



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Part 299**

**[Docket No. FRA-2019-0068, Notice No. 4]**

**RIN 2130-AC84**

### **Texas Central Railroad High-Speed Rail Safety Standards**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Proposed rule; announcement of telephonic public hearings and comment period extension.

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**SUMMARY:** On March 10, 2020, FRA published a notice of proposed rulemaking (NPRM) that would establish safety standards for the Texas Central Railroad (TCRR) high speed rail system. On March 12, 2020, FRA announced three public hearings to provide members of the public an opportunity to provide oral comments on the proposed safety requirements, which were subsequently postponed on March 30, 2020. FRA is now announcing the rescheduling of the public hearings. Additionally, FRA is extending the comment period to May 26, 2020, to afford members of the public time to comment on opinions and views expressed during these hearings, that will be captured in a transcript of the proceedings and placed in the rulemaking docket.

**DATES:** The comment period for the proposed rule published on March 10, 2020 (85 FR 14036), is extended and now closes on May 26, 2020. Written comments in response to views or information provided at the public hearings must be received by May 26, 2020.

The public hearings will be conducted on the following dates at the following times (members of the public will be able to call into each telephonic hearing 30 minutes prior to the start of each hearing):

- Hearing 1: May 4, 2020, from 5 p.m. (EDT) to 10 p.m. (EDT).
- Hearing 2: May 5, 2020, from 6 p.m. (EDT) to 10 p.m. (EDT).
- Hearing 3: May 6, 2020, from 6 p.m. (EDT) to 10 p.m. (EDT).

**ADDRESSES:** Written comments in response to views or information provided at the public hearings may be submitted by any of the methods listed in the NPRM. *See* 85 FR 14036.

The public hearings will be held telephonically. For more logistical information on the public hearings please visit <https://railroads.dot.gov/legislation-regulations/TCRR-NPRM>. Please note that participation in each hearing will be limited to the first 300 callers.

Dial-in phone numbers and participant access codes for each hearing are as follows:

- Hearing 1: Phone number: 844-721-7241; participant access code: 6322460.
- Hearing 2: Phone number: 844-721-7241; participant access code: 6441451.
- Hearing 3: Phone number: 844-291-5491; participant access code: 8976262.

**FOR FURTHER INFORMATION:** Mr. Kenton Kilgore, Program Analyst, Federal Railroad Administration, Office of Railroad Safety (telephone: (202) 493–6286; email: [Kenton.Kilgore@dot.gov](mailto:Kenton.Kilgore@dot.gov)); or Mr. Michael Hunter, Attorney Adviser, Federal Railroad Administration, Office of Chief Counsel, (telephone: (202) 493–0368; email: [Michael.Hunter@dot.gov](mailto:Michael.Hunter@dot.gov)).

## **SUPPLEMENTARY INFORMATION:**

### *Prior public engagement as part of the environmental review process*

In its March 12, 2020, announcement of the public hearings, FRA briefly discussed prior public engagement that was part of the environmental review process. *See* 84 FR 14449. While not repeating that discussion here, FRA still wishes to draw attention to those prior opportunities, reiterate that it is considering all comments received, and make clear that it will provide responses to the comments submitted during the public comment period for the draft environmental impact statement (EIS) in the final EIS. FRA anticipates releasing the final EIS in late Spring of this year.

### *Public hearings to receive oral comment on the NPRM—purpose and scope*

As stated above, FRA published the NPRM proposing safety requirements specific to the TCRR high-speed rail system, and opened the public comment period on March 10, 2020. *See* 85 FR 14036. On March 12, 2020, FRA announced it had scheduled three public hearings to be conducted in Dallas, Navasota, and Houston, Texas, between March 31 and April 2, 2020. *See* 85 FR 14449.

However, in light of the President's March 13, 2020, Proclamation on Declaring a National Emergency concerning the Novel Coronavirus Disease 2019 (COVID-19) public health emergency, and the Centers for Disease Control and Prevention (CDC) guidance to cancel mass gatherings of people,<sup>1</sup> FRA postponed the three public hearings in a March 30, 2020 *Federal Register* publication (85 FR 17527). FRA is now announcing the rescheduling of those hearings to provide an opportunity for additional public participation. Consistent with CDC guidelines advising against in-person

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<sup>1</sup>*See* <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>.

gatherings,<sup>2</sup> FRA has decided to convene three telephonic public hearings. The choice to conduct these hearings telephonically represents merely a change in the manner of public engagement. As the medium of these hearings is telephonic (there is no web-based application being used as part of these hearings), members of the public, regardless of phone technology used, will be able to participate.<sup>3</sup> FRA anticipates being able to accommodate the same number of participants at each telephonic hearing as during the in-person hearings, and does not believe there will be any degradation in the quality of the opinions and views expressed during a telephonic hearing, as compared to an in-person hearing. Further, FRA will consider all comments received during these telephonic hearings just as it would if the comments were received at an in-person hearing.

