United Transportation Advisors, LLC

# Client Alert

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*Advising Professionals in the Transportation Industry*

**News Flash:**

- **On March 17, 2010, the House approved a bill to extend operations of the Federal Aviation Administration through July 3, 2010, giving Congress another 90 days to work out a reauthorization bill**
- **In a surprise move, PHMSA will implement a new internal Safety Review Board to review internally contested safety decisions. PHMSA has not yet disclosed how the Board will be composed & what decisions it will review, but further information is to follow**

## Court Of Appeals Grants ATA Petition in Supporting-Documents Case

On Sept. 30, the United States Court of Appeals granted ATA's petition for writ of mandamus in the supporting-documents case, noting that ATA had "demonstrated that the delay in this case warrants issuance of the writ." Via its petition, ATA had asked the Court to require the Federal Motor Carrier Safety Administration (FMCSA) to fulfill a long-overdue Congressional mandate which requires the agency to issue a supporting document regulation that precisely identifies the categories of documents that motor carriers must retain for use in verifying hours-of-service compliance and to ensure that that such retention is at a reasonable cost. The Court ordered FMCSA to issue a supporting-document Notice of Proposed Rulemaking (NPRM) by Dec. 30. The Court also retained jurisdiction over the matter, leaving open to ATA the option to seek further relief if the NPRM does not lead to a final rule within a reasonable timeframe. Earlier in connection with the litigation, FMCSA had issued policy guidance (75 Fed. Reg. 32984 (June 2010)) that limited the categories of records that must be retained as supporting documents and clarified that carrier electronic records need only be retained as used in the carrier's business. ATA, however, concluded that the guidance did not provide sufficient relief and reactivated the litigation, leading to the Circuit Court's order.

The Court has ordered FMCSA to issue a supporting-document Notice of Proposed Rulemaking related to hours-of-service compliance by December 30, 2010.

## Secretary LaHood Announces More Than 70 Innovative Transportation Projects Competitively Funded Under TIGER II

DOT 188-10
Wednesday, October 20, 2010

Forty-two capital construction projects and 33 planning projects in 40 states will share nearly $600 million from the U.S. Department of Transportation's popular TIGER II program for major infrastructure projects ranging from highways and bridges to transit, rail and ports, Secretary Ray LaHood announced today.

Transportation Investment Generating Economic Recovery (TIGER) II received nearly 1,000 construction grant applications for more than $19 billion from all 50 states, U.S. territories and the District of Columbia.

The tremendous demand for TIGER II project dollars follows a similar demand for TIGER I project dollars. On February 17, 2009, the Department announced 51 grant awards from nearly 1,500 applications for TIGER I grants nationwide. The TIGER I requests were for almost $60 billion worth of projects, 40 times the $1.5 billion available under that program. TIGER I dollars were made available under the American Recovery and Reinvestment Act of 2009.

"These are innovative, 21st century projects that will change the U.S. transportation landscape by strengthening the economy and creating jobs, reducing gridlock and providing safe, affordable and environmentally sustainable transportation choices," said Secretary LaHood. "Many of these projects could not have been funded without this program."

Roughly 29 percent of TIGER II money goes for road projects, 26 percent for transit, 20 percent for rail projects, 16 percent for ports, four percent for bicycle and pedestrian projects and five percent for planning projects.

An example of projects funded is $47.6 million to the City of Atlanta to construct a new streetcar line connecting many of the most important downtown residential, cultural, educational and historic centers, demonstrating the Depart-ment's commitment to improving quality of life in major metropolitan areas.

TIGER II also provided $20 million to the New Hampshire Department of Transportation to replace the deteriorating Memorial Bridge that connects Portsmouth, NH, with Kittery, ME. The bridge is at the end of its service life and has a bridge sufficiency rating of six out of 100. Safety concerns recently

*Continued on Page 2. . .*

**Inside this issue:**

## Secretary LaHood Announces, cont.

TIGER II will disburse nearly $600 million for major infrastructure projects.

required a maximum three-ton weight restriction on the bridge, causing all truck traffic to be detoured. The project demonstrates the Department's commitment to bringing the nation's aging road and highway infrastructure to a state of good repair.

