset Limited Trains wait in sidings for long periods of time during which freight traffic is allowed to pass. Sunset Limited Trains have been forced to sit in a siding while freight trains traverse UP main lines on hundreds of occasions (if not more) over the past four quarters.¹¹⁰ That means Sunset Limited Trains are made to idle in sidings several times each trip, often for extended periods of time.

128. UP's pattern and practice of disregarding its legal obligation to provide Amtrak passenger trains with preference is also illustrated by another practice: Forcing Amtrak to follow freight trains. When traversing the UP-Hosted Segments, Amtrak is regularly dispatched behind freight trains, forcing Sunset Limited passengers to follow slower freight trains and suffer hours of delay. Many instances in which Sunset Limited Trains follow freight trains on the UP tracks result in very long delays. Altogether, Sunset Limited Trains have been forced to follow slower moving freight trains 1,196 times when operating on UP tracks, or 3.9 times per trip. Those follows impose average delays of 77.9 minutes per trip.

129. Other UP practices further illustrate its pattern and practice of disregarding Amtrak's statutory right to preference over freight traffic, such as forcing Sunset Limited Trains to wait on the main line during meets, forcing Sunset Limited Trains to stop because of freight

¹¹⁰ Amtrak classifies these incidents as “meets.” Sunset Limited Trains also experienced FTI from meets that occurred on the main line. On the UP-hosted portion of service, Sunset Limited Trains over the past four quarters have been delayed by meets 2,522 times, or 8.2 times per trip. Those meets impose average delays of 123.2 minutes per trip.

congestion, or exposing Sunset Limited Trains to delays caused by cross-traffic, by freight trains stopped to await repairs, by freight trains stopped to await fuel, or by other forms of FTI. Altogether, Sunset Limited Trains in fiscal year 2022 were made to wait for freight trains to complete their use of UP's rail lines, crossings, or junctions an average of 15.5 times per trip. The frequency with which UP requires Amtrak passengers to wait in a siding for clearing freight trains, to follow slow-moving freight trains for miles, or to otherwise endure FTI, reflects an unlawful practice of prioritizing freight trains in the use of these same rail lines, junctions, or crossings, contrary to 49 U.S.C. § 24308(c). So, too, does the severity of FTI, which averaged more than four hours per trip over the last four quarters.

2. UP Has Established Operational Practices that Result in Systemic Violations of Amtrak's Statutory Right to Preference Over Freight Transportation and Cause Substandard On-Time Performance.

130. Many of the delays that Sunset Limited Trains encounter on the UP-Hosted Segments are attributable to UP corporate decisions, operational practices or failures that result in systemic violations of Amtrak's preference rights and cause substandard COTP on the route. Amtrak provides examples of these everyday occurrences in this portion of Amtrak's Petition and Complaint. Each of these (illustrative) operational issues reasonably can be addressed by UP.

131. *Sidings.* UP fails to maintain sidings of sufficient length to accommodate all of its freight trains. In recent years, and consistent with its adoption of PSR, UP has increased the length of its freight trains. Based upon information and belief, UP has increased the average length of its freight trains to more than 9,300 feet, surpassing all other Class I freights. Also based upon information and belief, UP regularly runs freight trains that are longer than 12,000 feet. Although UP has increased the average and maximum length of the freight trains, it has not completed necessary corresponding improvements to the length of its sidings. As a result, UP now runs freight trains that are too long to fit into any existing or proximate siding ("non-fitters").

132. Based upon information and belief, UP dispatches non-fitter freight trains ahead of Sunset Limited trains that are likely to catch the non-fitter train during service. When that occurs, the Sunset Limited train must follow that non-fitter, which can result in hours of passenger delay.

