

FRA and the Hoosier State

**AASHTO Board of Directors
May 15, 2015**

**Jay Wasson, INDOT Deputy Commissioner
Engineering & Assets Management**



Passenger Rail in Indiana

- The Hoosier State operates four round trips weekly between Indianapolis and Chicago.
- The Cardinal provides service three days for daily service on the route.
- The State issued an RFP spring 2014, received four proposals, interviewed, scored and selected a preferred applicant.
- INDOT issued a Letter of Intent in November, 2014.



- The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) ended federal subsidies for Amtrak routes less than 750 miles. It also gave states the option to select an operator other than Amtrak for the passenger service.
- The Federal Railroad Administration (FRA) has jurisdiction over every area of railroad safety.
- Indiana first funded the Hoosier State in September, 2013.



- Letters from the FRA in July, 2014, December 2015 and January 26, 2015, determined that the state of Indiana (via INDOT), as the entity contracting for rail service, is responsible for compliance with the railroad safety laws.
- Ultimately, no matter what the contractors do, fail to do or report, INDOT is responsible to the FRA for compliance.
- FRA determined that INDOT was a “railroad” or “railroad carrier”.



Risks to RR Designation

- Exposure to tort liability (personal injury, death, property and premises liability), with a cap of \$200M per occurrence (federal RR limit may preempt Indiana tort cap) vs Indiana limits of \$700,000 per person and \$5M occurrence limit.
- Potential that some INDOT employees directly dealing with the rail service may be determined to be railroad employees, thus eligible for railroad retirement benefits, coverage under the Federal Employer Liability Act (a fault based system), rather than Indiana Workers Compensation laws for injuries during the course of employment, and coverage under the Railway Labor Act.



- # Other Risks
- Amtrak enjoys special pricing and access (trackage) rights to freight railroads' tracks.
 - Class I freight railroads over whose track the service travels, might require INDOT to negotiate and pay for trackage rights at market rates, rather than under the special terms Amtrak enjoys.
 - The Hoosier State travels over CSX, NS, UP, CN, Belt Railway of Chicago, Amtrak and Metra tracks.



FRA Deliverable Worksheet - Sample

| Discipline | Part | Summary (Note: Please refer to 49CFR for entire rule...) | Approval Required (y/n) | Date Required | RR Person(s) Responsible | Comments |
|------------|---------------------|--|-------------------------|--|--------------------------|------------------------------------|
| OP | <u>217.7(a)</u> | File with the FRA Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations. Further requirements are detailed are in Parts 217 & 218 | No | Prior to start-up | Amtrak & Iowa P | |
| OP | <u>217.9(c)</u> | Written program of operational tests and inspection | No | At least 30 days prior to start-up | Amtrak & Iowa P | |
| OP | <u>217.11218.95</u> | Program of instruction/training/examination on Operating Rules. Instruction to begin on the date of operations | No | At least 30 days prior to start-up | Amtrak & Iowa P | |
| OP | <u>225.11</u> | Accident/incident reporting requirements (requirements detailed throughout Part 225) | No | Within 30 days after the month in which the accident/incident occurred | Amtrak & Iowa P | Iowa Pacific once PTC is in effect |



- Multiple contracting entities make it unclear who is the responsible entity for addressing safety and regulatory issues.
- State sponsoring agency might not have dedicated staff to oversee contracts and work closely with the FRA to ensure safety compliance.
- Create path for how FRA and States can effectively partner together to continue and improve the strong record of safety on these services.



Challenges

- Preserve the service.
- Create a better passenger rail experience for Indiana taxpayers.



- Negotiated a letter agreement with the FRA that assures federal safety compliance requirements from the FRA and US DOT will be met.
 - Safety reporting requirement responsibilities included in vendor contracts.
 - Dedicated staff to oversee contracts and work closely with the FRA for compliance.

This solution is tailored to the Hoosier State service.



- # FRA Outreach
- Teleconference series to discuss roles and responsibilities for safety and compliance on state-supported services.
 - Because of the Indiana experience, the FRA is reaching out for state sponsors' input to understand the distinct challenges and opportunities we face.



Lessons Learned

- We didn't know what we didn't know and kept learning there was more that we didn't know.
- Accept help from industry professionals.
 - INDOT is working with a Washington DC law firm that specializes in passenger rail.

