

Monthly Roundup

June 2022



This *STC Monthly Roundup* is a regular report on recent and pending legislative, regulatory, enforcement and administrative initiatives by Congress, the U.S. Department of Transportation, and certain sub-agencies of the USDOT including the Federal Motor Carrier Safety Administration (“FMCSA”) and the National Highway Traffic Safety Administration (“NHTSA”) that impact the trucking industry at large. It also provides the latest information on enforcement trends, research and other timely information on relevant topics.

The *Roundup* is divided into three main sections: Hot Topics, Rulemaking Activity and Compliance/Enforcement/Research Information. Within each section you will find summaries of the most recent activity.

HOT TOPICS

Confirming the Status Quo – Earlier this month, Robin Hutcheson, the Acting Administrator of FMCSA since January, finally got her day in the Senate. While her written testimony was predictably milquetoast, her answers to questions posed by Senators provided a bit more insight into her priorities and how she plans to attack rising crash numbers. One theme that emerged was her commitment to driver workforce issues including her belief that there *is* a looming driver shortage impacting the trucking industry. While she boasted about the Agency’s progress on the younger drivers pilot program, she doubled down on partnering with the DOL to improve working conditions at the same time, requiring those interested in the program to develop an apprenticeship program and register with DOL, to the dismay of many in trucking. She stopped short of speculating if the prohibition against allowing drivers under 21 to cross state lines improves safety, even though 18 years olds can already travel hundreds of miles within a state. She also highlighted plans to increase investigations on high-risk carriers, investments in technology and stressed collaboration with industry stakeholders and DOT inter-agency cohorts to solve important safety problems. Finally, when asked about CSA, she hedged her bets stating that several unnamed conditions must be met to update FMCSA’s enforcement prioritization system in response to the National Academy of Sciences (NAS) report and recommendations, to include implementing Item Response Theory. So, what does this all mean? Hutcheson has plenty of experience in political roles and is therefore less willing to crack a few eggs to make her safety omelet. Stressing interagency and stakeholder collaboration is important for a well-functioning democracy but is a sure-fire way to slow the process. While there may be big moves on the horizon on issues like younger drivers and CSA, like the horizon, they may be slow to arrive.

A Ship Without a Captain – In light of the recent confirmation hearing, STC has been reflecting on the alarming turnover at FMCSA top spot since the last confirmed administrator, Ray Martinez, left the top spot in November 2019. In the last two and a half years, FMCSA has hosted four acting administrators including Jim Mullen, Wiley Deck, Meera Jooshi and now Hutcheson. This has created predictable challenges in pursuing a robust agenda to attack historically rising and high crash totals. The best example is the agency’s approach to CSA. Each of the most recent acting administrators seemed poised to deliver a plan to address the NAS’ recommendations. Unfortunately, their short-lived tenures required FMCSA to hit the brakes and reassess the work of previous administrators. Each made promising statements on progress they’d made, only to step away and leave the task to the next boss who, understandably, wanted to get up to speed on its complicated history and methodology before determining the best path forward.

Meanwhile, crashes continue to rise and the agency’s ability to make any significant progress has been hamstrung. FMCSA needs a clearly articulated strategic vision on how to address critical safety issues and fatalities. It needs to be one that is based on recurring review of program, regulatory and enforcement effectiveness and one less subject to the political and philosophic whims of whomever is leading the agency at one given moment. FMCSA also needs to develop a sound and evidence-based plan, strategies and measures that are grounded in the expertise of experienced safety and trucking professionals and stick to it, regardless of the ships’ captain.

The Value of the Rearview Mirror – With all the tumult at the top of FMCSA as well as internal shuffling, sadly, safety continues to suffer. New NHTSA data for 2021 shows crashes continuing to rise even in the face of big regulatory changes. The implementation of three significant rule changes the last several years to include ELDs, the Drug & Alcohol Clearinghouse and changes to hours of service seem to have failed to move the safety needle. Sure, crashes are inherently complicated and rare events, but each time a new rule is proposed, they come with the promised of improved safety and expected outcomes to support their implementation. STC isn’t suggesting these rule changes were made in error, in fact, we’ve supported each in the past. But without timely regulatory evaluations to understand the impact of these rules, we can’t be sure of their real-life impacts and may be failing to learn important lessons that could meaningfully improve safety.

