

LEGISLATIVE / ADMINISTRATIVE UPDATE

Henry E. Seaton, Esq.

American Home Furnishings Alliance

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I. Pro-labor agenda established by current Administration

- A. Truck Leasing Task Force
- B. Department of Labor – New Independent Contractor rule
 - (1) Applies to all industry
 - (2) Owner operator model is in the crosshairs

Politics

- A. Labor's objective is a return to closed shop
- B. Blue state politics – broke and seeking revenue and increased welfare payment
- C. AB5 “Same trade or business”
- D. Poor working man is subject to “sweatshop on wheels” – it is not a choice
 - (1) Success of owner operator not considered
 - (2) Family-owned small companies not considered
- E. We must overcome bad press

We have defenses

- A. Owner operator Carveout in 376
- B. Skin in the game
- C. Portability - no forced dispatch
- D. Anyone using owner operators should immediately check contract for modification
- E. DOL ruling does not address carveout, hours of service exemption, and legal requirement exclusion from control test

II. Future of the New Safety Fitness Determination

- A. Agency trying to resuscitate SMS
- B. Seeking to use technology and artificial intelligence to eliminate the impediment of the law of small numbers
- C. Past record is shameful using SMS as vetting safety ratings given to less than 5,000 per year out of 700,000 – Congress requires all carriers to be vetted and assigned a rating.
- D. Less than 1% of carriers are placed out of service

SMS is a Proven Failure

- A. Systemic flaws noted by National Academies of Science, confirmed by DOT, led to banning of publication and dismissal of FMCSA's earlier rulemaking. See Notice of Withdrawal "Carrier Safety Fitness Determination," <https://www.regulations.gov/document/FMCSA-2015-0001-0222>

- B. Reboot is too expensive and unrewarding
 - (1) Propose use of artificial intelligence
 - (2) Ten times as many tickets to get data
 - (3) No appeal

- C. Use of artificial intelligence (AI) is untested

III. Preventing Fraud

- A. The Agency disavows having any regulatory authority over brokers
- B. Over 30% of licensed carriers and brokers have no business address or contact information
- C. Five email addresses are shown as the same contact address for over 900 carriers

- D. The business address for thousands of brokers is inaccurate and unvetted.
- E. The most popular email with 359 registrations is *wtffmcsa@gmail.com*.
- F. Agency has stonewalled request for help with prosecution.
- G. OIG has the authority but not the will.
- H. Legislative initiative will be necessary.
 - (i) a broad-based coalition is building
 - (ii) members include 12 trade associations receiving the Regulatory Update and ASECTT
 - (iii) SFG / AHFA has been faithful ally

IV. Future Agency Initiatives

- Most FMCSA initiatives have been kicked back until after the election and will involve unidentified.
- 25 pages of check-the-block questions to be prepared with the aid of an unvetted application preparer/BOC-3 provider.

VI. Why the New Application Initiative Should be Postponed

1. New application does not address “red light / green light” safety issue nor provide for vetting or enforcement of anti-fraud laws.
2. Would grant new license with no vetting for safety or fraud on one week’s notice.
3. Would double down on use of vetted third parties.

4. Agency needs to accept responsibility for policing and prosecuting brokers who fail to comply with 371
5. Corruption and fraud requires federal anti-fraud prosecution
6. Establish carrier's need to outsource excess freight to third party carriers and brokers that the FMCSA has vetted

V. Our Counterproposal

Request postponement of new application
pending rulemaking

Piecemeal approach creates more problems
than answers

1. File separate petition for proposed rulemaking using audit procedures before authority is granted.
2. Procedure is in place and is cost effective.
3. Would answer “red light / green light” issue and comply with Congress’ requirements that all carriers be assigned a safety rating.

4. Cost to be paid for by increase in filing fee and fee for filing MCS-150 biennial update.
5. Brokers, forwarders, and relevant third parties must be vetted.

- Regardless of election outcome, the time is right
- Pending rulemaking on scope of Agency vetting powers
- Continuing association participation is of value
- Joint support from customers and carriers very helpful

Association incorporates many different types of transportation-related companies*

- Common carrier / general commodity carrier
- Consolidation service
- Custom broker
- Drayage
- Freight forwarder (NVOCC)
- In home delivery (white glove home delivery)
- Specialized furniture carrier
- Steamship vessel that moves containerized cargo
- Third party logistics
- Warehousing

**(As shown on AHFA website)*

Different types of legal issues needed by members

1. Use of warehouse liens for preferential treatment in bankruptcy
2. Use of uniform commercial code to sell at auction product in storage
3. Use of UIIA and FMC jurisdiction to curb intermodal abuses – Sino Trans
4. Home delivery issue – use of vans and sprinters
5. Insurance coverage issues – inside deliveries cause BI and PD claims

Need for Continuing Support

Possible participation of interested
members in Steering Committee