
Office of Inspector General

Audit Report

FRA HAS MADE PROGRESS IN IMPLEMENTING PRIIA RESPONSIBILITIES BUT CHALLENGES FOR LONG-TERM HSIPR REMAIN

Federal Railroad Administration

Report Number: CR-2012-072

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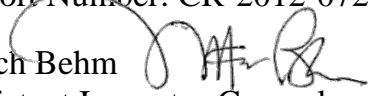
Memorandum

**U.S. Department of
Transportation**

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** FRA Has Made Progress in
Implementing PRIIA Responsibilities But
Challenges for Long-Term HSIPR Remain
Federal Railroad Administration
Report Number: CR-2012-072

Date: March 6, 2012

From: Mitch Behm 
Assistant Inspector General
for Rail, Maritime, and Economic Analysis

Reply to
Attn. of: JA-50

To: Federal Railroad Administrator

The Passenger Rail Investment and Improvement Act of 2008¹ (PRIIA)—the first passenger rail authorization to be enacted since 1997—calls for significant improvements to the Nation's intercity passenger rail system, including the development of high-speed rail corridors. The Act gives the Federal Railroad Administration (FRA) important new responsibilities, including creating a high-speed intercity passenger rail (HSIPR) \$10 billion grant program and developing a long-range National Rail Plan (NRP) that should, among other things, define how intercity passenger rail fits into the national transportation system. These new responsibilities have greatly expanded FRA's role in developing and managing the Nation's rail system. As we have previously reported, the Agency now faces several new challenges, including the development of policies to guide its new grant programs.² Additional funding provided through the American Recovery and Reinvestment Act of 2009³ (ARRA) exacerbates these challenges given ARRA's short timelines for implementation of the HSIPR grant program.

PRIIA Section 221 requires that our office assess DOT and Amtrak's progress in implementing the Act's provisions within 3 years of enactment. Based on discussions with congressional staff, we focused our audit on FRA's implementation, while Amtrak's Inspector General assumed responsibility for the assessment of Amtrak's implementation efforts. Our analysis identified 29 PRIIA

¹ P. L. No.110-432 Div. B.

² OIG Testimony Number CC 2010-050, "Federal Railroad Administration Faces Challenges in Carrying Out Expanded Role," April 29, 2010. OIG reports and testimonies are available on our Web site at www.oig.dot.gov.

³ P.L. No. 111-5.

Appendix. Agency Comments

responsibilities that FRA must implement.⁴ The objectives of our audit were to (1) evaluate FRA's progress in implementing its PRIIA responsibilities and (2) determine how the status of FRA's implementation of its PRIIA responsibilities impacts the improvement and expansion of intercity passenger rail. We conducted this audit in accordance with generally accepted Government auditing standards. Exhibit A provides details on our scope and methodology.

RESULTS IN BRIEF

FRA has implemented 25 of its 29 PRIIA responsibilities. Most notably, FRA has made significant progress on those intended to improve its oversight of Amtrak's financial and business management and service quality, such as reviewing and approving Amtrak's Capital Plan. However, FRA has yet to complete several key PRIIA responsibilities that could significantly impact HSIPR development. These include issuing an NRP, promulgating grant rules, and conducting rail-related research studies.

Without full implementation of all its key PRIIA responsibilities, FRA faces additional challenges in improving and expanding intercity passenger rail. In particular, because FRA has not completed an NRP, it cannot provide a blueprint that clarifies high speed rail's future role in the national transportation system. As a result, public and private stakeholders have been reluctant to move forward and commit funds. The lack of an NRP has also delayed action on some of FRA's other PRIIA responsibilities, such as establishing a process to modify existing high-speed rail corridors. Furthermore, FRA has obligated over half of its \$10 billion HSIPR grant program based on interim guidance that does not provide details for applicants on how to prepare reasonable ridership and revenue forecasts, public benefit valuations, and operating cost estimates. Consequently, it is difficult for FRA to objectively assess applicants when awarding grants among competing projects or the net benefits of its high-speed rail investments. Finally, FRA's delays in conducting PRIIA-required rail industry research has stalled the potential development of new technologies and operational and management improvements.

We are making a series of recommendations to assist FRA in fully implementing PRIIA and strengthening intercity passenger rail.

⁴ PRIIA includes 48 Sections, 22 of which direct the FRA to complete 29 responsibilities. For additional detail on audit methodology used to define responsibilities, see Exhibit A.

BACKGROUND

In 2008, PRIIA established requirements for Amtrak, the Department of Transportation, FRA, the States, and other stakeholders to improve rail service, operations, and facilities throughout the country. 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.

