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States for
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April 5, 2016

The Honorable Sarah Feinberg, Administrator
Federal Railroad Administration
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Comments on Draft Federal Railroad Administration Guidance for Sponsors of Intercity Passenger Rail Service

Dear Administrator Feinberg,

Thank you for providing the opportunity for the States for Passenger Rail Coalition, Inc., (SPRC) to submit comments on the Draft Federal Railroad Administration (FRA) Guidance for Sponsors of Intercity Passenger Rail Service. We also appreciate the FRA team participating in our February 16, 2016 SPRC meeting to further address the draft guidance.

We have carefully reviewed the latest draft guidance and reflected upon the discussions we have had with you and the FRA staff on this topic, and are pleased to offer the following comments and suggestions:

- The draft guidance does not provide a clear definition or basis for an industry problem it seeks to address, nor does it identify a solution.
- The draft guidance is vague; it assigns “ultimate responsibility” to states, but does not identify specific roles, scope or areas of responsibility. Further, it does not identify how FRA intends to develop an industry-wide training initiative or technical assistance program to assist with and assure compliance.
- The draft guidance simply is not realistic or practical, as FRA should not override contractual relationships between state entities and railroad operators and unilaterally determine who has “ultimate responsibility for the safety” of a service.
- The draft guidance both creates and ignores a host of legal issues, is at variance with longstanding Executive directives to improve and streamline agency regulation, and cannot be implemented uniformly.
- The draft guidance creates significant unintended consequences and fundamental federal and state transportation policy conflicts.

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Over the past year, FRA has stated that the intent of this effort was to clarify responsibilities for safety amongst entities under contract with state agencies to deliver passenger rail services.

Last fall, with this objective in mind and at FRA's request, the SPRC developed and provided a document entitled Safety Oversight of Intercity Passenger Rail Services (SOIPRS). While to date we have received no response to our proposal, we continue to believe it provides an effective and ready means to address the issue of identifying which entities are directly responsible for specific aspects of safety within our industry.

- SOIPRS presented an approach consistent with the program and contract administration model under which intercity passenger rail service sponsorship developed over the past 46 years.
- SOIPRS requests clear guidance from FRA, as well as model language and technical assistance, for use by public entities in conducting procurements, contracting with railroads and railroad industry contractors, and monitoring and reporting contractor compliance with FRA regulations.
- SOIPRS identifies the federal-state safety program partnerships and requests USDOT consider, and recommend, a multi-modal approach to program administration that is efficient, does not create redundancy and conflicts, and which can be a foundation for planned system safety improvements.

The SPRC is proud of our role in helping to improve the railroad industry to better serve our citizens, customers, and industries, and we remain eager to engage with FRA to discuss and agree on an effective and timely approach to safety oversight.

Accordingly, SPRC would be pleased to work with FRA and other parties to plan and conduct a workshop on this subject. Such a workshop should be designed to identify the problem(s) which need to be solved, address potential and realistic solutions for resolving them, and develop an action plan to get us there.

Thank you again for inviting and considering our comments.

Sincerely,



Patricia Quinn
Chair, States for Passenger Rail Coalition, Inc.
Executive Director, Northern New England Passenger Rail Authority

attachment: Safety Oversight of Intercity Passenger Rail Services

cc: Members, States for Passenger Rail Coalition
Bud Wright, American Association of State Highway and Transportation Officials



Safety Oversight of Intercity Passenger Rail Services

- **Safety of the traveling public and railroad employees is of paramount importance and is the top priority for sponsors of intercity passenger rail (IPR) services.**
- **A number of states and authorities sponsor IPR services and manage contracts with railroad owners, service providers and operators.**
 - *Employees of IPR service sponsors provide oversight of rail programs in compliance with FRA and other federal and state requirements.*
 - *Employees of IPR service sponsors are public employees not under the purview of the Railway Labor Act nor the Railroad Retirement Board.*
 - *IPR service sponsors are not railroads, railroad carriers nor railroad operators themselves.*
 - *Most states have laws prohibiting public employees from operating railroads.*
- **States and authorities are experienced in providing oversight of grants and rail safety programs conducted by their railroad and railroad industry contractors.**
 - *All 50 states contract with railroads for a range of programs and projects including FHWA highway-railroad crossing safety projects.*
 - *30 states are active in the FRA Rail State Safety Participation Program and 28 states engage in the FTA State Safety Oversight Program.*
 - *State and authorities manage various federally-funded grant programs and multi-modal capital projects.*
 - *Many states hold and or lease railroad property to secure rail corridors from abandonment and provide for future transportation use.*
 - *For some of these programs USDOT has been a funding partner and it is the policy of the USDOT to encourage broad state participation in these programs.*
- **It is essential that FRA provide IPR service sponsors with technical assistance, clear guidance and model contract language regarding the safety requirements which must be met by IPR service providers, railroads and railroad contractors. Merely citing the Code of Federal Regulations can be subject to interpretation.**

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- **IPR service sponsors can add model contract language for railroads, service providers and railroad contractors to specify compliance with FRA safety requirements, including for the qualification of contractors.**
 - *FRA guidance and model contract language for safety requirements will be used to qualify contractors, and assess, assign and communicate applicable responsibilities within their contract requirements.*
 - *IPR service providers and railroad contractors must comply with FRA's safety requirements and provide personnel qualified with direct experience for FRA safety compliance.*

- **IPR service sponsors accept responsibility for developing and implementing program oversight to verify that compliance is being achieved by its service providers and railroad contractors.**
 - *IPR service sponsors will monitor, certify and report contractor compliance to FRA.*
 - *IPR service sponsors are not directly responsible for meeting compliance requirements.*

- **States need to review how this new arrangement affects their participation in the FRA Rail State Safety Participation Program and or the FTA State Safety Oversight Program, identify any potential conflicts, and determine the feasibility of continuing these programs under the existing organizational structure.**

SPRC members sponsor 28 intercity passenger routes serving 296 communities across America. Last year our trains carried nearly 15 million passengers, representing nearly 49% of Amtrak's total ridership.