BNSF On-Time Performance Incentives: Inaccurate Invoices and Lack of Amtrak Management Review Lead to Overpayments

Report No. 407-2003

September 24, 2010

Audit Report Issued By:

NATIONAL RAILROAD PASSENGER CORPORATION
OFFICE OF INSPECTOR GENERAL
10 G STREET, N.E.
WASHINGTON, DC 20002

Memo

Date: September 24, 2010

To: William Crosbie, Chief Operating Officer

From: David R. Warren, AIG, Audits

Department: Office of Inspector General

Subject: BNSF On-Time Performance

Cc: Richard Phelps, VP, Transportation
Jessica Scritchfield, Internal Controls Officer

Enclosed is our Final report on our audit of the Burlington Northern Santa Fe Railway Company (BNSF) on-time performance (OTP) bills. Our audit objective was to determine whether BNSF complied with the Agreement, Appendix V, which provides the basis for performance payments and to evaluate the adequacy of Amtrak management's oversight and controls of monthly OTP invoices.

We appreciate the courtesies and cooperation of Amtrak representatives during this audit. If you have any questions, you may contact me at 202-906-4742 or Dan Krueger, Senior Director, at 312-880-5303.

David R. Warren,
Assistant Inspector General for Audits

Enclosure

EXECUTIVE SUMMARY

WHY WE DID THIS AUDIT

This audit was conducted:

- To determine whether BNSF complied with the Agreement, Appendix V, which provides the basis for "performance payments and penalties".
- To evaluate the adequacy of Amtrak management's oversight and controls of monthly OTP invoices.

Burlington Northern Santa Fe Railway Company (BNSF) billed Amtrak $11,441,460 for our seven (7) month audit period from October 2001 through April 2002 for on-time performance (OTP) incentives. Amtrak pays performance payments to freight (host railroads), such as BNSF, for operating passenger trains on-time more than 80% of the time during the month.

Amtrak also pays General Administration costs, which includes salaries and benefits for BNSF employees who prepare the monthly billing. Since Amtrak is paying for the billing preparation services, it is reasonable to expect the billings to be accurate and complete.

Amtrak overpaid BNSF $1,055,662 for On-Time Performance incentives

We found that Amtrak overpaid BNSF $1,055,662 for OTP incentives. This occurred because BNSF did not comply with Appendix V of the operating agreement. Inaccurate claims for tolerances accounted for nearly one-half of all exceptions identified. Incorrect run times accounted for the remaining exceptions. In prior BNSF audits, the OIG found that BNSF consistently over billed Amtrak for OTP incentives. This OTP overpayment pattern needs to be addressed by management.

Amtrak's Transportation Operations Management group (Management) did not have an OTP calculation process in October 2001 through April 2002. Also, Management relied on and paid BNSF employees to calculate the OTP incentives and prepare the bill. Consequently, Management did not perform a complete and thorough review to verify the accuracy of BNSF's monthly billings prior to approving them for payment. In our August 2008 report, we advised Amtrak that invoices from host railroads were not thoroughly reviewed prior to payment. Specifically, we reported that management controls were inadequate and ineffective and host railroads had consistently over billed Amtrak. In March 2010, we issued another report citing overbilling by another host railroad, which pointed out that Management had not yet taken steps to improve its billing review process and controls. In response to that report, Management again agreed to seek additional resources and establish a process to thoroughly review bills before making payments and provided us with an action plan in April 2010 with milestone dates. According to the action plan, Management is expected to add resources, implement controls, and assume responsibility for the billing review process no later than December 31, 2010.

Every month that Management delays implementing our prior audit report recommendations, Amtrak loses money by overpaying host railroads. Based on our audit results and on-going audits of host railroads over the last 10 years, we identified over $50 million in overpayments and potential recoveries. This negatively impacts Amtrak's cash flow. These monies could have been used in other Amtrak programs to help meet its goals and reduce operating expenses and Federal subsidies.