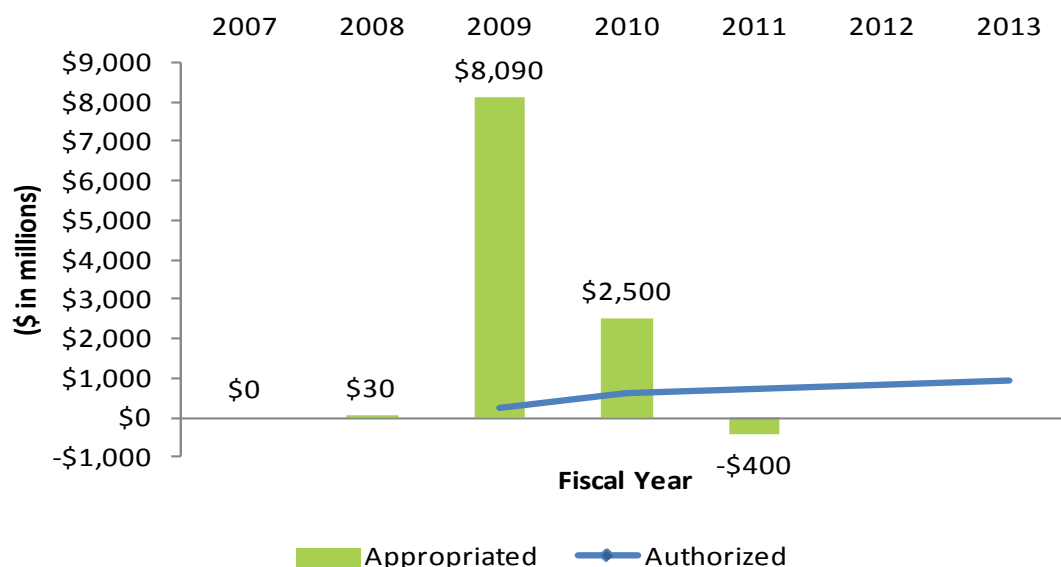
PRIIA dramatically expanded FRA’s role in managing the Nation’s passenger rail system. Historically, FRA focused on developing and implementing railroad safety regulations, administering small grant and loan programs, overseeing Amtrak’s operations, and disbursing Amtrak’s annual grant funds. Under PRIIA, FRA must now lead new passenger rail service enhancement initiatives and develop a multibillion-dollar high-speed rail discretionary grant program. PRIIA has also increased FRA’s Amtrak oversight role. Additionally, the Rail Safety Improvement Act of 2008⁵ (RSIA)—PRIIA’s companion statute—requires FRA to undertake new safety initiatives, including developing a long-term railroad safety improvement strategy and establishing a discretionary grant program that will support development and deployment of safety technologies.⁶

FRA’s expanded grant administration responsibilities under PRIIA became further complicated when—just months later—ARRA provided \$8 billion and short timelines for the implementation of grant programs to jump-start new high-speed rail corridors and enhancements for intercity services. As illustrated in figure 1, ARRA’s appropriations increased funding for FRA’s capital grants to a level that the Agency did not anticipate based upon PRIIA’s authorizations for 2009 through 2013.

⁵ P.L. No.110-432 Div. A

⁶ RSIA also requires 17 separate rulemakings that deal with a variety of safety-related issues, ranging from specifications and implementation guidelines for positive train control technologies to bridge inspection, maintenance, and management requirements.

Figure 1. FRA's PRIIA Capital Grant Funding Authorizations and Appropriations, Including ARRA



Source: OIG analysis of PRIIA, FYs 2007, 2008, 2009, 2010, and 2011 Appropriations Acts, and ARRA.
 Note: The Fiscal Year 2011 Appropriations Act rescinded \$400,000 from prior years' unobligated funds.

FRA HAS MADE PROGRESS IN IMPLEMENTING PRIIA RESPONSIBILITIES, BUT KEY HSIPR PLANNING EFFORTS REMAIN INCOMPLETE

FRA has completed 10 PRIIA responsibilities and is progressing on 15 more. The 10 completed responsibilities include enhanced Amtrak oversight as well as development of metrics and minimum standards for measuring intercity passenger service, performance, and quality. The 15 PRIIA responsibilities in progress include issuance of an NRP as well as new regulations for the high-speed rail corridor program. Once complete, these efforts will help expedite decision making for rail capital projects. The four responsibilities that FRA has not started include key planning issues, such as developing a process to designate or extend high-speed rail corridors as well as a schedule for achieving specific performance goals.

FRA Has Completed Ten of Its PRIIA Responsibilities

FRA has completed 10 of its PRIIA responsibilities, with significant progress toward those related to Amtrak oversight. PRIIA requires FRA to implement activities to improve the Agency's oversight of Amtrak's financial and business management, service quality, and capital asset management. Specifically, FRA has completed the following:

- Reviewed and approved Amtrak's grant request,

- Reviewed and approved Amtrak’s Capital Plan, and
- Established the Northeast Corridor Infrastructure and Operations Advisory Commission.⁷

FRA has also made progress on other Amtrak oversight responsibilities. These include publishing quarterly reports on intercity train operations’ performance and service quality, monitoring Amtrak’s improvement plans for long-distance routes, and monitoring and reviewing Amtrak’s compliance with the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1974. Table 1 summarizes FRA’s completed PRIIA responsibilities.

Table 1. FRA’s Completed PRIIA Responsibilities

	● Completed	⊙ In Progress	○ Not started
PRIIA Section	FRA Responsibility		Status
§ 206	Review and approve Amtrak’s grant requests		●
§ 207	Develop new or improve existing metrics and minimum standards		●
§ 211	Review and approve Amtrak’s Capital Plan		●
§ 212	Establish a Northeast Corridor Infrastructure and Operations Advisory Commission		●
§ 214	Complete a rulemaking to develop a pilot passenger rail program		●
§ 301	Make grants to assist in financing the capital costs necessary to provide or improve intercity passenger rail transportation		●
§ 302	Make grants to assist in financing the capital costs for high priority rail corridor projects to reduce congestion or facilitate ridership growth		●
§ 406	Establish procedures and/or facilities for preclearance of passengers traveling from the U.S. to Canada		●
§ 501	Make grants to finance capital projects in designated high-speed rail corridors		●
§ 502	Issue a request for proposals for projects in any of the 10 designated high-speed rail corridors or the Northeast Corridor		●
Completed			10

Source: OIG analysis

FRA Is Making Progress on Fifteen Responsibilities, but Has Yet To Initiate Four

FRA has made limited progress on 15 of its PRIIA responsibilities. These include key initiatives related to HSIPR: issuing an NRP, developing new rulemakings, and conducting specific railroad research studies. For example:

⁷ The Northeast Corridor Infrastructure and Operations Advisory Commission will promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor.

