

**OSHA/CONSTRUCTION NEWS SUMMARY****Protecting America's Workers Act...It's Back!**

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OSHA ALSO ANNOUNCED that it is **withdrawing** its proposed interpretation titled "**Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise**"... [Read more....](#)

TRANSPORTATION NEWS SUMMARY**Drivers Drive Truck Safety Rules;**

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FMCSA Ignoring Real-World Data on HOS

The **American Trucking Assns. (ATA)** has **continued its criticism** of the U.S. Dept. of Transportation's proposed **hours-of-service (HOS) regulations**, released publically on Dec. 23, 2010. [Read more....](#)

HOS Proposal Raises Ire on All Sides of Issue.....

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FMCSA Proposes Large Fines for Handheld Cell Phone Use

The **Federal Motor Carrier Safety Administration** has proposed fines up to \$2,750 for truckers who **use a handheld cell phone while driving**, as well as the **possible suspension or revocation of a commercial license for repeated offenses**. [Read more....](#)

Mining Deaths Rise In 2010....MSHA chief pledges continued enforcement, outreach on behalf of nation's miners

Mining fatalities in the United States significantly increased in 2010, following a year marked by the fewest deaths in mining history, according to the U.S. Department of Labor's Mine Safety and Health Administration. [Read more....](#)

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Protecting America's Workers Act... It's Back!

On the first day of the 112th Congress, Rep. Lynn Woolsey, D-California, re-introduced the **Protecting America's Workers Act (PAWA)**, which seeks to amend the **Occupational Safety and Health Act** of 1970. Specifically, the Act proposes the following changes:

- Expanding the application of the Act and coverage of public employees.
- Increasing **protections** for **whistleblowers**, which include amendments to employee actions, **prohibition of retaliation**, and procedures.
- **Improving reporting**, inspection, and **enforcement including changes to:**

- ▶ Posting of employee rights
- ▶ Employer reporting of work-related deaths and hospitalizations, and prohibition on discouraging employee reports of injury or illness
- ▶ No loss of employee pay for inspections
- ▶ Investigations of fatalities and significant incidents
- ▶ Prohibition on unclassified citations
- ▶ Victims' rights
- ▶ Right to contest citations and penalties
- ▶ Correction of serious, willful, or repeated violations pending contest and procedures for a stay
- ▶ Conforming amendments
- ▶ Civil penalties
- ▶ Criminal penalties
- ▶ Prejudgment interest

Based on a testimony given by Dr. David Michaels, Assistant Secretary of Labor for OSHA, before the Subcommittee on Workforce Protections last March, the **administration strongly supports the goals** of this Act because it **offers provisions that deal with significant weaknesses in the current law.**

Currently, OSHA's serious violations — those that pose a substantial probability of death or serious physical harm to workers — are subject to a maximum civil penalty of only \$7,000. Willful and repeated violations carry a maximum penalty of only \$70,000 and willful violations a minimum of \$5,000.

PAWA provides increases in both civil and criminal penalties for every type of violation of the OSH Act and would increase penalties for willful or repeat violations that involve a fatality to as much as \$250,000.

New Webpage Focuses on Tobacco Smoke in the Workplace

NIOSH has released a new [workplace safety and health topic page](#) on tobacco smoke in the workplace.

The page provides resources to help employers and workers **prevent workplace exposures to tobacco smoke** and to encourage workplace-based smoking cessation programs.

It also includes **Health Hazard Evaluations**, which examines **specific workplaces for tobacco smoke hazards**, as well as the **Surgeon General's Reports**.

The **Surgeon General recently concluded** that smoking is even **more dangerous** than one may think.

NIOSH says that the report **adds further evidence** to support its position that **even nonsmoking workers are at risk** if they are exposed on the job to tobacco smoke.

OSHA Temporarily Withdraws Proposed Column for Work-Related Musculoskeletal Disorders

OSHA just announced that it has temporarily withdrawn from review by the Office of Management and Budget its proposal to restore a column for work-related musculoskeletal disorders on employer injury and illness logs. The agency has taken this action to seek greater input from small businesses on the impact of the proposal and will do so through outreach in partnership with the U.S. Small Business Administration's Office of Advocacy.

"Work-related musculoskeletal disorders remain the leading cause of workplace injury and illness in this country, and this proposal is an effort to assist employers and OSHA in better identifying problems in workplaces," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels.

