



This issue of the Landing Gear is sponsored by the ICSA services shown below. If you haven't explored these discounts and special programs, you are not getting the full value from your ICSA membership. See what's in store for you!



We also want to remind you of two important business opportunities available to you and/or your drivers: ICSA's Model Safety Plan and the FirstGear™ online driver training curriculum. Both of these programs are available to members at no charge and can be accessed in your dashboard after you log into your account in the [ICSA website](#).

CA's "Dirty Truck Detectors" Ramping Up for January 2023

In the October Regulatory Roundup, we told members about the new truck pollution enforcement program scheduled to start soon in California. Meanwhile, the California Air Resources Board (CARB) has begun deploying "Portable Emissions Acquisition Systems (PEAQs) – so-called "Dirty Truck Detectors" – in areas of heavy truck traffic to educate drivers and operators about the new truck smog check program that starts Jan. 1.

CARB first unveiled the smog detectors August 23 near the Port of Los Angeles, where the agency screened more than 1,200 trucks over a five-hour

period. Trucks drive underneath the monitors which are programmed to detect high emissions, and which alert officers to heavy polluters that are then pulled over for additional smog inspections.

The PEAQs – manned and unmanned – have been spotted around the state, including Oct. 18 in San Diego at the CHP's commercial border crossing at Otay Mesa, October 25 in Oakland and November 1 at the Calexico border crossing on the U.S. side of the Mexican border.

"But wait!" you say. "My trucks aren't registered in California, and I'm not based there!" Unfortunately, that doesn't matter – the program will apply to all heavy-duty trucks, buses and agricultural equipment with a gross vehicle weight rating over 14,000 pounds operating in the state, regardless of whether they are registered in California. And by mid-2023, all truck operators traveling within the state will be required to register with CARB and obtain a certificate of compliance to operate in the state. High-emitting vehicles are flagged for full inspections, including a smoke test and verification of emissions-control equipment to determine if repairs are needed. Citations can be issued during the screenings. Of 281 trucks screened in Oakland last month, 15 were identified as higher-emitting and selected for full inspection.

In the 2024 final phase, trucks registering in California will have to meet an even higher level of compliance through emissions inspections tests performed twice a year for vehicles with onboard diagnostic (OBD) systems, with such tests increasing to four times per year in 2027.

CARB is banking on estimates that 75% to 80% of heavy-duty trucks will have OBD equipment with telematics technology that will be able to transmit the emissions data automatically when the program begins. Older heavy-duty vehicles without OBD systems will continue the current opacity testing requirements with added visual testing component, twice annually.

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COACHING CORNER

Could You be Found Negligent for Not Managing Your Camera Data?

By Mike Hitchcock

ICSA Senior Safety Advisor



ICSA's safety consultants get many calls every week from members asking us to send them video of incidents or crashes involving their drivers. Yet the SmartDrive Program belongs to you – the member. You own the data and you can, and should, access it yourself. In fact, because they belong to you, ICSA can't send or use any of your videos without your permission.

Yet fewer than 10% of ICSA members with SmartDrive cameras, or event recorders, have EVER logged into their own accounts and viewed video and reports. Members who haven't logged into the site are missing out on valuable data that could help them prevent crashes before they happen. Such data includes factors such as those listed in the article above about five driving behaviors that predict future crashes.

In just the past week, SmartDrive reviewed 40,498 events recorded by cameras mounted in just over 7000 ICSA-member trucks. SmartDrive assigns a severity level to each such event, with Severity 3 and Severity 4 flagged for review by an ICSA Safety Consultant. Of the 40,498 events, 3,791 were severity 3 or 4, leading ICSA to reach out to the carrier to alert them to these serious incidents. If you receive a message from an ICSA safety consultant, please return the call as soon as possible – they are reaching out to help you deal with potentially serious issues!

As your consultants, we are on your side. We aren't trying to run your business for you but would like to help you protect your business. To do this you must dig down to the root cause of what happened with each severe event and ensure that the driver understands what he or she should have done and what to do in the future to avoid another similar event. Multiple owners who have failed to follow up on serious safety alerts have been found negligent in lawsuits. Use the videos to help your driver fight complacency and improve driving habits.

