

STATE-SUPPORTED INTERCITY PASSENGER RAIL SERVICE - CURRENT PARAMETERS

Allison I. Fultz

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In the beginning -



- Sec. 403(b), Rail Passenger Service Act of 1970
 - State to contribute if Amtrak service requested
- 1997, Amtrak Reform & Accountability Act repeals 403(b)
 - Amtrak/States individually negotiate contracts for service

PRIIA



- Sec. 209, Passenger Rail Investment and Improvement Act of 2008
 - State contribution mandatory – cost allocation formula effective Oct 2013
 - Routes 750 miles or shorter
 - Contracting flexibility – menu of services
- States as **financial** sponsors – increase competition

RSIA



- Sec. 103, Rail Safety Improvement Act of 2008 (49 USC 20156)
 - Requires “**railroad carrier**” that **provides** intercity rail passenger or commuter rail passenger transportation to develop and implement a railroad risk reduction safety plan
 - NCDOT equipment maintenance third-party contract - 2008

RSIA – FRA Rulemaking

- NPRM – 77 Fed.Reg. 55,371 (Sept. 7, 2012):
 - Expands definition of “railroad” – “person or organization that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.
 - Identifies only Amtrak and Alaska Railroad as intercity passenger railroads

RSIA – FRA Rulemaking

- Final Rule – 81Fed.Reg. 53,849 (Aug. 12, 2016):
 - Introduces requirement to consult with “directly affected employees,” including those of contractors
- Petition for reconsideration – FRA decision pending



RSIA – FRA Guidance

- Aug. 11, 2016 – FRA sent to state sponsors
 - Treats sponsors differently – Amtrak as sole service provider vs. mix of contractors
- Petition for Review, D.C. Circuit No. 16-1352 (consol. 16-1355) – briefing ongoing

Current Context

- Final Rule and Guidance not consistent; further at odds with PRIIA Sec. 209 mandate
- FRA position casts states providing funding and planning support in role of operator



Current Context

Amtrak as sole contractor: continuation of pre-existing relationship, business as usual – to some extent

- Turnkey operation
- FRA looks to Amtrak for safety compliance
- Costs allocated under PRIIA Sec 209

Current Context

- Effects of FRA's current position:
 - Constrains procurement options by presumptively favoring Amtrak
 - Extent of role of sponsor to conduct consultation with "directly affected employees" unclear
 - Extent of required sponsor interaction with FRA unclear under varying Guidance scenarios

Potential Solutions



- To create level playing field for all sponsors of state-supported intercity passenger rail:
 - Amend final rule to exclude sponsors with no independent safety obligations from definition of “railroad”
 - Amend final rule to provide clear delegation of responsibility to prepare system safety plan to operating entities
 - Limit consultation obligation to entities with direct control over employees

- Questions?

Allison I. Fultz

afultz@kaplankirsch.com

(202) 955-5600



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