We also found that Management authorized relief requests and paid BNSF almost $240,000 for delays that were not covered by the operating agreement during the audit period. The agreement states, "There will be no other allowable delays or tolerances in determining whether a train is on-time or late…" The $240,000 represents a small portion (a 7-month period) of funds that could have been put to better use by Amtrak to meet its operational needs and is in addition to the over $1 million in overpayments Amtrak made in the same time period. Funds lost to relief letters cannot be recovered because Amtrak managers authorized additional relief beyond the terms of the operating agreement.

Continuing to allow overpayments and authorizing additional relief for delays through relief letters is undermining Amtrak's goal of implementing a simplified and automated OTP billing process. Because BNSF is receiving value beyond the terms of the agreement without any corresponding benefit to Amtrak it has little incentive to agree to change the OTP billing process. It would be in the best interest of Amtrak to prevent overpayments before paying bills and to eliminate all relief letters in order to facilitate negotiations with BNSF to implement a simplified and automated OTP billing process.

We are recommending that, 1) Amtrak recover the $1,055,662 it overpaid for OTP incentives, 2) develop and implement a criterion based process for consistently reviewing and approving relief requests, and 3) negotiate with BNSF to implement a simplified and automated OTP billing process.

In commenting on a draft of this report, Management agreed with all of the findings. Management also agreed with draft recommendations 1 and 3 and proposed an alternative to draft recommendation 2. The response is included in its entirety in this report's Appendix. In response to recommendation 1, Management agreed to seek to recover the full amount identified in the report and set a target date of December 31, 2010 to negotiate a settlement with BNSF. In response to draft recommendation 3, Management agreed to implement Delay Avoidance Incentives ("DAI") on BNSF and set a target date for completion, concurrent with the Amtrak-BNSF contract renegotiation of December 31, 2011.

In response to draft recommendation 2, which stated, "Eliminate the practice of authorizing relief requests that allow delays or tolerances that are not covered by the operating agreement (Appendix V.A.1)," Management agreed with the finding but offered an alternative recommendation to this issue. Management proposed an alternative that would allow them flexibility to approve relief requests made by host railroads that it deems to be appropriate but not specifically covered in the agreement. Management is in the process of developing a process for considering any future requests that incorporates criteria for decision making and independent management review of each request.

We believe that there is merit to Management's proposed recommendation because the practice of reviewing and approving or rejecting relief requests has been in place for over 10 years. Therefore, we believe it is reasonable and appropriate that a criteria based process be developed for consistently reviewing and approving or rejecting relief requests. Such an approach recognizes that although such requests, while not part of the agreement, do arise under certain unusual circumstances and Management's practice has been to consider the requests. Thus, eliminating or trying to define all occasions where requests would be considered does not appear practical. Further, we believe Management's proposed action meets the intent of our recommendation -- that only appropriately justified relief requests should be paid -- is met by the proposed review process. Therefore, our final recommendation 2 in this report reflects our consideration of management's comments. We discussed this final recommendation with Management officials and they agreed. We will follow up on this issue once Management's actions are complete.

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BACKGROUND

The Rail Passenger Service Act of 1970 created the National Railroad Passenger Corporation (NRPC), commonly known as Amtrak, to operate a national rail passenger system. Amtrak was created with the understanding that the freight (host railroads), such as BNSF, would provide certain services, equipment, and facilities to Amtrak in order for Amtrak to provide national rail passenger service. Each month host railroads bill Amtrak for all costs incurred for Amtrak trains operating over its tracks. Additionally, Amtrak elected to include incentives in the agreements with the host railroads to entice them to operate passenger trains on-time; i.e., within the mutually agreed upon running times between established checkpoints[1]. Generally, performance payments are calculated using provisions described in Appendix V of railroad operating agreements.

BNSF summarizes and provides detailed schedules of its calculations for each train's operating performance monthly. The BNSF schedules show the total agreed upon operating minutes between checkpoints (run time), tolerances claimed, and whether the train was on-time or late for each trip during the month. The on-time percentage is determined by dividing the number of times the train arrived on-time at the checkpoint by the number of trips operated to the checkpoint during the month.

Management reviews the BNSF monthly bills. When they disagree with any portion of the bill, they take exception to it and reduce the payment to BNSF by the amount of the exception.