"However, it is clear that the proposal has raised concern among small businesses, so OSHA is facilitating an active dialogue between the agency and the small business community."

According to the Bureau of Labor Statistics, MSDs accounted for 28 percent of all reported workplace injuries and illnesses requiring time away from work in 2009.

OSHA says that the proposed rule would not change existing requirements about when, and under what circumstances employers must record MSDs on their injury and illness logs. It would just require those employers already mandated to keep injury and illness records, and to record MSDs, to place a check mark in the new column for all MSDs. However, since the vast majority of small businesses are not required to keep a record of workplace injuries and illnesses, including work-related MSDs, on the OSHA Form 300 (Log of Work-Related Injuries and Illnesses), this would present some challenges.

Prior to 2001, OSHA's injury and illness logs contained a column for repetitive trauma disorders that included noise and many kinds of MSDs. In 2001, OSHA separated noise and MSDs into two columns, but the MSD column was deleted in 2003 before the provision became effective. This proposal would restore the MSD column to the Form 300.

OSHA and the U.S. Small Business Administration's Office of Advocacy jointly will hold a meeting to engage and listen to small businesses from around the country about the agency's proposal. Details of the meeting will be announced within 30 days. OSHA also will conduct a stakeholder meeting with other members of the public if requested.

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OSHA ALSO ANNOUNCED that it is withdrawing its proposed interpretation titled "Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise" to examine other approaches to prevent work-related hearing loss. The interpretation, published in the Federal Register on Oct 19, 2010, would have clarified the term "feasible administrative or engineering controls" as used in OSHA's noise standard.

"Hearing loss caused by excessive noise levels remains a serious occupational health problem in this country," said Dr. David Michaels, assistant secretary of labor for OSHA.

"However, it's clear from the concerns raised that addressing this problem requires much more public outreach and many more resources than originally anticipated. We are sensitive to the possible costs associated with improving worker protection and have decided to suspend work on this proposed modification while we study other approaches to abating workplace noise hazards." As part of this effort, the agency will:

- Conduct a thorough review of submitted comments in response to the Federal Register notice and other information it receives on this issue.
- Hold a stakeholder meeting on preventing occupational hearing loss to elicit the views of employers, workers, and noise control and public health professionals.
- Consult with experts from NIOSH, and the National Academy of Engineering.
- Initiate a robust outreach and compliance assistance effort to provide enhanced technical information and guidance on the many inexpensive, effective engineering controls for dangerous noise levels.

Since 2004, the Bureau of Labor Statistics reports that nearly 125,000 workers have suffered significant, permanent hearing loss, and in 2008, more than 22,000 hearing loss cases were reported. Michaels says OSHA remains committed to reducing this toll.

# Drivers Drive Truck Safety Rules;

*FMCSA shifts focus from equipment to operator in a bid to reduce already improving accident rates*



Truck safety regulators are increasingly focusing **not on the truck, but on the driver who operates it**. By targeting driver behavior “from the

number of hours spent behind the wheel each day to cell phone texting”, federal regulators hope to smash roadblocks to significantly **lower truck-related injuries and fatalities**.

“The **total number of crashes**, though declining, is still **unacceptably high**,” the **Federal Motor Carrier Safety Administration** said in its Dec. 29 notice of proposed rule-making on **truck driver hours-of-service**, published in the Federal Register.

As the **FMCSA** notes in its rule-making, truck crash rates have been **declining since 1979**, well before the daily driving limit changed from 10 to 11 hours in 2003. The **number of deaths in fatigue-related truck crashes** dropped 33 percent from 2003 through 2009, while the number of **truck-involved injuries** declined 39 percent.

A series of rule-makings aims to **improve crash figures** even more by **eliminating bad driver behavior** – or forcing bad drivers out of trucking. Two rule-makings stand out this year – the latest **revision of the hours-of-service rules** and the rollout of the **Compliance, Safety, Accountability** program, better known as **CSA**.

The **FMCSA** is slated to launch a rule-making on a new carrier safety rating system under **CSA** this year and issue a final rule on driver work hours by July 26.

The **CSA** program **doesn't add new safety regulations**, but it radically changes the way the **FMCSA** and state officials enforce truck safety rules. In essence, **CSA** shifts attention from trucking company records to truck driver performance, from **post-accident audits to pre-emptive action to prevent crashes**.

