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Federal Railroad Administration's Progress Implementing the Passenger Rail Investment and Improvement Act

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Mr. Chairman and Members of the Committee,

Thank you for inviting me here today to discuss the implementation of the Passenger Rail Investment and Improvement Act (PRIIA). As you know, PRIIA greatly expanded the Federal Railroad Administration's (FRA) role and tasked it with numerous significant responsibilities, including the creation of a High-Speed Intercity Passenger Rail (HSIPR) grant program and development of a National Rail Plan, which according to FRA would provide a blueprint for an efficient national system of passenger and freight rail corridors. In April 2010, we testified that this expanded role presented several challenges for FRA, including the development of policies to guide grant programs and the hiring of adequate staff to oversee implementation.¹ The difficulty of these challenges has been exacerbated by the accelerated timelines and additional funding provided by the American Recovery and Reinvestment Act of 2009 (ARRA).

My testimony today focuses on (1) FRA's progress in meeting its PRIIA responsibilities, and (2) the challenges FRA continues to face in the expansion and improvement of intercity passenger rail. My testimony is based on our recent and ongoing work related to PRIIA, FRA, and rail issues in general.

IN SUMMARY

FRA has made progress in meeting many of its responsibilities outlined in PRIIA. Most notably, FRA has made significant progress on requirements intended to improve its oversight of Amtrak. However, FRA has yet to complete its implementation of other PRIIA provisions, including finalization of rules that will provide specific guidance to HSIPR grant applicants in areas such as the forecasting of high speed rail projects' net benefits.

Delays in the implementation of certain PRIIA provisions—particularly the final National Rail Plan—significantly challenge FRA's ability to improve and expand intercity passenger rail. Without a final Plan, other PRIIA requirements cannot be completed and stakeholders' roles are uncertain. Furthermore, FRA has obligated more than half of its \$10 billion HSIPR grant program budget for dozens of projects without providing applicants detailed guidance on how to prepare reasonable and reliable ridership and revenue forecasts, public benefits valuations, and operating cost estimates. As a result, FRA cannot be sure that it based these awards on the relative value of competing projects, or that its high-speed rail investments are prudent.

¹ DOT OIG Testimony, "Federal Railroad Administration Faces Challenges in Carrying Out Expanded Role." CC 2010-050, April 29, 2010. OIG reports and testimony are available on our website: www.oig.dot.gov.

BACKGROUND

PRIIA, the first passenger rail authorization in 11 years, tasks Amtrak, the Department of Transportation, FRA, the States, and other stakeholders with improvements to rail service, operations, and facilities. PRIIA focuses on intercity passenger rail, including Amtrak’s long-distance routes and the Northeast Corridor (NEC), State-sponsored corridors throughout the Nation, and the development of designated high-speed rail corridors.

With its numerous responsibilities for FRA, PRIIA has dramatically expanded the scope of the Agency's role. Historically, FRA's role has been limited primarily to the promulgation of railroad safety regulations, administration of several small grant and loan programs, oversight of Amtrak's operations, and disbursement of Amtrak's annual grant funds. PRIIA also calls for FRA to lead multiple new passenger rail service enhancement initiatives, and to develop from the ground up a multi-billion dollar high-speed rail discretionary grant program. PRIIA also enhanced FRA's Amtrak oversight role.

FRA's new responsibilities under PRIIA took on additional significance when ARRA provided \$8 billion to FRA and accelerated the timelines for the development of discretionary grant programs to jump start the development of high-speed rail corridors and enhance intercity passenger rail service.

FRA HAS MADE PROGRESS IMPLEMENTING PRIIA REQUIREMENTS, BUT KEY RESPONSIBILITIES HAVE YET TO BE COMPLETED

FRA has made significant progress implementing most of the 29 responsibilities PRIIA required. Specifically, FRA has completed 9 of its responsibilities, and taken action on 16 more, including some key requirements we've identified. Finally, FRA has not started on 4 responsibilities. Table 1 shows the status of FRA's efforts.