RESULTS OF AUDIT

Finding 1: Amtrak overpaid $1,055,662 in OTP incentives

Our audit of the monthly OTP bills and schedules disclosed that BNSF inaccurately billed Amtrak for on-time performance payments from October 2001 through April 2002. The inaccurate billing occurred because BNSF did not comply with Appendix V of the agreement.

[1] A checkpoint is a term used in the agreement to identify the endpoint of a trip or partial segment of a trip for purposes of calculating OTP incentives. This is usually a specific location such as a station or a cross-over point between two tracks on the same railroad or between different railroads. For example, there may be many checkpoints on a long distance train route. A route from Oklahoma City to Ft. Worth, TX has only one checkpoint, the endpoint. A route such as the Southwest Chief has more than two checkpoints on the BNSF railroad.

Further, management did not perform a complete and thorough review[2] to verify the OTP claims made by BNSF. As a result, Amtrak overpaid BNSF $1,055,662 for OTP incentives.

Performance Payments

The agreement between Amtrak and BNSF includes an Article V, Section 5.1 (c), which gives BNSF the right to additional payments for schedule adherence. On-time performance incentive payments are set forth in Appendix V (Performance Payments and Penalties). Appendix V states, "Performance payments will be paid for a train at each performance checkpoint where the train attains an on-time performance greater than 80% during a month."

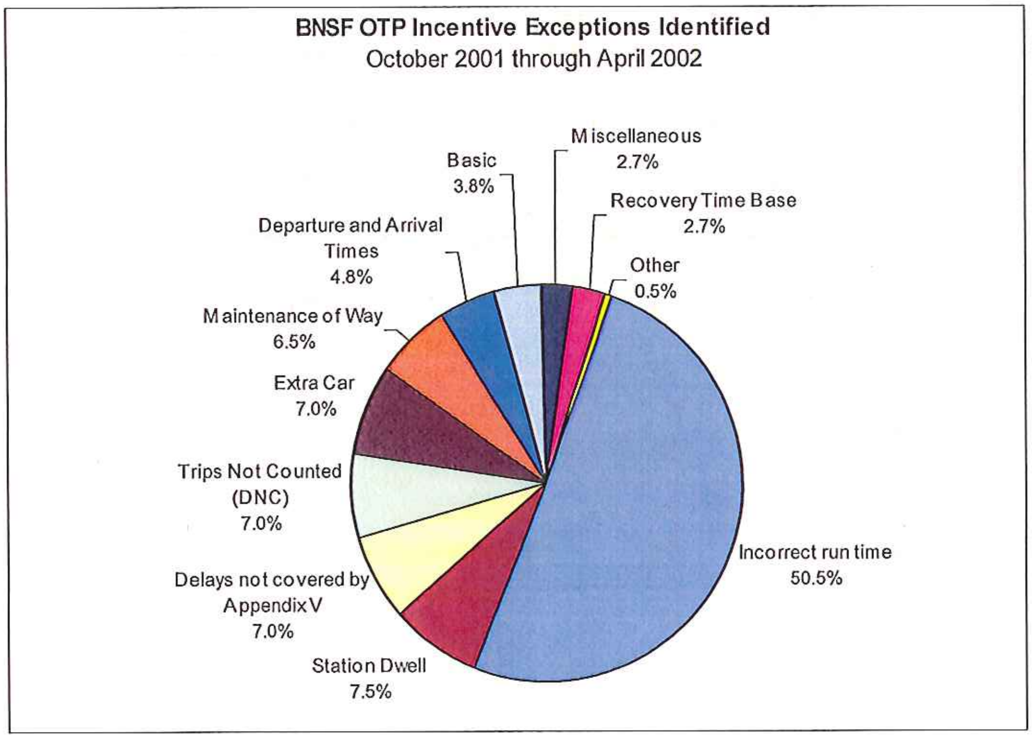
Appendix V also sets forth the tolerances that are to be used to determine the on-time percentage. The following tolerances are allowed by the agreement when calculating OTP incentives.