Under **CSA**, which went live in December, **motor carrier safety ratings** are based on live data from states fed into the **FMCSA's** database. That data includes **driver citations and violations and accident records** as they are reported. If a company has a large number of drivers cited for safety violations, the **FMCSA** can **act before a potential crash occurs** – rather than auditing a carrier post-accident.

As **CSA** kicks in, a significant number of drivers could find themselves **unemployable**, raising demand for drivers with **clean safety records**.

The **trucking industry largely favors CSA**, though smaller companies are concerned shippers will **misread or misuse online data** and shun them over **relatively minor safety issues** in fear of **vicarious liability in accident lawsuits**.

The **trucking industry is much more concerned** about the **FMCSA's** proposed **hours-of-service rule**, which would **cut into the number of hours** drivers spend behind the wheel even before determining what the daily driving limit should be. The rule proposed Dec. 23 **would require** all on-duty work be **completed within 13 hours**, as opposed to 14 under the current rule, and introduce a **change to the 34-hour restart provision** that could lengthen the amount of time drivers spend off-duty. It also may **cut the maximum daily driving limit back to 10 hours**.

“Because the **drivers who work very extensive hours** are a relatively small minority, **FMCSA** does not anticipate that this rule would have a **significant adverse impact** on the industry,” the agency said in its rulemaking.

**The industry disagrees**, and the final rule, if unchanged, may **face a legal challenge that could delay its rollout**.

# So You Got a CSA Warning Letter...

In January, the **Federal Motor Carrier Safety Administration** expected to start expanding the reach of its new safety regime, **CSA (Compliance, Safety, Accountability)**. It's going beyond the nine pilot test states to all states with warning letters to carriers whose **safety performance is falling short**.

The **warning letters will identify** the areas where the carrier has missed the mark and **explain** how carriers can **see their own data online** and **correct it if it is wrong**. The letters also **spell out what steps** the agency may take against the carrier if it **does not correct the problem**.

**"We urge you to take this warning letter seriously and improve your safety record,"** the letters will say.

**CSA** Program Manager Gary Woodford said the agency will take a **phased approach** to sending out the letters. The agency wants to be sure its state and regional personnel are **not overwhelmed by phone calls** from carriers that receive the letters.

The **agency's experience** in the pilot states **indicates that there will be a strong response**. More than half of the **pilot-state carriers that received warning letters took action**, mainly by going to the **CSA** website and checking their data. Woodford said the **agency is encouraged by that strong response**.

## **THE FIRST STEP**

The warning letter, which **is triggered by a carrier's performance** in roadside inspections and **any crashes it may have been involved in**, is the first step in a series of gradually tougher enforcement actions.

The letter will **cite deficiencies** in any of the **seven safety categories** the agency has established as a way to **gauge performance**. These categories, called **Behavioral Analysis Safety Improvement Categories, or BASICs**, are: **Unsafe Driving, Fatigued Driving, Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Cargo-Related and Crash Indicator**.

Carriers receive a **percentile ranking** of their performance in each category compared to other, similar carriers. The **warning letter is triggered** when their **rank exceeds a threshold determined by the agency**.

The **agency will inform carriers** in separate communications about any **egregious violations by drivers**, such as driving without a commercial license or driving after being placed out of service.

The **warning letters also say** that failure to improve safety performance will **lead to further action**.

## **WHAT COMES NEXT**

If carriers **don't improve their performance** after receiving an intervention letter, **FMCSA** has a **range of actions in its arsenal**, starting with a targeted roadside inspection based on data that inspectors get from the **CSA** system. These inspections will **take place at permanent and temporary facilities** where the inspectors can wirelessly link into the **CSA** database.

The **next step** would be an **offsite investigation**, in which the carrier must submit documents **such as toll receipts or drug testing records** to the agency or a state partner so officials can **identify safety problems**.

**Continued problems**, or more significant ones, can lead to an onsite investigation that focuses on a **specific problem** or looks comprehensively at the **carrier's safety management system**.

From there, the agency can move to a **voluntary Cooperative Safety Plan** in which the carrier addresses safety issues in its operations.

## **GETTING TOUGHER**

Getting even tougher, the agency can **issue a Notice of Violation** that **spells out a carrier's safety deficiencies** and requires a response.

The **next steps** would be a **Notice of Claim - a civil penalty - or the ultimate penalty, an Out of Service Order** requiring the carrier to stop operating.

