



U.S. Department
of Transportation

**Federal Railroad
Administration**

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

NOV 24 2014

Thomas C. Fellenz
Chief Counsel
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Re: Request for Waiver of Buy America Requirement for Two Prototype Next Generation
Trainsets

Dear Mr. Fellenz:

This letter is in response to your request dated February 28, 2014, that the Federal Railroad Administration (FRA) grant the California High-Speed Rail Authority (the Authority), a waiver from FRA's Buy America provision, at 49 U.S.C. § 24405(a)(1), for final assembly of two prototype high-speed rail (HSR) trainsets. For the reasons contained in this letter, FRA is granting the Authority's request, subject to the following condition:

- At "Notice To Proceed", the Authority must provide support for its assertion and certify to FRA that its selected supplier has not established domestic manufacturing facilities capable of assembling the prototypes within a reasonable time.

The larger projects underlying this waiver are Amtrak's and the Authority's plans to advance HSR on the Northeast Corridor (NEC) and in California, respectively. In the near identical waiver requests¹, Amtrak and the Authority assert that the projects require the purchase and use of high-quality, service-proven FRA Tier III Next Generation Trainsets, including two prototype HSR trainsets for each project. Amtrak states that HSR trainsets are essential to meeting Amtrak's critical short-term need to expand the capacity of its current NEC high-speed service and meeting the long-term operational needs of Amtrak. The Authority is seeking trainsets that can meet its planned trip-time requirements for service from the San Francisco Bay Area to Los Angeles on what will be largely brand new infrastructure. Amtrak and the Authority further assert that each project requires the purchase and use of two prototype HSR trainsets and that there are no domestic facilities capable of producing and testing HSR trainsets operating at greater than 160 miles per hour (mph).

¹ Amtrak's and the Authority's waiver requests are available at <https://www.fra.dot.gov/eLib/Details/L04954> and <https://www.fra.dot.gov/eLib/Details/L04955>, respectively.

FRA's Buy America requirement for rolling stock, including HSR trainsets, requires domestic final assembly of the trainsets and that all of the components be manufactured in the United States. Section 24405(a)(2) also permits the Secretary (delegated to the FRA Administrator) to waive the Buy America requirements if the Secretary finds that: (A) applying paragraph (1) would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

FRA believes a waiver is appropriate under 49 U.S.C. §24405(a)(2)(C) because domestically produced HSR trainsets meeting the specific technical, design, and schedule needs of Amtrak and the Authority are not currently available in the U.S. There is no assembly or testing facility for HSR trainsets operating at speeds greater than 160 mph in the U.S. Moreover, domestically-produced HSR trainsets cannot be bought or produced in the United States within a "reasonable time" given the program schedule associated with Amtrak's and the Authority's projects. FRA estimates that it could take HSR trainset manufacturers a minimum of one and a half to two years to establish the required facilities to support a domestic HSR trainset assembly capability. This includes any HSR trainset manufacturers that currently have domestic trainset manufacturing facilities. For example, in addition to acquiring specialized machinery and training and hiring the workforce, these manufacturers' plants are customized for steel railcars, and HSR trainsets require aluminum, which requires different manufacturing techniques.

Tier III HSR is a significant new technology for the U.S. market, and safety is a significant factor. Further, allowing final assembly of the prototype HSR trainsets at the manufacturer's existing non-domestic facilities is necessary to ensure that expected safety benefits of "service-proven" systems are secured, to enable training of U.S. workers, and to assure successful technology transfer. For example, rather than attempting to establish new manufacturing and assembly processes at a domestic facility while simultaneously integrating and testing HSR trainset designs, the selected manufacturers can focus on identifying and remedying any defects in the designs specific to Amtrak and the Authority and their operations in the United States. Further, FRA concludes that integrating U.S. manufacturing, assembly, and labor resources into the prototype production, among other suggested actions by Amtrak and the Authority, will facilitate the development of domestic HSR production facilities. This same "human technology transfer" has been used in other global HSR installations in South Korea, China, Taiwan, and Spain.

FRA finds that this delay to provide "service-proven" systems makes the prototypes not available within a "reasonable time." Therefore, a waiver is appropriate.

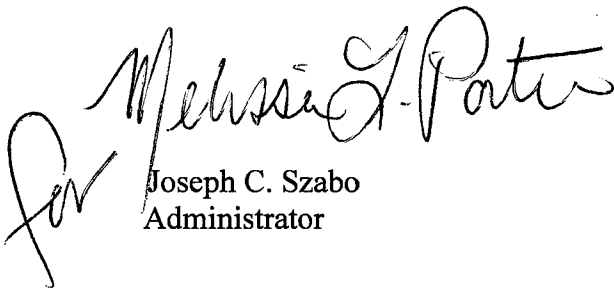
On March 14, 2014, FRA published on its website public notice of Amtrak's and the Authority's waiver requests. FRA received 13 online comments and one mailed response to this notice. None of the commenters identified a domestic source for HSR trainsets. Of the 14 comments, 10 commenters indicated they were against granting the waiver; four were for granting the waiver. Of the 10 comments "against," four were not responsive to the notice. Of the six remaining dissenters, they mainly disagreed with Amtrak's and the Authority's argument that HSR trainsets cannot be delivered in a reasonable time because Amtrak and the Authority could wait for domestic assembly. While this is theoretically possible, significant capacity and technology transfer problems are probable, and FRA believes that the one and a half to two year minimum delay could negatively impact the schedules proposed by Amtrak and the Authority. In addition, as noted above, assembling the prototypes at the suppliers' non-domestic factories will facilitate the successful technology transfer and training of U.S. workers. Finally, because FRA is limiting the waiver to final assembly of up to four prototypes with the expectation that the training of domestic resources will occur simultaneously, FRA is not delaying or preventing the establishment of the selected supplier's domestic assembly facilities.

Pursuant to 49 U.S.C. § 24405(a)(4), FRA is publishing notice of its decision to grant the Authority's waiver request in the Federal Register and provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver applies only to the final assembly of up to two prototype HSR trainsets and is subject to the condition described at the beginning of this letter.

Any components must be domestically manufactured or separate waivers for components applied for and granted before assembly of the prototypes can commence. FRA expects Amtrak and the Authority to require the selected HSR trainset supplier(s) to assemble the remaining trainset order(s) in the United States.

Question about this letter can be directed to, John Johnson, Attorney-Advisor, at john.johnson@dot.gov or (202)493-0078.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Szabo". To the left of the signature is a large, stylized handwritten mark that looks like "for".

Joseph C. Szabo
Administrator