PRIIA Section 209Cost Methodology
Frequently Asked Questions
June 10, 2011

1. ***What States are impacted by PRIIA Section 209?***
   ANSWER: On February 4, 2011, Amtrak sent a letter to the Department of Transportation, or equivalent agency, in all States served by Amtrak to inform them of the status of the routes passing through their State. By our determination, the states affected by Section 209 are California (Caltrans and CCJPA), Connecticut, Illinois, Indiana, Maine, Massachusetts, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Virginia, Washington, and Wisconsin. (Some of these States may not currently be State partners, but all have routes meeting the criteria of Section 209. Other states may join this list over time as future investments and intercity passenger service development plans are implemented.)

2. ***Is this the final Section 209 Policy? What if I have questions or concerns – is it too late to comment?***
   ANSWER: Section 209 Draft Policy presented to the States on June 10, 2011 is the result of extensive discussion between the Amtrak Section 209 team and the State Working Group (SWG), based on input provided by States. It has been reviewed by the Amtrak Board of Directors, however it is still a draft. During this two week comment period, States have an opportunity to carefully review the Policy draft and communicate any concerns or questions to the State Working Group. Suggested changes/comments will be considered by the SWG and Amtrak. After a final round of discussion, the policy will be presented to the Amtrak Board of Directors for final ratification in July. After the Amtrak Board of Directors formally adopts the policy, it will be forwarded to States currently served by an Amtrak route meeting the criteria of Section 209 for acceptance and approval.

3. ***If I approve the PRIIA Section 209 Policy, am I agreeing to pay a specific contracted price?***
   ANSWER: No, the numbers included with the draft policy are preliminary and are intended to provide an estimate of costs for each route using the 209 methodology. Approval means that the State concurs that the Policy adopted by the Amtrak Board represents a standard, national model which fairly allocates to States costs incurred for the benefit a particular route and fairly allocates a proportionate share of costs incurred for the common benefit of more than 1 route. Individual States and Amtrak will meet regularly to discuss costs related to specific routes and determine annual pricing based on the 209 methodology. Final costs for state-supported services will be determined through contract negotiations between each state and Amtrak.

4. ***What happens if a State does not approve/adopt the Section 209 Policy as submitted by the Amtrak of Directors? What recourse does a State have and what impact would this have on the overall timely implementation of Section 209?***

   ANSWER: Once the period for State approval of the Pricing Policy has passed, Amtrak will notify the Surface Transportation Board (STB) that a Policy has been approved by its Board, indicating which States have agreed to adopt and the methodology. According to paragraph (c) of Section 209, if any of the States or agencies does not approve and adopt the final Section 209 policy, the criteria will not be met and "the STB shall determine the appropriate methodology" and require full implementation. Under such a circumstance, Amtrak and those states supporting the Policy will request that the STB endorse the Policy and implementation schedule as the methodology to be imposed by the STB on Amtrak and the states.

   It is not possible to predict how the STB will proceed at that point, but the STB's adoption of the collaboratively developed Policy provides the greatest level of certainty and predictability for all parties. In the absence of consensus agreement between Amtrak and the states, the STB may chose to develop its own methodology rather than use the Policy recommend to the STB by Amtrak and the adopting States. In this case, under paragraph (c) of Section 209, the STB shall develop that methodology "in accordance with" section 24904(c) of title 49, which calls for users to be assigned "a proportionate share of <u>all other costs</u>" [emphasis added] which may be interpreted as requiring the States to pay fully allocated costs. In contrast, the Amtrak-SWG policy does not charge fully allocated costs to States. Thus the STB, if it is called upon to define methodology for implementing Section 209, could establish a policy that would actually result in higher costs to the States than represented in the Amtrak-SWG proposal.

   In addition, paragraph (c) calls for the STB methodology to be implemented within 1 year of the STB decision. It is not possible to predict how long it will take the STB to issue a decision, but the STB could require an accelerated timeframe for policy implementation than the timeframe that is included in the Amtrak-SWG proposed Section 209 policy.

