

## ALERT EMERGING TECHNOLOGIES



### FMCSA Seeks Comments About Advanced Safety Technologies

On December 18, 2019, the Federal Motor Carrier Safety Administration (FMCSA or Agency) published an [information collection notice](#) which proposes a limited scope for implementing the Beyond Compliance motor carrier safety program.<sup>1</sup> According to the notice, FMCSA personnel intend to query a little over 100 motor carriers with strong safety records about what technologies they employ and what programs or practices they engage in to achieve strong safety results. According to the notice, this research will be packaged into a technical report, which the Agency researchers will then incorporate into a Beyond Compliance report the Agency is required to transmit to Congress. If only motor carriers are consulted, technology providers may lose the opportunity to identify safety innovations that are not yet widely known to the trucking industry. The docket for comments will remain open through February 18, 2020.

#### Background

In the Fixing America's Surface Transportation Act of 2015, (FAST Act) Congress directed the FMCSA to establish the Beyond Compliance program.<sup>2</sup> Congress designed Beyond Compliance to identify advanced trucking safety technologies and practices that are not required by regulation but which improve safety. After identifying these technologies, motor carriers would participate in the Beyond Compliance program by adopting these advanced safety technologies. FMCSA would then reward the carriers by publicly recognizing the motor carrier. Congress has also directed the Agency to deprioritize trucks operating for carriers that meet Beyond Compliance criteria for roadside inspection by either creating a new measurement category in FMCSA's online CSA Safety Management System (SMS) or by designating that Beyond Compliant carriers' CSA SMS scores are otherwise improved by participating in the program.

Congress also required FMCSA to adopt a process in which any interested party could submit a technology or process for inclusion in the program. The law will also require the agency to publicly post Beyond Compliance-certified technologies and processes on its website when the program is operational. Because of this public listing, the Beyond Compliance program represents an excellent opportunity for safety technology providers to expand their audience to include motor carriers interested in taking advantage of Beyond Compliance rewards. But, to do so, technology providers need to ensure that their product or process falls within the program's scope.

#### FMCSA Notice

The notice contains no information about other information collection efforts. While FMCSA officials might intend to perform similar outreach to technology developers or providers in future information collections, the results from this first information collection are likely to determine next steps and the program's ultimate contours. Additionally, FMCSA officials have not indicated if they intend to list specific providers and products on the Beyond Compliance website or only types of technology certified.

DECEMBER 20, 2019

#### CONTACT

**BOYD A. STEPHENSON**

*bstephenson@babstcalland.com*  
202.853.3452

**JUSTINE M. KASZNICA**

*jkasznic@babstcalland.com*  
412.394.6466

**Washington, DC**

Suite 700  
505 9th Street NW  
Washington, DC 20004  
202.853.3455

**Pittsburgh, PA**

Two Gateway Center  
603 Stanwix Street  
6th Floor  
Pittsburgh, PA 15222  
412.394.5400

**BABSTCALLAND.COM**

<sup>1</sup> 84 FR 69451.

<sup>2</sup> P.L. No. 114-94, § 5222, 129 Stat. 1312, 1540 (Dec. 4, 2015).

Motor carriers generally are not also technology developers or providers. A motor carrier's safety director can identify technologies and processes that they believe make a difference and may even be able to provide data supporting their claim. But, because motor carriers are not typically designing the next generation of safety products, speaking only to them risks building status quo bias into the report and, eventually, into the Beyond Compliance program. Technology providers may have valuable information about what practices may be the most effective for improving safety.

Motor carriers and safety technology developers and providers should watch this issue closely and consider commenting on the proposal so that their products and processes can eventually be included in the program. For more information about the notice and guidance in preparing comments, contact Boyd A. Stephenson at (202) 853-3452 or [bstephenson@babstcalland.com](mailto:bstephenson@babstcalland.com) or Justine M. Kasznica at (412) 394-6466 or [jkasznica@babstcalland.com](mailto:jkasznica@babstcalland.com).

---

PITTSBURGH, PA | CANTON, OH | CHARLESTON, WV | HOUSTON, TX | SEWELL, NJ | STATE COLLEGE, PA | WASHINGTON, DC

*Babst Calland was founded in 1986 and has represented environmental, energy and corporate clients since its inception. The Firm has grown to more than 150 attorneys who concentrate on the current and emerging needs of clients in a variety of industry sectors. Our attorneys have focused legal practices in construction, corporate and commercial, creditors' rights and insolvency, emerging technologies, employment and labor, energy and natural resources, environmental, land use, litigation, public sector, real estate and transportation safety. For more information about Babst Calland and our practices, locations or attorneys, visit [babstcalland.com](http://babstcalland.com).*

This communication was sent by Babst Calland, headquartered at Two Gateway Center, Pittsburgh, PA 15222.

This communication is privately distributed by Babst, Calland, Clements and Zomnir, P.C., for the general information of its clients, friends and readers and may be considered a commercial electronic mail message under applicable regulations. It is not designed to be, nor should it be considered or used as, the sole source of analyzing and resolving legal problems. If you have, or think you may have, a legal problem or issue relating to any of the matters discussed, consult legal counsel.

This communication may be considered advertising in some jurisdictions. To update your subscription preferences and contact information, please [click here](#). If you no longer wish to receive this communication, please [reply here](#). To unsubscribe from all future Babst Calland marketing communications, please [reply here](#).

©2019 Babst, Calland, Clements and Zomnir, P.C. All Rights Reserved.