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Advising Professionals in the Transportation Industry

News Flash:

- **The FAA has raised Croatia's safety rating from Category 2 to Category 1, meaning that Croatia's civil aviation authority complies with International Civil Aviation Organization (ICAO) standards and will now be allowed to establish new service to the US**
- **On March 20, 2011, the FAA issued flight restrictions over Libya**

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USDOT Announces New Rule to Make Shipping of Hazardous Materials Safer

WASHINGTON – The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) today announced that Department inspectors will now have greater authority when it comes to ensuring the safety of hazardous materials in the stream of transportation. The new rule, which implements authority granted by Congress, allows inspectors to investigate shipments of hazardous materials during transport and take tougher enforcement action against companies shipping in an unsafe manner.

"Safety is the Department's number one priority, and this rulemaking will give our inspectors the tools they need to ensure hazardous materials are packaged correctly and reach their destination safely," said U.S. Transportation Secretary Ray LaHood.

The new authority allows Department inspectors to close down shipping companies with poor safety records. It also specifically authorizes inspectors to take im-

mediate action when there is a significant safety problem with a package in transit. This includes ordering restrictions, bans, or immediate recalls of faulty packages. With these new provisions, inspectors will be able to temporarily detain and inspect packages that may pose a serious threat to life, property or the environment.

Department inspectors will also be able to immediately open packages even if the request to open them is refused. However, if a particular package is detained, the rest of the shipment may continue in transit.

"This rulemaking is another step in ensuring the safe transportation of hazardous materials by providing our inspectors the authority to conduct thorough investigations, to remove non-compliant packages from transportation, and to recall packages that could pose a significant threat to the public and the environment," said PHMSA Administrator Cynthia Quarterman.

The rule applies to U.S. Department of Transportation inspectors in PHMSA, as well as the Federal Aviation Administration, Federal Motor Carrier Safety Administration, and Federal Railroad Administration. The final rule becomes effective 60 calendar days after the date of publication in the *Federal Register*. The final rule is scheduled for publication on March 2, 2011. The final rule, and the related internal operations manual, is also available on the PHMSA website at www.phmsa.dot.gov.



Inspectors are authorized to take immediate action when there is a significant safety problem with a package in transit

FAA Issues Residential Through-the-Fence Policy

WASHINGTON, D.C. – The Federal Aviation Administration (FAA) today issued its interim policy on residential through-the-fence (RTTF) access agreements at federally-funded airports.

The policy outlines the requirements that airport sponsors must follow if they wish to continue RTTF agreements at federally-funded airports. These agreements allow people who own residential property with aircraft storage facilities near an airport to access the airport from off-airport property. These properties are sometimes known as "hangar homes."

The interim policy requires airport sponsors with existing agreements to develop an airport access plan that outlines how the airport will meet its obligations to operate as a public-use airport. The plan must detail how the airport sponsor meets standards for control of the airport, safety of operations, self-sustainability, and nondiscriminatory airport rates.

The policy also amends one of the conditions of federal funding, called grant assurances, to prohibit new RTTF access to a federally-funded airport.

RTTF agreements that are not consistent with the FAA's new policy may introduce safety risks by creating direct access to runways or taxiways, impede a sponsor's ability to collect appropriate fees, or limit the airport's ability to address future growth. RTTF agreements also may restrict airport access for all general aviation pilots because of noise concerns and hours of operations since residences are nearby. The FAA has no objections to these agreements at privately owned airports, if they do not receive federal funds.

USDOT Proposes to Improve Safety for Truckers and Workers around Hazardous Materials Loading and Unloading Operations



PHMSA data shows that the most dangerous part of transporting hazardous materials by cargo tank motor vehicle occurs when the hazardous material is being transferred by hose or pipe between the holding facility and the truck transporting it

WASHINGTON – The U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) today announced a proposed rule that would protect the public by improving the safe transfer of hazardous materials to and from cargo tank motor vehicles. The proposed rule would require additional training for employees and new safety requirements for motor carriers and facilities that transfer hazardous materials to and from cargo tank motor vehicles.

“Safety is our top priority, and this rule would help cut the safety risks to workers loading and unloading hazardous materials and to people living near those facilities,” said U.S. Transportation Secretary Ray LaHood.

PHMSA data show that the most dangerous part of transporting hazardous materials by cargo tank motor vehicles occurs when the hazardous material is being transferred by hose or pipe between the holding facility and the truck transporting it. More specifically, the data show that human error and equipment failure also cause the greatest number of incidents during loading and unloading operations, sometimes with tragic consequences.