133. There are several UP-hosted subdivisions of the Sunset Limited route that do not contain a single siding over 10,000 feet. Some of these subdivisions, identified below, are more than 100 miles long:

- Iowa Junction, Louisiana – Lake Charles Louisiana (13.3 Miles)
- Sanderson, Texas to Alpine, Texas (102.3 miles)
- El Paso, Texas to Deming, New Mexico (88.9 miles)
- Deming, New Mexico to Lordsburg, New Mexico (120.2 miles)
- Lordsburg, New Mexico to Benson, New Mexico (115.6 miles)
- Benson, New Mexico to Tucson, Arizona (50.5 miles)
- Tucson, Arizona to Maricopa, Arizona (82.8 miles)
- Sentinel, Arizona to Yuma, Arizona (98.9 miles)
- Yuma, Arizona to Palm Springs, California (145.6 miles)
- Ontario, California to Pomona, California (7.1 miles)
- Pomona, California to El Monte, California (20.4 miles)

134. Importantly, several UP subdivisions that lack 10,000-foot sidings are consecutive. That means that freight trains longer than 10,000 feet cannot take a single siding for more than 450 miles of the Sunset Limited route—for example, the entire trip from El Paso, Texas to Maricopa, Arizona. In fact, over the 863-mile stretch of UP-hosted track between El Paso and El Monte, there are just two sidings available to trains longer than 10,000 feet. Although much of that track consists of double main line, Amtrak trains frequently gets stuck following freight trains or waiting in sidings on these portions of track.

135. *Expiring Crews.* Sunset Limited Trains also experience delay because UP fails to plan adequately for the expiration of its freight crews as required by federal law. Under the federal Hours of Service Act, freight crews may operate for up to twelve hours at a time.¹¹¹ However, if

¹¹¹ 49 U.S.C. § 21103(a)(2).

a crew exceeds the twelve-hour limit, FRA may take enforcement action, including by penalizing the railroad and the crew.¹¹² To avoid those penalties, as well as to avoid delay to Amtrak and other trains, freight railroads must adequately plan for the expiration of each crew so that a crew does not expire when a train is occupying a main line.

136. Along the Sunset Limited route, UP has failed to undertake adequate crew planning. For that reason, Sunset Limited trains are regularly delayed due to freight train interference when UP freight trains must stop to change crews on main line tracks, after the freight crew expires, or when UP freight trains are given priority in use of a rail line, junction, or crossing, so that a freight crew does not expire. Just by way of example, on April 3, 2022, Sunset Limited 1 was delayed for hours on a UP segment between Beaumont and Lake Charles when a crew expired on hours-of-service on a main line track at MP 253.2. Because the relief crew was dropped off by a Lyft driver at the wrong location, and attempts to secure additional local transportation were unsuccessful, Sunset Limited 1 had to wait until a UP manager responded from Beaumont to drive the crew to the correct location. Recently, on September 23, 2022, Sunset Limited 2 was delayed for more than two hours when a crew expired near Yuma.

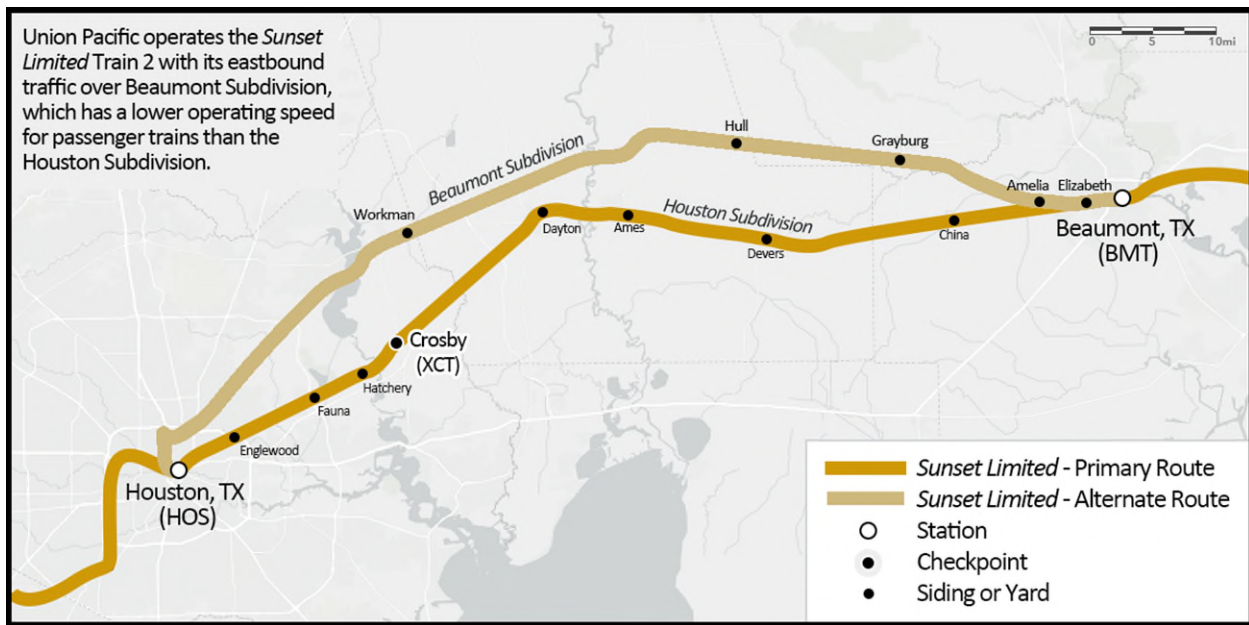
137. *Routing.* UP has two routes between Houston and Beaumont. The two routes include the Houston Subdivision (a former Southern Pacific line over which the Sunset Limited has operated since 1894) and the Beaumont Subdivision. Although Amtrak's agreement with Union Pacific specifies that the Sunset Limited is to operate over the Houston Subdivision, and Union Pacific represented to the Board when it sought authority to acquire Southern Pacific that Amtrak's operations would not be adversely impacted by the acquisition, Union Pacific often routes Sunset Limited 2 over the Beaumont Subdivision to align with UP's preferred directional