LEGISLATION, RULEMAKING & RELATED ACTIVITY

Legend

Near Term/Final Action

Medium Term/Proposal

Long term/No clear timeline



Red Text: New in the last month

Agency	Name Of Action	Status	Information & Industry Impact
Congress	Ocean Shipping Reform Act of 2022	President signed into Law June 16, 2022.	Most extensive reform of the shipping industry since 1998, is intended to increase competition, promote U.S. exports and lower prices for shipping. Provides additional authorities to FMC to oversee the industry, including a rulemaking process to define prohibited practices by common carriers, marine terminal operators and ocean transport intermediaries concerning demurrage or detention charges. FMC also given budget authority to hire investigators to oversee compliance, and NAS to study supply chain inefficiencies.
Congress	Modern, Clean and Safe Trucks Act of 2022.	Introduced in House. Senate Bill introduced in 2021 (S. 2435)	Would amend the Internal Revenue Code to repeal the 12% Federal Excise Tax on heavy trucks and trailers. The FET can add as much as \$22,000 to a new truck, and as much as \$50,000 to an electric or hydrogen fuel cell truck.
DOL	Public Forums on determination of Independent Contractor Status under FLSA	Employer Forum: June 24, 2022. Worker Forum: June 29, 2022.	DOL is working on a rulemaking for determining employee or independent contractor status under the Fair Labor Standard Act. They are holding these forums to hear perspectives from affected parties.
ODAPC	SAP and Service Agents Guidance	June 15, 2022 updated Enforcement Discretion	Extends the guidance for SAPs to conduct remote assessments and evaluations until December 31, 2022 and terminates the guidance regarding the service agent's requalification timelines.
FMCSA	Exemption Application: General Qualifications of Drivers; SBTC	Published June 15, 2022. Comments due July 15, 2022.	SBTC has requested an exemption from the requirement that motor carriers not permit a person to drive a CMV unless the driver meets English proficiency requirements.
PHMSA	Meetings: Frequently Asked Questions- Applicability of the HMR	Published June 13, 2022. Meeting June 27, 2022, comments due July 22, 2022.	PHMSA is converting letters of interpretation into broadly applicable frequently asked questions on its website. PHMSA is hosting a webinar to discuss the process and intent of this initiative with stakeholders on June 27, 2022.
FMCSA	Definitions of Broker and Bona Fide Agents	Published June 10, 2022. Comments due July 11, 2022.	Request for responses to questions to inform future guidance expected in November 2022, on the definitions of brokers and bona fide agents. The guidance must consider technology impacts on freight brokerage as well as the role and extent of dispatch services and must clarify financial penalty guidelines for unauthorized brokerage.