As with the in-persons hearings, members of the public are invited to present oral statements, and to offer information and views about the technical safety requirements proposed in the NPRM at the upcoming hearings. Unlike the public hearings conducted for the environmental review, the purpose and scope of these hearings is to receive oral comments only on the technical safety requirements proposed in the NPRM and its associated economic analysis. The NPRM public hearings are not a forum for debate on the merits of the project as a whole, or to provide comment on proceedings outside of the NPRM, such as the environmental review process. Rather, the NPRM hearings are meant to help inform FRA's decisions regarding the technical safety requirements proposed in the NPRM and its associated economic analysis. The hearings on the NPRM will be

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<sup>2</sup> *Id.*

<sup>3</sup> Please note that FRA is not making any representations about the connection of any one member of the public's individual phone. Technical issues that arise between a member of the public and their individual phone provider are outside of FRA's control.

conducted by representatives of FRA designated under FRA's Rules of Practice (49 CFR 211.25). The rules of evidence will not apply. The hearings will be informal, which means that they are non-adversarial proceedings and there will be no cross examination of persons presenting statements or offering evidence. These hearings are an opportunity to provide relevant technical information to FRA regarding the proposed requirements and associated economic analysis, and a mechanism to place that information in the record for review and consideration by FRA.

*Exemption for technological improvements—proceedings under 49 U.S.C. 20306*

As a part of only Hearing 1, FRA will conduct proceedings under 49 U.S.C. 20306 to determine whether to invoke its discretionary authority to provide relief to TCRR from certain requirements of 49 U.S.C. ch. 203 for its planned operation of new high-speed trainsets built to the proposed requirements contained in the NPRM. FRA will conduct these proceedings during the first hour of the hearing.

Under 49 U.S.C. 20306, FRA may exempt TCRR from the above-identified statutory requirements based on evidence received and findings developed at a hearing demonstrating that the statutory requirements “preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.” Accordingly, to receive such evidence and develop findings to determine whether FRA should invoke its discretionary authority under 49 U.S.C. 20306 in this instance, proceedings will be conducted as part of Hearing 1 scheduled for Monday, May 4, 2020 at 5:00 p.m. (EDT). Interested parties are invited to present oral statements at the hearing regarding the technical information presented in the NPRM addressing the application of 49 U.S.C. ch. 203. Again, as mentioned above,

this part of the proceedings will be an informal hearing limited in scope to the technical information presented regarding the proposed requirements concerning safety appliances, and is not a forum to generally debate the project or other proceedings outside of the rulemaking.

In its rulemaking petition, submitted April 16, 2016, TCRR requested FRA exercise its authority under 49 U.S.C. 20306 to exempt its high-speed passenger rail trainsets from the requirements of 49 U.S.C. 20302, mandating that railroad vehicles be equipped with (1) secure sill steps and efficient hand brakes; (2) secure grab irons or handholds on vehicle ends and sides for greater security to individuals coupling and uncoupling vehicles; and (3) the standard height of drawbars. *See* 49 U.S.C. 20302(a)(1)(B), (a)(2), and (a)(3).

In support of its request for an exemption, TCRR noted in its petition that safety appliances such as sill steps or end or side handholds are typically used in conventional North American practice by maintenance personnel who ride the side of trainsets in yards or maintenance facilities for marshalling operations. The N700 series trainset, as proposed in the NPRM, is a fixed-consist trainset where trainset make-up only occurs in defined locations where maintenance personnel can safely climb on, under, or between the equipment, consistent with the protections afforded under 49 CFR part 218. Additionally, the leading and trailing ends of the N700 series trainset are equipped with an automatic coupler located behind a removable shroud. These couplers, as proposed by TCRR, will only be used for rescue operations in accordance with TCRR's operating rules, and provide for the safe coupling of one trainset to another (i.e., each end will have automatic self-centering couplers that couple to other trainsets on impact and uncouple by

mechanisms that do not require a person to go between trainsets or the activation of a traditional uncoupling lever). Further, as proposed, level boarding will be provided at all locations in trainset maintenance facilities where crew and maintenance personnel are normally required to access or disembark trainsets. Moreover, because the equipment is a fixed-consist trainset in which individual vehicles are semi-permanently coupled and, as noted above, individual vehicles can only be disconnected in repair facilities where personnel can work on, under, or between units under protections consistent with 49 CFR part 218, TCRR asserts that having drawbars at the statutorily prescribed height is unnecessary.