The notice proposes to add requirements including:

- Practice drills and classroom training of truck drivers and other workers who unload or load hazardous

material;

- Training on automatic valve shut down to ensure the systems are in place and that employees know how to use the systems; and
- Developing inspection and maintenance programs to ensure the safety of hoses, valves and other equipment used in loading and unloading.

“Between October and December 2010, five of the six incidents involving death or major injury were related to the loading and unloading of hazardous materials. We believe these proposed changes will increase safety and ultimately reduce the likelihood of catastrophic hazardous material incidents during loading and unloading,” said PHMSA Administrator Cynthia Quarterman.

Over the past 10 years, fatal and serious accidents during the process of transferring hazardous materials between rail or trucks and holding tanks prompted two recommendations from the National Transportation Safety Board and one from the Chemical Safety Board. Those recommendations are discussed in detail in the Notice of Proposed Rulemaking and based on the following accidents:

- On July 14, 2001, in Riverview, MI, methyl mercaptan was released from a rail tank car during unloading. The material ignited, engulfing the tank car in flames. Three plant employees were killed,

and 2,000 people living in the surrounding neighborhood were evacuated.

- On September 13, 2002, in Freeport, TX, a tank car containing about 6,500 gallons of petroleum -- fuming sulfuric acid and sulfur trioxide -- ruptured at a transfer station. Twenty-eight people received minor injuries, and residents living within one mile had to shelter in-place for 5-1/2 hours. Two storage tanks near the transfer station were damaged, and they released 660 gallons of the hazardous material.
- On August 14, 2002, in Festus, MO, an unloading hose ruptured releasing approximately 24 tons of chlorine over three hours. The magnitude of the incident was exacerbated because the emergency shutdown system failed. Three residents were admitted to the hospital, and hundreds were evacuated or asked to shelter-in-place.
- On August 11, 2005, in Baton Rouge, LA, a chlorine transfer hose ruptured, although the emergency shutdown system operated properly, and the release ended in under a minute.

The public comment period for this notice ends 60 days after the date of publication in the Federal Register. The final rule is scheduled for publication on March 11, 2011.

The proposed rule is available on the PHMSA website at www.phmsa.dot.gov.



The proposed rule would require additional training for employees, including practice drills

“Safety is our top priority, and this rule would help cut the safety risks to workers loading and unloading hazardous materials and to people living near those facilities.”

U.S. Transportation Secretary Ray LaHood Announces \$100 Million for California to Purchase American-Made Rail Cars and Locomotives

U.S. Transportation Secretary Ray LaHood today announced the California Department of Transportation (Caltrans) will receive a \$100 million grant to purchase domestically manufactured rail passenger cars and locomotives for the Pacific Surfliner and San Joaquin corridors.

Both the Pacific Surfliner and San Joaquin lines experienced a surge in ridership over the last decade; the Pacific Surfliner service saw more than 65percent in ridership growth, and San Joaquin service experienced a 45 percent increase in ridership. This new equipment will accommodate the ridership growth with additional cars and locomotives

available for improved service.

"With gas prices at record highs, President Obama is committed to making sure Americans can choose safe, efficient passenger rail options for reaching their destinations," said Secretary LaHood. "Thanks to this investment in new, American-made cars and locomotives, Californians will continue to enjoy the congestion relief, economic growth, and affordable travel provided by these popular rail lines."

This money will allow Caltrans to purchase 27 bi-level intercity rail passenger cars and two diesel-electric intercity locomotives that comply with uniform standards that create a level playing field allowing U.S.-based manufacturers

to more effectively compete. Fostering healthy economic competition will drive down costs for rail owners and operators and the traveling public. Maintenance and repair costs will be lower because of reduced parts acquisition costs. Training can also be streamlined with just one type of equipment, allowing faster turnaround for repairs.

"We are very pleased to fund this first order for rolling stock under the new Next Generation design standards," said Federal Railroad Administrator Joseph C. Szabo. "These standards benefit manufacturers and suppliers, the railroad industry and overall passenger safety, utilizing the best technology available."



The Administration's goal is to connect 80% of Americans to high-speed rail within the next 25 years.

FMCSA Reaches Settlement Agreement in National Association of Small Trucking Companies Litigation on the Compliance Safety Accountability Program

Washington, DC - The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) today announced it has reached a settlement agreement with three trucking associations that will end litigation over information published on the website of FMCSA's motor carrier enforcement program, Compliance Safety Accountability (CSA).