¹¹² *Id.* § 21303.

running patterns. Traversing the Beaumont Subdivision ensures delay for three reasons. First, the Sunset Limited 2 must make convoluted moves to access the Beaumont Subdivision. Second, the maximum authorized passenger train speed is 15 miles per hour lower on the Beaumont Subdivision than on the Houston Subdivision. Third, the route via the Beaumont Subdivision is longer.

138. During fiscal year 2022, Sunset Limited 2 experienced 101 routing delays resulting in 2,602 minutes of delay because of this move, which was initially executed because of UP’s decision to operate westbound freight traffic on the Houston Subdivision and continues to be executed for the sole purpose of mitigating even more substantial delays anticipated by adhering to the agreed route.¹¹³

Map 4: Houston and Beaumont Subdivisions



139. *Coordination.* UP often fails to coordinate with other host railroads about the location and handoff of Amtrak passenger trains on the Sunset Limited route, as well as the

¹¹³ It is telling that Amtrak must accept either a departure from the agreed route for Sunset Limited Service or accept even more severe delays.

railroads that control crossings. These simple failures of communication impose delay on the Sunset Limited Trains because, for example, they preclude other railroads from clearing routes for passenger trains. In fact, in fiscal year 2022, Sunset Limited Trains operating on the UP-Hosted Segments experienced 135 delays totaling more than 2,572 minutes because of cross traffic.¹¹⁴ Based upon information and belief, many of these problems could reasonably be addressed by advance notification from UP, including through the implementation of enhanced training or procedures designed to improve communication between railroads.

140. *Conclusion.* UP has institutionalized and operationalized practices that result in systemic violations of Amtrak's statutory right to preference. These practices include, but not are limited to, the failure to align the length of freight trains and sidings, the failure to plan for expiring crews, the failure to properly coordinate with other railroads, and the failure to appropriately route Amtrak trains. Each of these practices results in systemic violations of Amtrak's statutory right to preference over freight transportation, forcing Sunset Limited passengers to follow or sit and wait for freight trains. And each practice could reasonably and readily be addressed by UP.

D. Amtrak Suffers Financially Because of UP-Responsible Delays

141. Amtrak has suffered and continues to suffer substantial financial loss because of delays to the Sunset Limited Trains.

142. Substandard on-time performance imposes significant reputational harm on Amtrak, as many customers and potential customers often cannot and do not distinguish between Amtrak and UP in allocating blame for persistent and significant delays on the Sunset Limited.¹¹⁵ Reputational harm can manifest in several ways, such as reduced ticket sales for the Sunset Limited

¹¹⁴ Cross traffic is when trains causing delay are operating on a route which crosses the intended route of the delayed Amtrak train at-grade.

