



TEANA Legislative Committee Accomplishments in 2016

Ongoing campaign modifications to the Engage website – Motor Carriers for Regulatory Reform – www.MCRR.net The site was used to oppose these recent Bills:

- HR 3093 - Correct The Safety Analysis Act. This bill permits the Department of Transportation (DOT), in determining the safety risk of a motor carrier under the Compliance, Safety, Accountability program, to attribute a crash to a motor carrier only if it determines that the carrier could have prevented the crash.,
- HR 22 (Section 5224)The interim hiring standard (Section 5224 of the House highway bill) as drafted and even as potentially revised could unfairly deny conditional carriers freight from shippers and brokers fearful of lawsuits.
- HR 3763 - Surface Transportation Reauthorization and Reform Act of 2015. This bill covers a six-year period for highway and infrastructure funding and proposes to convert the highway program to a block grant funding system with the goal of providing more flexibility to state and local governments.

In February the website was updated with information on opposition to the proposed **Safety Fitness Determination** and use of flawed CSA data incorporated into SFD. The agency's SFD issued in January of 2016 should be revoked as a violation of the FAST Act since the agency did not conduct a prerequisite examination of the effect on all segments of the industry

The Engage website has been successful in reaching our political representatives through grass roots letter writing campaigns as evidenced in the passing of the recent FAST Act where ideas suggested on the MCRR website were adopted into the Act. These ideas included removal of CSA scores and the interim hiring standard to include "Conditionally" rated or un-rated motor carriers (as noted above). The proposed standard was eliminated. The Engage website was successful in impacting legislation to remove the flawed CSA data from public view.

We continue to encourage participation from all TEANA member companies to use the Engage website www.MCRR.net - using the form letters available on the site to contact politicians in the letter writing campaigns we could have our voice heard. Visiting the site will keep you informed of current issues affecting our industry. Support from TEANA member companies can help us achieve great results. Each month the MCRR.net site is updated with material written by Hank Seaton. Motor Carriers for Regulatory Reform is empowered by a partnership of members of The Air and Expedited Motor Motor Carriers Association (AEMCA), The Expedite Association of North America (TEANA), and the Auto Haulers Association of America to bring needed change to regulatory issues affecting Motor Carriers. This site is also designed to assist and enable interested parties to provide feedback to their political representatives.

A webinar presented by some of the members of the TEANA Legislative Committee was presented on December 15, 2015 to inform attendees of the FAST Act and FMCSA's Regulatory Agenda. The webinar was well received.

We had success mining roadside inspection data with our driver survey which was conducted by Avery Vise, Irwin Shires and Bob Polous at the Mid America Truck Show. Miner of the Year Award issued to



Irwin Shires of Panther for his hard work and dedication. Irwin Shires made presentation to relay the stance of the coalition on the flaws of the CSA and SMS on August 30, 2016 to The National Academies Review Board. His goal was to get folks to understand just how flawed the system is. Irwin was able to garner the attention of the panel and bring to light serious flaws in the program. SMS is currently not accurate indicator of crash predictability - 57% of carriers which would be deemed unfit have no accidents. Irwin understands CSA and the methodology used better than the people that designed the CSA program. Hank Seaton submitted a letter to Mr. Michael Cohen at National Academies Review Board on Irwin Shires expert presentation and the data mined from his studies. This information highlights the systemic flaws in the SMS methodology and CSA program. Thank you so very much for your efforts Irwin and Hank!

Monitoring Crash Preventability – Bad data can turn good carriers into “bad actors”. ATA insists data needs to be scrubbed. Our worries are what will the Agency do with scrubbed data? Goal is for our coalition to craft a position. Crashes are currently not in compliance reviews till towards completion of review. Carrier can request review of individual crashes to determine preventability from FMCSA prior to conclusion of review.

We continue to monitor issues with small carriers operating vehicles less than 10,000 lbs. GVW and the insurance filing form BMC-91 required from these carriers. § 390.303 requires only \$300,000 insurance from these carriers. Because our industry uses vehicles of all sizes, including many under 10,000 lbs. GVW, this remains an important Expedite Industry issue. FMCSA does not regulate vehicles under 10,000 lbs. GVW and shies away from addressing any issues involving vehicles under 10,000 lbs. GVW. A very real problem involves the \$700,000 “gap” of coverage when we broker loads which is \$700,000 between the \$300,000 insurance these “carriers” have and the \$1,000,000 coverage most carriers within the Expedite industry carry and offer to their customers when operating vehicles of all sizes. Hank Seaton will be preparing an article on this topic.

