



## Regulatory Update

Everybody knows SMS methodology does not measure safety. The GAO has found the Agency cannot generate enough data to accurately measure 90% of the carriers. The Agency admits it cannot determine crash preventability, rendering false positives on 80% of the crashes the methodology assigns to carriers.

Over the past four years, the Agency has discarded one of its BASICs, and now admits that two others (drug and alcohol and driver fitness) have little or no correlation to safety and only measure a handful of carriers.

There are at last 3 Bills in Congress to force the Agency to stop publishing misleading SMS data and branding thousands of carriers as bad actors. Yet, the Agency doggedly proceeds ahead, publishing phone apps and encouraging shippers to use the flawed methodology in determining carrier safety.

The long awaited Safety Fitness Determination rulemaking has been sent to OMB but nobody knows its content. It seems clear the Agency intends to move the goalpost and change "intervention threshold" to "high risk carriers" but continue to publish roadside inspection data with no concern for due process or the business fallout or litigation problems for shippers and brokers it creates.

The Agency has now requested public comment about shifting the percentile thresholds in several of the major BASICs and diminishing the importance of the little used minor BASICs. On their face, these may be good ideas but the Agency has not offered one scintilla of proof that these changes will actually result in a correlation between the data and carrier safety fitness. If it had to justify these changes in rulemaking, it would have no "cost benefit analysis" to support it and acquiescing too quickly in these changes will only give the Agency fodder to ultimately tell Congress and the court that it has consulted with industry and everyone agrees the finished product is viable.

That simply is not the case. Comments need to be made reminding the Agency that it is once again trying to rearrange furniture in a house with no foundation. See <http://www.fmcsa.dot.gov/regulations/notices/2015-15907>.

Four and a half years into publication of SMS methodology, there is no sign that the Agency has been able to better do its job of auditing carriers. In fact, DOT's recent independent study demonstrates this is not the fact. See <http://www.ttnews.com/articles/basetemplate.aspx?storyid=38710>.

The Agency has an open docket in FMCSA-2015-15907. Your trade association will be filing comments preserving our principal objections to further use of SMS methodology

and making any changes which cannot be supported by evidence of a proven correlation to identifying individual carrier safety.

Individual association members are urged to make their own comments in the docket. Your comments can be filed electronically at <http://www.regulations.gov/#!submitComment;D=FMCSA-2015-0149-0001>. Your legislative affairs committee would appreciate receiving a copy of anything filed. You may send your copy to me at [jmueller@PTLLLC.com](mailto:jmueller@PTLLLC.com).

As described herein, we are launching a new website to better communicate with our members on the multitude of safety issues and both administrative and legislative initiatives and will launch a simpler process for individual members to communicate with their Senators, Congressmen and the Commission concerning the issues which affect our industry.

### Becoming "Engaged" in Issues which Affect Our Members

It is well settled that larger trade associations with paid lobbyists cannot singlehandedly represent every constituency in the trucking industry. Our issue as niche service providers and as privately owned carriers which support competition and the promises of deregulation are often lost.

With the support of the Board we have joined in an alliance with another similarly situated small trucking association to launch "Engage". Engage will be a website which will track legislation and rulemaking which critically affects our members, offering a means of communication and information.

Sponsored by Congressional Quarterly, a major source of up-to-the-minute information on congressional and regulatory affairs, Engage will offer our members an opportunity to express their views on legislation and rulemaking by composing responses to rulemakings and bills at one website for automatic transmission to the Agency and to their congressmen and senators. An important feature of this new service is it will allow your legislative committee to track the responses of its members, easily focusing our legislative efforts on key senators and congressmen in real time.

As an association, we cannot create a pact to give campaign money to congressmen and senators and do not propose to buy access. We do believe that each of our members are the kind of small business constituents that their representatives in Washington need to hear from.

The new Engage program and website, we believe, can be an important tool for fulfilling one of our association's major goals – to be an effective voice in representing our members, particularly in a time of bureaucratic overreach and the prospects of burdensome new regulations.

Your participation, feedback and comments are welcomed.

John Mueller  
*Legislative Chair for TEANA*