¹¹⁵ FRA identified this very issue in its final rule, Final Rule, 85 Fed. Reg. at 72981 n.29, and therefore adopted on-time performance metrics and standards that permit and demand a customer-driven analysis of on-time performance.

Trains and for other Amtrak services. When UP causes substandard on-time performance on the Sunset Limited, the experience can alienate (i) the passengers who endure that experience, (ii) any individuals affected by the passengers' delayed arrival, and (iii) a cascading number of others who become aware of that experience.

143. In other words, when UP imposes delay on a Sunset Limited train, it not only threatens to alienate passengers on that trip, but also threatens Amtrak's ability to build a broader base of passengers. These delays also undermine Amtrak's efforts to market Sunset Limited as a dependable transportation alternative and to attract ridership on the Sunset Limited and other services. All of this reduces the ticket revenues that Amtrak generates from operation of the Sunset Limited, and on other Amtrak routes with which it connects.

144. In addition, the substandard performance of Sunset Limited trains imposes significant direct and immediate costs on Amtrak. For example, delays increase labor costs for conductors, engineers, and onboard service, mechanical, or station personnel, while increasing engine idling and resulting fuel costs. Delays also increase alternative passenger transportation costs (such as bussing passengers) and increase the frequency of missed connections and subsequent vouchers (free rides) to passengers. It can diminish Amtrak's ability to service and turn around train sets, impacting subsequent trips. It can also create additional strain on assets, imposing additional maintenance and equipment costs. The reduced revenues and increased costs to the Sunset Limited due to UP-caused delays also increase the amount of federal funding, paid by taxpayers, required for the portion of the Sunset Limited's operating costs that is not funded by passenger revenues.

* * *

145. WHEREFORE, Amtrak respectfully requests that the Board immediately initiate an investigation into the substandard performance of the Sunset Limited Trains to determine whether and to what extent delays or failures to achieve minimum standards are due to causes that could reasonably be addressed by UP. Moreover, because Sunset Limited delays and failures to achieve minimum standards are attributable to UP's failure to provide preference to Amtrak over freight transportation as required under 49 U.S.C. § 24308(c), Amtrak further requests that the Board award damages and enter other appropriate relief, including (but not limited to) an injunction and other appropriate equitable relief to deter UP from taking future actions which may reasonably be expected to result in delays to Amtrak on the Sunset Limited route. Consistent with 49 U.S.C. § 24308(f)(4), all damages shall be used for capital or operating expenditures on the Sunset Limited route.

Dated: December 8, 2022

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, certify that courtesy copies of this document are simultaneously being provided by email and express overnight delivery to all host railroads for the Sunset Limited, by way of the below-listed individuals.