- **NRP:** While FRA met PRIIA's October 2009 deadline to develop a preliminary NRP and issued a report on its progress to Congress in September 2010, it has yet to issue the completed NRP. FRA officials explained that the Agency has not completed the Plan primarily because of its focus on the HSIPR program's grant obligations but that it intends to issue one part of the Plan—a section on high-speed and intercity passenger rail—later this year.⁸ However, FRA does not have an expected completion date for the entire plan.
- **New Rulemakings:** FRA's progress on its PRIIA-required regulations has been limited. The deadline has already passed for two key rulemakings that will govern HSIPR grant programs. In June 2009, FRA issued interim guidance on HSIPR grant program procedures, which includes guidance on how to assess the viability of proposed projects. According to a senior FRA official, the Agency has made limited progress on the PRIIA grant program rulemakings because it gave priority to the safety-related rulemakings required by RSIA. FRA plans to initiate a comprehensive grant rulemaking once the ARRA and fiscal years 2009 and 2010 grants have been awarded.
- **Research Responsibilities:** Although FRA has initiated a number of its research responsibilities, its progress in this area has also been limited. For example, FRA did not meet PRIIA's deadline of October 2009 to complete two research studies, but it did award grants in 2011 to two universities to complete them. One study will attempt to determine the extent to which railroads can use alternatives to diesel fuel, and the other will assess if it is feasible to use bio-based lubricants for railroads. The universities expect to complete their work by August 2013. FRA officials state that limited funds for railroad research in 2009 prevented them from working on these activities before the PRIIA deadlines. FRA has also yet to complete another PRIIA requirement calling for an advisory board to help plan research through FRA's newly established National Cooperative Rail Research Program (NCRRP).⁹ The Agency has not yet finalized its board nominations and did not provide a date for completion. Without FRA's appointments to its board, the NCRRP cannot begin its research.

FRA has not begun implementation of four PRIIA responsibilities, which include developing a process to designate and extend high-speed rail corridors. FRA has not addressed these four because it has prioritized other responsibilities, and certain prerequisites to initiating these responsibilities have not been completed.

⁸ According to FRA officials, the issuance of the Plan's section on high-speed and intercity passenger rail will comply with the Fiscal Year 2010 Appropriations Act's requirement that the Agency complete public investment cases for high-speed corridor programs before it obligates funds.

⁹ FRA established the program through a \$5 million grant to the Transportation Research Board. The Board is one of six divisions of the National Research Council—a private, nonprofit institution that provides services to the Government, the public, and the scientific and engineering communities.

Table 2 summarizes the status of these 4 as well as the 15 that are in progress. Exhibit B provides more details on the Agency's progress to date.

Table 2. FRA's PRIIA Responsibilities—In Progress and Not Started

	● Completed	⊙ In Progress	○ Not started
PRIIA Section	FRA Responsibility		Status
§ 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		⊙
§ 210	Monitor the development, implementation, and outcome of Amtrak's improvement plans		⊙
§ 212	Establish a Northeast Corridor Safety Committee		⊙
§ 220	Monitor and conduct periodic reviews of Amtrak's compliance with both ADA and ARRA		⊙
§ 301	Issue a final rule establishing application and qualification procedures for intercity passenger rail grants		⊙
§ 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 (NRP)		⊙
§ 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		⊙
§ 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	Issue regulations for the high-speed rail corridor program		⊙
§ 502	Evaluate high-speed rail corridor proposals		⊙
In Progress			15
§ 215	Develop an employee transition assistance program for Amtrak employees		○
§ 224	Submit reports on high-speed rail corridor service studies to Congress		○
§ 224	Establish a process for designation and extension of high-speed rail corridors		○
§ 307	Develop a schedule for achieving specific, measurable performance goals		○
Not Started			4

Source: OIG analysis

FRA'S INCOMPLETE IMPLEMENTATION OF KEY RESPONSIBILITIES CREATES CHALLENGES FOR INTERCITY PASSENGER RAIL

FRA's incomplete implementation of certain PRIIA responsibilities—particularly the NRP, HSIPR grant rulemaking, and research studies and programs—has created challenges for the improvement and expansion of intercity passenger rail. Without a completed NRP, FRA cannot provide a blueprint for interstate coordination or rail's role in the national transportation system. Lack of the NRP has also stalled some of FRA's other PRIIA responsibilities, including the establishment of a process to modify existing high-speed rail corridors. Furthermore, FRA has obligated over half of its \$10 billion HSIPR grant program based on interim guidance that does not provide details for applicants on how to prepare reasonable ridership and revenue forecasts, public benefit valuations, and operating cost estimates. Consequently, FRA cannot be sure that it based its awards on the relative value of competing projects, or that its high-speed rail investments are prudent. Finally, FRA's delayed implementation of its research studies and cooperative research program has stalled the potential development of new technologies and operational and management improvements.

Lack of a Complete NRP Has Created Uncertainties for Rail Stakeholders and Stalled Other PRIIA Responsibilities

Without an NRP, States remain uncertain about how interstate rail planning will be integrated and how those corridors will address national transportation needs. Consequently, States—which PRIIA tasks with developing their own rail plans and implementing passenger rail improvement projects—have called for an NRP that provides a defined, long-term vision of the national intercity passenger rail network. While more than 30 States completed individual rail plans, they did so without the benefit of a national blueprint for interstate rail corridors. Therefore, they encountered challenges planning multistate corridors, particularly in areas of the country with emerging passenger rail programs, such as the Southwest.