Woodford said if a carrier's **initial violations are significant enough**, the agency will not necessarily send a warning letter but **will move straight to an offsite or onsite investigation**.

**Later this year**, probably in August or September, the agency **intends to publish a proposal** to establish new safety fitness procedures under **CSA**. That **rule would not be final** until close to the **end of the year**.

# CSA 2010 And Its Impact On Tires

Now that the **Federal Motor Carriers Safety Administration (FMCSA)** has officially rolled out its new **Comprehensive Safety Analysis (CSA)** program, commercial trucking fleets need to **fully understand** all of the rules and regulations of **CSA** that will affect your **fleet's tire program**.

Commercial fleets **cannot afford to be penalized** for the results of a **poor tire maintenance program**.

**A closer look at violations and points associated with tire issues.....**

Tires that are **damaged or flat** have a rating of eight (out of 10). If the **lowest measured tread depth** is below the legal limit of 4/32nds for steer tires and 2/32nds for drive/trailer tires, there is **also an eight-point penalty**. If any tire is found to be **underinflated**, a **severity level of three is the penalty**.

**There still is a big question regarding underinflated tires:**

When is a **tire considered underinflated**? Industry standards regarding tires currently say **when a tire is 20% under the recommended inflation pressure**, that tire is considered **"flat."** But there is **no clear definition** as to the magic number for how much a **tire is underinflated** before you get **three points deducted**. Whether this is two psi, five psi, 10 psi or even more will have to be clarified by **CSA**.

Also consider the **accuracy** of the **tire pressure gauge** used by the "checker." Tire pressure gauges are **not very accurate**; they provide +/-3% readings when they are **brand new out of the box**. As a pressure gauge wears, the spring tension changes and the **accuracy decreases** even further. And what about a "hot" tire, since the air pressure in truck tires **increases about 15% when they are hot?**

**Here's an example of an underinflated tire calculation** (assume similar recent events occurred within the last three months):

- Three points for underinflated tire
- Two additional points since tires fall under the maintenance category
- Add three plus two and multiply by three, since the events occurred within the last three months
- The total is 15 penalty points

**A fleet rating is determined** by doing similar calculations for all **BASIC** categories. You can see that the points **can rapidly add up** for even a **single underinflated tire**. Because of this fact, it is now time to **reevaluate your current tire pressure program**. Tires will need to be monitored **much more closely**. Inside dual tires, **both tractor and trailer**, are typically the **underinflated tires** on any vehicle because they require more work to check. Bending down and reaching inside the wheel hand hole **is not a lot of fun** – you get dirty and your back hurts. **Checking tire pressures once a month or at PM's is no longer going to be sufficient**.

Tires lose air from **tire osmosis** (1-3 psi/month), **leaking valve core/stem, nail punctures or damage**. Fleets will need to be working more closely with **drivers, technicians and their tire vendors** to ensure that tires are running at the correct tire pressure.

Since tire issues will now be included on both the **fleet and driver's record**, drivers will not want to be driving equipment with **tires that are underinflated**. Good drivers are difficult to find and to keep. **Drivers will want to hire-on** with fleets that have a **serious tire program** to prevent being **penalized by CSA**.

**CSA** will actually generate two types of reports. The **first report is related to the fleet**, while the **second report is about its drivers**. These two reports are based on input data from **roadside inspections and crashes**.

The driver report will help a fleet in its **driver recruitment efforts**. If a driver worked for five different fleets in the last four years and had an **incident or accident at each of those carriers**, all of that information will be available for a fleet to review **prior to deciding if this driver would be a good candidate for its operation**. **CSA** will not have the power to **revoke a driver's CDL** based on the score generated in the report; **only a state can revoke a CDL**. However, driver intervention will take place when a **specific driver's score is in the lowest 10th percentile** as compared with other drivers.

The **second report is the overall fleet report**, which gives a point total and lets the fleet know **where it stands relative to similar fleets**. When a fleet reaches the bottom tier, **the intervention process begins**.

As you can tell, **CSA** is a changing program. Download the most recent version, a 95-page PDF, by visiting [csa2010.fmcsa.dot.gov](http://csa2010.fmcsa.dot.gov).

