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Advising Professionals in the Transportation Industry

News Flash:

- **Secretary LaHood announced a proposal that would require new motor-coaches to have lap-shoulder belts to help prevent driver and passenger ejections during a collision**
- **The Federal Railroad Administrator announced a Final Rule requiring railroad track owners to adopt and follow specific procedures to protect the safety of their bridges, and to strengthen federal oversight of railroad bridge maintenance programs.**

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FMCSA Drug and Alcohol Strike Force Removes Unsafe Commercial Drivers and Carriers from the Road

The Transportation Department removed 109 commercial bus and truck drivers from the roads and indicated that enforcement actions were pending against more than 175 carriers as a result of the Federal Motor Carrier Safety Administration's (FMCSAs) annual drug and alcohol strike force sweep which was conducted in June and July.

Commenting on the department's actions, Transportation Secretary LaHood stated, "If you are a commercial driver or carrier operating in violation of federal drug and alcohol laws, we will remove you from our roadways."

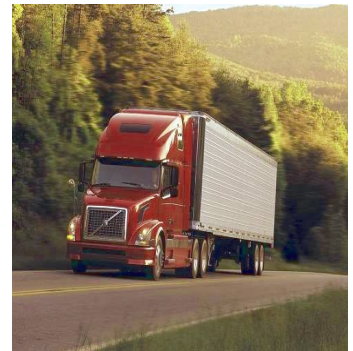
During the two week sweep, FMCSA strike force investigators examined the drug and alcohol safety records of commercial drivers employed by bus and truck companies, including school bus drivers, interstate passenger carriers, hazardous material transporters and gen-

eral freight long-haul trucking companies. The agency's goal was to identify motor carriers in violation of federal drug and alcohol testing requirements and to remove from the road any commercial truck and bus drivers who jump from carrier to carrier to evade federal drug and alcohol testing and reporting requirements.

"FMCSA is committed to ensuring that only safe commercial drivers and carriers are allowed to operate," said FMCSA Administrator Anne S. Ferro. "Our annual drug and alcohol strike force is just one of the ways we weed out those 'bad actors' and make our roads safer for everyone."

The 109 commercial drivers identified in the sweep face the prospect of a monetary fine and being barred from operating a commercial motor vehicle for failing to adhere to federal drug and alcohol regulations. Additionally, 175 commercial carriers

face pending enforcement actions for violations, such as using a driver who has tested positive for illegal drugs and for not instituting a drug and alcohol testing program. Both drivers and carriers will have an opportunity to contest the alleged violations and the amount of the civil penalties.



The Transportation Department will not tolerate commercial drivers and carriers operating in violation of federal drug and alcohol laws.

U.S. DOT Proposes \$1 Million Civil Penalty against Pipeline Company for Possible Violations in Fatal Louisiana Accident

The U.S. Department of Transportation today announced that its Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing more than a \$1 million civil penalty against the Marathon Pipe Line Company after an investigation into the March 2009 pipeline failure at the St. James Terminal in Vacherie, Louisiana. One welder was killed and three other workers were injured when hazardous

vapors in a crude oil sump ignited during maintenance.

PHMSA's investigation uncovered possible failures by Marathon to institute and follow required procedures to safely and effectively perform maintenance activities, report previous accidents and take actions to prevent the occurrence of such accidents, and use qualified and drug-tested personnel.

"It is essential that pipeline operators follow safety regulations when conducting maintenance and operational procedures to mitigate safety risks to their workers and the surrounding public," said PHMSA Administrator Cynthia L. Quarterman. "Proposing and assessing civil penalties is a key component of our oversight mission."

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PHMSA believes "it is essential that pipeline operators follow safety regulations when conducting maintenance and operational procedures to mitigate safety risks to workers and the surrounding public."

"The U.S. Department of Transportation also indicated that month-to-month changes can be affected by seasonal variations and other factors."

U.S. DOT Proposes \$1 Million Civil Penalty, cont.

In addition to the proposed violation notice and associated fines, PHMSA issued a proposed Compliance Order to Marathon that would require the company to submit the requested reports, develop procedures and properly qualify company workers. Pipeline

operators are allowed up to 30 days to respond to allegations included in a Notice of Probable Violation or, after review PHMSA could conclude the allegations to be facts and issue a Final Order without further notice.

PHMSA's pipeline safety inspectors and its state partners are committed to ensuring the safety of America's pipeline transportation system and will continue to carefully monitor the activities of Marathon Pipe Line Company.

U.S. Surface Transportation Trade Update

Surface Trade with Canada and Mexico Rose 37.6 Percent from Previous Year

Surface transportation trade between the United States and its North American Free Trade Agreement (NAFTA) partners Canada and Mexico rose 37.6 percent in June 2010 than in June 2009. Surface trade accounted for \$69.9 billion, according to the U.S. Department of Transportation which is responsible for tracking international trade between the three countries.

The department reported that the value of U.S. surface transportation trade with Canada and Mexico in June 2010 remained 5.8 percent below the June 2008 level despite the 2009-2010 increase. North American surface freight value rose 4.6 percent in June 2010 from May 2010. While noting the positive change, the department also indicated that

month-to-month changes can be affected by seasonal variations and other factors.