Tolerances	Description
Basic	Typically 5-10 minutes additional tolerance.
Station Dwell	The net amount of time by which the actual station dwell times exceed the allowed station dwell time, excluding early arrival.
Extra Car	Tolerance allowed when the number and weight of the cars exceed the locomotive horse power, which prevents the train from operating at maximum passenger train speeds.
Miscellaneous	Tolerance for specific conditions set forth in Appendix V.
Recovery Time Base	The amount of time that specific delays exceed the recovery time base minutes specified in the applicable amendment agreement change. For example; equipment failure, efficiency testing, drawbridge opening and sick or disruptive passengers.
Trips Not Counted (DNC)	"Do Not Count" tolerances are allowed to identify situations when neither BNSF nor Amtrak is responsible for a delay, such as severe weather. Thus, the train will not be counted at such checkpoint as late or as operated in calculating the train's monthly on-time performance.
Maintenance of Way (Track work)	Up to 30 minutes additional tolerance at a check point in return for a reduction in the trip performance rates.

We found that BNSF did not comply with the agreement provisions and submitted inaccurate OTP billings to Amtrak. Inaccurate claims for tolerances accounted for nearly half of all

[2] Although Amtrak's Transportation Operations Management performed a review, they agreed that the review was not a complete and thorough review; i.e., the review was not detailed enough to detect or prevent erroneous OTP claims made by BNSF.

exceptions identified. Incorrect run times accounted for remaining exceptions. The following chart provides details[3] of all exceptions:



For example, when calculating the allowed station dwell tolerance for a segment between checkpoints, we took the net amount of time by which the actual station dwell times exceeded the allowed station dwell time and excluded the amount of time the train arrived early per Appendix V of the agreement. We found instances where BNSF failed to take into account the early arrival at stations. As a result, the railroad claimed additional minutes that were not allowed by the agreement.

Also, when reviewing station dwell times, we used the following procedure; if Amtrak held the train at a station longer than allowed per Table 2 of Appendix V for boarding a large group of passengers, then the host railroad should not be penalized or lose its incentive. This is because the delay was caused by Amtrak and was not attributable to the railroad. The amount of time exceeding the time allotted in Table 2 was allowed as an additional tolerance. On the other hand, if BNSF held the train at a station due to a signal problem or freight train interference, then BNSF was responsible for the delay and no additional tolerance was allowed.

[3] In most situations there was only one tolerance accounting for the inaccurate claim. If more than one tolerance accounted for an inaccurate claim we categorized it based upon the tolerance with the greater number of minutes that affected the status of the train.

Run Time Variance

In the remaining exceptions, BNSF used incorrect run times. Specifically, BNSF claimed an additional five minutes of run time for the San Joaquin trains. While performing our review, we used the amendment agreement change (AAC) No. 034, effective July 1, 2001, that was applicable to the period being audited. This AAC did not include the additional five minutes claimed by BNSF.

The run time variance for the San Joaquin trains was identified in the previous OTP audit for the period from August 1998 through September 2001. BNSF agreed that they used the incorrect run times for the San Joaquin trains and reimbursed Amtrak for exceptions identified in that audit. The three examples in the following table illustrate the direct dollar impact the five minute run time variance had on the amount billed.

Run Time Variance Examples

Month	Train	Run Time per AAC-034	Run Time per BNSF Bill	Exception Amount
Oct 01	714	306	311	$17,795
Nov 01	712	306	311	$29,629
Jan 02	702	250	255	$25,998

In April 2005, BNSF representatives indicated that they believed the run time listed on the AAC was incorrect and that some of the trains had more time included in the run times than indicated by the AAC. Since then, both parties have researched the matter. BNSF has not provided any justification or reasonable explanation as to why it should be entitled to the extra 5 minutes. Additionally, although we have contacted Amtrak's host railroad negotiations and operations groups on several occasions, neither have produced documentation to justify and support the extra 5 minutes claimed by BNSF.

BNSF Billing Management

As one of the billing items, Amtrak pays General Administration costs, which includes salaries and benefits for BNSF employees who prepare the monthly billing. Since Amtrak is paying for the billing preparation services, it is reasonable to expect the billings to be accurate and complete. However, BNSF has continued to make errors in its monthly billings. Many of the errors are the same type found in previous OIG audits and consistently result in overbilling Amtrak for OTP incentives.