As such, TCRR believes there is not a functional need to equip the ends of the trainsets with sill steps, end or side handholds, or uncoupling levers. As this technology is intended to operate at high-speeds, the inclusion of these appurtenances would have a significant and detrimental impact on the aerodynamics of the trainset. This increase in the aerodynamic footprint would negatively impact both efficiency and aerodynamic noise emissions according to TCRR.

TCRR also noted that trainset securement will be provided using wheel chocks in addition to stringent operating rules and procedures, which will be consistent with the service-proven procedures utilized on the Tokaido Shinkansen. Additionally, as proposed in the NPRM, TCRR will be required to demonstrate, as part of its vehicle qualification procedures, that the procedures effectively secure the trainset (see proposed § 299.607).

In sum, TCRR asserted that requiring compliance with the identified statutory requirements would serve to preclude the development or implementation of more

efficient railroad transportation equipment or other transportation innovations under existing law.

*Procedures for public participation in the hearings on the NPRM*

At each NPRM hearing, FRA representatives will make opening statements reiterating the scope of the hearing as described above, and any relevant procedures to be followed at the hearing. Following FRA's opening statements, there will be an opportunity for members of the public to present a brief oral comment on the record. Time permitting, FRA will allow everyone who desires to provide an oral comment at a hearing the opportunity to do so. Those members of the public wishing to make a statement at the hearing will be required to follow those procedures announced at the hearings to indicate a desire to make a statement.

FRA will generally limit the duration of individual presentations, as necessary, to afford all persons who wish to speak the opportunity to do so. However, during the proceedings under 49 U.S.C. 20306, conducted as part of Hearing 1, TCRR may be afforded additional time to present information to support its request for FRA to invoke its discretionary authority under 49 U.S.C. 20306.

At each hearing, FRA will announce additional procedures that may be necessary for the conduct of the hearing, including the specific time limit for individual presentations. FRA reserves the right to limit participation in the hearing of persons who exceed their allotted time, or who discuss topics or issues outside the scope of the proposed rulemaking.

The proceedings will be recorded, with transcripts prepared. FRA will add the transcripts of the hearings to the public docket in this rulemaking proceeding.

For information on services for persons with disabilities, please contact FRA Program Analyst, Mr. Kenton Kilgore, at least 5 working days before the date of the hearing by one of the means listed in the **FOR FURTHER INFORMATION** section.

*Extension of comment period*

As the comment period for the NPRM published on March 10, 2020, closes on May 11, 2020, and the public hearings are scheduled for May 4-6, 2020, FRA is extending the comment period so that it now closes on May 26, 2020. FRA is extending the comment period so that members of the public have adequate time to review and provide written comments on the transcripts of the three public hearings conducted. All written comments must now be submitted by May 26, 2020. Written comments submitted after that date will be considered to the extent practicable.

FRA notes that it received numerous requests not to hold “virtual hearings,” due to concerns over the lack of reliable high-speed internet access, and/or to indefinitely postpone hearings until they can be safely held in person. In response, FRA has shifted these hearings to telephone-only hearings, which will be able to accommodate the same number of participants as the previously scheduled in-person hearings, in a manner that is consistent with ensuring public health, and that does not require any technology beyond a telephone. We have also extended the comment period to ensure the opportunity to comment on any safety issues raised in the hearing. However, given the extensive public outreach already conducted related to this proposed rule, and the supplementary nature of the public hearings as related to the opportunity to provide detailed written comments on the proposed rule, in consultation with Office of Information and Regulatory Affairs, FRA has determined that there is no need to further postpone the public hearings or

further extend the comment period.

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**John Karl Alexy,**  
*Associate Administrator for Railroad Safety,*  
*Chief Safety Officer.*

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