Table 1: Status of FRA's PRIIA Responsibilities, as of September 6, 2011

		● Completed	⊙ In Progress	○ Not Started
<i>PRIIA Section</i>	<i>FRA Responsibility</i>	<i>Status</i>		
§ 206	Review and approve Amtrak's grant requests	●		
§ 207	Develop new or improve existing metrics and minimum standards	●		
§ 207	Collect data and publish quarterly reports on performance and service quality		⊙	
§ 208	Obtain a qualified independent entity to develop and recommend objective methodologies for Amtrak Route decisions		⊙	

● **Completed**

⊙ **In Progress**

○ **Not Started**

<i>PRIIA</i> Section	<i>FRA Responsibility</i>	Status
§ 210	Monitor the development, implementation, and outcome of Amtrak's improvement plans	⊙
§ 211	Review and approve Amtrak's Capital Plan	●
§ 212	Establish an NEC Infrastructure and Operations Advisory Commission	●
§ 212	Establish an NEC Safety Committee	⊙
§ 214	Complete a rulemaking to develop a pilot passenger rail program	⊙
§ 215	Develop an employee transition assistance program for Amtrak employees	○
§ 220	Monitor and conduct periodic reviews of Amtrak's compliance with both ADA and ARRA	⊙
§ 224	Submit reports on high-speed rail corridor service studies to Congress	○
§ 224	Establish a process for designation and extension of corridors	○
§ 301	Make grants to assist in financing the capital costs necessary to provide or improve intercity passenger rail transportation	●
§ 301	Issue a final rule establishing application and qualification procedures for intercity passenger rail grants	⊙
§ 302	Make grants to assist in financing the capital costs for high priority rail corridor projects to reduce congestion or facilitate ridership growth	●
§ 303	Establish minimum requirements for the preparation and periodic revision of State rail plans	⊙
§ 304	Select and approve a new rail tunnel alignment in Baltimore and ensure completion of the related environmental review process	⊙
§ 306	Establish and carry out a rail cooperative research program	⊙
§ 307	Develop a long-range national rail plan	⊙
§ 307	Develop a schedule for achieving specific, measurable performance goals	○
§ 404	Report to Congress the results of a study to determine the extent to which railroads could use bio-fuels as alternatives to diesel	⊙
§ 405	Report to Congress the results of a feasibility study on the use of readily biodegradable lubricants for railroads	⊙
§ 406	Establish procedures and/or facilities for preclearance of passengers traveling from the U.S. to Canada	●
§ 407	Report to Congress on the results of a study and actions to streamline compliance with historic preservation requirements and on actions to expedite decision making for capital projects involving properties of disputed historical significance in the States of Alaska and North Carolina	⊙
§ 501	Make grants to finance capital projects in designated high-speed rail corridors	●
§ 501	Issue regulations for the high-speed rail corridor program	⊙
§ 502	Issue a request for proposals for projects in any of the 10 designated high-speed rail corridors or the Northeast Corridor	●
§ 502	Evaluate high-speed rail corridor proposals	⊙

Source: OIG analysis.

FRA has made significant progress implementing PRIIA provisions related to Amtrak oversight. Specifically, FRA has met its responsibilities to:

- review and approve Amtrak's grant request;
- develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train service;
- review and approve Amtrak's Capital Plan; and
- establish the Northeast Corridor Infrastructure and Operations Advisory Commission.

FRA has also made progress on PRIIA's other Amtrak oversight provisions: quarterly reports on performance and service quality of intercity passenger train operations; monitoring of the development, implementation, and outcome of Amtrak's improvement plans for long-distance routes; establishment of a Northeast Corridor Safety Committee; and the monitoring and periodic reviews of Amtrak's compliance with the Americans with Disabilities Act and the Rehabilitation Act.

FRA met PRIIA's October 2009 deadline to complete a Preliminary National Rail Plan, but has yet to complete the final National Rail Plan. Although PRIIA does not impose a deadline for the final Plans' completion, the Consolidated Appropriations Act for Fiscal Year 2010 required the Secretary of Transportation to submit the Plan to Congress no later than September 15, 2010.

Furthermore, FRA has yet to promulgate three rulemakings required by PRIIA, and the deadlines for each have passed. One rule would establish a pilot program for alternative passenger rail service on routes currently operated by Amtrak, and two would govern HSIPR grant programs. In June 2009, FRA issued interim guidance for HSIPR grant program procedures, as required by ARRA, including guidance on the preparation of analyses, such as revenue forecasts, operating and maintenance cost estimates, and estimates of user and non-user benefits for HSIPR grant applicants. FRA is also required to implement 17 separate rulemakings, such as specifications for Positive Train Control and hours of service for railroad operations employees, as a result of the Rail Safety Improvement Act, which was passed at the same time as PRIIA.

