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**Advising Professionals in the Transportation Industry**

**News Flash:**

- **The Federal Aviation Administration (FAA) has just proposed a \$450,000 civil penalty against Dassault Falcon Jet Corp. and its completion center in Little Rock, Ark., for improperly plating certain parts and installing them on airplanes.**

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## U.S. Transportation Secretary Announces Proposed Regulations to Prevent Railroad Crew Distractions While Operating Trains

The Transportation department recently announced a new campaign to stop distracted driving by announcing a proposed rule aimed at prohibiting the improper use of distracting electronic devices by on-duty railroad operating employees. If adopted, the rules would explicitly restrict and in some cases prohibit the use of cell phones and other hand held devices such as personal digital assistants (PDAs) by safety critical employees, including locomotive engineers, conductors, switchmen and other train employees.

The proposed rule is the latest in a series of actions taken by the Department to combat distracted driving. During a seminal September 2009 Distracted Driving Summit, Secretary LaHood announced the Department's plans to vigorously pursue regulatory and other steps to reduce the risks posed by distracted driving.

The rule would prohibit the use

of an electronic device—whether personal or railroad-supplied— if it interferes with that employee's or another employee's performance of safety-related duties. Railroad operating employees would be permitted to use cell phones or similar electronic devices under highly limited circumstances.

The notice of proposed rulemaking (NPRM) provides certain exceptions for watches, calculator use, medical devices, railroad radios, cameras used to document bona fide safety hazards or violations of rail safety laws and various emergency situations. The regulations would also authorize the Federal Railroad Administration to review a railroad's training program on the use of electronic devices and require that records be kept documenting employees receiving recurrent training at specified intervals. The NPRM seeks comment on whether violations of the rule should be used as a basis for revoking a locomotive

engineer's certification to operate a locomotive under other FRA regulations.

"There should be no confusion about when and where cell phones, video games or PDAs may be used by train crews," said FRA Deputy Administrator Karen Rae.

*Continued on page 2 . . .*



The Transportation Department aims to restrict or prohibit the use of cell phones and other electronic communications devices by safety critical railroad employees.

## Pipeline Safety Agency Issues Advisory Bulletin Regarding Facility Response Plans

PHMSA has issued an Advisory Bulletin to operators of hazardous liquid pipeline facilities required to prepare and submit an oil spill response plan under 49 CFR part 194. In light of the Deepwater Horizon oil spill in the

Gulf of Mexico, which has resulted in the relocation of oil spill response resources to address the oil spill, PHMSA is reminding operators of their responsibilities to review and update their oil spill response

plans and to comply with other emergency response requirements to ensure the necessary response to a worst case discharge from their pipeline facility.



The Transportation Department's cell phone ban was prompted by the September 12, 2008 Metrolink/Union Pacific collision in which the Metrolink engineer was found to have been operating a cell phone at the time of the accident.

## U.S. Transportation Secretary Announces, cont.

FRA is proposing to codify a modified version of its 2008 Emergency Order No. 26 (EO 26), which sets forth stringent restrictions on the use of electronic devices by railroad operating employees. FRA issued EO 26 less than three weeks after a September 12, 2008 collision between a Metrolink

commuter train and a Union Pacific Railroad freight train in Chatsworth, California, killing 25 people.

Preliminary investigative findings revealed that the engineer operating the Metrolink train was text messaging at the time of the collision. While longstanding railroad operating rules and EO

26 have restricted the use of electronic devices, FRA has determined that Federal regulations are necessary to prevent the inappropriate and unauthorized use of these devices on the job. A final rule would supplant EO 26.

## New Kansas Law Bans Texting for All Drivers

*"The National Highway Traffic Safety Administration (NHTSA), a part of the U.S. DOT attributed an estimated 6,000 deaths and 500,000 injuries to distracted driving last year alone."*

Kansas Governor Mark Parkinson has signed an anti-texting-while-driving bill into law for all drivers in his state. As the 26th state to pass a texting ban, Kansas has taken the country past the halfway mark toward a nationwide prohibition of texting while driving. Kansas's new law will outlaw texting by all drivers. Drivers caught texting will receive warnings until January 1, 2011, after which law enforcement will issue \$60 fines for violations. Because it is a pri-

mary law, police officers can stop motorists suspected of this offense alone.

