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Advising Professionals in the Transportation Industry

News Flash:

- **FMCSA placed two commercial bus companies out-of-service and fined the companies for violating hours-of-service, insurance, and maintenance requirements.**
- **PHMSA is proposing a \$423,600 civil penalty against Chevron Pipeline Company after an investigation into the June 2010 pipeline failure near the University of Utah campus in Salt Lake City which resulted in the release of 800 barrels of crude oil.**

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NTSB Finds Discrepancies in San Bruno Pipeline Records

Federal investigators searching for the cause of last fall's deadly natural gas explosion in San Bruno have found discrepancies in some of the records that describe how the transmission line was built.

The National Transportation Safety Board reported Tuesday that Pacific Gas & Electric records showed the section of pipe that ruptured, killing eight people and destroying dozens of homes, was of a seamless steel construction. But investigators, in an update on their probe, noted the line actually included welded seams. In addition, some seams running along the length of the pipe were welded only on the outside, investigators said, while others were welded both inside and out.

The combined findings suggested investigators are focusing on a weld failure as one cause of the disaster. But NTSB investigators declined to elaborate, saying their inquiry is still in the early stages, and a final report will not be completed until late next year.

The agency did say it is re-searching pipe welding standards and practices from 1956, when the 30-inch PG&E transmission line was constructed, to better understand the variances found in welding patterns.

The report revived concerns about the safety of the utility's pipelines. Assemblyman Jerry Hill (D-San Mateo), who represents San Bruno and is pressing for tougher pipeline regulation, said he was troubled by the recordkeeping problems. "It's disturbing.... It raises questions about their understanding of their system."

PG&E officials said they take the discrepancy in records seriously and are investigating. The utility has both seamed and seamless pipe and adheres to all inspection regulations, which are similar for both types of pipeline, company Vice President Kirk Johnson told reporters in a conference call.

"We are very confident of our inspection program," he said. The ruptured pipeline never ex-

perienced a pressure spike exceeding its design limits, he added. And the utility doesn't dig up pipelines to verify the accuracy of its records without some indication of a problem, he said.

Richard B. Kuprewicz, a pipeline safety expert, said the report "calls into question the integrity" of PG&E's federally-mandated safety management program. He said older pipelines with welded seams can require more rigorous monitoring. Regulators "put the onus on the operator," he said. "You're supposed to know about this stuff, and your records have to be complete."



Investigations revealed that portions of the San Bruno pipeline contained welded seams despite PG&E records showing the entire line to be seamless.

PHMSA Publishes Proposed Rulemaking Addressing Cargo Tank Issues

On September 29, 2010, PHMSA published a notice of proposed rulemaking clearing up minor cargo tank issues that were not previously being enforced. The full notice is available at 75 FR 60017, but what follows is a brief overview of changes affecting cargo tanks:

- Revise the definition of "person" to include those who manufacture, test, repair, and recondition packages (see § 171.8).

- Revise § 178.345.1 to allow vapors to escape through a vent or drain (You can now plug the opening on top of double bulkhead cargo tanks).
- Revise § 178.320 cargo tank wall definition and removed the phrase "cargo tank assembly".
- DOT 407 Vacuum Tanks (Tanks Designed to be loaded by vacuum or built

to withstand full vacuum)

- Revise § 178.347-1 to clarify that a cargo tank motor vehicle with a Maximum Allowable Working Pressure (MAWP) greater than 35 psig or designed to be loaded by vacuum must be constructed and certified in accordance with the ASME Code.
- Revise § 178.347-4 to make a clear distinction



PHMSA cleans up some minor cargo tank issues in its new proposed rulemaking

PHMSA Publishes Proposed Rulemaking, cont.

- Note the difference between constructed and certified and simply constructed is if the tank is constructed and certified there will be an ASME Name Plate with a "U" stamp on the tank. If the tank is only constructed in accordance with the ASME code but not certified there will be no ASME Name Plate and no "U" stamp.

Remove the reference to § 180.407(d)(4) in § 180.417(b)(1)(v) and replace it with the reference to § 180.407(d)(5).

ASME Name Plate and no "U" stamp.

- Remove the reference to § 180.407(d)(4) in § 180.417(b)(1)(v) and replace it with the reference to § 180.407(d)(5).

FMCSA Launches New Compliance, Safety, Accountability (CSA) Program for Commercial Trucks and Buses

WASHINGTON - The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) today took a major step toward improving commercial truck and bus safety with the launch of the Compliance Safety Accountability (CSA) program.

The centerpiece of CSA is the Safety Measurement System (SMS), which will analyze all safety-based violations from inspections and crash data to determine a commercial motor carrier's on-road performance. The new safety program will allow FMCSA to reach more carriers earlier and deploy a range of corrective interventions to address a carrier's specific safety problems.