Surface transportation consists largely of freight movements by truck, rail and pipeline. In June, 86.6 percent of U.S. trade by value with Canada and Mexico moved on land.

The value of U.S. surface transportation trade with Canada and Mexico in June was up 17.5 percent compared to June 2005, and up 38.0 percent compared to June 2000, a period of 10 years. Imports in June were up 33.7 percent compared to June 2000, while exports were up 43.4 percent.

U.S. Surface Transportation Trade with Canada

U.S.-Canada surface transportation trade totaled \$42.0 billion in June, up 35.5 percent compared

to June 2009. The value of imports carried by truck was 35.8 percent higher in June 2010 compared to June 2009, while the value of exports carried by truck was 34.2 percent higher during this period. Michigan led all states in surface trade with Canada in June with \$5.9 billion.

U.S. Surface Transportation Trade with Mexico

U.S.-Mexico surface transportation trade totaled \$27.8 billion in June, up 41.0 percent compared to June 2009. The value of imports carried by truck was 37.9 percent higher in June 2010 than June 2009 while the value of exports carried by truck was 34.5 percent higher. Texas led all states in surface trade with Mexico in June with \$9.9 billion, the largest monthly amount of trade between Texas and Mexico on record.

Agencies Seek Public Comment on the Most Dramatic Overhaul in the Label's 30-year History

As a new generation of cars and light trucks start appearing on the market, the U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA) are jointly proposing changes to the fuel economy labels consumers see on the window of every new vehicle in dealer showrooms. The proposed rule seeks public comment on label design options and related issues. The public can view the proposed rule, labels, and fact sheet at <http://www.nhtsa.gov/fueleconomy>. They can also review the proposed rule at <http://www.epa.gov/fueleconomy> and submit comments as part of the rulemaking process via email to: newlabels@epa.gov.

"We are asking the American people to tell us what they need to make the best economic and environmental decisions when buying a new car," said EPA Administrator Lisa P. Jackson. "New fuel economy labels will keep pace with the new generation of fuel efficient cars and trucks rolling off the line, and provide simple, straightforward updates to inform consumers about their choices in a rapidly changing market. We want to help buyers find vehicles that meet their needs, keep the air clean and save them money at the pump."

"New technologies such as battery electric vehicles and plug-in hybrids are entering the Ameri-

can market in greater numbers," said U.S. Transportation Secretary Ray LaHood, "We need to provide consumers with labels that include fuel economy and environmental information so that buyers can make better informed decisions when purchasing new vehicles."

The goal of the new fuel economy labels is to provide consumers with simple, straightforward energy and environmental comparisons across all types of vehicles, including electric vehicles (EV), plug-in hybrid electric vehicles (PHEV), and conventional gasoline-powered vehicles.

DOT and EPA are looking to provide enhanced information on effi-

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The DOT and EPA want to "help buyers find vehicles that meet their needs, keep the air clean and save them money at the pump."

FAA Proposes Civil Penalty Against American Airlines

The Federal Aviation Administration (FAA) has proposed a \$24.2 million civil penalty against American Airlines Inc. for failing to correctly follow an Airworthiness Directive involving the maintenance of its McDonnell Douglas MD-80 aircraft. This civil penalty is the largest ever proposed by the FAA.

The FAA alleges American did not follow steps outlined in a 2006 Airworthiness Directive requiring operators to inspect wire bundles located in the wheel wells of MD-80 aircraft. The Airworthiness Directive, AD 2006-15-15, required a one-time general visual inspection by March 5, 2008 for chafing or signs of arcing of the wire bundle for the auxiliary hydraulic pump. It also required operators to perform corrective actions in accordance with the instructions of the applicable manufacturer's Service Bulletin.

The purpose of the Airworthiness Directive was to prevent the shorting of wires or arcing at the auxiliary hydraulic pump, which could result in loss of auxiliary hydraulic power or a fire in the wheel well of the aircraft. The Airworthiness Directive also sought to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with the flammable vapors, could result in a fuel tank explosion.

The FAA first detected the violations on March 25, 2008, during an inspection of two aircraft. The FAA informed American's management that the aircraft did not comply with the AD, prompting a series of re-inspections and additional maintenance work that occurred during the following two weeks. On March 26, after American performed additional maintenance on its MD-80 fleet, the FAA inspected eight aircraft at American's Tulsa maintenance base and found that seven did not comply with the Airworthiness Directive. On April 7, the FAA inspected another nine MD-80 aircraft at Dallas/Fort Worth In-

ternational Airport and found that eight of them still did not comply with the AD. A tenth aircraft inspected by American mechanics also did not comply. On April 8, American began grounding its MD-80 fleet to conduct new inspections and redo work as necessary.

The FAA subsequently determined that 286 of the airline's MD-80s were operated on a combined 14,278 passenger flights while the aircraft were not in compliance with Federal Regulations. American ultimately completed the work required by the 2006 Airworthiness Directive.

