



**Overview of the Federal Railroad Administration
Rule of Particular Applicability (RPA) and Record of Decision (ROD)
September 21, 2020**

Overview: The Federal Railroad Administration (FRA) is slated to publish its final Rule of Particular Applicability (RPA) and Record of Decision (ROD) this Friday, September 18, 2020. The final RPA and ROD, one of many remaining milestones within the overall regulatory process—including the NEPA process—does not “permit construction or operations.” Rather, the final RPA and ROD simply enables FRA to reach a decision that is informed by a cursory understanding of the potential environmental impacts and safety requirements Texas Central Railway (TCR) will be mandated to operate by.

When considering the overall impact of the final RPA and ROD to the timeline of the project, it is worth noting that FRA does not grant any kind of construction approval or permit. Rendering this decision less than conclusory, FRA expressly states that “neither does this final rule, by itself, grant any permission or authority for TCR to operate.” It is the Surface Transportation Board (STB) that is the only agency that can grant TCR permits to operate and construct since taking jurisdiction over the project on July 16, 2020. And considering the STB via that decision is requiring TCR to submit a full application to the Board, TCR is years away from construction and operation, should it manage to secure \$30B.

In short, the final RPA and ROD establish the minimum establish safety requirements with which TCR must comply, while signifying the completion of the NEPA process. The publication of this final RPA and ROD is the beginning, not the end, of TCR’s regulatory journey. In addition, these final agency actions clear the way for legal challenges regarding, among other NEPA violations, the FRA’s failure to take the requisite “hard look” at the project’s environmental impacts, reasonable alternatives and financial feasibility.

To summarize the final RPA and ROD—FRA concludes:

- TCR has no permits to construct or operate
- TCR has completed the NEPA process (*albeit with numerous violations, which will likely be litigated*)
- The final RPA establishes the minimum federal safety requirements with which TCR must comply with, nothing more
- FRA denied TCR’s waiver to substitute non-compliant Japanese rolling stock
- FRA mandated compliance with crash readiness standards along with full Positive Train Control (PTC) compliance, requiring a complete redesign of TCR rolling stock in order to be compliant with this final RPA (*This must be done before submitting final designs for the required STB application for construction and operational permits. This redesign will cost TCR potentially tens of millions of dollars in additional costs.*)
- FRA stated that TCR must complete more thorough engineering and design work to facilitate construction (*FRA only reviewed conceptual designs via TCR*)
- STB will be a major hurdle for TCR to get past by being denied an exemption thus being required to submit a full application to the Board, which will be a multi-year process and requires TCR to submit detailed financial, engineering, construction and ridership information they have been unwilling to make available to date
- Union Pacific’s concerns were not addressed nor resolved
- FRA considers TCR to be a standalone system (i.e.- not interoperable), as its tracks are not physically connected to the rest of the general system of rail, and would be prohibited from doing so by this regulation



Technical Overview

This record of decision (ROD) is not a permit to begin construction.

FRA does not grant any kind of construction approval or permit. Neither does this final rule, by itself, grant any permission or authority for TCRR to operate. Furthermore, this rulemaking does not relieve TCRR of its responsibilities to design, construct and operate a safe railroad. Page 16

The FRA requires that TCRR work with Union Pacific Railroad (UPRR) to resolve conflicts between the two railroads when TCRR is near or adjacent to UPRR lines.

FRA would expect that the two railroads work together, and with the owner of the roadway, to identify and mitigate any hazards associated with reduced sightlines at any impacted highway-rail grade crossing, once final designs are developed. In addition, FRA expects that any localized risk presented regarding these issues would be identified in TCRR's risk-based hazard analysis program under part 270 and mitigated appropriately. Page 26/27

The FRA requires substantial redesign of the Tokaido Shinkansen system to further comply with the U.S. Tier III crashworthiness requirements that will result in significantly higher costs.

“...FRA is including additional requirements that are not inherent in the JRC approach to trainset structure design. These requirements include a dynamic collision scenario analysis that is designed to address the residual risks that could potentially exist within the TCRR operating environment.³² Of particular note, in this instance, is the inclusion of the steel coil collision scenario outlined in § 299.403(c). Despite the safety record of JRC's Tokaido Shinkansen system, FRA believes that the North American environment poses unique risks with respect to potential objects that might somehow enter the protected ROW, either by accident or on purpose. In this case, FRA believes that requiring dynamic collision scenario analysis using the 14,000-lbs steel coil scenario derived from existing requirements to protect against risks presented by grade crossings can serve as a conservative surrogate for potential hazards that might be present on the TCRR ROW (*e.g.*, feral hogs, stray livestock, unauthorized disposal of refuse). With the inclusion of this dynamic collision scenario, and adaptations of existing U.S. requirements on emergency systems and fire safety, FRA believes it has reasonably addressed risks unique to the TCRR operating environment in a manner that appropriately considers crashworthiness and occupant protection standards for the operating environment intended, while at the same time keeping intact the service-proven nature of the equipment. Pages 34/35

The FRA defers to the State of Texas with regard to eminent domain issues.

FRA understands the eminent domain issues to be centered on the interpretation of various Texas State statutes. FRA defers to the State of Texas to interpret its own statutes. Page 50