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FHWA	National Electric Vehicle Infrastructure Formula Program	NPRM , request for comments. 60-day comment period, not published in FR yet.	Proposal would establish regulations setting minimum requirements for projects funded under the National Electric Vehicle Infrastructure (NEVI) Program and projects for the construction of 500,000 publicly accessible electric vehicle (EV) chargers nationwide by 2030. Funding level is \$5 Billion over next 5 years.
Supreme Court	CTA Vs State of California	June 6, 2022	As requested by SCOTUS, on May 24, the US Solicitor General issued its recommendation that SCOTUS not hear CTA's appeal of AB5 because of the law's business-to-business exemption, among other reasons. On June 6, CTA issued its response , arguing the law would be extremely disruptive to interstate commerce and the B2B exemption isn't a practical alternative.
FMCSA	MCSAP Grants for CMV Safety Improvements	Published June 2, 2022	Provides a 52% increase in annual MCSAP grants to States to reduce CMV-involved crashes, fatalities, and injuries through uniform, equitable, and effective CMV safety programs..
FMCSA	Extension of COVID-19 Emergency Declaration	Published May 27, 2022	Extends the COVID Emergency Declaration to Aug. 31, 2022 and continues the exemption granted from certain hours of service rules. The declaration applies to those providing direct assistance to relief efforts, subject to restrictions.
Congress	TSA Security Threat Assessment Application Modernization Act	Introduced in Senate May 25, 2022. House companion bill (HR 6571).	The legislation would reduce the burden on workers applying for two or more of the Transportation Worker Identification Credential (TWIC), hazardous materials endorsement (HME), or TSA PreCheck programs by standardizing the enrollment and renewal systems administered by TSA.
FMCSA	Acknowledgement of Use of COVID-19 Emergency Declaration Relief	Request for Comments. Published May 5, 2022. Comments due July 5, 2022.	FMCSA is requesting permanent approval to collect information on motor carriers using emergency exemptions. The request it may indicate the Agency's intent to extend the COVID declaration or to create efficiencies for the next time there's an emergency without having to jump through hoops at OMB.
Congress	COMPETES Act	Conferees Appointed May 5, 2022. Negotiations have started.	Addresses U.S. technology and communications, foreign relations and national security, domestic manufacturing, education, and trade. Provides funding for U.S. semiconductor manufacturing, research and development, and supply chain security; funding for wireless supply chain innovation; establishes a Directorate for Technology and Innovation; requires federal infrastructure programs to provide for the use of materials produced in the United States; imposes sanctions on China for cybersecurity and human rights abuses; requires the Department of Health and Human Services to consider national security risks associated with sensitive genetic information; requires the U.S. Trade Representative to take actions related to digital trade and censorship practices.
FMCSA	Speed Limiting Devices	ASPRM, Published May 4, 2022. Comments due June 3,	The SNPRM will propose CMVs of 26,001 pounds or more that are equipped with an electronic engine control unit capable of governing the maximum speed be required to limit the CMV (speed TBD by the rule) and to maintain that ECU

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		2022. Comments extended to July 18, 2022.	setting for the service life of the vehicle. FMCSA is requesting public comments and data regarding the adjustment or reprogramming of ECUs. There is no companion NHTSA rule.
NHTSA	State Electronic Data Collection Grant Program	Request for Information. Published April 29, 2022.	NHTSA is implementing a new discretionary grant program for jurisdictions to upgrade and standardize crash data systems to enable electronic data collection, intrastate data sharing, and electronic data transfers to NHTSA to increase the accuracy, timeliness, and accessibility of the data including data relating to fatalities involving vulnerable road users.
FMCSA	Implementation of HHG Working Group Recommendations	Final Rule. Published April 26, 2022. Effective Date June 27, 2022.	Amends the HHG regulations (Part 375) to incorporate recommendations the Working Group. The Agency also makes minor changes to the HHG and Brokers of Property regulations including: 1) Allow virtual surveys of household goods; 2) Require motor carriers to conduct surveys beyond a 50-mile radius; 3) Remove the requirement for an order for service; 4) Update requirements in the bill of lading; 5) Require the bill of lading to be provided earlier in the moving process; 6) Replace the requirement for a freight bill with an invoice; and 7) Require all motor carriers that have a website to prominently display a link to FMCSA's Ready to Move? publication.
NHTSA	Barriers and Solutions for Submitting Toxicology Data to FARS	Request For Comments. Published April 25, 2022.	Requesting comments on barriers and solutions for reporting toxicology investigations of drug-impaired driving and motor vehicle fatalities to the Fatality Analysis Reporting System. NHTSA is preparing a report to Congress on drug-impaired driving data collection and requests feedback about the barriers states are experiencing for inclusion in the report.
NHTSA	Uniform Procedures for State Highway Safety Programs	Request for Comments. Published April 21, 2022.	NHTSA is initiating a rulemaking to implement changes to the Highway Safety Grant Program (the annual formula grants to States) in accordance with the IIJA. NHTSA is publishing the RFC and announcing three public meetings to be held prior to issuing the NPRM.
Congress	HR 7517 -- Guaranteeing Overtime for Truckers Act	Introduced in House April 14, 2022.	This bill would remove the FLSA overtime exemption for commercial truck drivers and require employers to provide overtime pay to such drivers engaged in a workweek longer than 40 hours.
FMCSA	Apprenticeship Pilot Program; Information Collection Request	Published April 18, 2022.	The IIJA requires FMCSA to establish a pilot program to allow truck driver apprentices between 18 and 21 to operate in interstate commerce. This newest notice discusses their data collection expectations and responds to several questions submitted by previous commenters.
Congress	Trucking Workforce Bill	Introduced in US House, April 1, 2022	A bipartisan bill introduced in the US House of Representatives establishing a two-year refundable income tax credit of up to \$7500 for Class A truck drivers