Uncertainty about the Federal role and interstate coordination also makes it difficult to attract private sector investment. Stakeholder outreach that FRA conducted for the NRP revealed that the private sector is hesitant to take on the risks associated with developing goods and services for intercity passenger rail without defined, long-term public sector commitment to the program.

The lack of a completed NRP has also delayed FRA's completion of other PRIIA responsibilities. For example, FRA officials reported that they have been unable to create a process for States to petition for modification of designated high-speed rail corridors because this goal relies on the NRP to provide national context and

perspective for the designation process. Therefore, States do not currently have a role in the designation process. Additionally, FRA is responsible for creation of a schedule for achieving measurable performance goals and must estimate funds and resources needed to accomplish each goal. This performance schedule is a requirement separate from the NRP, but FRA staff indicated that the completed NRP will establish the specific goals and the basis for the performance schedule. Consequently, FRA has not submitted this schedule to Congress, along with an assessment of progress towards the achievement of each goal, since it was first required in fiscal year 2010.

FRA Has Yet To Issue Its Regulations for the HSIPR Grant Program

FRA has not published final, detailed regulations since it issued interim guidance for the HSIPR program in June 2009. Current FRA guidance for grant applications lacks sufficient detail and clear direction for applicants. Our previous work has shown that, while the interim guidance included general grant terms and conditions, application procedures, project safety requirements, quality assurance procedures, and evaluation criteria, it lacked sufficient detail and clear direction to applicants.¹⁰ For example, FRA's guidance informs applicants that it looks at the quality and reasonableness of revenue and operating and maintenance forecasts and the reasonableness of estimates for user and non-user benefits; however, the guidance provides no information on what constitutes sound forecasts, valuations, and estimates. Although FRA has issued additional guidance through Notices of Funding Availability, most recently in March 2011, the guidance is still not sufficiently clear and detailed.¹¹

Because applicants do not have clear guidance on the grant application process, FRA may have difficulty conducting objective evaluations of applications and associated forecasts of investments' expected public benefits. The economic and financial viability of any HSIPR project depends primarily on three factors: expected levels of ridership and revenue, costs, and associated public benefits. Without reliable valuations of these factors submitted by applicants—particularly without uniform methodologies for estimating these values—it is difficult for decision makers to assess projects' viability and prioritize competing proposals. In addition, FRA's metrics, as stated in its interim guidance, are largely qualitative. For example, “organizational capacity, thoroughness of management plan, and reasonableness of project completion schedule” are listed as potential factors for the evaluation of applications. However, FRA did not identify a methodology for weighing these metrics in the guidance thus making the process more subjective.

¹⁰ DOT-OIG Report Number MH-2010-024, "DOT's Implementation of the American Recovery and Reinvestment Act: Continued Management Attention Is Needed To Address Number Oversight Vulnerabilities," November 30, 2009.

¹¹ FRA published Notices of Funding Availability in the *Federal Register* to solicit applications for its HSIPR grant program.

The Government Accountability Office (GAO) has also found that information on project benefits and costs submitted by applicants to the HSIPR program varied in both quality and comprehensiveness.¹² For example, most applications GAO analyzed contained only qualitative descriptions of project benefits, omitted important costs, and frequently lacked key data and methodological information recommended by the Office of Management and Budget.¹³ GAO also noted that a lack of clear guidance on standard values to use in the estimation of project benefits was one contributing factor to the inconsistent quality and limited usefulness of estimates of project benefits and costs.

FRA's Delay in Conducting PRIIA-Required Research Affects New Railroad Technologies That Could Improve Intercity Passenger Rail

FRA's delayed completion of research has in turn delayed its possible use of new technologies. For example, PRIIA requires FRA to conduct studies of both bio-fuels and bio-based lubricants. These studies could provide research to enhance understanding of the effects of the use of bio-fuels on locomotive performance and lubricants' effects on health and safety. In addition, FRA's delays with beginning rail industry research through the NCRRP—on topics such as safety and new passenger and freight rail technologies—hinders the NCRRP's ability to find new ways to expand the share of international trade traffic that railroads carry. This in turn could lead to policy, program, or technological changes that might shift traffic from more energy-intensive modes of transportation to rail.

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.

RECOMMENDATIONS

To ensure that PRIIA is fully implemented and that intercity passenger rail is strengthened, we recommend that the Federal Railroad Administrator:

¹² GAO Report 11-290, "Intercity Passenger and Freight Rail: Better Data and Communication of Uncertainties Can Help Decision Makers Understand Benefits and Trade-Offs of Programs and Policies," February 24, 2011.

¹³ OMB Circulars A-4 and A-94 provide guidance on best practices in analyzing costs, benefits—including discount rates for estimating the present value of future benefits and costs—and cost effectiveness.

1. Develop a comprehensive action plan, including milestones, to complete all outstanding PRIIA responsibilities.
2. Complete the National Rail Plan and include in it measurable performance goals and clear stakeholder roles.
3. Publish final rules for PRIIA grant programs that include clear, detailed directions for prospective applicants.
4. Confirm the National Rail Cooperative Research Program's advisory board membership and ensure that the members act in a timely manner to initiate required research.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided a draft of our report to FRA on January 5, 2012. We received FRA's full response on February 16, 2012, which can be found in its entirety in the appendix of this report. FRA fully concurred with three of our four recommendations (1, 3, and 4) and has taken actions to complete recommendation 4, and provided target action dates for completing recommendations 1 and 3. However, with regard to recommendation 2, FRA concurred-in-part explaining that the development of the NRP is a continuous process involving multiple products, among them completed State rail plans. While the Agency provided a target action date to issue final guidance to States for developing rail plans, it did not provide a target action date for completing the NRP as stated in the recommendation.