5. ***If a State were to assume the operating costs and the use of capital assets/capital charges associated with the implementation of Section 209 Policy, but could only afford to pay for a portion of the route frequencies and/or Amtrak services, what options are available to that State?***

   ANSWER: If after the transition period a State is not able to support the route as it is currently structured, Amtrak will work with that State to develop alternative service plans and budgets on the condition that the results of that process are agreed to and implemented prior to the fiscal year for the proposed change. New service plans could include variations in route frequencies; route length; fare structure; consist; food service options; and also to the mix of States and Agencies supporting the route.

   It is important to note that if service or frequencies are reduced, the cost of restoring services or frequencies at a later date may be significant. Mobilization, training, equipment availability and staffing must be considered and slot-availability on host railroads may become an issue as the capacity once utilized for intercity passenger trains may be subsequently utilized for freight services.

6. ***Can a State outsource or bid out the services that Amtrak currently provides a State for these Intercity Passenger Rail (IPR) Corridor trains? Are there limitations (federal, institutional, or other) on this outsourcing?***

   ANSWER: Currently, some States outsource components of their operations to other vendors instead of using Amtrak. For example, the *Downeaster* has a non-Amtrak food service provider and the *Piedmont* has a non-Amtrak mechanical contractor servicing its state-owned equipment, so there are cases where this approach has been successfully implemented. However, there are likely to be limits to outsourcing, particularly for routes where there are shared Amtrak facilities that also serve Long Distance trains or for routes utilizing the Northeast Corridor. Options vary considerably over the network and Amtrak should be consulted early-on regarding any services for which a State is interested in seeking an alternate provider so that a clear understanding of the options, costs, and impacts of such arrangements can be developed. Alternative services remain subject to FRA and other applicable standards that are followed by Amtrak, and all services that receive capital funding from the FRA's HSIPR grant program must have operations that comply with applicable grant conditions relating to the application of railroad labor, retirement, and safety laws.

7. ***What date must a State start to assume the full operating costs and use of capital assets/capital charges for the IPR routes under 750 miles? Can the date of FY2014 (October 1, 2013) be changed? Are there limitations on the source of funds that States can use to pay Amtrak?***

   ANSWER: With respect to the implementation date, according to paragraph (a)(1) of Section 209, "within 5 years after the date of enactment of this Act" the results of the methodology must be implemented. Since PRIIA was passed on October 16, 2008, five years from that date, October 16, 2013, is the mandated date for implementation. Because this is only 16 days after the start of the Federal and Amtrak fiscal year, October 1, 2013 has been selected as the implementation date to simplify the process for all parties.

   With respect to the ability to change the date, neither Amtrak nor the states have the ability to alter the statutory deadline. A change in federal law is required to change this date.

   Regarding funding sources, there is no stipulation within the Sec. 209 regarding the sources or types of funding that the States may use to meet their obligations. Additionally, under PRIIA Sec. 301, FRA HSIPR grant funding may be available to fund up to 80% of a state's capital charge and the Administration's FY12 Budget request proposes offering funding to states to assist them with additional operating costs associated with the implementation of Sec. 209 for a limited period.

8. ***Under Section 209, the states take over the responsibility of regional train operations subsidy. Did PRIIA also hand over the operating access to the track capacity that Amtrak utilizes today to run the regional trains along with the ability to solicit other train operators?***

ANSWER: No. PRIIA did not transfer to the States the rights to track access from host railroads that Amtrak uses today. Amtrak obtained these rights as a result of the Rail Passenger Service Act of 1970 and these rights did not change under PRIIA. Partnering with Amtrak helps states gain access to host railroad tracks and other facilities needed to operate intercity passenger service, as part of existing business and operating relationships between Amtrak and host railroads. Amtrak's unique statutory rights of access to the rail network are the foundation of intercity passenger rail service in the nation and are not transferable to other entities. Key Amtrak Rights exclusively available to Amtrak on Host Railroads from Federal Law include:

Access to the National Rail Network

- Amtrak is granted access to the entire national rail network, including host railroad property such as station buildings, platforms, and other facilities. This access is not restricted to routes where Amtrak already has or previously had service.