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			who drive at least 1,900 hours per year; and a \$10K credit for new truck drivers. The bill has been referred to the House Ways & Means committee.
NHTSA	Occupant Protection for Vehicles with ADS	Final Rule published March 30, 2022	This final rule clarifies that occupant protection standards will still be required even if the vehicle is designed for vehicles that do not require a driver.
OST	Oral Fluid Testing	Proposed Rule, Published February 28, 2022	OST is proposing to allow motor carriers to use oral fluids, which is more difficult to defeat because it is directly observed, as an alternative to urinalysis to fulfil drug testing requirements for all required testing scenarios. OST is also proposing changes to the testing process to accommodate the new specimen.
FMCSA	CVSA Petition for a Definition of Personal Conveyance	Petition sent March 29, 2022	CVSA has petitioned FMCSA to add a definition of personal conveyance that includes time and distance parameters to make roadside enforcement of the provision easier to enforce for inspectors and motor carriers. This is the second time CVSA has submitted a petition on this issue.
FMCSA	ELDT Correction	Final Rule, Published March 18, Effective immediately	FMCSA removed Subpart E, which required motor carriers to train drivers with less than 1 year of CMV experience on whistleblower protections; driver wellness; hours of service rules, and driver qualification requirements.
FMCSA	Record of Violations	Final Rule, Published March 9, 2022. Effective May 9, 2022	FMCSA published a final rule eliminating the requirement that drivers submit a list of their convictions for traffic violations annually and required that motor carrier obtain MVR from foreign driver's jurisdiction of licensure.
EPA	Heavy Duty Vehicle Emissions Standards	NPRM Published March 7, 2022	EPA has proposed new, stronger standards to reduce emissions from new heavy-duty engines and, for the first time, trailer, starting MY 2027
HOS Brief	Public Citizen Reply to HOS Brief	February 15, 2022, Oral Arguments April 25, 2022	Public citizen has replied to the FMCSA and OOIDA defense of the Hours of Service final rule arguing that the extension of the short haul provision and the changes to the 30 minute rest break provision were improper.
FMCSA	Guidance Concerning Third Party Testers Conducting the CDL Knowledge Test	Posted February 3, 2022. Effective immediately.	Guidance to explain FMCSA's current rules do not prohibit third party testers from administering the CDL knowledge tests for all classes and endorsements. SDLAs may accept the results of knowledge tests administered by third party testers in accordance with existing knowledge test requirements.
FMCSA	Vision Standard	Published January 21, 2022. Final Rule, effective date March 22, 2022	Permits individuals who do not satisfy existing distant visual acuity standard to be physically qualified to operate CMVs under specified conditions. The new standard replaces the exemption program. Importantly, carriers need to road test drivers qualified under the new standard for the first time.
FMCSA	D&A Testing: State Driver's Licensing	October 7, 2021. Final Rule.	FMCSA will require State Driver's Licensing Agencies to access information obtained through the Drug and Alcohol Clearinghouse to not allow for issuance, renewal, upgrade, or transfer a CDL/CLP for drivers listed as prohibited in the