Prior audit reports in 2000 and 2003 identified nearly $3 million in overbilling by BNSF[4]. These audit results indicate that BNSF cannot be relied upon to institute adequate procedures and controls to prevent these errors.

[4] Our audit report 00-403 issued on March 31, 2000 identified $1,815,467 in OTP incentive overpayments for the period September 1996 through July 1998. Additionally, audit report 404-2003 issued on December 4, 2003 identified $1,180,727 in OTP incentive overpayments for the period August 1998 through September 2001.

Railroad monthly billings are not thoroughly reviewed before payment

Management did not have an OTP calculation process in October 2001 through April 2002. Consequently, Management did not perform a complete and thorough review to verify the accuracy of BNSF's monthly billings prior to approving them for payment. Management needs to detect inaccurate BNSF billing errors and deny payment. If Management had performed a thorough and complete review before approving invoices for payment, these overbillings, or a majority of them, would have been detected and the overpayment to BNSF would have been prevented. Preventing overpayments would have increased Amtrak's cash flow by $1,055,662 for the seven months audited.

In August 2008, we issued our report on Host Railroad Administration and Operations Management Controls (Report No. 401-2008). We advised Management that invoices from host railroads were not thoroughly reviewed prior to payment. We reported that management controls were inadequate and ineffective and host railroads had consistently over billed Amtrak. We also reported that Management is responsible for establishing adequate systems of internal controls over its operations to provide reasonable assurance that Amtrak's assets are protected.

In another host railroad, not BNSF, audit report 406-2005, issued March 30, 2010, we found the same situation. In its response to audit report 406-2005, Management agreed to thoroughly review bills before making payments and provided us with an action plan in April 2010 with a milestone date of December 31, 2010 to develop and implement an OTP calculation and billing review process. Since Management has not yet implemented controls and assumed responsibility for the process, we will continue to follow up on this process and monitor the milestone dates. Every month that Amtrak delays implementing our prior audit report recommendations; Amtrak loses the use or money when overpaying host railroads for OTP incentives.

Based on our audit results and on-going audits of host railroads over the last 10 years, we identified over $50 million in overpayments and potential recoveries[5]. This negatively impacts Amtrak's cash flow. In this situation, Amtrak's cash flow was affected by more than $1 million for the seven month audit period. This amount does not include interest for the period. These monies and interest could have been used in other Amtrak programs to meet its goals and reduce operating expenses and Federal subsidies.

Finding 2: Management authorized relief requests and paid BNSF for OTP claims not covered by the agreement

Appendix V.A.1 of the agreement between Amtrak and BNSF lists specific delays and tolerances that are allowed and used in the calculation of OTP incentives. It also states, "There will be no other allowable delays or tolerances in determining whether a train is on-time or late except as

[5] The $1,055,662 in this audit is included in the $50 million. Further the $50 million is subject to upward or downward adjustments based on additional audit work.

provided in Item 2 below[6]." However, BNSF has routinely submitted claims to Management for additional delay minutes or tolerances not covered by the agreement provisions when it has exhausted all of the "recovery minutes" or extra minutes built into the passenger train's national timetable or agreement scheduled run time. In commenting on a draft of this report, Management indicated that it did not have a consistent process for reviewing claims that were submitted and would need to develop one.

Recovery minutes are minutes over and above the actual time it takes for the train to be operated at track speeds under normal conditions including acceleration and deceleration when arriving and departing stations. They are intended to compensate for daily fluctuations and operational delays encountered on the route. Passenger train meetings and station dwell times are added to the schedule as separate and known delays in addition to recovery minutes.