Agency officials stated that they have developed a 6-year vision and implementation strategy for high-speed rail in its fiscal year 2012 proposed budget as well as interim guidance to assist States with rail planning. We appreciate these efforts, but without a completed NRP, that conveys a long-term Federal commitment to intercity passenger rail, rail stakeholders are reluctant to commit and invest. Furthermore, other PRIIA requirements remain incomplete. Accordingly, we are requesting that FRA provide us with a target action date for completing the NRP.

ACTION REQUIRED

We consider FRA's actions for recommendation 4 complete and therefore closed. We consider FRA's planned actions and target dates for recommendations 1 and 3 reasonable and therefore resolved but open pending completion of the planned actions, subject to follow-up provisions in accordance with DOT Order 8000.1C. We request that within 30 days of this report FRA provide in writing a target

action date for recommendation 2. We appreciate the courtesies and cooperation of FRA representatives during this audit. If you have any questions concerning this report, please call me at (202)366-9970 or Toayoa Aldridge, the Program Director, at (202) 366-2081.

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cc: Audit Liaison, OST, M-1
Audit Liaison, FRA, RAD-43

EXHIBIT A. SCOPE AND METHODOLOGY

We evaluated the progress of the Federal Railroad Administration's (FRA) implementation of its responsibilities under the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) and assessed the impact of any incomplete responsibilities on intercity passenger rail. This report concludes our audit work to fulfill the legislative requirement for the Department of Transportation Office of Inspector General (OIG) to complete an overall assessment of the progress made by Amtrak management and the Department of Transportation in implementing the provisions of PRIIA.¹ Based on discussions with Congressional staff, we focused our audit on FRA's implementation, while Amtrak's Inspector General assumed responsibility for the assessment of the company's progress in the implementation of the Act's Amtrak responsibilities.

To measure FRA's progress implementing PRIIA, we reviewed each Section of the Act to identify primary responsibilities that accomplish each Section's overall purpose(s), as well as any deadlines. PRIIA consists of 48 Sections that task Amtrak and FRA with responsibilities such as oversight. In evaluating the Sections, we found that 22 contained 29 primary responsibilities for FRA. If we obtained evidence from documents and interviews with agency officials that FRA completed a primary responsibility, we considered the responsibility completed. If we obtained evidence that FRA had partially completed a primary responsibility by completing some procedural steps, we considered the Section in progress. If we obtained no evidence that FRA had started to address a primary responsibilities or the associated procedural steps, we considered the primary responsibility not started.

To determine the impact of incomplete PRIIA responsibilities on intercity passenger rail, we categorized PRIIA Sections based on functional areas and their progress status. To assess the causes and impacts of responsibilities' incomplete implementation statuses within a given functional area, we used documentation such as appropriation acts, rulemaking activity published in the Federal Register, and prior audit work by the Government Accountability Office and OIG. In addition, we conducted interviews with FRA officials and public and private rail stakeholders.

We conducted our work from February 2011 through January 2012 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

¹ P.L. 110-432, Division B, § 24310(a).

objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

EXHIBIT B. FRA'S PROGRESS IN IMPLEMENTATION OF ITS PRIIA RESPONSIBILITIES

● Completed

⊙ In Progress

○ Not started

PRIIA Section	FRA Responsibility and Progress to Date	Status
§ 206 Establishment of Grant Process	Review and approve Amtrak's grant requests FRA established initial requirements and submitted a requisite letter to Congress on December 22, 2008.	●
§ 207 Metrics and Standards	Develop new or improve existing metrics and minimum standards FRA issued a final version of the metrics and standards on May 12, 2010.	●
§ 207 Metrics and Standards	Collect data and publish quarterly reports on performance and service quality FRA collected the necessary data and published its first quarterly report on performance and service quality of intercity passenger train operations on March 3, 2011. As of January 18, 2012, three additional reports have been published.	⊙
§ 208 Methodologies for Amtrak Route and Service Planning Decision	Obtain a qualified independent entity to develop and recommend objective methodologies for Amtrak Route decisions FRA stated that while it engaged the Volpe Center in September 2009—several months after the mandated deadline—it used the funding for this contract on National Rail Plan efforts. FRA considers the National Rail Plan a prerequisite for Sec. 208, since it should provide facts, policy, and guidance that will provide the foundations of many other requirements.	⊙
§ 210 Long-Distance Routes	Monitor the development, implementation, and outcome of Amtrak's improvement plans FRA has monitored the plans to assure their development and publication according to PRIIA's schedule. Implementation of the initial plans has only recently begun. Amtrak published the Performance Improvement Plans for the middle third of its fifteen long-distance routes in September 2011.	⊙