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	Agency Non-Issuance/Downgrade of Commercial Driver's License	Compliance date November 18, 2024.	Clearinghouse. SDLAs must remove the CLP or CDL privilege from the driver's license until the driver complies with RTD requirements. Also makes clarifying changes, including how carrier reports of actual knowledge violations are maintained in the CH.
FMCSA	Exclusively Electronic Exchange of Driver History Record Information	July 23, 2021 Compliance Date August 22, 2024.	FMCSA codifies the requirement that State driver licensing agencies implement a system for the electronic exchange of driver history record information through the Commercial Driver's License Information System, including the posting of convictions, withdrawals, and disqualifications.
FMCSA	Inspector Qualifications; ATA Application for an Exemption	July 14, 2021 Application for Exemption, Request for Comments	ATA has applied for an exemption that would allow an individual who completes a training program consistent with a set of Recommended Practices (RPs) developed by ATA's TMC to be considered a qualified inspector for purposes of the periodic inspection rule, or a qualified brake inspector, for purposes of the brake system inspection, repair and maintenance requirements.
FMCSA	Extension of Compliance Dates for Medical Examiner's Certification Integration	June 22, 2021 Final Rule	FMCSA delays the compliance date to June 23, 2025, for several provisions of its Medical Examiner's Certification Integration final rule to provide FMCSA time to complete IT development for its NRCME and give SDLA's time to make the necessary IT changes when the new system is completed.
FMCSA	Proposed Regulatory Guidance Concerning Yard Moves	January 4, 2021 Notice of Proposed Regulatory Guidance	FMCSA published a NPRG proposing that movements of CMVs in "yards" would be considered "yard moves" and could be recorded as on-duty not driving time rather than driving time.

COMPLIANCE, ENFORCEMENT, RESEARCH AND OTHER INFORMATION

Org	Compliance, Enforcement Information & Research
FMCSA	Announced a high visibility traffic enforcement campaign from June 20-24 in multiple states along the I-81 corridor from New York to Virginia. The event will focus on unsafe driving behaviors like speeding, following too closely and distracted driving.
NHTSA	Released its early estimate for 2021 crash statistics and estimates 42,915 died in motor vehicle traffic crashes, an increase of 10.5% over 2020. This is the highest number of fatalities since 2005 and the largest annual increase in the Fatality Analysis Reporting System’s history. Fatalities in crashes involving at least one large truck increased by 13%.
NHTSA	Issued its initial report on ADAS and ADS technologies resulting from its 2021 General Standing Order . The report cataloged 392 separate incidents for ADAS Level 2 and 258 for ADS Levels 3-5 between July 1st of last year through May 15th, 2022. For the ADS incidents, there were an average of 12.9 incidents per month, the most common damage was in the rear, 1 crash involved a serious and 3 involved moderate injuries. The data has several limitations.
CVSA	Launched a revised Emergency Declarations web site that includes: (1) information on changes to allowable weights; (2) contact info for each state’s permitting office; (3) interactive map; (4) ability to subscribe to new notices; (5) information on the issuer of the relief, the type of relief granted, and emergency declarations’ beginning and end dates; (6) all relevant information for vehicle permits for size, overweight restrictions on interstates, waivers for overweight restrictions on state roads, and marking and lighting relief; and (7) contact information for the jurisdiction’s issuer.
Escalent	Released a study on the state of adoption for eight key fleet technologies in 2021: data analytics, telematics, battery electric vehicles (BEVs), autonomous vehicles (AVs), artificial intelligence, drones, mobility service and blockchain. The study of 1,031 fleets noted that while their near-term readiness may have diminished due to the current business climate, adoption remains an eventuality.
Together for Safe Roads	TSR is partnering with DOT’s Volpe Center to advocate for making direct-vision cab design a fleet industry standard. The initiative will give fleet managers and operators data and analysis on how safe — or dangerous — vehicles are in relation to driver blind zones, including developing a standard for rating the vehicles and a database of those ratings.
CVSA	Operation Safe Driver week is scheduled for July 10-16. Law enforcement in Canada, Mexico and the U.S. will be conducting traffic enforcement and issuing warnings and citations to CMV and non-CMV drivers engaging in unsafe driving behaviors. This year’s focus area is on speeding.
3G Sunset	Several deadlines are approaching for mobile carriers that are sunsetting their 3G services: Sprint LTE (T-Mobile) will shut down June 30, 2022, and T-Mobile will shut down July 1, 2022.
NHTSA	Released a synthesis of studies relating the amount of enforcement to the magnitude of safety outcomes. A positive and relationship was found between seat belt use and both the number of checkpoints and the amount of media spending during enforcement campaigns. However, for distracted driving, alcohol-impaired driving, speeding, and aggressive driving campaigns, no such relationship was identified. The synthesis concluded that enforcement campaigns were effective even though the magnitude of the safety improvements cannot be predicted by the level of enforcement activity.