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/s/ Jessica Ring Amunson

December 8, 2022

Jessica Ring Amunson

Appendix A
Sunset Limited Schedule Skeletons

Sunset Limited Train 1

Sunset Limited Train 1			Schedule Skeleton - Sunset Limited/Train 1 (MoWeSa)										
Effective 3/11/18 MoWeSa	Days of Operation	Effective 11/3/19 MoWeSa	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust	Dwell Minutes	Arrive	Depart	Station	
			AMT	0.0	T,E,FA,I,W,G							New Orleans, LA	CT
9:00 AM	Dp	9:00 AM MoWeSa	CNIC	3.7		10	5			9:15 AM	9:15 AM	XSU - Southport Jct	
10:30 AM	Dp	10:30 AM MoWeSa	NOPB	5.9		5				9:20 AM	9:20 AM	XEB - East Bridge Jct	
11:56 AM	Dp	11:56 AM MoWeSa	BNSF	11.1		19	1			9:40 AM	9:40 AM	XWB - West Bridge Jct	
12:24 PM	Dp	12:24 PM MoWeSa	BNSF	15.5		7	2	5		9:54 AM	9:54 AM	XLL - Live Oak	
12:24 PM	Dp	12:24 PM MoWeSa	BNSF	55.6		37	-3		2	10:28 AM	10:30 AM	Schriever, LA	
1:55 PM	Dp	1:55 PM MoWeSa	BNSF	127.1		82	2		2	11:54 AM	11:56 AM	New Iberia, LA	
3:48 PM	Dp	3:48 PM MoWeSa	BNSF	145.1		22	3		3	12:21 PM	12:24 PM	Lafayette, LA	
6:18 PM	Ar	6:18 PM MoWeSa	BNSF	205.8		70	32	16		2:22 PM	2:22 PM	Iowa Jct.	
6:55 PM	Dp	6:55 PM MoWeSa	UP	205.8				-39		1:43 PM	1:43 PM	XIJ - Iowa Jct.	
12:05 AM	Ar	12:05 AM TuThSu	UP	219.4		18	-8		2	1:53 PM	1:55 PM	Lake Charles, LA	
2:45 AM	Dp	2:45 AM TuThSu	UP	280.7	t, e	79	4	16	14	3:34 PM	3:48 PM	Beaumont, TX	
5:49 AM	Dp	5:49 AM TuThSu	UP	362.5		104	46		37	6:18 PM	6:55 PM	Houston, TX	
8:24 AM	Dp	8:24 AM TuThSu	UP			25				7:20 PM	7:20 PM	XWJ - West Junction, TX	
10:38 AM	Dp	10:38 AM TuThSu	UP			26				7:46 PM	7:46 PM	XRB - Rosenberg, TX	
1:22 PM	Ar	1:22 PM TuThSu	UP			30				8:16 PM	8:16 PM	XEA - Eagle Lake, TX.	
1:47 PM	Dp	1:47 PM TuThSu	UP			50				9:06 PM	9:06 PM	XFA - Flatonia, TX	
3:18 PM	Dp	3:18 PM TuThSu	UP			45				9:51 PM	9:51 PM	XKG - Kingsbury, TX	
4:13 PM	Dp	4:13 PM TuThSu	UP	565.7	FR	41	23	20	8	11:15 PM	11:23 PM	XKY - Kirby	
5:18 PM	Dp	5:18 PM TuThSu	UP	572.8	I,T,E,W,G	17	25		160	12:05 AM	2:45 AM	San Antonio, TX	
6:45 PM	Ar	6:45 PM TuThSu	UP	582.3		13		2		3:00 AM	3:00 AM	XWY - Withers, TX	
7:35 PM	Dp	7:35 PM TuThSu	UP	588.1		6				3:06 AM	3:06 AM	XMD - Macdonald Siding	
8:52 PM	Ar	8:52 PM TuThSu	UP	598.7		9		7		3:22 AM	3:22 AM	XLC - Lacoste Siding	
9:02 PM	Dp	9:02 PM TuThSu	UP	610.9		14				3:36 AM	3:36 AM	XDN - Dunlay Siding	
11:49 PM	Dp	11:49 PM TuThSu	UP			18				3:54 AM	3:54 AM	XHT - EE Hondo, TX	
2:02 AM	Dp	2:02 AM WeFrMo	UP			74				5:08 AM	5:08 AM	XPF - Spofford, TX	
3:54 AM	Dp	3:54 AM WeFrMo	UP	741.9		35	4		2	5:47 AM	5:49 AM	Del Rio, TX	
4:04 AM	Dp	4:04 AM WeFrMo	UP			67				6:56 AM	6:56 AM	XLY - Langtry, TX	
5:35 AM	Ar	5:35 AM WeFrMo	UP	867.8		78	9		1	8:23 AM	8:24 AM	Sanderson, TX	
			UP	959.0	t,e	98	26		10	10:28 AM	10:38 AM	Alpine, TX	
						60				11:38 AM	11:38 AM	XVL - Valentine, TX	CT
			UP			55				12:33 PM	12:33 PM	XTS - Sierra Blanca, TX	MT
			UP	1177.5	T,E,FV	91	5	13	25	2:22 PM	2:47 PM	El Paso, TX	MT
			UP	1265.4		82	7		2	4:16 PM	4:18 PM	Deming, NM	
			UP	1325.1		48	5		2	5:11 PM	5:13 PM	Lordsburg, NM	MT
			UP	1443.6		115	8		2	7:16 PM	7:18 PM	Benson, AZ	MST
			UP	1493.3	G,W	53	17	17	50	8:45 PM	9:35 PM	Tucson, AZ	
			UP	1579.4	t,e	72	5		10	10:52 PM	11:02 PM	Maricopa, AZ	
			UP			53				11:55 PM	11:55 PM	XZS - Sentinel, AZ	
			UP	1743.9		94	8	8	4	1:45 AM	1:49 AM	Yuma, AZ	MST
			UP	1762.7		20		3		2:12 AM	2:12 AM	Cactus, CA	PT
						28				2:40 AM	2:40 AM	XIC - Iris, TX	
			UP	1808.4		8				2:48 AM	2:48 AM	Niland, CA	
			UP	1835.7		21	2			3:11 AM	3:11 AM	Ferrum, CA	
			UP	1857.9		15	4			3:30 AM	3:30 AM	XTH - Thermal, CA	
			UP	1888.3		28			4	3:58 AM	4:02 AM	Palm Springs, CA	
			UP	1955.5		85	27		3	5:54 AM	5:57 AM	D Ontario, CA	
			UP	1962.4		8	-1		3	6:04 AM	6:07 AM	D Pomona, CA	
			UP	1981.1		19		39		7:05 AM	7:05 AM	XEL - El Monte	
			SCRRA	1994.1	T,E	19	10		1	7:35 AM		Los Angeles, CA	PT
							Total Pure Run	Total Recovery Minutes	Total Misc. Adjust.	Total Dwell	Total Schedule Time		
							2073	268	108	348	2795		