Ongoing goals for this committee – We will....

Continue to communicate to politicians about industry needs and concerns with the pending legislation affecting Compliance Safety and Accountability (CSA), Safety Fitness Determinations (SFD), required levels of insurance, Tolls, Electronic Logging Devices (ELD’s), Speed Limiters and the upcoming “All-purpose” Application which may be used in lieu of the current MCS-150 for all FMCSA/DOT transactions.

Continue to use MCRR.net to impact current, pending and future issues. These include the SFD ruling. We will attempt to force FMCSA to follow protocol mandated by FAST act in implementing new SFD. If passed or allowed as currently proposed the new SFD would allow FMCSA to issue “Unfit” rating to motor carriers solely based on roadside inspection data rather than by full compliance reviews. Based on Congress’ requirement that the agency make a safety fitness determination applicable to all operators of commercial motor vehicles and the agency’s proposed rule that using SMS methodology it could rate in whole or in part less than 5% of the carriers it regulates. Congress should mandate that the agency should consider implementing abbreviated biannual audits contemporaneous with carriers’ URS filing requirements to confirm that each commercial operator is in compliance with the FMCSRs – the APA requires consideration of such alternatives which have been suggested to the agency and ignored.



Continue to work to make sample contracts available for member use on TEANA website.

Continue to provide useful information and updates involving regulatory changes and issues to our membership through E-blasts, webinars and TEANA sponsored events.

Continue to monitor advancements and implementation of the new Electronic Logging Device mandate which was passed December 10, 2015 and will become enforced in December 2017. We will also closely watch the progression of the Driver Coercion rules that coincide with the ELD mandate.

Promote upcoming webinar presentations from the TEANA Legislative Committee.

We will monitor the re-introduction of the Denham Amendment. It will be a top priority for trucking, particularly to roll back state legislative efforts which undermine uniformity, destroy productivity and the independent contractor model. Federal preemption – whether field, implied, or expressed - is the doctrine of federal law affecting interstate commerce can trump state law.

Seek funding for opposition to SFD and other rulings. Our funds could prohibit appropriation of any funds to the governmental agencies which allow them to enhance or develop SMS methodology pending congressional approval of the agency's corrective action report. Seek additional funding for opposition to SFD and other rulings from outside sources/Associations. Our goal is to continue to press for a "simple scoring method" for Motor Carriers. Funding from our organization was used successfully in having CSA scores from public view among other causes.

Continue to monitor Speed Limiters. This may be an issue that requires us to initiate a letter writing campaign using the MCRR website.

Attempt to protect small carriers in the following ways:

(a) Provide that existing legislation in 49 U.S.C. 14501(c) is not intended to carve out shipper or broker liability under state law theories of negligent selection or vicarious liability when shippers and brokers use carriers that are licensed, authorized and insured. (There is already statutory authority in Section 31143 and in the FAST Act for this principle.)

(b) Provide for an independent contractor carve-out for leased equipment with drivers. A division in the federal circuits threatens to undermine the traditional federal law that independent contractor treatment is available when equipment with drivers is leased to carriers under the federal leasing regulations found at 49 CFR 376. A raft of class action suits against large carriers demonstrates the havoc which can result from "misclassification" suits based upon state law and DOL overtime rules.

Clarifying statutes providing a carve-out for lease operators consistent with the existing safe harbor provisions (Section 530) should be most helpful. It could simply read that a carrier who retains independent contractors to provide equipment with drivers in compliance with 49 CFR 376 shall not be reclassified as the employer of the driver retained by the contractor to render such services for state law purposes.

Other issues like opposing implementation of the speed limiter rules, examining the "enhanced investigative techniques" employed by the agency, development of sleep apnea and driver training rules



are some of the issues which need attention as well as pro labor initiatives of the outgoing administration.

Monitor Beyond Compliance – A possible 8th “CSA Basic”. This program would reward carriers that (have the financial ability to) purchase safety related technologies. Large carriers support this matter wishing to improve their posture – does nothing for small carriers attempting to improve (Basics) scores.

Monitor advances and legal implications with use of new technologies – such as forward facing cameras and other safety devices in Commercial Motor Vehicles.

Please support our industry by actively participating in the various TEANA committees and by donating generously to our Association. We can do great things with your support. Thank you!