



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket Number FRA-2019-0103]**

### **Petition for Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this provides the public notice that by letter received December 3, 2019, Colorado Pacific Railroad, LLC (CXR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 234. FRA assigned the petition Docket Number FRA-2019-0103.

Specifically, CXR seeks a waiver from the requirements of 49 CFR 234.247, *Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements*. CXR seeks this relief to operate over five non-functioning highway-rail grade crossings (HRGC) in Kiowa County, Colorado, without making inspections and tests required in § 234.249 through § 234.271.

The line runs from milepost (MP) 747.50 in Towner, Colorado, to NA Junction, Colorado, at MP 869.40. CXR purchased the line in 2017, but it has not yet started operations pending repair and rehabilitation of the tracks that have been neglected for many years.

CXR explains the HRGC warning signal system at each of the five locations has been vandalized. CXR intends to rehabilitate the tracks to meet FRA Class 2 standards with 25 miles per hour (MPH) operation, with 10 MPH in Eads, Colorado, and Ordway,

Colorado, with an average of one train per day. Applications to the Colorado Public Utilities Commission have been made for the five involved HRGCs. Four of the five applications seek changing the active crossings to passive crossings, and one application seeks to remove the gates, but keep the flashers.

CXR explains it only seeks permission to temporarily use flagmen at five HRGCs in relatively small Colorado towns to allow rail service pending the reconstruction of rail signaling and equipment. The expectation is that no more than one train of 25 cars per day would be transported over these HRGCs for a period of 10 weeks. This rail service would be over an approximately 62-mile-long segment of CXR's 122-mile rail line. This segment extends from Haswell, Colorado, eastward to Towner, Colorado, where the CXR track interchanges with the track of the Kansas & Oklahoma Railroad.

CXR states there is a present urgency to permit this rail service. Area wheat and milo farmers, in reliance upon restoration of rail service to this territory, have delivered so much grain to one Haswell facility, that it has been necessary to store a veritable mountain of it on the ground. 2019 saw near record rainfall in this territory, resulting in above average harvest amounts. To avoid the waste of these harvested crops, expedited approval of flagman service to allow opening of the railroad to service is necessary.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting

written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE, W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Ave., SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described

in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC.

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

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