In addition, TIGER II funds are being used to support a $546 million TIFIA (Transportation Infrastructure Finance and Innovation Act) loan for the Los Angeles County Metropolitan Transportation Authority to build the Crenshaw/LAX Light Rail Line, a key piece of Mayor Antonio Villaraigosa's 30/10 initiative to construct 12 major transit projects in 10 years rather than 30, exemplifying the Department's commitment to bold, regional transportation projects that create jobs in the short term while reinvesting in long term economic competitiveness and livability.

Under TIGER II, more than $140 million is reserved for projects in rural areas. As a competitive program, TIGER II is able to fund the best projects from around the country. Using merit-based evaluation criteria allows the Department of Transportation to address some of the nation's most critical challenges like sustainability and economic competitiveness.

This marks the first time that the U.S. Departments of Transportation and Housing and Urban Development (HUD) have joined together in awarding grants for localized planning activities that ultimately lead to projects that integrate transportation, housing and urban development. Almost 700 applicants sought up to $35 million in TIGER II planning grants and up to $40 million in HUD Sustainable Community Challenge Grants. HUD's funds can be used for localized planning efforts, such as development around a transit stop and zone or building code updates and improvements. The two Departments, along with assistance from the Environmental Protection Agency and the U.S. Department of Agriculture, participated in the evaluation of the planning grant applications.

To ensure the important investments made by the Recovery Act continue, President Obama recently announced a comprehensive infrastructure investment plan that would be frontloaded with $50 billion to expand and renew America's roads, railways and runways.

TIGER II grants were awarded to projects that have a significant impact on the nation, a region or metropolitan area. The projects chosen demonstrate their ability to contribute to the long-term economic competitiveness of the nation, improve the condition of existing transportation facilities and systems, increase energy efficiency and reducing greenhouse gas emissions, improve the safety of U.S. transportation facilities and/or enhance the quality of living and working environments of communities through increased transportation choices and connections. The Department also gave priority to projects that are expected to create and preserve jobs quickly and stimulate rapid increases in economic activity.

A complete list of capital grant recipients can be viewed at: http://www.dot.gov/docs/tiger2grantinfo.pdf

A complete list of planning grant recipients can be viewed at: http://www.dot.gov/docs/tiger2planninggrantinfo.pdf

## Administration Announces Amtrak Refinancing Plan to Save Taxpayers More Than $160 Million

*"Refinancing these leases will save taxpayers money while continuing the President's vision of improving passenger rail service across the country at a lower cost."*

A refinancing agreement between the U.S. government and Amtrak will save taxpayers approximately $162 million, the U.S. Departments of Transportation and Treasury announced today.

"This announcement is good for taxpayers and important for the future of rail service in America," said U.S. Treasury Secretary Tim Geithner. "Refinancing these leases will save taxpayers money while continuing the President's vision of improving passenger rail service across the country at a lower cost."

"This is a great opportunity to help Amtrak and save money for the taxpayer," said U.S. Transportation Secretary Ray LaHood. "These savings also represent funds that could be used to support the development of high-speed rail."

Over the years, Amtrak has incurred a large amount of debt paid by the government through an annual appropriation to the railroad. The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) permitted the Treasury Department to study ways to repay or restructure Amtrak's debt that would save money for the taxpayer and the railroad, and to take action on its findings if this would produce substantial savings. Today's action is based on the government's findings.

Critics of Amtrak point to prior reports issued by the Department of Transportation's Inspector General which was highly critical of the company's business model. According to the IG report, Amtrak is unlikely to sustain itself without continuing government subsidies.

Under the terms of today's Memorandum of Understanding, the government will exercise early buyout options on 13 existing high-cost leases over the next three years. The $420 million up-front cost will save approximately $582 million in future payments, in effect saving the taxpayer approximately $162 million.

So far in 2010, the railroad's revenue was 9 percent higher than during the previous 12 months and its ridership increased 5.7 percent.


Amtrak is unlikely to sustain itself without continuing government subsidies.

## Transportation Department Releases August Passenger Airline Employment Data:

### *August 2010 Employment Down 1.7 Percent from August 2009*

U.S. passenger airlines reported a 1.7% decline in full-time employees .

U.S. scheduled passenger airlines employed 1.7 percent fewer workers in August 2010 than in August 2009, the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS) reported today. This is the 26th consecutive decrease in full-time employee levels for the scheduled passenger carriers from the same month of the previous year.