Access at Incremental Cost

- There is no fee for the access to the national network granted to Amtrak; Amtrak reimburses hosts for their out-of-pocket costs for hosting Amtrak trains. This is a fraction of host railroad charges for non-Amtrak passenger service which include host profit and other fees.

Preference Over Freight Transportation

- Intercity and commuter rail passenger transportation provided by Amtrak has preference over freight transportation.

Additional Trains

- Additional Amtrak service may not unreasonably impair freight transportation, so new services may require capacity investments negotiated with the host railroad. However, hosts must engage in these negotiations, and cannot refuse new Amtrak service.

Accelerated Speeds

- If a host railroad refuses to allow accelerated speeds for Amtrak trains, Amtrak may apply to the Surface Transportation Board for an order requiring the carrier to allow the accelerated speeds. The Board will decide which improvements would be required to make accelerated speeds safe and practicable.

Eminent Domain

- Amtrak has condemnation authority over property owned by host railroads, if such property is needed for intercity passenger service.

In some cases, a State or Agency may have existing two-party agreements with a Host Railroad for providing access to track capacity. Section 209 does not change these agreements.

9. ***How are revenues and costs apportioned between state-supported and other Amtrak services that utilize the same corridor?***

ANSWER: In many parts of the Amtrak network long distance trains operate along the same tracks as State supported routes for a portion of the network, although in some cases not all stations served by State supported trains are also served by Amtrak. The States pay for only the costs of the State-supported trains as offset by the revenues earned from passengers using State supported trains. Long distance trains carry fully allocated costs and only the revenues that are earned from passengers using the long distance trains.

10. ***Under the use of capital assets/capital charge, do states receive a credit for prior investment in Amtrak's rolling stock rehabilitation or purchase?***
    ANSWER: Yes. Amtrak will credit the net book value of a State's prior investment in Amtrak assets which is primarily related to rolling stock.

11. ***Would the Section 209 national pricing policy also apply to high speed train operations resulting from FRA HSIPR program investments?***
    ANSWER: Yes. If a route meets the criteria in Section 209, compensation to Amtrak for operation of future service—including high speed service—would be in accordance with the Section 209 policy. As the policy excludes the Northeast Corridor (NEC), new high speed train operations in the NEC would not be subject to Section 209 provisions but would be subject to Section 212 provisions.

12. ***What was the process used by Amtrak and the states to develop the national pricing policy?***
    ANSWER: The SWG, with input from Amtrak, has prepared an Issue Brief: *Establishing Standard Pricing Policies, Annual Operating Costs and Capital Charges.* This document describes the history and process used to develop the Section 209 policy.

13. ***Does FRA or any other federal agency or entity have to approve the Section 209 National Pricing Policy prior to sign on implementation with the states?***
    ANSWER: No. According to paragraph (a) of Section 209, in addition to consulting with the governors of each relevant State, the Amtrak Board of Directors shall also <u>consult</u> [emphasis added] with the Secretary of Transportation. No official approval is required by the U.S. Secretary of Transportation or the Federal Railroad Administration. However, the Secretary of Transportation, represented by FRA Administrator, Joe Szabo, is a member of the Amtrak Board of Directors and the policy must be an agreement that is ratified by the both the Board of Directors and the applicable States.

14. ***What if a State decides to terminate a route rather than participate in the new policy?***
    ANSWER: A state may cease support of an existing state-supported corridor route or decline to begin supporting a corridor route that now requires state-support under the policy. Upon such a decision, Amtrak may immediately terminate service and the state may be responsible for some of the demobilization costs associated with termination, depending on the contract terms between the parties. Additionally, the termination of a route may trigger the redistribution of certain costs to other routes that share facilities, staffing, or other shared costs and may also require Amtrak to reconsider the additive amounts contained within the policy, in accordance with the provisions of the policy.

    It is important to note that if a route is eliminated, the cost of restoring services at a later date may be significant. Mobilization, training, equipment availability and staffing must be considered and slot-availability on host railroads may become an issue as the capacity once utilized for intercity passenger trains may be subsequently utilized for freight services.