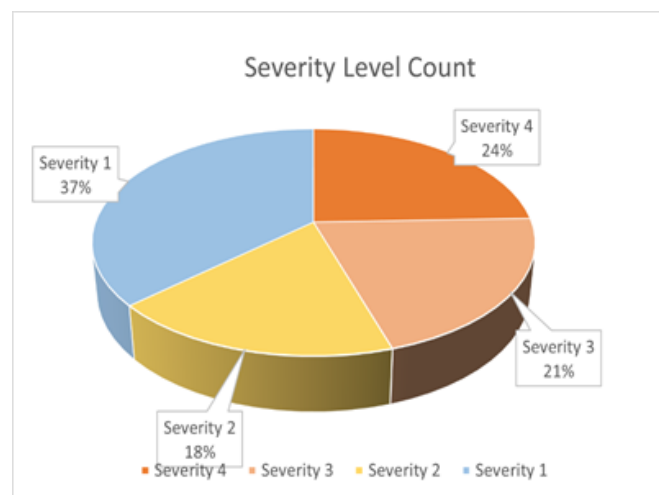
The most valuable thing about an event record-

er is a tool to help change driver behavior. Event recorders help make a good driver even better by identifying the complacencies developed after miles and miles of safe driving. If you are a professional driver, then you already know this. It's easy to get comfortable with a two-second following distance even though we know that it takes 1.5 seconds to visually identify a risk and then begin to take action to slow down. That does not include the time it takes the air system and brake mechanisms to react and begin to slow the truck down. Helping coach a driver to understand that nothing positive comes from following too closely just makes good business sense. It can also reduce the chances of a crash.

ICSA's expectations of members utilizing the SmartDrive Program are to:

1. Keep SmartRecorder Equipment functional and healthy
2. Maintain a Safety Score under 50. Our Safety Consultants can help you here!
3. Notify ICSA/SafeCarriers within 14 days of identifying a hardware issue and then work with Iron Maintenance to make repairs.

I encourage each of you to go through the SmartDrive Video training. Log in and become familiar with the program and your data. Once you are familiar with the basics, feel free to reach out to your regional safety consultant for more help and advice in using this program. This is the main focus of our Safety Consultants who have decades of experience and love to discuss ways to coach drivers.



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FMCSA Issues Interim Guidance on Freight Brokers, Other Roles



The October Regulatory Roundup article on broker transparency caught the attention of many members, so we want to update you on interim guidance posted just yesterday by the Federal Motor Carrier Safety Administration in advance of possible rulemaking. FMCSA intends the guidance to help define key roles in the transport of goods. Is that company or person you hired to help you find loads truly the “dispatch service” they claim to be? Are they your “bona fide agent” serving your individual motor carrier needs? Have you actually engaged the services of a “broker,” one required under law to have broker authority, to post a \$75,000 bond, and to obey federal regulations such as disclose load information including the broker’s compensation?

[FMCSA’s interim guidance](#) is intended to help carriers better define and understand these three roles in the trucking industry. Three things you need to know:

1. This is FMCSA “guidance.” It does not have the effect of regulation or law. FMCSA is saying, here is how we look at facts when determining what rules may apply. Because this is “interim” guidance, FMCSA is asking carriers if the agency got this right. You can [submit your comments](#) by January 17, 2023.
2. Determining exactly what role a party plays in a transaction, FMCSA emphasizes, is intensely fact-specific. True, the terms “broker” and “bona fide agent” are already defined in regulation – it would require a separate rulemaking to change those definitions – but there is always the question of whether the facts of a situation fit the definition. The term “dispatch service,” on the other hand, is not defined in regulation. Only facts can determine what rules may apply to a “dispatch service.”
3. Facts matter... and facts are often in your control. A written contract, FMCSA notes, can define the precise role a “dispatch service” performs for a motor carrier. That contract might prevent the “dispatch service” from serving multiple carriers or negotiating directly with a shipper – facts that FMCSA says may indicate “unauthorized brokerage activities,” by law subjecting the “dispatch service” to financial

penalties and leaving the motor carrier without the protection of a broker’s bond.

In the Infrastructure Investment and Jobs Act (IIJA), Congress directed FMCSA to clarify these three terms and discuss whether today’s technology calls for a formal change in the regulatory definitions of “broker” and “bona fide agent.” FMCSA did an initial review in June 2022. Commenters at that time agreed that the fact brokerage activities are now conducted on the Internet rather than over the telephone does not change the nature of the business. So, FMCSA has not initiated a rulemaking to adjust those definitions.

“Broker” is defined at 49 U.S.C. 13102(2) and at 49 CFR 371.2(a). In both, a broker is a “person who, for compensation, arranges... the transportation of property by an authorized motor carrier.” Brokers, however, are not themselves motor carriers “or persons who are employees or bona fide agents of carriers.”