Add XIC.

Add XTH

Sunset Limited Train 2

Sunset Limited Train 2			Schedule Skeleton - Sunset Limited/Train 2 (SuWeFr)											
Effective 3/11/18 SuWeFr	Days of Operation	Effective 11/3/19 SuWeFr	RR	Mileage	Services	PRT	Recovery Minutes	Misc. Adjust.	Dwell Minutes	Arrive	Depart	Station	PT	
			SCRRA	0.0	T,E,FA,W,I,G						10:00 PM	Los Angeles, CA	PT	
			UP	13.0			18			10:18 PM	10:18 PM	XEL - El Monte		
10:00 PM	Dp Los Angeles, CA	PT 10:00 PM	UP	31.7			20		3	10:38 PM	10:41 PM	Pomona, CA		
10:41 PM	Dp Pomona, CA	SuWeFr 10:41 PM	UP	38.6			8	2		10:51 PM	10:54 PM	Ontario, CA		
10:54 PM	Dp Ontario, CA	SuWeFr 10:54 PM	UP	105.8			82	3	12	5	12:31 AM	12:36 AM	Palm Springs, CA	
12:36 AM	Dp Palm Springs, CA	PT 12:36 AM	UP	136.2			28			1:04 AM	1:04 AM	XTH- Thermal, CA		
2:47 AM	Dp Yuma, AZ	MST 2:47 AM	UP	155.1			16			1:20 AM	1:20 AM	Ferrum, CA		
5:30 AM	Ar Maricopa, AZ	MoThSa 5:30 AM	UP	184.1			19			1:39 AM	1:39 AM	Niland, CA		
5:40 AM	Dp Maricopa, AZ	MoThSa 5:40 AM	UP	228.1			6			1:45 AM	1:45 AM	XIC-Iris, CA		
7:28 AM	Ar Tucson, AZ	MoThSa 7:28 AM	UP	250.2			29			2:14 AM	2:14 AM	Cactus, CA	PT	
8:15 AM	Dp Tucson, AZ	MoThSa 8:15 AM	UP				18	8	2	5	2:42 AM	2:47 AM	Yuma, AZ	MST
9:15 AM	Dp Benson, AZ	MST 9:15 AM	UP				93			4:20 AM	4:20 AM	XZS-Sentinel, AZ		
12:15 PM	Dp Lordsburg, NM	MT 11:15 AM	UP	414.7	t,e		53	7	10	10	5:30 AM	5:40 AM	Maricopa, AZ	
1:10 PM	Dp Deming, NM	MoThSa 12:10 PM	UP	500.8	FV,W,G		74	34		47	7:28 AM	8:15 AM	Tucson, AZ	
3:10 PM	Ar El Paso, TX	MoThSa 2:10 PM	UP	550.5			53	5		2	9:13 AM	9:15 AM	Benson, AZ	MST
3:35 PM	Dp El Paso, TX	MoThSa 2:35 PM	UP	669.0			115	4		1	11:14 AM	11:15 AM	Lordsburg, NM	MT
8:45 PM	Ar Alpine, TX	MoThSa 6:45 PM	UP	728.7			49	5		1	12:09 PM	12:10 PM	Deming, NM	
10:36 PM	Dp Sanderson, TX	MoThSa 8:36 PM	UP	816.6	T,E		94	21	5	25	2:10 PM	2:35 PM	El Paso, TX	
1:02 AM	Dp Del Rio, TX	TuFrSu 11:02 PM	UP				95				4:10 PM	4:10 PM	XTS-Sierra Blanca, TX	
4:50 AM	Ar San Antonio, TX	TuFrSu 2:50 AM	UP				55				5:05 PM	5:05 PM	XVL-Valentine, TX CT	
6:25 AM	Dp San Antonio, TX	TuFrSu 4:25 AM	UP	1035.1	t,e		59	31		10	6:35 PM	6:45 PM	Alpine, TX	