PRIIA Section	FRA Responsibility and Progress to Date	Status
§ 211 NEC State-of-Good- Repair Plan	<p>Review and approve Amtrak's Capital Plan</p> <p>FRA has approved Amtrak's NEC State-of-Good- Repair Plan that includes a comprehensive capital investment program published on April 15, 2009. It has also directed Amtrak to submit monthly and quarterly reports on its capital project status. FRA reviews the scope and budgets of all of Amtrak's proposed projects, including for NEC. At quarterly review meetings with Amtrak's Engineering Department, FRA reviews all proposed NEC capital expenditures against the Plan, both before and after approval.</p>	●
§ 212 NEC Infrastructure and Operations Improvements	<p>Establish a Northeast Corridor Infrastructure and Operations Advisory Commission</p> <p>FRA established the Commission, with members from Amtrak, NEC States, and USDOT. Freight railroads are represented as non-voting members. As of January 18, 2012, the Commission had met five times.</p>	●
§ 212 NEC Infrastructure and Operations Improvements	<p>Establish a Northeast Corridor Safety Committee</p> <p>The committee has been established under the auspices of the FRA Office of Safety. Its first meeting is scheduled for February 22, 2012.</p>	⊙
§ 214 Alternative Passenger Rail Service Pilot Program	<p>Complete a rulemaking to develop a pilot passenger rail program</p> <p>FRA issued a final rule on December 14, 2011, more than 2 years after the PRIIA imposed deadline of October 16, 2009. The final rule is effective on February 13, 2012.</p>	●
§ 215 Employee Transition Performance	<p>Develop an employee transition assistance program for Amtrak employees</p> <p>FRA has not issued regulations under this Section because no alternative passenger rail service has been proposed pursuant to Sec. 214. PRIIA did not establish a deadline for this Section. According to FRA, if implemented by the Secretary, Sec. 215 would provide affected employees a one-time lump sum payment as an option in lieu of labor protection pay. The employees would not have to accept the one-time payment, but if they do, the total amount of labor protection payments that Amtrak would otherwise owe to adversely affected employees would be reduced.</p>	○

**Exhibit B. FRA's Progress in Implementation of Its PRIIA
Responsibilities**

PRIIA Section	FRA Responsibility and Progress to Date	Status
§ 220 Oversight of Amtrak's Compliance with Accessibility Requirements	<p>Monitor and conduct periodic reviews of Amtrak's compliance with both ADA and Rehabilitation Act of 1974</p> <p>FRA's Office of Civil Rights and Office of Railroad Policy and Development work cooperatively to monitor and review Amtrak's compliance with applicable accessibility requirements. Amtrak's current plan for compliance with the Americans with Disabilities Act calls for all stations to be in compliance by 2015. As of July 26, 2010, all of Amtrak stations (482 as of October 2010) were required to be accessible to those with disabilities; Amtrak missed the deadline. Amtrak has repeatedly requested an extension of the deadline, but Congress has not granted the request. In addition, FRA has engaged the Volpe Center to review and monitor work to bring stations into compliance with the ADA and the Rehabilitation Act of 1974 under funding provided by both ARRA and the fiscal year 2010 appropriations act.</p>	○
§ 224 Passenger Rail Service Studies	<p>Submit reports on high-speed rail corridor service studies to Congress</p> <p>According to FRA, available funds have been directed to National Rail Plan development, since the plan is a prerequisite to this Section to ensure that designations, extensions and modifications of corridors are cohesive, orderly and responsive to national needs.</p>	○
§ 224 Passenger Rail Service Studies	<p>Establish a process for designation and extension of high-speed rail corridors</p> <p>FRA previously solicited State petitions for designating or modifying high-speed rail corridors through the Intermodal Surface Transportation Efficiency Act of 1991 by eliminating railway-highway crossing hazards in high-speed rail corridors, which was for safety purposes. However, FRA has not solicited State petitions for the purpose intended by PRIIA.</p>	○

PRIIA Section	FRA Responsibility and Progress to Date	Status
§ 301 Capital Assistance for Intercity Passenger Rail Service	Make grants to assist in financing the capital costs necessary to provide or improve intercity passenger rail transportation	●
§ 301 Capital Assistance for Intercity Passenger Rail Service	Issue a final rule establishing application and qualification procedures for intercity passenger rail grants	⊙
§ 302 Congestion Grant	Make grants to assist in financing the capital costs for high priority rail corridor projects to reduce congestion or facilitate ridership growth	●
§ 303 State Rail Plans	Establish minimum requirements for the preparation and periodic revision of State rail plans	⊙

Exhibit B. FRA's Progress in Implementation of Its PRIIA Responsibilities

PRIIA Section	FRA Responsibility and Progress to Date	Status
§ 304 Tunnel Project	<p>Select and approve a new rail tunnel alignment in Baltimore and ensure completion of the related environmental review process</p> <p>In April 2011, FRA signed a \$60 million grant agreement with Maryland DOT to fund environmental analysis and the preliminary engineering work necessary to approve the new rail tunnel and rehabilitate the existing one. It is unlikely that FRA will meet the September 30, 2013 deadline for the approval of the new alignment, since environmental analysis is scheduled to be completed toward the end of 2014 or during 2015.</p>	⊙
§ 306 Rail Cooperative Research Program	<p>Establish and carry out a rail cooperative research program</p> <p>In September 2010, FRA signed a \$5 million grant agreement with the Transportation Research Board, establishing the National Cooperative Rail Research Program. Research cannot begin, however, until the FRA appoints an advisory board for the Program. FRA officials could not provide an estimated timeline for the determination of the board's membership.</p>	⊙
§ 307 Federal Rail Policy	<p>Develop a long-range national rail plan</p> <p>While FRA has not yet published a National Rail Plan, DOT released a preliminary National Rail Plan on October 15, 2009. In 2010, FRA solicited input on national rail issues through outreach events, focus groups and a public docket. On September 28, 2010, FRA provided Congress with a National Rail Plan progress report. The report indicates that to complete the National Rail Plan, FRA must conduct feasibility analyses, and estimate both investment needs and returns on investment. In September 2011, FRA officials reported that the final plan is still under development.</p>	⊙
§ 307 Federal Rail Policy	<p>Develop a schedule for achieving specific, measurable performance goals</p> <p>FRA has not begun developing a schedule to achieve its performance goals. PRIIA's deadline for this schedule was the President's annual budget submission to Congress, starting in 2010 and every fiscal year thereafter. According to FRA officials, the schedule is contingent upon finalization of the National Rail Plan.</p>	○

