

Client Alert

Advising Professionals in the Transportation Industry

For more information,
please contact info@uta-network.com or call us at
214-668-6640

USDOT Agency Facts:

- There are over 500,000 motor carriers registered with the Federal Motor Carrier Safety Administration.
- Each day the Pipeline and Hazardous Materials Safety Administration oversees one million shipments of hazmat.
- The National Highway Safety Traffic Administration is expected to give approval to Toyota's proposed accelerator pedal fix.
- The Federal Aviation Administration will address pilot flight time, fatigue and rest in 2010.
- The Federal Railroad Administration announces new Positive Train Control rule.

Inside this issue:

DOT Issues Additional Proposed Rule on Transportation of Lithium Batteries	1
U.S. Transportation Secretary Ray LaHood Announces Federal Ban on Texting for Commercial Truck Drivers	1
Hours-of-Service Regulations	3
FAA Controllers in Houston Begin Using Safer, More Efficient Satellite Based Tracking System	3
U.S. Transportation Secretary Ray LaHood Announces Historic New Safety Standards for Freight and Passenger Trains	4
Brigham McCown Bio	4

United Transportation Advisors

DOT Issues Additional Proposed Rule on Transportation of Lithium Batteries

DOT 01-09
Friday, January 08, 2010
Contact: Patricia Klinger
Joe Delcambre
Tel: (202) 366-4831

Washington, D.C. - In its continuing effort to improve aviation safety, the U.S. Department of Transportation (DOT) today proposed to strengthen safeguards for air shipments of lithium batteries and cells, including when they are packed with or contained in equipment. The proposed changes will ensure that lithium batteries are designed to withstand normal transportation conditions and that they are packaged to reduce the possibility of damage that could lead to an unsafe incident.

"Safety is our highest priority," said U.S. Transportation Secretary LaHood. "This rulemaking is important for the protection of the traveling public and

many of those who work in the aviation industry. We have to make sure lithium batteries or any other hazardous materials taken on planes are carried in the safest way possible. This rule will help us achieve a safer aviation environment without imposing a ban on the transport of lithium batteries by air."

Since 1991, more than 40 air transport-related incidents involving lithium batteries and devices powered by lithium batteries have been identified.

The Department's Pipeline and Hazardous Materials Safety Administration, in coordination with the Federal Aviation Administration (FAA), developed this Notice of Proposed Rulemaking on display today in the Federal Register to comprehensively address the safe transportation of lithium cells and batteries when being shipped on aircraft.



The DOT strives to serve the U.S. by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future.

In part, DOT proposes to:

- Eliminate regulatory exceptions for small lithium cells and batteries when included in an air shipment; and require their transportation as Class 9 materials, meaning they could

Continued on page 2...

U.S. Transportation Secretary Ray LaHood Announces Federal Ban on Texting for Commercial Truck Drivers

DOT 14-10
Tuesday, January 26, 2010
Contact: USDOT Public Affairs
Tel: 202-366-4570

Washington D.C.- U.S. Transportation Secretary Ray LaHood today announced federal guidance to expressly prohibit texting by drivers of commercial vehicles such as large trucks

and buses. The prohibition is effective immediately and is the latest in a series of actions taken by the Department to combat distracted driving since the Secretary convened a national summit on the issue last September.

"We want the drivers of big rigs and buses and those who share

the roads with them to be safe," said Secretary LaHood. "This is an important safety step and we will be taking more to eliminate the threat of distracted driving."

The action is the result of the Department's interpretation of standing rules. Truck and bus

Continued on page 3...

DOT Issues Additional Proposed Rule, cont.



Current regulation of transportation of lithium batteries via air raises safety concerns.

"This rule will help us achieve a safer aviation environment without imposing a ban on the transport of lithium batteries by air."

pose a hazard when transported;

- Subject packages of small lithium batteries to well-recognized marking and labeling requirements for hazardous materials;

- Require transport documentation to accompany a shipment of small lithium batteries, including notifying the pilot in command of the presence and location of lithium batteries being shipped on the aircraft;

- Require manufacturers to retain results of satisfactory completion of United Nations design-type tests for each lithium cell and battery type;

- Limit stowage of lithium cell and battery shipments aboard aircraft to cargo locations accessible to the crew or locations equipped with an FAA-approved fire suppression system, unless transported in a container approved by the FAA Administrator; and

- Apply appropriate safety measures for the transport of lithium cells or batteries identified as being defective for safety reasons, or those that have been damaged or are otherwise being returned to the manufacturer, and limit the transportation of defective or damaged cells or batteries to highway and rail.

"Under existing regulations, a flight crew may not be made aware of a pallet containing thousands of lithium batteries on board the aircraft, yet a five-pound package of flammable paint or dry ice would be subject to the full scope of the regulations. That makes little sense," said House Transportation and Infrastructure Chairman Jim Oberstar (D-MN). "This rulemaking protects the safety of the traveling public and flight crews on board passenger and cargo aircraft and in ground operations. It ensures that all lithium batteries will be regulated and addresses the Na-

tional Transportation Safety Board's recommendations issued more than a decade ago. I congratulate the department for this important step forward."

