

For more information, please contact [info@uta-network.com](mailto:info@uta-network.com)

## Advising Professionals in the Transportation Industry

### News Flash:

- **The FMCSA has enhanced its Pre-Employment Screening (PSP) program by adding data for co-driver safety and post-crash violations to the roadside inspection and crash records**

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## USDOT Issues Proposed Rule Requiring Electronic On-Board Recorders for Interstate Commercial Truck and Bus Companies

WASHINGTON - The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) today issued a regulatory proposal that would require interstate commercial truck and bus companies to install electronic on-board recorders (EOBRs) to monitor their drivers' hours-of-service (HOS) compliance.

The proposed rule would also relieve interstate motor carriers from retaining certain HOS supporting documents, such as delivery and toll receipts, which are currently used to verify the total number of hours drivers spend operating the vehicle. This part of the proposal fulfills an order of the U.S. Court of Appeals for the District of Columbia requiring FMCSA to publish a Notice of Proposed Rulemaking regarding supporting documents by January 31, 2011.

"We cannot protect our roadways when commercial truck and bus companies exceed hours-of-service rules," said Transportation Secretary Ray LaHood. "This proposal would make our roads safer by ensuring that carriers traveling across state lines are using EOBRs to track the hours their drivers spend behind the wheel."

EOBRs are devices attached to commercial vehicles that automatically record the number of hours drivers spend operating the vehicle. Several carriers, including Schneider National, Maverick USA, J.B. Hunt, Knight Transportation and U.S. Express Enterprise, have already installed EOBR technology on their fleets. Approximately 500,000 carriers would be affected by the proposed rule.

Under the proposal, interstate carriers that currently use Records of Duty (RODS) logbooks to document drivers' HOS would be required to use EOBRs. Short-haul interstate carriers that use timecards to document HOS would not be required to use EOBRs.

Carriers that violate this EOBR requirement would face civil penalties of up to \$11,000 for each offense. Noncompliance would also negatively impact a carrier's safety fitness rating and DOT operating authority. In April 2010, FMCSA issued a final rule that mandates EOBRs for interstate carriers with serious patterns of HOS violations.

"This proposal is an important

step in our efforts to raise the safety bar for commercial carriers and drivers," said FMCSA Administrator Anne S. Ferro. "We believe broader use of EOBRs would give carriers and drivers an effective tool to strengthen their HOS compliance."

This proposed rule also continues the Department's partnership with Cornell on the e-Rulemaking Initiative, an important step toward keeping President Obama's promise of opening government to more effective citizen participation. The Cornell e-Rulemaking Initiative (CeRI) makes the federal regulatory process more accessible to the public through [Regulation Room](#), an online public participation environment where people can learn about and discuss proposed federal regulations and provide effective feedback to the Department.



Use EOBRs would ensure compliance with interstate hours-of-service requirements

## Maritime Administration Reaches Agreement with Department of Energy on Cargo Preference Requirements

The US Department of Transportation's Maritime Administration has successfully reached an agreement with the Department of Energy (DOE) on the application of cargo preference requirements to the DOE loan guarantee program. The Maritime Administration's cargo preference

requirements allow for U.S. flag ocean carriers, hiring U.S. crews, to bid on at least 50 percent of cargoes shipped as part of a federally-financed project. These requirements allow at least 75 percent for the case of food-aid cargoes, and 100 percent for military cargoes. In an effort to

resolve a difference of legal opinion, the two Agencies engaged in a dialogue over a period of months to address the issue, and have agreed as a matter of policy to apply the cargo preference requirements.



PHMSA's new regulation will cut down on thousands of special permit applications per year

*“Getting rid of this cumbersome process will maintain safety and save businesses and the government both time and money.”*

## USDOT Converts Widely Used HazMat Transportation Permits into Federal Regulations

WASHINGTON – The U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) today announced another step in its efforts to improve the safe transport of hazardous materials by incorporating the provisions of six widely used cargo tank special permits into Federal Hazardous Materials regulations.

This new regulation will cut down on thousands of special permit applications per year. The special permits incorporated into regulations today have long established safety records. Like all special permits, these were used to approve processes for hazmat transport not explicitly spelled out in PHMSA regulations. Over years, the practices approved in these permits became commonplace and were proven safe.

“President Obama asked us to find ways to make our government better for the people of the United States,” said U.S. Transportation Secretary Ray LaHood. “Getting rid of this cumbersome process will maintain safety and save businesses and the government both time and money.”

“This rulemaking is another step in incorporating tested transportation technologies and operations from longstanding special permits into the regulations, promoting safety and streamlining our processes,” said PHMSA Administrator Cynthia Quarterman.

Streamlining the hazardous materials special permit and approvals process is a major priority for PHMSA. Last year, the Department released an Action Plan to improve PHMSA’s safety oversight, processes, procedures, and policies for its hazardous materials special permits and approvals program.

