



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

July 25, 2008

The Honorable Robert C. Byrd
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 (Division K of Pub. L. 110-161) stipulates that "... the Secretary [of Transportation], in consultation with the Corporation [Amtrak] and the States on the Northeast Corridor, shall establish a common definition of what is determined to be a 'state of good repair' on the Northeast Corridor and report its findings, including definitional areas of disagreement, to the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation."

I am pleased to submit the requested definition and findings, which incorporate the results of the congressionally mandated consultations. I hope that the information contained in these enclosures will assist the Committees in their work.

Identical letters have been sent to the Ranking Member of the Senate Committee on Appropriations, and to the Chairmen and Ranking Members of the House Committee on Appropriations, the House Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation.

Sincerely yours,

A handwritten signature in blue ink that reads "Mary E. Peters".

Mary E. Peters

Enclosures

Definition of a “State of Good Repair” on the Northeast Corridor:

A condition in which the existing physical assets, both individually and as a system, (a) are functioning as designed within their “useful lives,”¹ and (b) are sustained through regular maintenance and replacement programs²; state of good repair represents just one element of a comprehensive capital investment program that also addresses system capacity and performance.³

NOTES

¹ **Test (a):** An asset is considered to be “functioning as designed” when it is performing at a level at least equal to that called for in its as-built or -modified design specification; it is considered to be within its “useful life” when the life cycle cost of maintaining the asset, so that it continues to function as designed, is lower than the cost of replacing it.

² **Test (b):** In addition, assets must be maintained and replaced on a regular schedule designed to mitigate cyclical imbalances in renewal needs. Moreover, if an asset or group of assets has received inadequate maintenance over a long period of time, it may still be functioning as designed but face imminent heavy repair or replacement to overcome a “backlog” of regular maintenance which was not performed on schedule; a railroad system is in a state of good repair only when there is no such backlog of deferred maintenance.

³ **Comprehensive capital investment program:** Achieving a state of good repair is one goal of a capital investment program; it is not sufficient in and of itself to define a comprehensive investment program. A comprehensive capital investment program would consider the full set of system needs – including state of good repair – but also capacity and performance requirements driven by the business and service plans of all users. Such a plan would therefore also consider whether current physical assets are sufficient to meet projected service requirements or whether any such assets are excess; defining state of good repair itself is independent of such an assessment. Finally, capital investment plans, along with the business/service plans that underpin them, should be updated on a regular basis for changes in user needs, market demand, asset condition, technology and other considerations.

Findings: State of Good Repair on the Northeast Corridor

Background

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 (Division K of Public Law 110-161) stipulates that "... not later than 180 days after the enactment of this Act, the Secretary [of Transportation], in consultation with the Corporation [Amtrak] and the States on the Northeast Corridor, shall establish a common definition of what is determined to be a 'state of good repair' on the Northeast Corridor and report its findings, including definitional areas of disagreement, to the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation." By delegation of the Secretary's responsibilities under this section of the Act, the Federal Railroad Administrator (the Administrator) is issuing this report which includes a common definition and findings including areas of definitional disagreement.

Consultation

As required by the statute, the Administrator consulted with all the States on the Northeast Corridor (NEC) and the District of Columbia via a letter sent to their Secretaries of Transportation (or equivalent officials), the National Railroad Passenger Corporation (Amtrak), and the Coalition of Northeastern Governors (CONEG) on April 2, 2008. The affected States, the District of Columbia, Amtrak, and CONEG were invited to submit their comments via an electronic docket (FRA-2008-0038) on [regulations.gov](http://www.regulations.gov) created for the sole purpose of receiving those comments. Six States (Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania), the District of Columbia, Amtrak and CONEG all submitted comments on this proposed rule via the docket. The Administrator considered all of the comments received in the docket in drafting the definition. The following sections synthesize the areas of definitional agreement and disagreement that are contained in the docket. The entire docket may be viewed at: <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=FRA-2008-0038>

Areas of Definitional Agreement

The FRA's definition reflects most of the comments submitted by the States, CONEG, and Amtrak as outlined below:

Neutral on ownership – Several respondents indicated that any definition should apply to any Northeast Corridor infrastructure regardless of ownership. The FRA definition is a generic one that could be used on any segment of the Northeast Corridor – or other infrastructure for that matter – regardless of whether the ownership is by Amtrak or another party.