In response to BNSF claims for additional delay minutes or tolerances not covered by the agreement, Amtrak's Director of Contract Administration evaluates and authorizes or denies such claims by issuing a relief request letter each month. Each BNSF claim for additional delay minutes or tolerances not covered by the agreement provisions which is authorized by Management can result in additional OTP incentive costs to Amtrak. Such claims include the following:

- Freight Train Derailment – Appendix V A. (3b) indicates that the first time a passenger train encounters an impassable track condition, such as a freight train derailment, the passenger train will be considered late. During the audit period BNSF submitted and Management authorized a relief request which allowed a Do-Not-Count tolerance for a derailment situation. As a result the passenger train status was changed from late to a Do-Not-Count status which cost Amtrak $15,111 in OTP incentives.

- Manual Operation of Switches - BNSF requested relief for delays due to the manual operation of switches on 11 occasions even though there is no agreement provision to allow relief for these delays. Also, the National timetable schedule, when created, includes additional time (recovery minutes) to compensate for daily fluctuations and all operational delays encountered on the route. The relief authorized by Management cost Amtrak $35,469 in OTP incentives in these situations.

- BNSF Infrastructure (Signal) Problems - BNSF documentation shows the root cause of its signal damage was from a winter storm that occurred 4 days earlier. The agreement allows a Do-Not-Count tolerance for extraordinary weather conditions, but not for BNSF signal problems. Ironically, Amtrak's passenger train operated "on-time" over the same tracks on all three days after the storm. However, on the fourth day after the storm the

[6] Item 2 prescribes the procedures to facilitate programmed maintenance of way (track work). BNSF can receive 5, 10, 15, 20, 25, or 30 minutes of additional tolerance at a checkpoint in return for a reduction in the OTP incentive rate. The OTP incentive rate is reduced by 10, 20, 25, 30, 40, and 50 percent respectively. Further, Item 2 states, "BNSF will inform Amtrak's Contract Management Department in writing in advance specifying the additional tolerance requested and the period it is to be effective."

train was seven minutes late, which would have prevented BNSF from receiving OTP incentives. BNSF requested and Management authorized Do-Not-Count due to signal damage caused by a storm. As a result the passenger train status was changed from late to a Do-Not-Count status which cost Amtrak $7,748 in OTP incentives.

We calculated that Management authorized nearly $240,000 for relief request claims not covered by the agreement for our seven month audit period. None of these claims included maintenance of way (track work). Our review of the relief letters did find that some claims were for situations that were covered by the agreement and we did not dispute those claims nor include the dollar amount in the $240,000. Although the operating agreement does not have provisions covering the relief letter process, we are not recommending that Management recoup the costs for the additional delays because they were authorized by Amtrak's Director of Contract Administration. Accordingly, the $240,000 is not included in finding 1 of this report. However, the $240,000 are funds that could have been put to better use by Amtrak to help meet its goals and reduce operating expenses and Federal subsidies.

We tested the first six months of 2006 to determine if this condition was still occurring. We found that Management authorized BNSF claims not covered by the agreement totaling $151,000 for the six month period in 2006. The amounts authorized each month during the first six months of 2006 ranged anywhere from $2,000 to $75,000 for relief requests not covered by the agreement. As of July 2010, Management continued to authorize relief requests. We know this because we receive an electronic copy of the relief letters from Management each month.

Finding 3: Overpayments and relief letters undermine Delay Avoidance Incentive

Amtrak has a stated goal of implementing a simplified and automated OTP billing process, referred to as a Delay Avoidance Incentive (DAI) process with host railroads. Effective February 1, 2006, a new simplified and automated OTP billing process, DAI, was implemented with another host railroad. Amtrak also negotiated a reduction in the General Administration costs with the other host railroad because Amtrak does not need the railroad to prepare the OTP report due to the new automated billing process.

The new DAI process is more timely and efficient. The DAI OTP report is based on predefined delay codes which determine responsibilities for the delays. The process change is that Amtrak prepares and sends the DAI OTP report to notify the host railroad of the amount due for each month, instead of the host railroad preparing an OTP report and submitting it with the monthly billing. If the host railroad disagrees with an item on the DAI report, it is given an opportunity to provide information to correct the situation.

