

BY HENRY E. SEATON



RIGGED TO FAIL

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The jury is now in. SMS methodology, in trying to make safety fitness determinations based on compliance data and crash statistics alone, is hopelessly flawed and cannot be remedied. More than 10 years ago, Congress charged the FMCSA with devising a mechanism to provide a safety rating for all carriers. After seven years in development, the agency released SMS methodology in December 2010 and touted its efficacy, thus opening Pandora's Box for shippers, brokers, and carriers alike.

In the past four years, all stakeholders have come to recognize that SMS methodology is hopelessly flawed. First the Gimpel study, and then the General Accounting Office, confirmed that the system could not generate enough data to accurately predict the safety performance of 90 percent of the carriers the agency regulates because they are too small. This mathematical principle, known as "the law of large numbers," should have doomed the publication of SMS methodology and data as a reliable predictor of carrier safety, and should have precluded its use by the agency as an ultimate safety fitness indicator.

Yet, when more than 20 trade associations including carriers, brokers, and shippers asked Secretary Foxx to remove SMS methodology from public view based in part of the GAO's finding, the agency responded that it could not admit its methodology was too imprecise to rate 90 percent of the carriers, because then it would have nothing else to use!

Secretary Foxx's response begs the question: How can the agency continue to publish compliance data which mathematically cannot predict the safety performance of 90 percent of the carriers the agency regulates — even if it were conceded that compliance data could be a predictor of carrier susceptibility to future crashes?

Now, four years after publication of SMS methodology, and after the agency's multiple website redesigns to make SMS data "user friendly," the other shoe has dropped. One major indicator of carrier performance has been hidden from public view because even the agency acknowledged the results could be misleading. Although the agency must ultimately demonstrate that raw scores in any BASIC are predictors of preventable crashes, the "crash BASIC" has always been hidden. The reason is simple. The system records against a carrier all crashes regardless of fault. Approximately three out of every four crashes are caused by the non-carrier party.

Students of SMS methodology have recognized that determining crash preventability through case-by-case audits is an essential due process component of any ultimate safety fitness rating. If the FMCSA or much worse, the public, is supposed to make safety fitness determinations based on SMS data and severity ratings, calling balls and strikes on accident or crash preventability is key.

On Wednesday, Jan. 21, 2015, the agency released its crash accountability analysis concluding that determining crash accountability was too expensive and "would not improve the agency's ability to identify those carriers most at risk of future accidents." Clearly the agency is right about one thing: trying to determine crash preventability in the 149,367 crashes reported in SMS data annually is too expensive and an unrewarding task. There is no way the federal government can afford due process and a mini

trial to determine preventability of every recorded crash or fender bender. Clearly the costs outweigh the benefits.

Yet to say that crash preventability is not essential in accurately evaluating the safety performance of regulated carriers is a preposterous conclusion, particularly in the context of the GAO's statistical findings and the "law of large numbers." With a 75 percent error factor, chances are pretty good that carriers with less than 10 trucks will have two recordable accidents which are not preventable before they ever cause a wreck that is their fault.

If the standard for determining the safety rating without an audit is the same as it is now and the agency admits it cannot call preventability, a 10-truck operator could easily exceed the 1.6 crashes per million barrier and be labeled as unsatisfactory simply because two of its drivers were at the wrong place at the wrong time. Don't be misled into thinking that this is some statistical anomaly or random occurrence. The small carriers which make up 90 percent of the operators of commercial motor vehicles constantly oscillate between zero crashes and exceeding the 1.6 crashes per million miles as a result of monthly updates during the two-year SMS data horizon.

As a result, by the agency's own admission, it does not have the funds to get usable crash data to make a safety fitness determination of all motor carriers it regulates. Indispensable crash BASIC lacks sufficient data to measure carrier safety performance with statistical accuracy at least 90 percent of the time even if the data could be purified.

Do you remember Comprehensive Safety Analysis 2010? That is the agency's long abandoned misnomer for its SMS methodology. Four years later, any notion that the agency's measurement system is comprehensive, accurately measures safety performance, or is a valid analytical construct has been thoroughly refuted.

SMS data and methodology cannot meet the rigors of the Data Quality Act and thus cannot form the basis for making safety fitness determinations by the public. Its statistical flaws and crash causation problems cannot be rectified.

Clearly, the agency is in denial. The time has come to pull the plug on use of SMS methodology as a basis for making an ultimate safety fitness determination.

What is needed now is a Congressional action which would affirm that the agency's ultimate determination of a carrier's safety fitness "to operate on the nation's roadways" is the definitive standard for use by the shipping public. Accordingly, SMS methodology and data should not be published or used in support of state law causes of action arising from accidents involving carriers which are licensed, authorized, and insured. ■



Henry E. Seaton, Esq. | Seaton & Husk, LP
2240 Gallows Road | Vienna, VA 22182
Tel: 703-573-0700 | Fax: 703-573-9786
heseaton@aol.com | transportationlaw.net

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