

States for
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States as Railroads

States for Passenger Rail Coalition, Inc.
AASHTO Rail Resource Center

Thursday, May 21, 2015
2:00-3:00 PM



State Rail Activities

- State Rail Planning
- Manage crossing safety programs
- Freight, corridor preservation and economic development
- Rail Safety Inspections
- FTA System Safety Oversight
- Manage state and federal grant programs
- Sponsor intercity passenger rail services

Interim FRA Passenger Rail Safety Policy

Late Spring

- Publish interim policy in the *Federal Register*
- Open a docket and 60-day comment period
- *We want to get this right – provide feedback and comments*

Summer

- Close comment period
- Develop final policy

Late Summer/Fall

- Issue final policy



States as Railroads?

- 49 CFR Part 209, Appendix A—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws
- FRA exercises jurisdiction over all intercity passenger operations
- Railroad, railroad carrier or railroad of record

Tier I Passenger New Starts Deliverables

- FRA checklist of 134 items for compliance
- Civil Rights ADA provisions
- Track—continuous welded rail procedures
- Maintenance—roadway worker safety
- Operations—operating rules
- Drug and alcohol program administration
- Qualify and license engineers
- Dispatch records

Civil penalties are applicable to any “person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)” who fails to comply with the regulations or statutes.

Conflicts

- Places public employees in railroad environment (right to work)
- Responsibilities are not matched with authority
- Railroad skills differ from that of public employees
- Added liability impacts sovereign immunity
- Many states have statutes prohibiting employees from operating railroads

NC, IN and Beyond?

- 2008 FRA determined NCDOT was a railroad
- Litigation resolved when USDOT moved dismissal on grounds of competency
- 2014 IN competitive procurement => engagement with FRA
- States contract with railroads for intercity passenger services—what about other contracts?

Status

- Acting Administrator says, “not gonna do it”
- Staff says, “we're not sure we are ready to say that...”
- Clearly we need closer engagement between sponsors of IPR and FRA
- How to improve safety?
- Congressional intent?
- States as Grantees approach?

Status

- INDOT FRA letter agreement precedent
- Added costs
- Now what?
 - contracts with Amtrak
 - contracts with alternate operators
 - contracts with multiple operators
 - contracts with railroads for non-IPR services
- Will any of this improved safety?
- Notwithstanding legislation?

Proposed Legislation

Notwithstanding any other provision of law, neither the United States Department of Transportation nor the Federal Railroad Administration shall determine that a State, a group of States, or a political subdivision of a State who contracts for intercity passenger rail services is a railroad, a railroad carrier nor a railroad of record.

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