Include design life – Several respondents were concerned that due to deferred maintenance, assets may be "functioning as designed" but still be overdue for replacement. FRA responded to these concerns by stating that to be in a state of good repair, assets must not only be

functioning as designed but also be within their useful lives. Furthermore, the definition requires that the assets be continually protected against future maintenance deferrals by means of regular maintenance and replacement programs.

Apply to a comprehensive set of assets – Several respondents to the docket recommended that the definition apply to a comprehensive set of assets including all the fixed infrastructure necessary for train operations on the Northeast Corridor. FRA agreed with these respondents; therefore, the definition states that the NEC railroad is only in a state of good repair when all of its existing assets individually and as a system meet the definition.

Functioning as designed – Several respondents to the docket recommended that a state of good repair require not just that assets be within their useful lives, but also that they be functioning as designed as a failure would adversely impact reliability. The phrase “functioning as designed” was added to the definition.

Maintain through regular maintenance and replacement programs – Several respondents to the docket recommended that FRA include in the definition that a state of good repair must be maintained through a normalized program to replace or renew assets before the end of their useful lives. Endorsing that concept, the FRA included wording that a state of good repair must be sustained through regular maintenance and replacement programs. If such regular programs are not in place and continually implemented, then a state of good repair cannot exist because deferred maintenance would be accumulating.

Areas of Definitional Disagreement

The FRA’s definition takes into account the views generally held by the docket respondents, with the exception of the following major points of definitional disagreement:

Necessary to support the level of service established with respect to each user (included as part of one of the definitions provided by the FRA to stimulate discussion). While some respondents agreed that this clause should be part of a state of good repair definition, others indicated that the concept blurs the distinction between projects directed toward state of good repair and projects directed toward capacity improvement. FRA agreed with this latter position, and decided against including it in the final definition because portions and components of the Northeast Corridor, especially during peak hours, are undergoing use at a rate higher than their design capacities. As mentioned in Note 3 to the FRA definition, SOGR-related projects would be but one element of a capital plan which would include projects to improve capacity so as to meet the needs of all users. However, in FRA’s view, while projects that increase capacity or improve service quality may properly form part of a comprehensive capital plan, they do not fall within the definition of state of good repair.

Inclusion of rolling stock – One submission to the docket recommended inclusion of Amtrak’s rolling stock as “infrastructure” in the definition. While not explicitly excluding rolling stock, FRA’s definition adopts as its focal point the fixed infrastructure. FRA believes that this focus properly responds to the intent of Congress and to the greater need for definitional precision with reference to the fixed infrastructure of the NEC, which is shared by multiple users, than to rolling stock, which generally appertains to individual users. In a larger conceptual sense, however, the principles encompassed in the FRA definition—functioning as designed within useful lives, regularly maintained and replaced, and addressed within a context of comprehensive business and capital planning—are applicable to all forms of NEC assets, moving as well as fixed.

Current use and engineering standards – Several respondents to the docket recommended that the definition include the statement that, to be in a state of good repair, assets should be replaced with those that meet current use requirements, up-to-date engineering standards, and new regulatory requirements. FRA decided not to include such a statement because it could potentially broaden the definition of state of good repair to include investments which are actually “betterments” to the infrastructure.⁴ While such betterments are certainly important, often desirable, and likely to be included in any comprehensive capital plan, they do not constitute state of good repair projects. For example, in a comprehensive capital plan, a project to rehabilitate a currently-used station might logically include both replacement of a hopelessly deteriorated roof and accessibility improvements for compliance with the Americans with Disabilities Act. Although both types of improvements may be absolutely necessary for system integrity and/or legal reasons, and although construction efficiency and cost factors might dictate that both projects be undertaken simultaneously, only the new roof would qualify as a “state of good repair” investment under the FRA definition.

⁴ In practice, there will be many cases in which outmoded infrastructure components would not be available for replacement in kind, and the most practical and/or least-cost option would be to replace such components with components that use new, improved technology; in such cases—depending, of course, on their specifics—the updated component might potentially be regarded as a state of good repair investment.