



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

OCT 31 2011

Mr. William Bronte  
Chair  
Next Generation Corridor Equipment Pool Committee  
c/o Caltrans Division of Rail  
P.O Box 942873  
Sacramento, CA 94273-0001

Dear Mr. Bronte:

At a recent meeting of the Executive Committee of the Next Generation Corridor Equipment Pool Committee (NGEC), there was a general discussion about how best to align the Federal Railroad Administration's (FRA) strong support for the NGEC's efforts to advance the development of standardized passenger rail equipment for use in intercity, including high-speed, passenger rail service with FRA's primary mission of assuring rail safety. I wish to clarify FRA's position so that the Committee understands FRA's position with regard to the NGEC specifications and restate that FRA truly appreciates the efforts of the Committee and its members.

The FRA has a complex set of missions. First and foremost, FRA's mission is to improve railroad safety through regulation and enforcement. While FRA has an expanding mission in support of capital investment in the rail industry, including the High-Speed Intercity Passenger Rail Program, we, who are responsible for the management of the investment programs must be mindful where our actions might create uncertainties or blur the public's perceptions of FRA's safety requirements. Most importantly, FRA must manage the NGEC investment programs without conflicting with the agency's minimum safety requirements.

The FRA has issued regulations on passenger equipment safety through an open process that provides for, among other things, notice and opportunities for public comment, and analysis of regulatory impacts, all of which are considered and balanced by FRA's Administrator before issuing a regulation. FRA's safety regulations are rules of general applicability that impose minimum requirements for the safe operation of railroads. Consequently, the rail industry is not precluded, and is in many cases encouraged, to go beyond the requirements of FRA's safety regulations. Exceeding FRA's minimum safety standards, however, cannot be used as a condition for FRA financial assistance.

The FRA's Office of Railroad Policy and Development has sponsored research into a number of approaches to enhance passenger equipment safety. Among the promising areas of that research are strategies for crash energy management (CEM). These measures, however, have not yet been incorporated in FRA's passenger equipment safety regulations for Tier I passenger equipment. Thus, while they are not required to do so by FRA regulation, some railroads operating Tier I passenger equipment, including the Southern California Regional Rail Authority, have voluntarily included some or all of the products of FRA's CEM research into recent equipment orders.

FRA's Office of Railroad Safety is also aware of the benefits of CEM and has developed, through the Railroad Safety Advisory Committee's Engineering Task Force, criteria for qualifying CEM-equipped, alternatively-designed trainsets that provide an equivalent level of safety to current Tier I passenger equipment crashworthiness standards. The establishment of equivalent safety is one of the factors that would be considered by FRA's Railroad Safety Board when determining whether to grant a waiver from the existing requirements for buff strength on CEM-equipped Tier I equipment. Longer term, it is FRA's intention to initiate rulemaking to propose the incorporation of CEM designs meeting the criteria as an alternative to the current buff strength requirements in FRA's passenger equipment safety regulations.

The FRA fully supports the goals of Section 305 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) and the NGEC. We see a common approach to passenger equipment orders as an important part of the Obama Administration's strategy to rejuvenate the domestic passenger rail equipment manufacturing industry. Thus, we have been an active participant in the Committee and its technical subcommittee developing the specifications. FRA also strongly believes that participation by innovative companies in the evolving domestic manufacturing base must be encouraged. Thus, we are reluctant as an agency to agree to specify or endorse the use of products of specific manufacturers. We seek instead to promote a process by which there is encouragement and incentive to exceed existing minimum standards by those seeking to participate in the manufacture of this equipment.

FRA participation on the NGEC and its subcommittees in no way represents a delegation of any aspect of FRA's exclusive jurisdiction over railroad safety. It is possible that some may not see the clear differences in the multiple missions of the agency and might interpret an FRA vote approving standards and specifications developed by the NGEC as a modification of FRA's safety regulations. Such modifications to FRA's safety regulations can only be accomplished through a notice and comment rulemaking proceeding.

At the July NGEC meeting it was recommended that the Section 305 specifications should include a disclaimer that addresses FRA's position outlined above. We believe that such a disclaimer as presented below would accomplish this purpose:

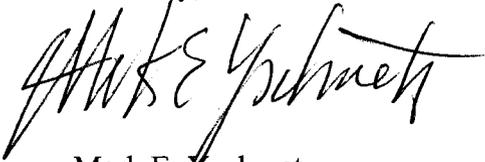
“All equipment for intercity passenger rail operation must, at a minimum, comply with the current Federal railroad safety laws and regulations contained in Subtitle V of Title 49, U.S.C., and Chapter II, Subtitle B of Title 49, C.F.R., that are applicable to passenger equipment. Any provision in this specification that exceeds or is contrary to a requirement of the existing Federal railroad safety laws or regulations, or both, does not constitute an amendment to those laws and regulations in any way.”

The use of third-party standards or specifications in this specification does not create an exemption from complying with any applicable Federal law or regulation. Before any equipment supplied pursuant to this specification that is not in compliance with applicable Federal law or regulation can be operated in the U.S., an appropriate waiver must be obtained from FRA’s Railroad Safety Board.

FRA considers the identification of component suppliers and any other commercial entities within this specification as being illustrative to help describe expected performance, and does not constitute a recommendation or product endorsement by FRA.”

I trust this explanation of FRA’s action clarifies how this agency views the important work of the NGECC and our shared commitment to improve high-speed and intercity passenger rail service. If you have any questions, please contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Yachmetz". The signature is written in a cursive, somewhat stylized script.

Mark E. Yachmetz  
Associate Administrator  
for Railroad Policy and Development