

Rail & Transit Law Alert: FRA Issues Final Rule on Metrics & Minimum Standards for Intercity Passenger Rail Service

11.16.20

The Federal Railroad Administration (FRA) has issued the Final Rule for Metrics and Minimum Standards for Intercity Passenger Rail Service. The Final Rule was published in the Federal Register on Monday, November 16, 2020.

The Final Rule emerges after years of litigation over the mechanism identified in the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, 122 Stat. 4907 (PRIIA) for establishing standards for determining whether intercity passenger trains, currently all operated by Amtrak are “on time.” The Final Rule establishes the following measures:

- Whether a train is on time is determined by (a) the percentage of all customers on an intercity passenger rail train who (b) arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and route. 49 CFR 273.5(a)(1). (Final Rule at 72,974.)
- The minimum threshold for satisfactory on time performance (OTP) is that 80 percent of customers on a given route must arrive on time for any 2 consecutive quarters. 49 CFR 273.5(a)(2). (Final Rule at 72,975.)
- The Final Rule requires Amtrak to report a ridership metric, which is an aggregated, generalized figure consisting of the number of host railroads to whom Amtrak has provided ridership data, reported by host railroad and by month. 49 CFR 273.5(b). (Final Rule at 72,984.) The Final Rule does **not** require Amtrak to share ridership data with its state supported route partners. (Final Rule at 72,986.)

This standard applies to passenger trains beginning “on the first full calendar quarter after May 17, 2021.” Anticipating ongoing disputes between Amtrak and host freight railroads over scheduling, the Final Rule also introduces a certified schedule metric that allows for Amtrak and the host railroads to negotiate schedules and sets forth a dispute resolution process if the parties disagree. In the event that Amtrak and a host railroad cannot agree on a train schedule for a particular route before May 17, 2021, they can report the then-applicable schedule as a “disputed schedule” and the customer OTP standard for that disputed schedule will apply beginning on the *second* full calendar quarter after May 17, 2021. This metric requires Amtrak to report which trains have certified schedules, uncertified schedules or disputed schedules. Amtrak and the Host Railroad’s CEO must notify Congress of the uncertified schedules on a monthly basis.

If you have questions about the Final Rule, please contact Allison Fultz, Suzanne Silverman, Byron Smith or Charles Spitulnik.