11:10 AM	Ar Houston, TX	TuFrSu 9:10 AM	UP	1126.3			98	12		1	8:35 PM	8:36 PM	Sanderson, TX	
12:10 PM	Dp Houston, TX	TuFrSu 10:10 AM	UP				78				9:54 PM	9:54 PM	XLY - Langtry, TX	
2:05 PM	Dp Beaumont, TX	TuFrSu 12:05 PM	UP	1252.2			66			2	11:00 PM	11:02 PM	Del Rio, TX	
3:29 PM	Dp Lake Charles, LA	TuFrSu 1:29 PM	UP				40				11:42 PM	11:42 PM	XPF - Spofford, TX	
5:15 PM	Dp Lafayette, LA	TuFrSu 3:15 PM	UP				75				12:57 AM	12:57 AM	XHT- EE Hondo, TX	
5:41 PM	Dp New Iberia, LA	TuFrSu 3:41 PM	UP	1378.3			17				1:14 AM	1:14 AM	Dunlay siding	
7:03 PM	Dp Schriever, LA	TuFrSu 5:03 PM	UP	1391.5			16				1:30 AM	1:30 AM	Lacoste siding	
9:40 PM	Ar New Orleans, LA	TuFrSu 7:40 PM	UP	1402.1			11	8			1:49 AM	1:49 AM	Maconda siding	
			UP	1406.9			10	1			2:00 AM	2:00 AM	Withers, TX	
			UP	1421.3	I,T,E,W,G		16	34		95	2:50 AM	4:25 AM	San Antonio, TX	
			UP	1428.4	FR		20	2		8	4:47 AM	4:55 AM	XKY - Kirby Yd.	
							39			15	5:49 AM	5:49 AM	XKG- Kingsbury, TX	
							40				6:29 AM	6:29 AM	XFA- Flatonia, TX	
			UP				50	1			7:20 AM	7:20 AM	XEA- Eagle Lake, TX	
							30				7:50 AM	7:50 AM	XRB- Rosenberg, TX	
							26	9			8:25 AM	8:25 AM	XWJ- West Junction, TX	
			UP	1631.6			24	21		60	9:10 AM	10:10 AM	Houston, TX	
			UP	1713.4	e, t		101	2		12	11:53 AM	12:05 PM	Beaumont, TX	
			UP	1774.7			76	6		2	1:27 PM	1:29 PM	Lake Charles, LA	
			UP	1788.3			16	69			2:54 PM	2:54 PM	Iowa Jct.	
			BNSF	1788.3						-54	2:00 PM	2:00 PM	XIJ - Iowa Jct.	
			BNSF	1849.0			68	4		3	3:12 PM	3:15 PM	Lafayette, LA	
			BNSF	1867.0			24				3:39 PM	3:41 PM	New Iberia, LA	
			BNSF	1938.5			81	-1		2	5:01 PM	5:03 PM	Schriever, LA	
			BNSF	1978.6			42	37			6:22 PM	6:22 PM	XLL - Live Oak	
			NOPB	1983.0			8	-2			6:28 PM	6:28 PM	XWB - West Bridge Jct	
			CNC	1988.2			19				6:47 PM	6:47 PM	XEB - East Bridge Jct.	
			AMT	1990.4			5				6:52 PM	6:52 PM	XSU - Southport Jct	
			AMT	1994.1	T,E,FA,I,W,G		19	22		7	7:40 PM		New Orleans, LA	
				Total Pure Run			Total Recovery Minutes	Total Misc. Adjust.	Total Dwell		Total Schedule Time			
				2099			345	-3	299		2740			