"As our Committee has documented, there is more than enough evidence showing the need to enhance safety standards when shipping lithium batteries," House Aviation Subcommittee Chairman Jerry Costello (D-IL) said. "The frequency of incidents combined with the difficulty in extinguishing lithium battery fires warrants taking strong action. These new regulations proposed by the Department of Transportation, will enhance safety for passengers, pilots, crews and our entire transportation system."

For more detailed information on battery shipment requirements in the Hazardous Materials Regulations go to: <http://www.phmsa.dot.gov/hazmat/regs/rulemaking/final>.

Federal Ban on Texting, cont.

drivers who text while driving commercial vehicles may be subject to civil or criminal penalties of up to \$2,750.

"Our regulations will help prevent unsafe activity within the cab," said Anne Ferro, Administrator for the Federal Motor Carrier Safety Administration (FMCSA). "We want to make it crystal clear to operators and their employers that texting while driving is the type of unsafe activity that these regulations are intended to prohibit."

FMCSA research shows that drivers who send and receive text messages take their eyes off the road for an average of 4.6 seconds out of every 6 seconds while texting. At 55

miles per hour, this means that the driver is traveling the length of a football field, including the end zones, without looking at the road. Drivers who text while driving are more than 20 times more likely to get in an accident than non-distracted drivers. Because of the safety risks associated with the use of electronic devices while driving, FMCSA is also working on additional regulatory measures that will be announced in the coming months.

During the September 2009 Distracted Driving Summit, the Secretary announced the Department's plan to pursue this regulatory action, as well as rulemakings to reduce the risks posed by distracted

driving. President Obama also signed an Executive Order directing federal employees not to engage in text messaging while driving government-owned vehicles or with government-owned equipment. Federal employees were required to comply with the ban starting on December 30, 2009.

The regulatory guidance on today's announcement will be on public display in the *Federal Register* January 26 and will appear in print in the *Federal Register* on January 27.

The public can follow the progress of the U.S. Department of Transportation in working to combat distracted driving www.distraction.gov.



Commercial truck drivers will no longer be allowed to text message while driving in an attempt to improve driver alertness.

Hours-of-Service Regulations

The Hours-of-Service regulations (49 CFR Part 395) put limits in place for when and how long commercial motor vehicle (CMV) drivers may drive. These regulations are based on an exhaustive scientific review and are designed to ensure truck drivers get the necessary rest to perform safe operations. FMCSA also reviewed existing fatigue research and worked with organizations like the Transportation Research Board of the National Academies and the National Institute for Occupational Safety in setting these HOS rules.

The regulations are designed to continue the downward trend in truck fatalities and maintain motor carrier operational efficiencies. Although the HOS

regulations are found in Part 395 of the Federal Motor Carrier Safety Regulations, many States have identical or similar regulations for intrastate traffic.

Who must comply with the Hours-of-Service Regulations? Most drivers must follow the HOS Regulations if they drive a commercial motor vehicle, or CMV.

In general, a CMV is a vehicle that is used as part of a business and is involved in interstate commerce and fits any of these descriptions:

- Weighs 10,001 pounds or more
- Has a gross vehicle weight rating or gross combination weight rating of 10,001 pounds or more

- Is designed or used to transport 16 or more passengers (including the driver) not for compensation
- Is designed or used to transport 9 or more passengers (including the driver) for compensation

A vehicle that is involved in Interstate or intrastate commerce and is transporting hazardous materials in a quantity requiring placards is also considered a CMV.



FMCSA imposed hours-of-service requirements for CMV drivers to reduce incidents of fatigue-related accidents

FAA Controllers in Houston Begin Using Safer, More Efficient Satellite Based Tracking System

January 12, 2010
 Contact: Tammy L. Jones
 Phone: (202) 267-3883

Washington D.C. — Federal Aviation Administration (FAA) Administrator Randy Babbitt announced today that Houston air traffic controllers are beginning to use an improved satellite-based system – Automatic Dependent Surveillance-Broadcast (ADS-B) — to more efficiently and safely separate and manage aircraft flying over the Gulf of Mexico.

“Safety is our highest priority at the U.S. Department of Transportation, and this new satellite-based technology will help the FAA improve the safety of flights over the Gulf even as air traffic increases,” said U.S. Transportation Secretary Ray LaHood.

“This is a significant, early step toward NextGen,” Administrator Babbitt said in a press conference at the Houston Air Route Traffic Control Center. “We’re delivering on time, a system that’s not only more accurate than radar but comes with significant safety and efficiency benefits. This will save time and money for aircraft op-

erators and passengers and reduce our carbon footprint.”

