

**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:

- *Website:* <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 January 10, 2020 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.*

[FR Doc. 2019–26663 Filed 12–10–19; 8:45 am]

**BILLING CODE 4910–06–P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****[Docket No. NHTSA–2019–0029; NHTSA–2019–0030; Notice 2]****Mack Trucks, Inc., and Volvo Trucks North America, Grant of Petitions for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petitions.

**SUMMARY:** Mack Trucks Inc., (Mack) and Volvo Trucks North America (Volvo) have determined that certain model year (MY) 2014–2019 Mack Trucks and certain MY 2014–2019 Volvo Trucks do not comply with Federal Motor Vehicle Safety Standard (FMVSS) 101, *Controls and Displays*. Both Mack and Volvo filed noncompliance reports dated August 16, 2018, and later amended them on August 23, 2018, and June 2, 2019. Both Mack and Volvo subsequently petitioned NHTSA on October 9, 2018, and later amended their respective petitions on May 29, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces grant of both Mack and Volvo's petitions.

**FOR FURTHER INFORMATION CONTACT:** John Finneran, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5289, facsimile (202) 366–3081.

**SUPPLEMENTARY INFORMATION:****I. Overview**

Mack and Volvo have determined that certain MY 2014–2019 Mack Trucks and that certain MY 2014–2019 Volvo Trucks do not comply with Table 2 of FMVSS 101, *Controls and Displays* (49 CFR 571.101). Both Mack and Volvo filed noncompliance reports dated August 16, 2018, and later amended

them on August 23, 2018, and June 2, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Both Mack and Volvo subsequently petitioned NHTSA on October 9, 2018, and later amended their petitions on May 29, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Mack's and Volvo's petitions was published with a 30-day public comment period on August 21, 2019, in the **Federal Register** (84 FR 43663). No comments were received.

## II. Vehicles Involved

Approximately 95,000 MY 2014–2019 Mack Anthem, Granite, LR, Pinnacle, TerraPro, and Titan Trucks, manufactured between September 1, 2013, and August 13, 2018, are potentially involved.

Approximately 130,000 MY 2014–2019 Volvo VAH, VHD, VNL, VNM, VNR VNX, and VT Trucks, manufactured between September 1, 2013, and August 13, 2018, are potentially involved.

## III. Noncompliance

Mack and Volvo explained that the noncompliance is that the Low Brake Air Pressure telltale for air brake systems does not display the words “Brake Air,” as specified in Table 2 of FMVSS No. 101. The subject Mack vehicles include various combinations of low air telltales, pressure gauges, and available alerts, and the subject Volvo vehicles include both visual and audible warnings that are not an exact match to the “Brake Air” telltale requirement.

## IV. Rule Requirements

Paragraphs S5 and S5.2.1 of FMVSS No. 101 include the requirements relevant to these petitions. Each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of FMVSS No. 101 for the location, identification, color, and illumination of that control, telltale or indicator.

Each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2.

## V. Summary of Petition

Mack and Volvo both described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

Mack and Volvo submitted the following views and arguments in support of the petitions:

1. Both Mack and Volvo provide a visual and audible alarm along with air pressure gauges and feel that their vehicles, even though non-compliant, meet the intent of the regulation to provide a clear and visible warning to the driver when the air pressure in the service reservoir system is below 60 psi.

2. For Mack Granite, Pinnacle, and Titan model vehicles that are 2018 and earlier, the display includes two gauges and a red low air pressure indicator lamp for each gauge. When a low air pressure situation occurs, the driver is warned through the gauge, a red indicator lamp in each gauge, and an audible warning.

3. For Mack LR model vehicles, two pressure gauges, a low air telltale, a popup in the display, and an audible alarm are provided.

4. For Mack TerraPro model vehicles, pressure gauges, a low air telltale, and an audible alarm are provided.

5. In 2019 and later Anthem, Pinnacle, and Granite model vehicles, pressure gauges, a low air pressure popup (System Air Pressure is Low), and an audible alarm are provided.

6. For Volvo, 2014–2019 models, the display includes two gauges and a red low air pressure indicator lamp for each gauge. When a low air pressure situation occurs, the driver is warned through the gauge, a red indicator lamp in each gauge, and an audible warning. On all models and model years, a pop-up (Low System Air Pressure) is provided in addition to the gauges, a low-pressure indicator, and an audible alarm.

Both Mack and Volvo concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

## VI. NHTSA's Consideration

Any manufacturer that determines a noncompliance to exist and intends to petition the agency, pursuant to 49 CFR part 556.4(c), must submit their petition no later than 30 days after such determination. Both Mack and Volvo submitted their petitions 25 days past

the 30-day requirement. However, due to the nature of the noncompliance and considering that the agency has previously granted similar inconsequential noncompliance petitions, in this case, the agency has decided to accept both Mack and Volvo's petitions.