**Take advantage of understanding the entire CSA program so you can support fleets when it comes to tires.**

# FMCSA Ignoring Real-World Data on HOS

The American Trucking Assns. (ATA) has continued its criticism of the U.S. Dept. of Transportation's proposed hours-of-service (HOS) regulations, released publically on Dec. 23, 2010. ATA claims that the **Federal Motor Carrier Safety Administration (FMCSA)**, in applying data to back up its proposal, "misapplied its own crash numbers so as to elevate driver fatigue as a cause of truck crashes."

"Since the current HOS rules were introduced in 2003, the trucking industry has achieved a continually improving safety record, reaching the lowest fatality and injury rate levels in recorded history," said ATA president Gov. Bill Graves. "It is troubling that this complex, restrictive set of proposed rules is founded on what appears to be incorrect analysis and inflated math."

*(Read what others are saying to FMCSA about the proposal at [www.regulations.gov](http://www.regulations.gov) and search "hours of service").*

The proposal, which **FMCSA** is accepting public comment on until Feb. 28, 2011, would retain the existing 34-hour provision that DOT said allows drivers to "restart the clock" on their weekly 60 or 70 hours by taking at least 34 consecutive hours of off-duty time. But under the new proposal, the restart period would have to include two consecutive off-duty periods from midnight to 6 a.m. Drivers would be allowed to use this restart only once during a seven-day period, noted DOT.

The proposed rule would also require truckers "to complete all driving within a 14-hour workday, and to complete all on-duty work-related activities within 13 hours to allow for at least a one-hour break."

"A fatigued driver has no place behind the wheel of a large commercial truck," Secretary of Transportation Ray LaHood said in announcing the proposal. "We are committed to an hours-of-service rule that will help create an environment where commercial truck drivers are rested, alert and focused on safety while on the job."

ATA, though, said that **FMCSA** ignored its own Large Truck Crash Causation Study, presented to Congress in March 2006. According to ATA, that report stated that "No judgment is made as to whether any factor is

related to the particular crash, just whether it was present."

Despite this, **ATA** said that in the new proposal, **FMCSA** raises the fatigue factor dramatically despite contradictions in previous rulemakings. "Using these data manipulations, **FMCSA** has nearly doubled in its analysis of the number of truck-involved crashes that are likely caused by fatigue".

"Consistently, in past rulemakings, the Agency has found fatigue to be a causal factor in just 7% of crashes. In fact, in just 2008, the **FMCSA** noted that while the best data on fatigue as a factor in fatal truck accidents showed only a 2.2% relationship, it remained confident that its 7% figure is accurate. Now, apparently to assist it in reaching a desired result, the Agency has ignored the real-world data and its past pronouncements and adopted a 13% fatigue factor."

**ATA** also claims that **FMCSA** has engaged in "creative" accounting to justify its position. The trucking lobby said it will issue further news releases that will detail how **FMCSA** has lowered the projected costs to the industry by nearly \$1 billion and increased the supposed benefits of the rule changes "by measuring assumed health benefits that it has long held are immeasurable and likely insignificant."



"I KNOW THERE'S SOMETHING IN HERE THAT COVERS THAT!"

# HOS Proposal Raises Ire on All Sides of Issue.....

**FMCSA's** new proposed hours-of-service rule, which would impose complex restrictions on commercial drivers' work schedules, was panned by officials on all sides.

## *Truckers and Companies Speaking Out...*

"We are sure that if it is enacted as it is now, it is going to have serious implications for all our operations," said Randy Mullett, vice president of government relations for **Conway Inc.**, which is ranked **No. 6** in the Transport Topics **Top 100 list of for-hire carriers** in the United States and Canada.

"The only thing that I see that could have some benefit is this notion that you can take off-duty hours while you're being held up by a customer," Mullett said. "And that is not a fair trade-off for all the other complexities and restrictions that go along with it."

Mullett also highlighted a "notion buried in the back that we might have more restrictions on night driving," as potentially damaging to the industry. "The whole trucking industry works during those times, so it would shove a whole lot more traffic into daytime hours".



Wayne Johnson, manager of carrier relations for **Owens Corning** and chairman of the **National Industrial Transportation League's highway policy committee**, said the proposal "will hurt the productivity of trucking," and, as a result, squeeze shippers.

"They're bound and determined to change something that isn't broken," he said, referring to **FMCSA**. "It will affect us as a nation with how many trucks are on the road, and it will affect us as a shipper by increasing the number of trucks we're going to have to use to get our shipments moved."