Over the last year and a half, FAA safety officials have reported progress in working with American Airlines to help improve the airline's maintenance culture. The FAA is committed to continuing that work. American has 30 days from the receipt of the FAA's civil penalty letter to respond to the agency.



After a March 25, 2008 inspection during which the FAA detected violations of the Airworthiness Directive, a follow-up inspection revealed that additional planes in the AA fleet were noncompliant.

Agencies Seek Public Comment, cont.

ciency and environmental performance – including information about air pollutants, such as smog, that impact public health – to consumers. The Energy Independence and Security Act of 2007 specifically calls on EPA and DOT to rate available vehicles according to fuel economy, greenhouse gas emissions and smog forming pollutants.

EPA and DOT are proposing two new label designs for comment. One label design prominently features a letter grade to communicate the vehicle's overall fuel economy and greenhouse gas emissions performance. The new design will also provide consumers with an estimate of the expected fuel cost savings over five years compared to an average gasoline-powered vehicle of the same model year.

The second proposed label retains the current label's focus on miles per gallon (MPG) and annual fuel costs, while updating the overall design and adding the required new comparison

information on fuel economy and emissions.

Both proposed label designs expand on the content of the current label by including new information on fuel consumption, tailpipe carbon dioxide (CO₂) emissions and smog-related emissions. The new labels would provide information on a new web-based interactive tool that can also be accessed by smart phone. This tool would allow consumers to personalize the information about a vehicle's performance.

For EVs and PHEVs, the agencies are proposing to show energy use by translating electricity consumption into miles per gallon equivalent. The proposed label designs for EVs also include energy use expressed in terms of kilowatt-hours per 100 miles.

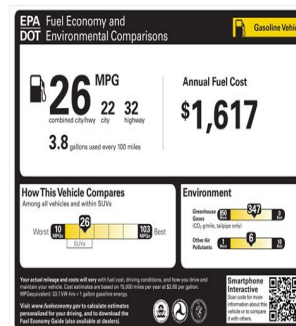
DOT and EPA encourage public feedback on all aspects of the proposal, including which designs or design features would best help consumers compare fuel economy, fuel costs, and environmental impacts of different vehicles and across different

vehicle technologies.

The agencies are proposing that the label only present information on vehicle tailpipe emissions. Upstream emissions, which are associated with electricity generation or refining fuel, would not be displayed on the label. EPA and DOT propose to develop a website to provide consumers additional information on non-tailpipe emissions, while taking comment on other approaches to provide consumer information about life-cycle emissions across various vehicle fuels and technologies. The agencies are aiming to complete the rule in time to allow the new label to appear on the windows of as many 2012 model year vehicles as possible.

DOT and EPA are providing a 60-day public comment period that begins with the proposal's publication in the Federal Register. More information on the proposed labels and submitting comments: <http://www.epa.gov/fueleconomy/> and <http://www.nhtsa.gov/fuel-economy>

"We need to provide consumers with labels that include fuel economy and environmental information so that buyers can make better informed decisions when purchasing new vehicles."



The goal of the new fuel economy labels is to provide consumers with simple, straightforward energy and environmental comparisons across all types of vehicles.

USDOT Announces New High-Speed Rail Design Standards to Help U.S. Manufacturers to Compete

U.S. Transportation Secretary Ray LaHood today announced the first-ever uniform technical standards for the manufacture of high-speed intercity passenger rail cars, a development that will enhance the ability of U.S. manufacturers to compete in what is set to become a burgeoning industry.

A uniform standard creates a level playing field and economies of scale based on a common set of designs and technical requirements allowing U.S. based manufacturers to more effectively compete with foreign companies. The department believes that fostering healthy economic competition will drive down costs for rail owners and operators and the traveling public. The government also believes that reductions to maintenance and repair costs will be achieved due to lower acquisition costs.

The first technical standard will apply to bi-level passenger rail cars for use in high-speed passenger rail operations.

"This is a milestone in the history of rail transportation," said Federal Railroad Administrator Joseph C. Szabo. "These

standardized bi-level passenger rail cars will be able to operate nationwide and are compatible with existing equipment. A common design also makes it easier to train maintenance personnel, stock parts and perform repairs, which reduces costs."

New bi-level cars will meet all current safety requirements and regulations, as well as be able to satisfy future regulations for crash energy management. As existing passenger rail vehicles are replaced, the addition of new stock will enhance system safety.

The standards will ensure that newly manufactured cars can be used with the current passenger locomotive fleet, either alone or with existing bi-level cars, and are designed to accommodate entry and departure from low-level platforms. The new cars will also be Americans with Disabilities Act - compliant. Similar standards for single-level passenger rail cars are expected to be adopted by the end of the year.

The establishment of technical standards for high-speed rail operations is required by the Passenger Railroad Investment and Improvement Act of 2008 and was developed by the Technical Subcommittee of the Sec-

tion 305 Next Generation Equipment Committee. Members include the Federal Railroad Administration, Amtrak and state Departments of Transportation. The subcommittee also received input and participation from rail industry manufacturers, freight railroads and transportation associations.



The creation of uniform technical standards for the manufacture of high-speed rail cards will aid U.S. manufacturers competing with foreign companies.



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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.