In a 2008 audit report, we recommended Management negotiate with all host railroads to adopt the automated simplified DAI process[7]. Management agreed and is in the process of

[7] See finding No. 2 of the Host Railroad Administration and Operations Management Controls, (Report No. 401-2008), issued on August 21, 2008.

implementing this recommendation, however; it has stated that some host railroads are reluctant to agree to the new DAI process. Amtrak has had discussions with BNSF regarding the DAI process. The most recent discussion was June 11, 2010. Specifically, in discussions with Amtrak management, BNSF expressed concerns about whether or not they will receive the same amount of incentive earnings under the new automated billing process. According to the Host Railroad negotiations group, they plan to have extensive discussions with BNSF regarding DAI beginning in early 2011.

Continuing to allow overpayments and authorizing additional relief for delays through relief letters is undermining Amtrak's goal of implementing a simplified and automated OTP billing process. Because BNSF is receiving value beyond the terms of the agreement without any corresponding benefit to Amtrak, it has little incentive to agree to change. It would be in the best interest of Amtrak to prevent overpayments before paying bills and to eliminate all relief letters in order to facilitate negotiations with BNSF to implement a DAI process.

RECOMMENDATIONS

We recommend that Amtrak

1. Recover the $1,055,662 Amtrak overpaid BNSF for OTP incentives.

2. Develop and implement a criterion based process for consistently reviewing and approving relief requests.

3. Negotiate with BNSF to implement a DAI process.

MANAGEMENT'S COMMENTS AND OIG RESPONSE

In commenting on a draft of this report, Management agreed with all of the findings. Management also agreed with draft recommendations 1 and 3 and proposed an alternative to draft recommendation 2. The response is included in its entirety in this report's Appendix. In response to recommendation 1, Management agreed to seek to recover the full amount identified in the report and set a target date of December 31, 2010 to negotiate a settlement with BNSF. In response to draft recommendation 3, Management agreed to implement Delay Avoidance Incentives ("DAI") on BNSF and set a target date for completion, concurrent with the Amtrak-BNSF contract renegotiation of December 31, 2011.

In response to draft recommendation 2, which stated, "Eliminate the practice of authorizing relief requests that allow delays or tolerances that are not covered by the operating agreement (Appendix V.A.1)," Management agreed with the finding but offered an alternative recommendation to this issue. Management proposed an alternative that would allow them flexibility to approve relief requests made by host railroads that it deems to be appropriate but not specifically covered in the agreement. Management is in the process of developing a process for considering any future requests that incorporates criteria for decision making and independent management review of each request.

We believe that there is merit to Management's proposed recommendation because the practice of reviewing and approving or rejecting relief requests has been in place for over 10 years. Therefore, we believe it is reasonable and appropriate that a criteria based process be developed for consistently reviewing and approving or rejecting relief requests. Such an approach recognizes that although such requests, while not part of the agreement, do arise under certain unusual circumstances and Management's practice has been to consider the requests. Thus, eliminating or trying to define all occasions where requests would be considered does not appear practical. Further, we believe Management's proposed action meets the intent of our recommendation -- that only appropriately justified relief requests should be paid -- is met by the proposed review process. Therefore, our final recommendation 2 in this report reflects our consideration of management's comments. We discussed this final recommendation with Management officials and they agreed. We will follow up on this issue once Management's actions are complete.

Audit Staff:

Satish Parikh
Raymond Zhang
Richard Bohne
Dan Krueger

Exhibit
Scope and Methodology

We conducted this performance audit in accordance with the generally accepted government auditing standards (GAGAS). These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We completed this review in November 2007. We used the following scope and methodology in conducting this audit.

Scope and Methodology

BNSF billed \$11,441,460 and Amtrak paid \$11,451,976 in OTP incentives for the seven-month audit period of October 1, 2001 through April 30, 2002. The paid amount includes Management adjustments of \$10,516 for the audit period. Our review of BNSF claims authorized through the monthly relief request process was expanded to include the months of January through June 2006.

The operating agreement applicable during the audit period was effective September 1, 1996. The agreement was further amended through Amendment Agreement Changes. These were reviewed and used as the basis to determine the accuracy and validity of BNSF monthly billings for on-time performance incentives and to verify the compliance of BNSF claims with Appendix V of the agreement.