## VII. NHTSA's Analysis

NHTSA has considered the arguments presented by Mack and Volvo and has determined that the subject noncompliance is inconsequential to motor vehicle safety. NHTSA believes that the subject noncompliance poses no risk to motor vehicle safety for the reasons discussed below:

1. When a low air pressure situation exists, each vehicle has a low system air pressure indicator illuminated in red with a black background. There are no requirements in FMVSS No. 101 for the color of the telltale but the petitioner's use of red, which is an accepted color representing an urgent condition, provides a definitive indication of a situation that needs attention.

2. Simultaneous to the illumination of the low system air pressure indicators is activation of an audible alert, further notifying the operator that a malfunction exists, requiring corrective action. Although the alert would not, in and of itself, identify the problem, a driver would be prompted by the warning tone to heed the other indicators.

3. In a low-pressure situation, the operator is provided additional feedback by the primary and secondary instrument cluster air gauges which are marked with numerical values in PSI units with red shading denoting the low-pressure range.

4. The Agency believes that the functionality of the parking brake system and the braking performance of the service brake system remain unaffected by the use of multiple different indicators and audible alerts instead of the words “Brake Air” on the subject vehicles.

5. Lastly, NHTSA believes that, as the affected trucks are predominately used as commercial vehicles with professional drivers, operators will monitor their vehicle's condition and take note of any warning signs and gauge readings to ensure proper functionality of all systems. Also, professional drivers will become familiar with the meaning of the telltales and other warnings and the feedback provided to the driver in these vehicles, if a low brake pressure condition exists, would be well understood.

NHTSA concludes that simultaneous activation of the red low air pressure indicators, an audible alert for a low air pressure condition, along with the primary and secondary air gauge indicators, provide adequate notification to the operator that a brake malfunction exists.

#### VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Mack and Volvo have met their burden of persuasion that the FMVSS No. 101 noncompliance is, in each case, inconsequential as it relates to motor vehicle safety. Accordingly, Mack and Volvo's petitions are hereby granted, and they are exempted from the obligation to provide notification of and remedy for, the subject noncompliance in the affected vehicles under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicle that Mack and Volvo no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mack and Volvo notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

#### Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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### DEPARTMENT OF TRANSPORTATION

#### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2018-0025: Notice No. 19-XX]

#### Hazardous Materials: Notice of Issuance of Special Permit Regarding Liquefied Natural Gas

**AGENCY:** Pipeline and Hazardous Materials Safety Administration

(PHMSA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** PHMSA is publishing this notice as a general informational announcement concerning the issuance of a special permit. The special permit authorizes the grantee to transport Methane, refrigerated liquid (*i.e.*, liquefied natural gas or LNG) by rail tank car. The special permit and documents supporting the special permit decision have been added to PHMSA's LNG by Rail Notice of Proposed Rulemaking Docket (Docket No. PHMSA-2018-0025) for consideration by the public because the subject matter of the special permit overlaps with the subject matter of PHMSA's rulemaking proposing to authorize the transport of LNG in rail tank cars. PHMSA reviewed comments to the draft environmental assessment (Docket No. PHMSA-2019-0100) published for public review on June 6, 2019. These comments informed PHMSA's decision making in issuing the special permit and will also help to inform PHMSA's deliberations with respect to a potential LNG by rail final rule. PHMSA will consider any additional comments on the operational controls included in the special permit that are filed to the LNG rulemaking docket to aid the agency in determining what, if any, operational controls may be appropriate for inclusion in a potential final rule.

**DATES:** Comments must be received to Docket No. PHMSA-2018-0025 by December 23, 2019. To the extent practicable, PHMSA will consider late-filed comments in development of a potential final rule.

**ADDRESSES:** You may submit comments identified by the Docket Number PHMSA-2018-0025 (HM-264) via any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* To the Docket Management System; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and Docket

Number (PHMSA-2018-0025) or RIN (2137-AF40) for this rulemaking at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 105.30, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as "Confidential"; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice.

Submissions containing CBI should be sent to Michael Ciccarone, Office of Hazardous Materials Safety, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590-0001. Any commentary that PHMSA receives which is not specifically designated as CBI will be placed in the LNG by Rail Notice of Proposed Rulemaking Docket (Docket No. PHMSA-2018-0025).

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Approvals and Permits (PHH-30), Telephone (202) 366-4535, or Michael Ciccarone, Standards and Rulemaking Division (PHH-10),