"The CSA program will help us more easily identify unsafe commercial truck and bus companies," said U.S. Transportation Secretary Ray LaHood. "Better data and targeted enforcement will raise the safety bar for commercial carriers and empower them to take action before safety problems occur."

The program also advances the Obama Administration's open government initiative by providing the public with safety data in a more user-friendly format. This will give consumers a better picture of those carriers that pose a safety risk. CSA was also tested in nine pilot states before the program was launched.

"We worked closely with our partners in the motor vehicle community to develop this powerful new program," said FMCSA Administrator Anne S. Ferro. "CSA is an important new tool that will help reduce commercial vehicle-related crashes and save lives."

The SMS uses seven safety improvement categories called BASICs to examine a carrier's on-road performance and potential crash risk. The BASICs are Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance, Cargo-Related and Crash Indicator. Under FMCSA's old measurement system, carrier performance was assessed in only four broad categories.

By looking at a carrier's safety violations in each SMS category, FMCSA and state law enforcement will be better equipped to identify carriers with patterns of high-risk behaviors and apply interventions that provide carriers the information necessary to change unsafe practices early on.

Safety interventions include early warning letters, targeted roadside inspections and focused compliance reviews that concentrate enforcement resources on specific issues identified by the SMS.

FMCSA will continue to conduct onsite comprehensive compliance reviews for carriers with safety issues across multiple BASICs. And, where a carrier has not taken the appropriate corrective action, FMCSA will invoke strong civil penalties.

To learn more about the new CSA program, visit <http://csa.fmcsa.dot.gov/>.

"Better data and targeted enforcement will raise the safety bar for commercial carriers and empower them to take action before safety problems occur."

USDOT Announces New Safety Guidelines to Better Protect Communities Close to Transmission Pipelines

Guidelines Will Foster Improved Land-Use Planning & Development Practices



The USDOT released new safety guidelines containing recommendations for community development near existing pipelines

WASHINGTON - The U.S. Department of Transportation (USDOT) today released new safety guidelines to help local governments, developers, and community planners better protect areas near transmission pipelines. The guidelines, developed by the Pipelines and Informed Planning Alliance (PIPA), mark the first time a set of recommendations for

development near existing transmission pipelines has been issued.

"Development of residences, businesses and green space has increased all over the country, and these areas frequently contain transmission pipelines," said Transportation Secretary Ray LaHood. "Safety for our communities is our num-

ber-one priority, and having these new guidelines in place will help communities and pipelines safely coexist."

The report, *Partnering to Further Enhance Pipeline Safety in Communities through Risk-Informed Land Use Planning*, offers nearly 50 recommended practices for local communities, developers and pipeline operators to use to help

FMCSA Issues Proposed Rule on Hours-of-Service Requirements for Commercial Truck Drivers

WASHINGTON – The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) today issued a regulatory proposal that would revise hours-of-service (HOS) requirements for commercial truck drivers.

"A fatigued driver has no place behind the wheel of a large commercial truck," said Transportation Secretary Ray LaHood. "We are committed to an hours-of-service rule that will help create an environment where commercial truck drivers are rested, alert and focused on safety while on the job."

The publication of this proposed rule coincides with the timeframe established in a court settlement agreement that requires FMCSA to publish a final HOS rule by July 26, 2011.

This new HOS proposal would retain the "34-hour restart" provision allowing drivers to restart the clock on their weekly 60 or 70 hours by taking at least 34 consecutive

hours off-duty. However, the restart period would have to include two consecutive off-duty periods from midnight to 6:00 a.m. Drivers would be allowed to use this restart only once during a seven-day period.

Additionally the proposal would require commercial truck drivers to complete all driving within a 14-hour workday, and to complete all on-duty work-related activities within 13 hours to allow for at least a one hour break. It also leaves open for comment whether drivers should be limited to 10 or 11 hours of daily driving time, although FMCSA currently favors a 10-hour limit.

"In January, we began this rule-making process by hosting five public listening sessions with stakeholders across the country," said FMCSA Administrator Anne S. Ferro. "This proposed rule provides another opportunity for the public to weigh in on a safety issue that impacts everyone on our roadways."

Driving hours are regulated by federal HOS rules, which are designed to prevent commercial ve-

hicle-related crashes and fatalities by prescribing on-duty and rest periods for drivers.

Commercial truck drivers who violate this proposed rule would face civil penalties of up to \$2,750 for each offense. Trucking companies that allow their drivers to violate the proposal's driving limits would face penalties of up to \$11,000 for each offense.