Jeff Davis, VP of safety and human resources for **Jet Express Inc.**, told Transport Topics that retaining the 11th hour of driving was "critical," given the way Jet has structured its regional routes.

Davis also pointed to the requirement for two periods of rest between midnight and 6 a.m. during a 34-hour restart as another onerous provision "that will certainly have

an effect on productivity. It is something that could be workable down the road, but that would mean a tremendous amount of support and changes from our shipper population."



"The current HOS seem to be working pretty well," said Lee Hawkins, an owner-operator from Tennessee. "I would suggest keeping the 14-hour rule, the 11-hour rule and don't limit the 34-hour reset rule. I may use it one time a week and two times the next week; it all depends on how the freight is running."



Greg Decker, a driver for **Triple Decker Transport**, questioned why the agency was proposing changes, even as it has been "announcing the fantastic improvement in the statistics of decreasing accidents and deaths on the American highways."

"Why do you want to jeopardize that improvement with a proposal that will decrease the working hours available to the present workforce?" Decker asked. "A decrease in potential hours will require an increased truck presence on the highways."

## *Industry Executives Weren't Alone in Criticizing FMCSA for its Proposal...*

The coalition of groups that have successfully challenged earlier versions of the rule twice in federal court, said the changes do not go far enough.

"The new proposed rule does not eliminate any of the anti-safety provisions that allow truck drivers to drive and work long hours, get less rest and drive while fatigued," Public Citizen, Advocates for Highway and Auto Safety and the Truck Safety Coalition stated jointly.

They specifically objected to the retaining the 11th hour of allowable daily driving and to the modified 34-hour-restart provision.

The groups stated they have "preserved the right . . . to return to court" and renew their challenge to the rules.

The groups called for cutting daily driving time and for a 48-hour restart, saying the new proposal "perpetuates excessive working and driving hours for truckers."

Observers said the poor reception on both sides could be an indication of continued legal battles and uncertainty.

## ***Some Further Analysis...***

"The HOS proposal is telling, when both the ATA and Public Citizens' group are quite critical of the new proposal," BB&T Capital Markets Analyst Thom Albrecht said in a note to investors. "Unlike some regulatory issues, in which equal criticism means kernels of truth and value have been discovered, this feels like a regulatory quagmire."

Stephen Keppler, executive director of the Commercial Vehicle Safety Alliance, said the proposed rules increase the chance of a universal mandate for electronic onboard recorders, something supported by CVSA and the coalition of groups that challenged the rule.

"It ups the ante that those things will become a more critical tool to help increase compliance," Keppler said.

The rule "creates some scenarios that we don't have today . . . and from our perspective, simplicity is best, and in whatever rule we have, ease of enforcement is paramount," Keppler said, adding that requiring EOBRs is a way to improve enforcement and compliance with the rules.

**FMCSA** said it would take public comments on the rule through the end of February, but at press time, more than 200 comments already were in the agency's docket.

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## **FMCSA Proposes Large Fines for Handheld Cell Phone Use**

The **Federal Motor Carrier Safety Administration** has proposed fines up to \$2,750 for truckers who use a handheld cell phone while driving, as well as the possible suspension or revocation of a commercial license for repeated offenses.

*The agency is accepting public comments on the proposal until Feb. 22.*

"Every time a commercial truck or bus driver takes his or her eyes off the road to use a cell phone, even for a few seconds, the driver places everyone around them at risk," Transportation Secretary Ray LaHood said in a statement. "This proposed rule will go a long way toward keeping a driver's full attention focused on the road."

"We are committed to using every resource at our disposal to ensure commercial drivers and vehicles are operating safely at all times," **FMCSA** Administrator Anne Ferro said. "Implementation of this proposal would help make our roads safer and target a leading cause of distracted driving."

The proposal would ban commercial drivers from "reaching for, holding or dialing a cell phone" while behind the wheel.

The rule also would apply to fleets, by prohibiting them "from requiring or allowing drivers of commercial vehicles to engage in the use of a handheld mobile telephone" while driving.

Fleets found in violation of this provision, **FMCSA** said, could face a maximum penalty of \$11,000.

"ATA's members are generally supportive of a ban on handheld cell phone use, and we'd like to see it extended to drivers of all vehicles," said Rob Abbott, vice president of safety for American Trucking Associations.

