

for Region 7 who will notify the NWP within 14 days of the submission whether or not the standards and instructions are approved. If they are not approved, the Regional Administrator will describe what additional measures must be taken to secure approval.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR §§ 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to the Regional Administrator for Region 7.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR Part 213. [Note: Emergency Order No. 14 already requires the Northwestern Pacific Railroad to repair all track subject to that order to class 1 track standards or designate the track as excepted track in accordance with 49 CFR 213.4. By separate notice, Emergency Order No. 14 is being amended to require repair to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.]

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37;

(7) Furnish FRA with a 12-month track maintenance plan that includes, at a minimum the number and location (mile by mile) of crossties to be installed, location and extent of rail surfacing, location and nature of drainage facility maintenance, location and nature of vegetation control, extent of rail replacement, schedule for accomplishing programs, and criteria used to determine the location and extent of tie renewal and replacement (e.g., traffic density, track inspection data, and accident history).

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7. The training program shall ensure that track inspectors, track foremen, and first level track supervisors can assure compliance with the requirements of 49 CFR part 213. FRA is to be furnished a copy of the training program.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and

ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met. Within 30 days of the notification, FRA will conduct inspections of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

#### Partial Relief

In order for FRA to consider granting partial relief from this Emergency Order, the NWP must first meet all of the system-wide requirements, i.e., requirements 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of the line for which all of the requirements of this Emergency Order are met. NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met for a specified section of the railroad's line. Within 30 days of the notification, FRA will conduct inspections of that specified portion of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted for that specified portion. If FRA does not lift the order for the specified portion, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

#### Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to \$22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

#### Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 6:01 p.m. (PST) on November 27, 1998, and apply to all operations of

trains on or after that time. Notice of this Emergency Order will be provided by publishing it in the **Federal Register**. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

#### Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on November 25, 1998.

**Jolene M. Molitoris,**  
*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[FRA Emergency Order No. 14, Notice No. 5]

#### Northwestern Pacific Railroad; Amendment to Prohibit the Transportation of Hazardous Materials between Willits, California and Ft. Seward, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this amendment to Emergency Order No. 14 prohibiting the Northwestern Pacific Railroad (NWP) of Eureka, California, from transporting, or permitting anyone to transport, hazardous materials over any track from mile post 145.5 near Willits, California to mile post 216.6 near Ft. Seward, California.

#### Background

FRA issued Emergency Order No. 14 on June 7, 1990, when the railroad was known as the Eureka Southern Railroad. The Emergency Order prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. The Emergency Order originally covered the rail line from Willits to

Eureka, mile post 284.1. However, because of improved conditions, FRA lifted the Emergency Order between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka on October 1, 1990. The Emergency Order remains in effect from mile post 145.5 near Willits to mile post 216.6, Ft. Seward. FRA granted further partial relief in January, 1997, by allowing the NWP to haul hazardous materials over track not designated as excepted when the materials hauled were for construction, maintenance, and operation of the railroad.

In conjunction with the California Public Utilities Commission (CPUC) and the Federal Emergency Management Agency (FEMA), FRA conducted in September, October, and November 1998, safety surveys of the entire NWP line from mile post 295.5 near Arcata to milepost 63.4 between Schellville and Napa Junction. The surveys revealed unsafe conditions and practices which, in FRA's judgment, pose an emergency situation involving a hazard of death or personal injury. FRA found that 32 of the railroad's 127 grade crossing signals are not operational, endangering any motorist attempting to cross a grade crossing without adequate warning about a train's approach. The surveys also showed widespread track safety defects including numerous defective crossties, improper drainage, and overgrown vegetation posing a fire hazard and obstructing visibility of signs and signals. Most important, FRA found locations where the conditions for movement over excepted track were not being met.

The area between Willits and Eureka, which encompasses the area affected by Emergency Order No. 14, is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install culverts at the correct depth and angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is crushed quickly by the weight of work trains.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations the vegetation

poses a fire hazard to track carrying structures.

In response to these findings, FRA is issuing, concurrent with this amendment, Emergency Order No. 21, which prohibits the NWP from operating, or permitting operations, over its rail line until the railroad inspects and repairs all of its grade crossing signals and repairs the track to class 1 track standards. The requirements of Emergency Order No. 21 apply to the entire railroad, including the portion of the line still governed by Emergency Order No. 14, with the exception of the requirement that the track be repaired to class 1 track standards for all rail traffic.

Until now, Emergency Order No. 14 has permitted movement of hazardous materials over excepted track, consistent with the conditions of 49 CFR § 213.4. However, the same conditions that have caused FRA to prohibit hazardous materials traffic on excepted track elsewhere on the line also exist on the portion of the line still covered by Emergency Order No. 14. Therefore, we are amending Emergency Order No. 14 to prohibit movement of hazardous materials, except in work trains, until the track is brought to class 1 standards. Emergency Order No. 14, as amended here, remains in effect, which allows the NWP to haul non-hazardous freight between Willits and Ft. Seward over excepted track, without repairing the track to class 1 track standards. With Emergency Order No. 14 still in place, NWP is allowed to operate with slightly fewer restrictions than in other parts of the railroad over a portion of its line where the general population is smaller and rail traffic is less extensive.

#### **Amendment to the Order**

I find that the unsafe conditions described above compel me to address the hazards presented by hauling hazardous materials over excepted track. Accordingly, I order that the NWP may not haul materials required by 49 CFR Parts 171-179 to be placarded as hazardous over the portion of its line still covered by Emergency Order No. 14 until such trackage meets class 1 standards. The railroad may continue to haul non-hazardous freight over the track once the track is designated as excepted. This amendment is not meant to prohibit the hauling of hazardous materials in work trains for the specific and sole purpose of effecting repairs on the railroad.

#### **Relief**

The NWP may obtain full relief from this amendment and all of Emergency

Order 14 by fulfilling the following requirements:

1. Repair the track to class 1 track standards.
2. Obtain approval from the Federal Railroad Administrator that all of the requirements of Emergency Order No. 14 have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of Emergency Order No. 14 have been met. Within 30 days of notification, FRA will conduct inspections of the line and within seven days of the inspections, will inform the railroad in writing whether Emergency Order No. 14 is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of Emergency Order No. 14.

#### **Penalties**

Any violation of Emergency Order No. 14, as amended, shall subject the person committing the violation to a civil penalty of up to \$22,000. 49 U.S.C § 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C § 20112.

#### **Effective Date**

This amendment shall take effect at 12:01 (PST) on November 27, 1998, and apply to all operations of trains on or after that time. Copies of this amendment Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

#### **Review**

Opportunity for formal review of this amendment will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211.

Issued in Washington, D.C. on November 25, 1998.

**Jolene M. Molitoris,**  
*Administrator.*

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