Other key provisions include the option of extending a driver's daily shift to 16 hours twice a week to accommodate for issues such as loading and unloading at terminals or ports, and allowing drivers to count some time spent parked in their trucks toward off-duty hours.

A copy of the rulemaking proposal is available on FMCSA's Web site at <http://www.fmcsa.dot.gov/HOS>. The rulemaking will be published in the Federal Register on December 29 and the public will then have 60 days to comment. Information on how to submit comments and evidentiary material is available at <http://www.fmcsa.dot.gov/HOS>.



New HOS proposals include requiring drivers to complete all driving within a 14 hour workday and the option to extend a driver's daily shift to 16 hours twice a week

USDOT Announces New Safety Guidelines, cont.

reduce the safety risks that result from growth of communities near pipelines. The recommendations offer options on how land-use planning and development decisions can help protect existing pipeline infrastructure and growing communities. The report also provides recommendations on how communities can gather information about local transmission pipelines and how local planners, developers and pipeline operators should communicate during all phases of new development to understand pipeline risks, and how to minimize pipeline excavation damages during site preparation and construction.

PIPA, a historic partnership led by USDOT's Pipeline and Hazardous Materials Safety Administration (PHMSA), is a

130-member coalition made up of representatives from the pipeline safety community, local city and county governments, the public, developers, fire marshals, pipeline operators, and state and federal regulators.

"PHMSA continues to look at ways to reduce risks and improve safety near pipelines," said PHMSA Administrator Cynthia Quarterman. "These recommendations describe actions local governments can take to make full use of available resources and how they can communicate effectively with transmission pipeline operators to better understand all factors that can affect risks."

New coalition partners include the National Association of Home Builders, the National League of Cities, and the National Association of Counties. They join

longtime pipeline safety organizations such as the Pipeline Safety Trust, the National Association of Pipeline Safety Representatives, and the National Association of Regulatory Utility Commissioners, as well as government partners such as the Federal Energy Regulatory Commission.

To read the report: <http://primis.phmsa.dot.gov/comm/PIPA.htm>

"Safety for our communities is our number-one priority, and having these new guidelines in place will help communities and pipelines safely coexist."



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The report also provides recommendations on how local planners, developers and operators should communicate during all phases of new development

FRA Advances Use of Bio-Based Fuels and Lubricants with New Research Grants

U.S. Transportation Secretary Ray LaHood today announced two research grants totaling \$766,562 intended to advance the use of bio-based fuels and lubricants with the goal of cleaner air and decreasing the nation's dependence on fossil fuels.

"We are committed to reducing our carbon footprint through the use of alternative sources," said Secretary LaHood. "These innovative projects are just the latest steps in making our transportation systems cleaner all across the country."

The Federal Railroad Administration (FRA) awarded \$395,189 to North Carolina State University to continue its research into the use of biofuels for freight and passenger rail operations, which will result in a possible recommendation of a "premium" biofuel blend for locomotive engines. In addition, the National Ag-based Lubricant Center at the University of Northern Iowa received \$371,373 to study the feasibility of using readily biodegradable soy-based lubricants by freight and passenger railroads.

"FRA has a long history of funding research to make railroads more energy efficient and

cleaner," said Federal Railroad Administrator Joseph C. Szabo. "One of our most successful initiatives is now in revenue service on Amtrak's Heartland Flyer route."

With a \$274,000 FRA grant, Amtrak equipped a Heartland Flyer train operating between Oklahoma City, OK and Ft. Worth, TX to run on a biodiesel blend known as B20, which is 20 percent pure biofuel and 80 percent diesel. The success of this locomotive led Time magazine to include the train in its list of "The 50 Best Inventions of 2010."

No Tarmac Delays Longer Than Three Hours in October

Tuesday, December 7, 2010 - The nation's largest airlines reported no flights in October with tarmac delays of more than three hours, down from 11 flights in October 2009, with a slight decrease in the rate of canceled flights, according to the Air Travel Consumer Report released today by the U.S. Department of Transportation (DOT). This is the first month there were no tarmac delays of more than three hours by the reporting carriers since the

Department began collecting more comprehensive tarmac delay data in October 2008.

Data filed with the Bureau of Transportation Statistics (BTS) showed there have been only 12 total tarmac delays of more than three hours reported from May through October this year by the 18 airlines that file on-time performance data with DOT, compared to 546 during the

same five-month period of 2009. October was the sixth full month of data since the new aviation consumer rule went into effect on April 29. BTS is a part of DOT's Research and Innovative Technology Administration (RITA).



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United Transportation Advisors provides a single point of access for companies and individuals seeking professional guidance and advice on transportation issues.

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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.