Listed below are the six special permits that will be incorporated into the Hazardous Materials Regulations pertaining to the shipment of certain hazardous materials in cargo tanks.

- Two of the special permits cover hazardous materials mounted on farm trucks used exclusively for agricultural purposes:
  - Liquefied petroleum gas (LPG)
  - Liquid soil pesticide (toxic substances)

- One special permit covers the transportation of hazardous materials used for striping roads.
- One special permit authorizes private motor carrier companies to transport propane tanks most commonly used for home heating and cooking.
- Two special permits address nurse tanks:
  - The first covers the transportation of nurse tanks securely mounted on field trucks.
  - The second authorizes the use of the nurse tanks carrying anhydrous ammonia under certain conditions when the tanks are missing or have illegible identification plates.

The final rule becomes effective 30 days after the date of publication in the *Federal Register*. The final rule is scheduled for publication on February 1, 2011. It is also available on the PHMSA website at [www.phmsa.dot.gov](http://www.phmsa.dot.gov).

## Proposed Rule Would Require Railroads to Establish Emergency Notification Systems for Reporting of Unsafe Highway-Rail Grade Crossing Conditions

The Federal Railroad Administration (FRA) today proposed a rule that would make it easier for the public to report unsafe conditions at highway-rail grade crossings. The proposal would require railroads to establish toll-free telephone numbers to allow the public to report malfunctioning highway-rail grade crossing warning signals, disabled vehicles blocking crossings, or any other unsafe conditions at crossings.

Under the proposed rule, once the railroad receives a call from the public about a malfunctioning crossing signal or a vehicle stalled on the crossing, train operators in that area would be immediately notified of the un-

safe condition in an effort to avoid an accident.

“Giving the public the power to report unsafe conditions at a highway-rail grade crossing can save lives,” said U.S. Transportation Secretary Ray LaHood.

The proposal to establish Emergency Notification Systems would require railroads to post a toll-free telephone number and the Department’s National Crossing Inventory identification number at every highway-rail crossing and explicitly authorized pathway grade crossing. Currently, all of the larger, Class I freight railroads and larger passenger railroads have some type of system in place by which they receive

notification of unsafe conditions at grade crossings. However, not all smaller railroads have such a system in place. Based on National Crossing Inventory data from the end of December 2009, the proposed rule would affect 211,401 highway-rail and pathway grade crossings and 594 railroads.

“With a uniform emergency notification system all railroads must follow, we could cut the number of highway-rail crossing incidents,” said Federal Railroad Administrator Joseph C. Szabo. “Standardization would simplify the process for both the public and railroads, saving precious time and lives.”



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## Nation's Highway Traffic Reaches Highest Level Since 2007

WASHINGTON - Americans drove three trillion miles in 2010, the most vehicle miles traveled since 2007 and the third-highest ever recorded, U.S. Transportation Secretary Ray LaHood announced today. The increase in traffic volume comes as the U.S. in 2009 posted its lowest number of traffic fatalities and injuries since 1950.

"More driving means more wear and tear on our nation's roads and bridges," said Secretary LaHood. "This new data further demonstrates why we need to repair the roads and bridges that are the lifeblood of our economy."

The Secretary noted that Americans drove 0.7 percent more, or 20.5 billion additional vehicle miles traveled (VMT), in 2010 than the previous year. Travel increased by 0.6 percent, or 1.4 billion VMT, in December 2010 compared to the previous December. It is the tenth consecutive month of increased driving.

The new data, from the Federal Highway Administration's monthly "Traffic Volume Trends" report, show the South Gulf area, a bloc of eight states ranging from Texas to Kentucky, experienced the greatest regional increase in December 2010 at 46.6 billion VMT, an increase of 624 million miles traveled compared to the previous December.

With an increase of 11.1 percent, or 156 million additional miles traveled, Nebraska led the nation with the largest single-state increase that month, and rural driving outpaced urban driving across the country.

"These data are critical to identifying and evaluating patterns of use on America's road system, which help us to make decisions about investments in critical infrastructure," said Federal Highway Administrator Victor Mendez. "Repairing our nation's roads, bridges and tunnels will help us ensure safety, strengthen the economy and build for the future."



Americans drove 0.7 percent more, or 20.5 billion additional vehicle miles traveled, in 2010 than the previous year

## USDOT Proposes Rule to Ban Hand-Held Cell Phone Use for Commercial Truck and Bus Drivers

WASHINGTON - As part of its campaign to put an end to the practice of distracted driving, the U.S. Department of Transportation today proposed a new safety regulation that would specifically prohibit interstate commercial truck and bus drivers from using hand-held cell phones while operating a commercial motor vehicle (CMV).

"Every time a commercial truck or bus driver takes his or her eyes off the road to use a cell phone, even for a few seconds, the driver places everyone around them at risk," said U.S. Transportation Secretary Ray LaHood. "This proposed rule will go a long way toward keeping a driver's full attention focused on the road."