The National Highway Traffic Safety Administration (NHTSA), a part of the U.S. DOT attributed an estimated 6,000 deaths and 500,000 injuries to distracted driving last year alone. In addition to the ban on texting for federal employees, the U.S. Department of Transportation has banned texting for all commercial and truck drivers, with simi-

lar rules in the works for rail operators. Last month, Secretary LaHood launched pilot programs in Syracuse, New York and Hartford, Connecticut as part of a "Phone in One Hand. Ticket in the Other," campaign designed to reduce distracted driving behavior through a combination of increased enforcement and public awareness.

## High Speed Rail Moves Forward: Federal Railroad Administration Seeks Applications for \$2.3 Billion in High-Speed Rail Grants

The federal government took the next step toward realizing its vision for high-speed rail in the United States. The U.S. Department of Transportation's Federal Railroad Administration (FRA) will begin accepting applications for \$2.1 billion in grants to continue the development of high-speed intercity passenger rail corridors. In addition, FRA will make another \$245 million available for individual construction projects within a corridor. Funds for both come from funding by Congress.

"We are excited to move the President's vision on high-speed rail forward and are working quickly to get money in the hands of states," said FRA Ad-

ministrator Joseph C. Szabo. "These new funds will allow the states to further advance their high-speed rail plans and represent a commitment to developing a world-class transportation network."

A new report by the U.S. Conference of Mayors found that full construction of high-speed rail networks, in conjunction with healthy metropolitan economies over the next twenty years, and supportive infrastructure investments to allow high speed rail benefits to be realized, in Los Angeles, could create up to \$7.6 billion per year in new business and up to 55,000 jobs; in Chicago, up to \$6.1 billion per year in new business and up to

42,000 jobs; in Orlando, up to \$2.9 billion per year in new business and up to 27,500 jobs; and in Albany, NY, up to \$2.5 billion per year in new business and up to 21,000 jobs.

Opponents to the program point to its high costs and say that the money would be better spent on modernizing the Nation's highway infrastructure. They also point out that many of the trains called for under this program will have to share existing rail lines designed for freight trains, effectively prohibiting any passenger trains from achieving high speeds.



The federal government will be distributing \$2.1 billion in grants to continue the development of high-speed rail infrastructure.

## FAA Proposes \$297,000 Civil Penalty against Air Mods

JAMAICA, NY — The Federal Aviation Administration (FAA) has proposed a \$297,000 civil penalty against Air Mods and Repair Corporation of Wilmington, Del., for allegedly operating two general aviation aircraft when they were not in compliance with Federal Aviation Regulations.

The FAA alleges that an FAA

Flight Standards inspection of a proposed flight school at the Air Mods facility at Robbinsville, N.J., revealed maintenance problems with a Piper PA-23 Aztec twin and a single-engine Piper PA-28 Warrior. The FAA told the company repairs were needed before further flight of either aircraft.

The FAA alleges that Air Mods

operated the Warrior on 19 subsequent flights between January 22 and March 4, 2009 and the Aztec on six flights from January 21 to February 28, 2009 without making the required repairs to either aircraft.

The company has 30 days from the receipt of the penalty letter to respond to the FAA.



The FAA alleges that Air Mods operated two aircraft that had been flagged for maintenance problems despite the FAA's instructions that the planes needed to be grounded until maintenance was performed.

## FAA Proposes \$348,000 Civil Penalty against Chautauqua Airlines

WASHINGTON, D.C. — The Federal Aviation Administration (FAA) has proposed a \$348,000 civil penalty against Chautauqua Airlines for allegedly operating some of its regional jets without performing inspections required by five different FAA airworthiness directives (ADs).

FAA investigations found that problems with Chautauqua's management of its maintenance program and its system for tracking the status of airworthiness directives led to the alleged violations.