"CSA is a safety-critical program that helps to reduce commercial motor vehicle-related crashes and save lives," said FMCSA Administrator Anne S. Ferro. "Through this settlement agreement, we addressed the concerns raised by petitioners without compromising the CSA program and its safety benefits."

The National Association of Small Trucking Companies, Inc. (NASTC), the Expedite Alliance of North America (TEANA) and the Air & Expedited Motor Carriers Association (AEMCA) filed suit on Nov. 29, 2010 challenging FMCSA's CSA program. Under the agreement, FMCSA will make changes to CSA's Safety Measurement System (SMS) public website to address con-


cerns regarding the display of information on a commercial motor carriers' safety performance.


The key changes that FMCSA will make to the SMS public website by March 25, 2011 are as follows:

- Replace any ALERT symbol currently displayed in orange on the SMS website with the following symbol of the exclamation mark inside a gold triangle



- Revise the disclaimer language on the SMS website to read: "The data in the Safety Measurement System (SMS) is performance data used by the Agency and enforcement

community. A  symbol, based on that data, indicates that FMCSA may prioritize a motor carrier for further

monitoring. The  symbol is not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144. Readers should not draw conclusions about a carrier's overall safety condi-

tion simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways. Motor carrier safety ratings are available at <http://safer.fmcsa.dot.gov> and motor carrier licensing and insurance status are available at <http://li-public.fmcsa.dot.gov>."

On Dec. 13, 2010, FMCSA launched its CSA enforcement program that is used to analyze all safety-based violations from roadside inspections and crashes to measure a commercial motor carrier's on-road safety performance. CSA allows FMCSA to reach more carriers earlier and deploy a range of corrective interventions to address a carrier's specific safety problems before crashes can occur.

To learn more about the CSA settlement agreement, visit the CSA website at <http://csa.fmcsa.dot.gov/>.

"Through this settlement agreement, we addressed the concerns raised by petitioners without compromising the CSA program and its safety benefits"



Pursuant to the settlement, FMCSA will make changes to CSA's Safety Measurement System (SMS) public website to address concerns regarding the display of information on a commercial motor carriers' safety performance

U.S. Transportation Secretary Ray LaHood Announces \$100 Million, *cont.*

To date, approximately \$5.7 billion dollars has been obligated throughout the country for rail projects funded by the Recovery Act and annual appropriations. President Obama's vision is to connect 80 percent of Americans to high-speed rail within the next 25 years. This strategic investment is put-

ting America on track towards that goal, providing an integrated passenger rail network with trains operating at all speeds and connecting to additional transit options, serving as a core component of our nation's future transportation network.

A "Buy America" requirement for high-speed

intercity passenger rail projects also ensures that U.S. manufacturers and workers will receive the maximum economic benefits from this federal investment. And, in 2009, Secretary LaHood secured a commitment from 30 foreign and domestic rail manufacturers to employ American workers and locate or expand their base of operations in the U.S. if they are selected for high-speed-rail contracts.

Federal Motor Carrier Safety Administration Completes Compliance Sweep of Moving Companies in Nine Major Cities

Three household goods moving companies are facing civil penalty fines of \$25,000 each as a result of a Federal Motor Carrier Safety Administration (FMCSA) enforcement sweep which took place in nine major U.S. cities from March 14-18, 2011. The companies are Guardian Moving & Storage of Los Angeles, California; Lightning Van Lines, Inc. of San Leandro, California; and Viking Moving and Storage, Inc. of Oakland, California.

The sweep, in which 37 FMCSA and state investigators conducted compliance reviews of 67 moving companies, was part of the agency's year-round Household Goods Strike Force initiative designed to

protect the public from fraudulent moving companies. The sweep targeted high-risk moving companies in Los Angeles and San Jose, California; Las Vegas, Nevada; Phoenix, Arizona; New Orleans, Louisiana; Miami, Florida; and Atlanta, Georgia.

"We are committed to protecting the public from unscrupulous movers that attempt to operate unsafely," said U.S. Transportation Secretary Ray LaHood. "We want these carriers to know that there are serious legal and financial consequences for evading federal regulations."

The comprehensive compliance reviews conducted by federal and state investiga-

tors looked for regulatory violations such as failing to relinquish possession of a household goods shipment (hostage load), collecting fees more than the original binding estimate and failing to provide consumers with an arbitration process.

"FMCSA is committed to raising the bar for safety and closing cases on rogue household goods movers," said FMCSA Administrator Anne S. Ferro. "We will do this by keeping the focus on safety and on improving service to the American public, one safe and successful move at a time."



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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.