According to a senior FRA official, the PRIIA-required rules have been delayed because the Agency focused on safety-related rulemakings, consistent with the Administration's priorities. Agency officials also stated that FRA's limited workforce capacity has affected its ability to issue rulemakings. Our work confirms that the rulemaking process

is long and complicated. The officials informed us that they plan to issue a single, comprehensive rulemaking covering PRIIA's rules for governing the HSIPR grant program (Secs. 301, 302, and 501) once all of the funds appropriated in fiscal years 2009 and 2010 and under ARRA have been awarded. The officials further stated that this timing will allow the Agency to incorporate into the rulemaking lessons learned from the first rounds of grants.

DELAYS IN COMPLETING CERTAIN PRIIA REQUIREMENTS CREATE CHALLENGES TO EXPANDING AND IMPROVING INTERCITY PASSENGER RAIL

Delays in the completion of certain PRIIA requirements—particularly the National Rail Plan—have created a number of challenges for FRA. Without a final National Rail Plan, other requirements cannot be completed, and public and private sector stakeholders' roles are uncertain. Also, the lack of important grant-related regulations for application procedures and qualification requirements could result in potential grantees' use of a variety of methodologies in the development of their applications.

Performance and Progress Measures Cannot Be Completed and the Role of Stakeholders Remains Uncertain Without a Final National Rail Plan

According to FRA, a final National Rail Plan would be the basis for the completion of other PRIIA requirements, including a process for the designation and extension of high speed rail corridors, and could also define the roles of public and private stakeholders. The lack of a final plan has also delayed FRA efforts to satisfy PRIIA requirements to develop a schedule for achieving specific, measurable performance goals that include estimated funds and staff resources needed to accomplish each goal.

A final National Rail Plan is also expected to provide a blueprint for interstate rail corridors to guide States' intercity passenger rail plans. Both the preliminary plan and FRA's progress report on the final plan—issued in September 2010—lack measurable goals to guide the States' plans. For example, one goal in the progress report is the establishment of community connections with high-speed and intercity passenger rail in areas where population densities and competitive trip times create markets. However, FRA did not define criteria that States can use to identify population densities and trip times that characterize high-speed and intercity passenger rail markets.

At the same time, it is unknown what roles various stakeholders will play. Although FRA's September 2010 progress report states that successful implementation of high-speed intercity passenger rail requires participation of a number of industry stakeholders, from equipment manufacturers to service operators, it does not provide specifics about

what their roles will be. Rail industry stakeholders have expressed optimism about increased public investment in intercity passenger rail, but without a final plan there is uncertainty about how effectively private stakeholders can participate in the intercity passenger rail market. The Government Accountability Office has reported that Federal guidance on the role of stakeholders could help provide structure to the intercity passenger rail market.²

Final Regulations Governing HSIPR Would Guide Assessments of the Investments' Net Benefits

As of August 2011, FRA had obligated more than half of its approximately \$10 billion capital grant program budget on the basis of its interim guidance, which was developed under tight timeframes. Specifically, the Agency has obligated \$7.4 billion to 102 projects without important grant-related regulations for application procedures and qualification requirements. While the interim guidance describes possible factors for the evaluation of applications—such as transportation network integration, organizational capacity, thoroughness of management plans, and reasonableness of project completion schedules—these factors are largely qualitative. This interim guidance also does not provide information on how these metrics should be weighted, increasing the subjectivity of the evaluation process. Without more quantitative metrics and specific grant-related regulations, FRA cannot be sure that its award decisions are based on sound ridership and revenue forecasts, public benefits valuations, and operating cost estimates. Moreover, it cannot ensure that its investments are based on competing projects' relative value.

CONCLUSION

With the passage of PRIIA, FRA was given the daunting task of overseeing the implementation of the Nation's high-speed rail system—at a time when a myriad of programs and projects vie for limited Federal dollars. While FRA has made notable progress in carrying out its expanded responsibilities with limited resources, finalizing the National Rail Plan and grant-related rules is critical to ensuring viable intercity rail plans, interstate cooperation, and sound assessments of the net benefits of high-speed rail investments.

² GAO Report, "High Speed Rail: Learning From Service Startups, Prospects for Increased Investment, and Federal Oversight Plans" GAO-10-625, June 17, 2010.