



Rail Law Alert – SSP Rule’s Impact on Public Agencies

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System Safety Program Final Rule Imposes Unprecedented Obligations on Public Agency Sponsors of Passenger Rail

On August 12, 2016, the Federal Railroad Administration (FRA) published a Final Rule that requires all railroads providing intercity or commuter rail passenger transportation to develop and implement a System Safety Program (SSP). Importantly, the Rule defines railroads to include public agency sponsors of passenger rail services, *even if all those sponsors do is provide funding for the service and then rely upon contractors to manage and operate all aspects of the service.*

The Rule imposes on “railroads,” as thus defined, an obligation to comprehensively and systematically identify and evaluate safety hazards throughout their railroad systems, and to implement procedures to manage the risks resulting from those hazards. These plans must be submitted to the FRA for approval by February 8, 2018.

The Rule also imposes substantial procedural requirements on an agency’s development of its SSP plan. Specifically, agencies are required to consult in “good faith” and use “best efforts” to reach an agreement with all “directly affected employees,” which in this Final Rule includes contractors *and the contractors’ employees* with responsibility for “significant” portions of the railroad operations. Agencies are required to hold a preliminary meeting with these employees to discuss the consultation process by April 10, 2017, or face potential enforcement action by the FRA. Moreover, employees and contractors’ employees may file a statement with the FRA with respect to any aspect of the SSP plan on which agreement is not reached, which the FRA will consider in reviewing the plan. While the FRA has stated that it does not consider the Rule’s consultation requirements akin to collective bargaining, it is unclear how these consultation requirements might impact the long-standing status of the relationship between an agency and its contractors’ employees.

Public agencies providing or sponsoring passenger rail services should carefully evaluate the impact that these and other requirements are likely to have on their operations and the administration of their systems. Petitions for administrative reconsideration of the Final Rule are due by October 3, 2016, and petitions for review in an appropriate U.S. Court of Appeals must be filed by October 10, 2016.