The right to perform an audit of BNSF bills is included in Article V, Section 5.2(b) of the agreement. This section allows Amtrak to audit and evaluate any payment of both financial and operational issues. Both parties are required in Article V, Section 5.2(c) to maintain supporting accounting, operating, and mechanical department records that are to be available for inspection and copying.

The audit included the following methods for gathering, analyzing, and summarizing data:

- Reviewing the operating agreement and its amendments, focusing on sections that relate to the billing of OTP regarding train performance;
- Obtaining Amtrak Delay Reports (ADRs/CDRs) and Train Operations Support System (TOSS) data to enter trip data for analysis of OTP incentives claimed;
- Reviewing the detailed support of OTP billings submitted to Amtrak monthly by BNSF;
- Comparing tolerances claimed by BNSF with all available support documentation;

- Calculating over and/or under-billed amounts, as a result of any claim inaccuracies by BNSF; and

- Communicating with host railroad groups for interpretation of agreement provisions.

APPENDIX - MANAGEMENT'S RESPONSE

NATIONAL RAILROAD PASSENGER CORPORATION

60 Massachusetts Avenue, NE, Washington DC 20002
tel 202 906.3400 fax 202 906.2023

Memo

AMTRAK

Date September 17, 2010

To Dominic Pinto

From William Crosbie

Department Operations

Subject BNSF OTP Audit Rpt. 407-2003

cc R. Phelps

J. Scritchfield

Message This letter is management's response to Office of Inspector General ("OIG") audit 407-2003, "BNSF On-Time Performance Incentives" dated August 20, 2010.

The draft audit report provides useful information on which Amtrak management can take action to strengthen the review of host railroad billing practices. Since the OIG's previous report on on-time performance incentives in March 2010, management has hired an outside consultant to assist management in documenting policies and procedures, creating checklists, and implementing additional management reviews of work performed in order to thoroughly review host railroad invoices prior to payment. Additionally, we anticipate hiring additional resources to facilitate the timely review of invoices.

Management agrees that a thorough review to verify on-time performance incentives billed by host railroads should be performed prior to the approval and payment of invoices and expects to have a process in place by December 31, 2010.

Finding 1: Amtrak overpaid $1,055,662 in OTP incentives

Management agrees with this finding and recommendation and will seek to recover the full amount identified in the report.

Management's lead to negotiate for recovery of these funds is Byl Herrmann, Managing Deputy General Counsel. Target date to complete negotiations is December 31, 2010.

Finding 2: Management authorized relief requests and paid BNSF for OTP claims not covered by the agreement

Management agrees with this finding but offers an alternative recommendation to address the issue raised by the OIG. The alternative would allow management the flexibility to approve relief requests made by host railroads that it deems to be appropriate but not specifically covered in the agreement. Management is in the process of developing a process for considering any future requests that incorporates criteria for decision making and an independent management review of each request. Management's lead to draft and implement this process is Lois Cunning, Senior Director Operations Management. Target date is December 31, 2010. Amtrak will share this process with the OIG when it is developed.

Finding 3: Overpayments and relief letters undermine Delay Avoidance Incentives

Management agrees with the finding and recommendation to implement Delay Avoidance Incentives ("DAI") on BNSF. Management's lead for negotiating with BNSF to adopt DAI is Paul Vilter, AVP Host Railroads. Target date for completion, concurrent with the Amtrak-BNSF contract renegotiation, is December 31, 2011.

Management agrees that the implementation of a simplified and automated on-time performance billing process such as DAI is necessary and critical to improving the payment of on-time performance incentives. Management has had conversations with host railroads regarding the implementation of DAI and feels the best opportunity to implement such a process exists when operating agreements are up for negotiation, as is the case with BNSF. Management does not believe that overpayments and granting of selected relief requests will undermine these negotiations with host railroads.

Barriers to reaching agreement on DAI with BNSF or any host are based on a variety of factors, including when operating agreements open for renegotiation; host reluctance to change their internal management and reporting structures to a new incentive system; and host fear of change, among other issues. Amtrak management will continue to work to convert BNSF and additional host railroads to DAI, in the context of the objections and opportunities that exist with each individual host.