However, ATA has some concerns with proposal, including that, even though it does not propose a ban on hands-free use, **FMCSA** could include it in a final rule. Abbott said a hands-free ban would be "problematic" because data show that simply talking on a hands-free phone can reduce the risk of a crash, compared with using a handheld phone.

Abbott also said ambiguity in **FMCSA's** definition of dialing was a concern. "They haven't distinguished the risk of dialing a 10-digit number from push-to-talk or pushing a speed-dial number so that you can have that hands-free conversation," adding that ATA would discuss this point further in its comments.

Stephen Keppler, executive director of the Commercial Vehicle Safety Alliance, said the law enforcement group supports the proposal.

"Generally speaking, anything that takes a driver's attention away from the road is a bad thing," he said. "I think **FMCSA** going forward and putting these proposals out makes sense."

The proposal is the second one focused on curbing distracted driving. During 2010, **FMCSA** finished a regulation banning truck drivers from sending or reading text messages on a cell phone.

The agency is also in the process of examining other in-cab distractions for possible future regulations.

# Mining Deaths Rise In 2010....MSHA chief

*pledges continued enforcement,  
outreach on behalf of nation's miners*



Mining fatalities in the United States **significantly increased in 2010**, following a year marked by **the fewest deaths in mining history**, according to the U.S. Department of Labor's Mine Safety and Health Administration.

**Seventy-one miners died** on the job last year, compared to 34 in 2009...**23 of those victims were killed in surface mining accidents**, while 48 miners died in underground mining accidents. **"While 2010 will be remembered for the explosion that killed 29 men at the Upper Big Branch mine, we are mindful that 42 additional miners' lives also ended in tragedy,"** said Joseph A. Main, assistant secretary of labor for mine safety and health.

The **leading cause** of coal mining deaths was ignition or explosion, followed by powered haulage and roof falls...for **metal/nonmetal mining deaths** - powered haulage, followed by falling or sliding material, and machinery.

**"First and foremost, mine operators must take responsibility** for the health and safety conditions in their mines to prevent these tragedies. Mining deaths are preventable, and actions must be undertaken to prevent them."

MSHA has taken a **number of actions** to identify mines with safety issues, and has **initiated a number of outreach and enforcement initiatives**, including **"Rules to Live By,"** a fatality prevention program spotlighting the **safety and health standards most frequently cited** during fatal accident investigations.

In addition, MSHA engaged in a number of targeted **enforcement, awareness, outreach and rulemaking activities** in 2010 to reduce the number of mining fatalities, accidents and illnesses. **These efforts include:**

- A monthly round of **aggressively targeted impact inspections** at mines with a **history of significant and/or repeat violations**, poor compliance records, and high numbers of closure orders, accidents, injuries, illnesses or fatalities. Between April and December 2010, MSHA conducted 200 impact inspections and **issued 4,142 citations**, orders and safeguards.

- **New screening criteria and tougher procedures** for the pattern of violations enforcement program, which gives the agency

**additional enforcement tools** to use at mines with a history of violating safety standards, and notification of 14 mines for **potential pattern of violations**.

- First-time use under the Federal **Mine Safety and Health Act** of 1977 to seek injunctive action against the **most recalcitrant mine operators**, resulting in a settlement requiring specific **safety measures** to be applied to the mine.

- **New enforcement policies** and alert bulletins addressing specific hazards or problems such as **prohibitions on advanced notice of MSHA inspections**, mine ventilation requirements to prevent mine explosions, and **miners' rights to report hazards** without being subject to retaliation.

- A **roof fall prevention awareness program** aimed at reducing the high number of roof falls that occur in the nation's underground coal mines

- A pilot program aimed at **addressing the backlog of contested citations** and the agency's conferencing procedures at the **Mine Safety and Health Review Commission**.

- Issuance of a new **emergency temporary standard for rock dust**, which would strengthen miners' protections and **minimize the potential for coal dust explosions** by requiring a higher percentage of inert rock dust in underground coal mines.

- A safety initiative **calling special attention** to the potential dangers that **shuttle cars and scoops** pose in underground coal mines, a **leading cause of miner injury and death**.

- A new, proposed rule that would expand requirements at underground coal mines **requiring mine operators to conduct pre-shift, supplemental, on-shift and weekly examinations to determine compliance with mandatory health and safety standards**.