The proposed Federal Motor Carrier Safety Administration (FMCSA) rule would prohibit commercial drivers from reaching for, holding or dialing a cell phone while operating a CMV. Drivers who violate these restrictions would face federal civil penalties of up to \$2,750 for each offense and disqualification of their commercial driver's li-

cense (CDL) for multiple offenses. Additionally, states would suspend a driver's CDL after two or more violations of any state law on hand-held cell phone use.

Motor carriers that allow their drivers to use hand-held cell phones while driving would face a maximum penalty of \$11,000. Approximately four million interstate commercial drivers would be affected by this proposal.

"We are committed to using every resource at our disposal to ensure commercial drivers and vehicles are operating safely at all times," said FMCSA Administrator Anne S. Ferro. "Implementation of this proposal would help make our roads safer and target a leading cause of distracted driving."

FMCSA research shows that using a hand-held cell phone while driving requires a commercial driver to take several risky steps. In particular, commercial drivers reaching for an object, such as a cell phone, while driving are three times more likely to be involved in a crash or other safety-critical event. Drivers dialing a hand-held

cell phone while driving increase their risk by six times. Many of the largest carriers, such as UPS, Covenant Transport, and Walmart, already have company policies in place banning their drivers from using hand-held phones. In September 2010, FMCSA issued a regulation banning text messaging while operating a commercial motor vehicle.

Nearly 5,500 people died and half a million were injured in crashes involving a distracted driver in 2009. Distraction-related fatalities represented 16 percent of overall traffic fatalities in 2009, according to National Highway Traffic Safety Administration (NHTSA) research.

FMCSA is providing 60 days for the public to comment on this rulemaking. The comment period begins once the proposed rule is published in the Federal Register.

To learn more about the U.S. Department of Transportation's efforts to stop distracted driving, visit <http://www.distraction.gov>

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## FMCSA Strengthens Protections for Consumers Using Household Goods Moving Brokers

The Federal Motor Carrier Safety Administration (FMCSA) has issued a final rule that strengthens protections for consumers who use household goods (HHG) brokers to arrange the shipment of their property across state lines. Under the new rule, all household goods brokers

must provide consumers with the following information before contracting a move: MC Docket number, estimates of moving charges and brokerage fees, list of motor carriers the broker uses to transport household goods, FMCSA's "Your Rights and Responsibilities When You Move" booklet and a

statement indicating the broker is not a motor carrier. Additionally, as of January 1, 2012, HHG brokers will be required to increase their surety bonds or trust funds to the new minimum of \$25,000

## DOT Announces Application Period for Grants to Promote Community Involvement in Pipeline Safety Efforts

WASHINGTON -- The U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) today announced it is accepting applications for up to \$1 million in grants to communities and non-profit organizations for work on pipeline safety issues affecting local communities.

Communities can play a vital role in the safety and reliability of pipeline operations, said Transportation Secretary Ray LaHood. The Department's technical assistance grants are aimed at helping interested communities enhance their pipeline safety efforts at the local level.

The Technical Assistance Grants (TAG) program, in its third year, provides funding for engineering and scientific analysis of natural gas and hazardous liquid pipeline safety, as well as to foster open communication between the public and pipeline operators on pipeline safety and environmental protection.

PHMSA's Technical Assistance Grants will continue to help local communities improve and expand their knowledge of pipelines and pipeline safety issues, as well as help to initiate discussions between the community and the pipeline operators, said PHMSA Administrator Cynthia Quarterman.

Applications for the grants will be accepted until Feb. 28, 2011, and will be awarded by September 2011. Each grantee may receive up to \$50,000. Previous grants have funded 46 projects in communities across 21 states.

Local government bodies, such as cities, towns, villages, counties, parishes, and townships, are eligible to receive the grants. Non-profit groups are also eligible. Corporations, companies and other for-profit entities are not eligible, and the funding may not be used for lobbying or litigation.



*Brigham A. McCown*

Post Office Drawer 92236  
Southlake, Texas 76092  
Main: 214-668-6640  
<http://www.uta-network.com>

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*With more than 20 years of public and private and public sector experience, Brigham represents commercial litigation and regulatory clients with matters relating to energy, transportation, manufacturing, construction, homeland security and the environment and also serves as an expert witness on transportation matters.*

*Until 2007, Brigham served in several executive leadership roles at the United States Department of Transportation Headquarters in Washington, DC where he helped shape the Nation's surface, maritime and aviation laws, regulations and policies.*

*Brigham has been a partner at a major U.S. law firm where he gained extensive litigation expertise defending clients throughout all phases of administrative, trial and appellate proceedings. He is a frequent CLE lecturer and published expert and has also served on active duty as a United States Navy Officer and Naval Aviator.*