One AD compliance issue involved mandated repetitive inspections for possible cracks in the lower wing

planks of Canadair Regional Jets (CRJ) after every 5,000 flights. The FAA alleges that:

- Eight different Chautauqua CRJs conducted more than 9,900 flights between October 2007 and December 2008 before the required lower wing inspections were done.
- In January 2009, the airline operated another CRJ on 231 flights without inspecting a different section of the lower wings for cracks and flew a different CRJ for 61 hours without a required inspection of electrical relays.
- Another Chautauqua CRJ made more than 17,600 flights between November 2007 and

January 2009 before mandatory inspections of the plane's GE engines were performed. Chautauqua also flew one of its Embraer 145 regional jets for 43 days past the time one of its inertial navigation units should have been replaced.

"An air carrier's maintenance program can't function without a good system to determine compliance with airworthiness directives," said FAA Administrator Randy Babbitt. "Problems with the AD system are inconsistent with an airline's continued safe operation."

Chautauqua has 30 days from the receipt of the FAA's civil penalty letter to respond to the agency.

*"An air carrier's maintenance program can't function without a good system to determine compliance with airworthiness directives."*

## PHMSA Modifies Security Plan For Hazmat

The Pipeline and Hazardous Materials Safety Administration of the Department of Homeland Security has modified its current security plan requirements for the transportation of hazardous materials by narrowing the list of materials subject to the requirements.

Under the final rule, effective Oct. 1, 2010, certain types and quantities of hazardous materials will not be under the rule. In conducting the analysis, the PHMSA evaluated transportation scenarios in which a terrorist

could use hazardous materials to cause large-scale casualties and property damage.

Those materials that are unlikely to be targeted for criminal or terrorist use will be removed from the list.

In determining which materials should be removed, the PHMSA considered physical and chemical properties of the material or class of materials and how those properties could contribute to a security incident; quantities shipped and mode of transport;

past terrorist use; potential use; and availability.

According to the department, narrowing the list should reduce associated regulatory costs and the paperwork involved with complying.



PHMSA evaluated transportation scenarios in which a terrorist could use hazardous materials to cause large-scale casualties and property damage.

## FMCSA Fines Owner of Illegal Tierra Santa Inc., Bus Company for Violating Multiple Federal Safety Regulations

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) today announced it has issued a notice of claim charging Mr. Cayetano Martinez, owner of Tierra Santa, Inc. bus company, with multiple federal motor carrier safety violations. The \$72,760 in fines is the result of an investigation of a fatal crash in Phoenix, Arizona on March 5, 2010 involving a bus operated by Tierra Santa, Inc. The motor coach carrying 21 passengers rolled over on I-10 South of Phoenix. In that accident, six passengers were killed with the remaining passengers and driver receiving injuries.

In the notice of claim, FMCSA charged Mr. Martinez with 78 violations of 13 separate motor carrier safety regulations. It also identifies the four separate company names Mr. Martinez allegedly used to illegally operate and evade previous orders from FMCSA to cease all interstate and international passenger carrier transportation.

The violations include 19 counts of operating without federal authority; 21 counts of operating without required minimum insurance; 24 counts of operating in violation of a previous FMCSA order to cease operations; Violation of alcohol and controlled substance testing requirements; Violation of driver qualification requirements; Violation of hours of service requirements; and Violation of vehicle inspection and maintenance requirements.

According to local newspaper accounts, the company was illegally transporting passengers when the accident occurred. Because it had no insurance, the company was forbidden from operating as a bus company. The company also had a history of transporting passengers across state lines and into Mexico.

According to the Arizona Department of Public Safety, the crash occurred at 5:25 a.m. when rear-ended a pickup truck, fish-tailed and swerved onto the median. The driver overcorrected, swerved back across

the freeway, slammed into the edge of the roadway and rolled down an embankment.



The company was allegedly illegally transporting passengers when the accident occurred, and was also charged with 78 violations of 13 separate motor carrier safety regulations.



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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.*