Five network airlines decreased employment from August 2009 to August 2010. The sixth network carrier, Delta Air Lines, after completing its merger with Northwest Airlines, is reporting combined employment numbers in 2010 and reported 6.2 percent more FTEs in August 2010 than the combined totals of both carriers for August 2009. Network airlines operate a significant portion of their flights using at least one hub where connections are made for flights to down-line destinations or spoke cities.

AirTran Airways was the only low-cost carrier to report a decrease in employees from August 2009. Six low-cost carriers reported an increase in employment. Regional carriers Comair, Horizon Air, Mesa Airlines, Air Wisconsin Airlines, Mesaba Airlines, Shuttle America Airlines, and Lynx Airlines also reported reduced employment levels compared to last year.

Scheduled passenger airline categories include network, low-cost, regional and other airlines.

The six network airlines employed 256,122 employees in August, 67.8 percent of the passenger airline total, while seven low-cost carriers employed 16.9 percent and 18 regional carriers employed 13.8 percent.

## DOT, EPA Propose the Nation's First Greenhouse Gas and Fuel Efficiency Standards for Trucks and Buses

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation recently announced the first national standards to reduce greenhouse gas (GHG) emissions and improve fuel efficiency of heavy-duty trucks and buses. According to the government, this comprehensive national program is projected to reduce GHG emissions by nearly 250 million metric tons and save 500 million barrels of oil over the lives of the vehicles produced within the program's first five years.

"Through new fuel-efficiency standards for trucks and buses, we will not only reduce transportation's environmental impact, we'll reduce the cost of transporting freight," said U.S. Transportation Secretary Ray LaHood. "This is a win-win-win for the environment, businesses and the American consumer."

EPA and DOT's National Highway Traffic Safety Administration (NHTSA) are proposing new standards for three categories of heavy trucks: combination tractors, heavy-duty pickups and vans, and vocational vehicles. The categories were established to address specific challenges for manufacturers in each area. For combination tractors, the agencies are proposing engine and vehicle standards that begin in the 2014 model year and achieve up to a 20 percent reduction in CO2 emissions and fuel consumption by 2018 model year. For heavy-duty pickup trucks and vans, the agencies are proposing separate gasoline and diesel truck standards which phase in starting in the 2014 model year and achieve up to a 10 percent reduction for gasoline vehicles and 15 percent reduction for diesel vehicles by 2018 model year (12 and 17 percent respectively if accounting for air conditioning leakage). Lastly, for vocational vehicles, the agencies are proposing engine and vehicle standards starting in the 2014 model year which would achieve up to a 10 percent reduction in fuel consumption and CO2 emissions by 2018 model year.

Overall, NHTSA and EPA estimate that the heavy-duty national program would provide $41 billion in net benefits over the lifetime of model year 2014 to 2018 vehicles. With the potential for significant fuel efficiency gains, ranging from seven to 20 percent, drivers and operators could expect to net significant savings over the long-term. For example, it is estimated an operator of a semi truck could pay for the technology upgrades in under a year, and save as much as $74,000 over the truck's useful life. Vehicles with lower annual miles would typically experience longer payback periods, up to four or five years, but would still reap cost-savings.

The Obama Administration believes that these innovative technologies fostered by the program will also yield economic benefits, enhance energy security and improve air quality. Specific examples of these new technologies include widespread use of aerodynamic improvements and tire rolling resistance, as well as engine and transmission upgrades.

*"This is a win-win-win for the environment, businesses and the American consumer.*

The EPA predicts its new green house gas initiative will provide over $41 billion in net benefits.

# Trucking Litigation

November 2, 2010- 90 Minute Live Teleconference 1 pm ET / 12 pm CT / 11 am MT / 10 am PT

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**Teleconference Highlights** View Complete Agenda

Litigation involving trucking and bus companies seems straightforward. Unfortunately, nothing could be further from the truth. Come hear how to negotiate the waters and learn how the myriad of confusing federal and state regulations could torpedo your case. Hear from the former top U.S. D.O.T. trucking lawyer on how to utilize federal and state information to help bolster your case. You will also hear from a veteran trial lawyer on how to prepare your case from start to finish. Hear how new cases and regulations may affect your clients. This is one teleconference you will not want to miss. Whether you are a veteran of many commercial motor carrier cases or new to the industry, you will learn how to piece your case together from discovery to verdict.

**Faculty** Detailed Faculty Information

Chris Kilgore, Carstens & Cahoon, LLP & Brigham McCown, Langley Weinstein, LLP

**Credit** Detailed Credit Information

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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 shaped 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.*