Exhibit B. FRA's Progress in Implementation of Its PRIIA Responsibilities

PRIIA Section	FRA Responsibility and Progress to Date	Status
§ 404 Locomotive Biofuel Study	<p>Report to Congress the results of a study to determine the extent to which railroads could use bio-fuels as alternatives to diesel</p> <p>FRA issued a notice of funding availability seven months after the October 16, 2009 deadline for a final report to Congress. In March of 2011, FRA executed a grant agreement with the University of North Carolina, which will conduct the study and is expected to complete work, including required reports, by June 2013. According to FRA, it could not implement the provision earlier due to a lack of funds.</p>	⊙
§ 405 Study of the Use of Biobased Technology	<p>Report to Congress the results of a feasibility study on the use of readily biodegradable lubricants for railroads</p> <p>See previous discussion of Sec. 404. An agreement with the University of Northern Iowa on this feasibility study was executed on May 11, 2011. The university is expected to complete its work, including all required reports, by August 2013.</p>	⊙
§ 406 Cross-Border Passenger Rail Service	<p>Establish procedures and/or facilities for preclearance of passengers traveling from the U.S. to Canada</p> <p>Amtrak has established a pre-inspection process for its route to Vancouver, Canada, and it is currently in discussions with the Department of Homeland Security and Canadian stakeholders for its route to Montreal. In the implementation of this provision, FRA has focused primarily on the monitoring of developments for Amtrak's Vancouver (Canada)-bound and Montreal-bound routes and offering of assistance to Amtrak—assistance Amtrak has thus far declined, preferring to work directly with State stakeholders.</p>	●

PRIIA Section	FRA Responsibility and Progress to Date	Status
§ 407 Historic Preservation of Railroads	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 FRA has contracted with an outside vendor to study ways to streamline compliance with historic preservation requirements. The study is underway, and the vendor plans completion by March 2012. According to FRA, there are no urgent issues in either Alaska or North Carolina that require expedited coordination, the Agency will complete its reports to Congress—its primary responsibility under this Section—sometime after the contractor has completed its study.	⊙
§ 501 High-Speed Rail Corridor Program	Make grants to finance capital projects in designated high-speed rail corridors See discussion of Sec. 301.	●
§ 501 High-Speed Rail Corridor Program	Issue regulations for the high-speed rail corridor program See discussion of Sec. 301.	⊙
§ 502 Additional High-Speed Rail Projects	Issue a request for proposals for projects in any of the 10 designated high-speed rail corridors or the Northeast Corridor FRA issued a Request for Expressions of Interest on December 11, 2008, 5 days before PRIIA's deadline.	●
§ 502 Additional High-Speed Rail Projects	Evaluate high-speed rail corridor proposals With assistance from the Volpe Center, FRA has completed an initial review of the eight proposals it received. Five proposals were preliminarily deemed responsive and identified for further review within the Department of Transportation. No decision has been announced.	⊙

Exhibit B. FRA's Progress in Implementation of Its PRIIA Responsibilities

EXHIBIT C. MAJOR CONTRIBUTORS TO THIS REPORT

<u>Name</u>	<u>Title</u>
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Susan Neill	Writer/Editor



U.S. Department of
Transportation
**Federal Railroad
Administration**

Memorandum

Date: February 15, 2012

Reply to Attn of:

Subject: FRA Response to OIG Draft Report on Implementing Passenger Rail Investment and Improvement Act of 2008 (PRIIA) Responsibilities

From: Joseph Szabo
Administrator
Federal Railroad Administration

A handwritten signature in black ink, appearing to read "Joseph C. Szabo".

To: Mitch Behm
Assistant Inspector General
for Rail, Maritime, and Economic Analysis

Over the last few years, the Federal Railroad Administration (FRA) has completed implementation of nearly all the provisions in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). This achievement is particularly noteworthy in light of both the sweeping provisions of the Act, and the need to simultaneously and expeditiously address the requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act), especially its high-speed rail provisions.

In addition to recognizing FRA's accomplishments with regard to PRIIA, the OIG draft report highlights several open issues, including completing a national rail plan so as to convey to all stakeholders—the Congress, the States, the railroad industry, and the American public—a vision of the industry's future. The draft report also indicates that FRA needs to issue the final rule containing methodological guidance for estimating demand, revenues, costs, and benefits of programs and projects. While efforts continue in both areas, FRA has already made considerable information available regarding a vision of rail's future and has made comprehensive interim guidance available to grant applicants and the public.

FRA Has Conducted Considerable National Rail Planning

FRA has made significant progress in implementing the national rail planning (NRP) provision in PRIIA, but subsequent legislative requirements that exempted State rail plans from High Speed Intercity Passenger Rail (HSIPR) grant prerequisites demanded a reassessment of the NRP approach. FRA met the one-year PRIIA deadline for submitting a preliminary national rail planning document in October 2009. Moreover, to keep all stakeholders fully apprised of the processes at work and the progress achieved, FRA proactively submitted a national rail planning progress report less than one year later. These reports demonstrate FRA's solid progress and provide an effective program "blueprint" for further advancement in planning.