ADS-B, which is one of the technologies at the heart of the transformation to NextGen, brings air traffic control to the Gulf of Mexico, an area that has not had the benefit of radar coverage. Before ADS-B, controllers had to rely on an aircraft’s estimated or reported — not actual — position. Individual helicopters flying under Instrument Flight Rule conditions at low altitudes to and from oil platforms were isolated within 20x20 mile boxes in order to remain safely separated from other helicopters. The complex, manual nature of these operations severely reduced capacity and efficiency for the 5,000 to 9,000 daily helicopter operations in the Gulf of Mexico.

Aircraft equipped with ADS-B in the region will now know where they are in relation to bad weather and receive flight information including Notice to Airmen and Temporary Flight Restrictions.

Prior to ADS-B, commercial air-

craft flying at high altitudes were kept as much as 120 miles apart to ensure safety. Controllers are now able to safely reduce the separation between ADS-B equipped aircraft to five nautical miles, significantly improving capacity and efficiency. The new technology will also allow the FAA to provide new, more direct routes over the Gulf of Mexico, improving the efficiency of aircraft operations while using less fuel.

The FAA was able to install ground stations on oil platforms as part of an agreement with the Helicopter Association International, oil and natural gas companies and helicopter operators. A network of ground stations was deployed on oil platforms and the surrounding shoreline, bringing satellite-based surveillance to an area with almost as much daily air traffic as the northeast corridor.

The Gulf of Mexico is the second key site where ADS-B is being used by controllers to

Continued on page 4...

“We’re delivering on time, a system that’s not only more accurate than radar but comes with significant safety and efficiency benefits.”



A new satellite-based system in use in Houston allows air traffic controllers to manage aircraft flying over the Gulf of Mexico more efficiently and safely.

United Transportation Advisors

Post Office Drawer 92236
Southlake, Texas 76092
214-668-6640
info@UTA-Network.com
www.UTA-Network.com

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

If you wish to receive, or no longer receive our monthly publication, please email news@uta-network.com and indicate your preferences. Thank you.

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.

FAA Controllers in Houston, cont.

separate aircraft. The new technology is also being used by controllers in Louisville, KY, chosen in part because UPS voluntarily outfitted much of its fleet with ADS-B avionics. Four ground stations give controllers at the Louisville International Airport and the Louisville Terminal Radar Approach Control facility an ADS-B coverage area extending 60 nautical miles around the airport up to 10,000 feet.

Controllers in Philadelphia will begin using ADS-B in February and the system will become operational in Juneau in April. ADS-B is expected to be available nationwide by 2013.

The FAA first established an ADS-B prototype in Alaska, outfitting numerous general aviation aircraft with ADS-B avionics. The improved situational awareness for pilots and extended coverage for controllers resulted in a 47 percent drop in the fatal accident rate for equipped aircraft. In South Florida, the installation of eleven ground stations now gives pilots in equipped aircraft free traffic and weather information. Controllers will soon begin using ADS-B in that region to separate aircraft.

U.S. Transportation Secretary Ray LaHood Announces Historic New Safety Standards for Freight and Passenger Trains

Tuesday, January 12, 2010
Washington D.C.- U.S. Transportation Secretary Ray LaHood and Federal Railroad Administration (FRA) Administrator Joseph Szabo today announced historic safety regulations requiring that Positive Train Control (PTC) technology be installed on the nation's major rail lines as well as commuter and intercity passenger rail routes. PTC is an integrated set of technologies that will help avert train-to-train collisions, derailments caused by excessive speed, accidents caused by human error or misaligned switches, and harm to roadway workers.

"Safety is our highest priority, and we believe the installation of this equipment will make our nation's railroads safer," said Secretary LaHood.

PTC sends and receives a continuous stream of data transmitted by wireless signals about the location, speed, and

direction of trains. PTC systems utilize advanced technologies including digital radio links, global positioning systems and wayside computer control systems that aid dispatchers and train crews in safely managing train movements.

"We believe this final rule, as mandated by Congress, is a giant step forward toward ensuring the safety and reliability of our freight, commuter and intercity passenger rail routes," said FRA Administrator Szabo.

The final rule will also allow railroads to immediately begin finalizing their PTC Implementation Plans, which are required by statute to be submitted to FRA by April 16, 2010.

The final rule issued today is the result of over a decade of work by FRA and its stakeholders, carried out in partnership through the Railroad Safety Advisory Committee (RSAC). The Rail Safety Improvement Act of

2008 mandates that interoperable PTC systems must be fully instituted by the end of 2015. Train control systems such as PTC are now mandatory for most passenger rail operations and for trains hauling certain hazardous materials, but they are not required for closed passenger rail systems such as light rail, rapid transit and subways.

Unrelated to any deadlines contained in this final rule, FRA is seeking additional comments on a few specific provisions of this final rule as to whether clarity can be improved and whether further opportunities for cost savings, consistent with safety, are available.

The final rulemaking on PTC, published today in the Federal Register, can be found here:

[PTC Rulemaking](#)