Appendix B
Delay Codes

Host-Responsible Delay Codes		
Code	Code Description	Explanation
CTI	Commuter Train Interference	Delays for meeting or following commuter trains
DCS	Signal Delays	Signal failure or All Other signal delays, wayside defect-detector false-alarms, defective road crossing protection, efficiency tests, drawbridge stuck open
DMW	Maintenance of Way	Maintenance of Way delays including holds for track repairs or MW foreman to clear
DSR	Slow Order Delays	Temporary slow orders, except heat or cold orders
DTR	Detour	Delays from detours
FTI	Freight Train Interference	Delays from freight trains
PTI	Passenger Train Interference	Delays for meeting or following All Other passenger trains
RTE	Routing	Routing-dispatching delays including diversions, late track bulletins, etc.

Amtrak-Responsible Delay Codes		
Code	Code Description	Explanation
ADA	Passenger Related	All delays related to disabled passengers, wheelchair lifts, guide dogs, etc.
CAR	Car Failure	Mechanical failure on all types of cars
CCR	Cab Car Failure	Mechanical failure on Cab Cars
CON	Hold for Connection	Holding for connections from All Other trains or buses.
ENG	Locomotive Failure	Mechanical failure on engines.
HLD	Passenger Related	All delays related to passengers, checked-baggage, large groups, etc.
INJ	Injury Delay	Delay due to injured passengers or employees.
ITI	Initial Terminal Delay	Delay at initial terminal due to late arriving inbound trains causing late release of equipment.
OTH	Miscellaneous Delays	Lost-on-run, heavy trains, unable to make normal speed, etc.
SVS	Servicing	All switching and servicing delays
SYS	Crew & System	Delays related to crews including lateness, lone-engineer delays

Third-Party Responsible Delay Codes		
Code	Code Description	Explanation
CUI	Customs	U.S. and Canadian customs delays; Immigration-related delays
DBS	Debris	Debris strikes
MBO	Drawbridge Openings	Movable bridge openings for marine traffic where no bridge failure is involved
NOD	Unused Recovery Time	Wait for departure time
POL	Police-Related	Police/fire department holds on right-of-way or on-board trains
TRS	Trespassers	Trespasser incidents including road crossing accidents, trespasser / animal strikes, vehicle stuck on track ahead, bridge strikes
WTR	Weather-Related	All weather-related delays including floods/washouts, earthquake-related delays, heat or cold orders, slippery rail due to leaves

Appendix C
Relevant Statutory Provisions

49 U.S.C. § 24308(c)

PREFERENCE OVER FREIGHT TRANSPORTATION. Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of carrier and Amtrak on reasonable terms.

49 U.S.C. § 24308(f)

(1) INVESTIGATION OF SUBSTANDARD PERFORMANCE. If the on-time performance of any intercity passenger train averages less than 80 percent for any two consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 fails to meet those standards for 2 consecutive calendar quarters, the Surface Transportation Board (referred to in this section as the ‘Board’) may initiate an investigation or 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 services, the Board shall initiate such an investigation, to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators.

(2) PROBLEMS CAUSE BY HOST RAIL CARRIER. If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.

(3) DAMAGES AND RELIEF. In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as **(A)** the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and **(B)** what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.

(4) USE OF DAMAGES. The Board shall, as it deems appropriate, order the host rail carrier to remit the damages awarded under this subsection to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or

failures to achieve minimum standards were the result of a rail carrier's failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).