The distinguishing feature of “bona fide agents” under 49 CFR 371.2(a) is that they “are part of the normal organization” of the carrier, performing duties “under the carrier’s directions pursuant to a preexisting agreement” and do not have discretion “in allocating traffic between the carrier and others.”

A “dispatch service” may perform duties for a motor carrier unrelated to securing loads. But when it comes to loads, FMCSA indicates that among the critical facts are:

- Is there a written agreement between the motor carrier and the “dispatch service;”
- Is the “dispatch service” working exclusively in the interest of the motor carrier; and
- Does the motor carrier continue to handle negotiations and financial arrangements with shippers.

Once again, [comments on the FMCSA interim guidance](#) are due by January 17, 2023.



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Five Driving Behaviors Predict Future Truck Crashes

In the 2022 update to its Predicting Truck Crash Involvement report published last month, the American Transportation Research Association (ATRI) documented five driving behaviors that are “strong indicators” of future truck crashes. Due to a delay in reporting by FMCSA, ATRI’s report examined truck data collected in 2017 and 2018, covering 584,000 truck drivers and 38,797 crashes.

The five behaviors outlined by ATRI are:

- A reckless driving violation
- Conviction for failure to use or improper use of signals
- A past crash
- Failure to yield right-of-way violation
- Conviction for improper or erratic lane change

ATRI’s analysis also shows how likely it is, in percentage terms, that a driver’s current behavior will result in a future crash. The recent increase in truck crashes has made this research more important than ever, with FMCSA data showing an increase in truck crashes from nearly 147,000 in 2020 to over 168,000 crashes in 2021. Just from January 1 through March 31, 2022, FMCSA preliminary data documented over 40,000 crashes, indicating a trend that could make 2022 an even worse year for truck crashes! We hope you’ll [download the report](#), read it and share with your drivers and other personnel.

Conference Recap

Your Eyes and Ears on the Industry

As our members know, ICSA is active in many trucking organizations and attends many conferences to get and share information that can be useful in your business. On a regular basis we will provide information that you can use. In October, we attended the Management Conference and Exhibition (MCE) put on by American Trucking Associations (ATA). The following week, we also attended the Future of Freight Festival put on by Freightwaves. The highlights:

- In both events, the economy was a key focus. We heard from numerous economists, both national and international, both trucking specific and general economists. Obviously, the economy is not going well. The consensus of all the economists speaking in these meetings is that there will be a recession in early 2023. It is projected to be relatively small, and not as severe as in the rest of the

world. In fact, the United States was described as the “best house in a bad block.”

What does that mean for you? Loads are going to be down (as you probably have experienced) and hard to come by. Loads are shifting from the spot market to the contract market and from FTL to LTL. This also means that finding loads will be more difficult and many loads will be on the brokerage side, especially those operated by the large carriers with shipping contracts.

- Pete Buttigieg, Secretary of the Department of Transportation, addressed the ATA MCE and outlined the federal government’s plan to recruit more drivers to the industry. Those plans include (1) a Trucking Action Plan, a comprehensive plan to address industry issues, (2) a nationwide plan to streamline the process of obtaining a CDL, and (3) spending a portion of the trillion-dollar infrastructure bill to improve safety, reduce delays and increase parking.
- ATA President & CEO Chris Spear described the ATA victories over the past year, including defeating truck-only tolls in Rhode Island (that inevitably would have led to truck-only tolls in other states), defeating the federal vaccine mandate, and getting the infrastructure bill passed in Congress. ATA testified 25 times before Congress this past year. Spear also touted the environmental steps taken by trucking – as an example, today one new truck emits the same amount of pollution as 66 trucks did in 1988. As an industry, trucking has taken great steps to become more environmentally sound and will oppose government actions to force the industry to take any further steps, such as electric truck mandates.
- In addition to the economy, a key emphasis at Festival of Freight was on hundreds of new technologies that have come or are coming on the market that are designed to help trucks and their owners operate more efficiently. Each day we saw multiple demonstrations of new technologies ranging from sophisticated in-cab systems to reduce distractions and improve safety, to highly integrative mapping systems to programs that network devices, vehicles and hardware which can actively share data, including networks of sensors mounted throughout the truck to monitor everything from tire pressure to load stability and feed data back to the carrier.

ICSA will continue to attend industry conferences on your behalf and provide you information that you can use in your business.