- A two-part, comprehensive action plan to tackle black lung, which **encompassed education, enhanced enforcement, training and rulemaking**, including publication of a proposed rule on lowering miners' exposure to respirable coal dust to end black lung disease among miners.

**"No miners should have to die on the job just to earn a paycheck. MSHA will vigorously enforce the Mine Act, and look for ways to improve our policies and regulations to prevent these unnecessary deaths and provide miners the opportunity to return home safe at the end of every shift,"** said Main.

## PREVENTING THE FLU: Good Health Habits Can Help Stop Germs

The single best way to prevent seasonal flu is to get [vaccinated](#) each year, but good health habits like covering your cough and washing your hands often can help stop the spread of germs and prevent respiratory illnesses like the flu. There also are [flu antiviral drugs](#) that can be used to treat and prevent the flu.

- **Avoid close contact.**

- Avoid close contact with people who are sick. When you are sick, keep your distance from others to protect them from getting sick too.

- **Stay home when you are sick.**

- If possible, stay home from work, school, and errands when you are sick. You will help prevent others from catching your illness.

- **Cover your mouth and nose.**

- Cover your mouth and nose with a tissue when coughing or sneezing. It may prevent those around you from getting sick.

- **Clean your hands.**

- Washing your hands often will help protect you from germs.

- **Avoid touching your eyes, nose or mouth.**

- Germs are often spread when a person touches something that is contaminated with germs and then touches his or her eyes, nose, or mouth.

- **Practice other good health habits.**

- Get plenty of sleep, be physically active, manage your stress, drink plenty of fluids, and eat nutritious food.

### Cover Your Cough

#### Stop the Spread of Germs that Make You and Others Sick!

Serious respiratory illnesses like influenza, respiratory syncytial virus (RSV), whooping cough, and severe acute respiratory syndrome (SARS) are spread by:

- **Coughing or sneezing**

- **Unclean hands**

#### To help stop the spread of germs

- Cover your mouth and nose with a tissue when you cough or sneeze.

- If you don't have a tissue, cough or sneeze into your upper sleeve, not your hands.

- Put your used tissue in the waste basket.

#### Clean your hands after coughing or sneezing

- Wash with soap and water, or

- Clean with alcohol-based hand cleaner

**Note:** You may be asked to put on a surgical mask to protect others!

### Stopping The Spread of Germs At Home, Work & School

#### GOOD HEALTH HABITS:

##### Avoid close contact.

- Avoid close contact with people who are sick. When you are sick, keep your distance from others to protect them from getting sick too.

##### Stay home when you are sick.

- If possible, stay home from work, school, and errands when you are sick. You will help prevent others from catching your illness.

##### Cover your mouth and nose.

- Cover your mouth and nose with a tissue when coughing or sneezing. It may prevent those around you from getting sick.

- [Cover Your Cough](#): Stop the Spread of Germs that makes you and others sick.

- **Clean your hands:** Washing your hands often will help protect you from germs.

##### Avoid touching your eyes, nose or mouth.

- Germs are often spread when a person touches something that is contaminated with germs and then touches his or her eyes, nose, or mouth.

# Stop the Spread of Germs

*Healthy habits can protect everyone from getting germs or spreading germs at home, work, or school.*

## **GUILT MAY FORCE SICK EMPLOYEES TO GO TO WORK**

**A** new CareerBuilder survey finds that nearly three-quarters (72 percent) of workers typically go to work when they are sick. Workplace pressures and "presenteeism" may be causing workers to go in under the weather, as more than half (55 percent) of workers said they feel guilty if they call in sick.

The CareerBuilder survey was conducted nationwide from November 15 to December 2, 2010 among more than 3,700 workers.

With so many workers heading to work ill, they are likely passing their germs on to others. More than half of workers (53 percent) said they have gotten sick from a co-worker who came to the office sick, while 12 percent said they picked up a bug from someone who was sick on public transportation going to or from work.

To help encourage a healthy workplace, nearly one-in-five (19 percent) employees said their companies provided flu shots at their office. Nearly two-in-five workers (38 percent) said they were proactive and got a flu shot this year.

When workers were asked what other ways they attempt to avoid germs, they said the following:

- Wash hands often - 78 percent
- Carry hand sanitizer and use it often - 32 percent
- Regularly clean keyboard, phone, desk, etc. - 30 percent