PRIIA required that national rail planning build upon State rail plans to create a national vision, rather than directing FRA to dictate a Federal vision for rail. Specifically, PRIIA tasked States with developing statewide rail plans to set policy involving freight and passenger rail transportation within their boundaries, establish priorities and implementation strategies to enhance rail service in the public interest, and serve as the basis for Federal and State rail investments within the State; it further called for the NRP to be “consistent with approved State rail plans.”

Three months after PRIIA’s passage, however, the Recovery Act exempted the HSIPR Program from State planning requirements, effectively establishing HSIPR implementation and job-creation as a priority over State rail planning, and, in turn, delaying completion of any “long-range national rail plan” that would be “consistent with” State plans. The Recovery Act and the FY 2010 appropriation provided almost five times more funding to the HSIPR Program than was contemplated in PRIIA. These appropriation acts substantially accelerated the program and necessitated a shift in the approach to developing the passenger rail elements of national rail planning.

FRA has ongoing planning efforts that will continue to provide ample guidance, from a Federal perspective, for a national vision for passenger rail that does not rely on completed rail plans from each State. For example, FRA has completed a strategic plan for high-speed rail, “High-Speed Rail for America,” published in April 2009; issued a series of interim guidance and funding availability notices for the HSIPR Program, beginning in June 2009; and, in the FY 2012 budget proposal, provided a specific six-year vision and implementation strategy for the future of high-speed and intercity passenger rail in America. Additional efforts are ongoing that will provide both Federal and regional perspectives on high speed rail planning, which will be completed over the next couple of years. FRA intends to finalize its State planning guidelines in order to assist the States and to advance this PRIIA prerequisite for national rail planning.

Extensive Guidance is Available for HSIPR Implementation

FRA has produced comprehensive HSIPR guidance for stakeholders as called for in PRIIA, and subsequently accelerated in the Recovery Act and FRA’s FY 2010 appropriation¹. These subsequent appropriation acts recognized that promulgation of a regulation would have taken too long to be of use under the accelerated time frames for program implementation called for in the legislation, and therefore required FRA to immediately implement the HSIPR Program on the basis of interim guidance rather than a final rule.

FRA’s interim guidance covered all program elements critical to the preparation of an application to the program. The criteria for evaluating applications were fully described under the main headings of public return on investment, project success factors, and timeliness. That FRA received a cumulative total of \$77 billion in HSIPR project applications from 39 States, the District of Columbia, and Amtrak for only \$10.1 billion in available funding—a ratio of over seven to one—demonstrates the adequacy of the interim guidance in conveying program requirements and gaining the interest of potential participants. Consistent with Congressional direction, initial implementation of the HSIPR Program has been successful under interim guidance, with over

¹ See PRIIA, Pub. L. No. 110-432, § 301, 122 Stat. 4936 (2008); ARRA, Pub. L. No. 111-5, 123 Stat. 208 (2009); Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, 123 Stat. 3056-57 (2009).

\$1.4 billion in construction already underway and with projects around the country creating jobs and promoting economic development.

FRA recognizes the necessity and substantive value in completing formal rulemaking activity for HSIPR, when circumstances and national priorities allow. However, the OIG report does not offer the important additional context, which more extensively conveys the subsequent statutory imperatives and modified requirements.

Recommendations and Responses

OIG Recommendation 1: Develop a comprehensive action plan, including milestones, to complete all outstanding PRIIA responsibilities.

FRA Response: Concur. FRA has maintained a continuous planning effort since PRIIA's passage through the Department's Regulatory Review process, which fulfills this recommendation. However, in order to explicitly demonstrate fulfillment of this recommended action, FRA will complete a "PRIIA Action Plan" by July 1, 2012. This Action Plan will synthesize all of FRA's PRIIA-related Regulatory Review materials in order to describe FRA's intended treatment of each remaining PRIIA requirement, with associated milestones.

OIG Recommendation 2: Complete the National Rail Plan and include in it measurable performance goals and clear stakeholder roles.

FRA Response: Concur-in-part. National rail planning, as described above, is a continuous process involving multiple products, some of which have already been issued, with further deliverables to be released in the future. Moreover, while Congress subsequent to PRIIA deferred the requirement for State rail plans, FRA has developed draft guidelines, and will issue final requirements by March 31, 2013, in order to advance this PRIIA prerequisite for national rail planning.

OIG Recommendation 3: Publish final rules for PRIIA grant programs that include clear, detailed directions for prospective applicants.

FRA Response: Concur. While the FRA intends to complete formal rulemaking activity for its grant programs, it is important to recognize that its Interim Guidance, as modified by subsequent Notices of Funding Availability, already includes clear, detailed directives for prospective applicants. Nonetheless, FRA intends to issue a Notice of Proposed Rulemaking on this topic by October 1, 2013.

OIG Recommendation 4: Confirm the National Rail Cooperative Research Program's advisory board membership and ensure that the members act in a timely manner to initiate required research.

FRA Response: Concur. This recommendation was fulfilled as of January 3, 2011, by letter from the Federal Railroad Administrator to the Executive Director of the Transportation Research Board. Documentation of the action was provided to the OIG under separate cover, along with a number of other technical comments and updates that offer additional information on the status of FRA's many accomplishments in implementing PRIIA.

We appreciate this opportunity to offer additional perspective on the OIG draft report. We also appreciate the courtesies of the OIG staff in conducting this review. Please contact Neil Moyer, Chief of the Financial and Economic Analysis Division, RPD-15 (telephone 202-493-6365), with any questions or if we may be of further assistance.