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CROSS BORDER TRUCK AND BUS OPERATIONS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 18, 2001

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ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on July 18, 2001	1
Statement of Senator Allen	7
Statement of Senator Boxer	6
Prepared statement	6
Statement of Senator Breaux	141
Statement of Senator Dorgan	5
Statement of Senator Ensign	14
Statement of Senator Fitzgerald	48
Statement of Senator Hollings	1
Prepared statement	2
Statement of Senator Kerry	9
Prepared statement	10
Statement of Senator McCain	3
Statement of Senator Nelson	50
Statement of Senator Stevens	45

WITNESSES

Acklie, Duane W., Chairman, American Trucking Associations	132
Prepared statement	135
Claybrook, Joan, President, Public Citizen	76
Prepared statement	78
Emmett, Edward M., President, The National Industrial Transportation League	65
Prepared statement	66
Hoffa, James P., General President, International Brotherhood of Teamsters	68
Prepared statement	70
Mead, Hon. Kenneth M., Inspector General, Department of Transportation	22
Prepared statement	25
Mineta, Hon. Norman Y., Secretary, U.S. Department of Transportation	14
Prepared statement	17
Pantuso, Peter J., President and CEO, American Bus Association	128
Prepared statement	129
Vaughn, Captain Steve, President, Commercial Vehicle Safety Alliance	55
Prepared statement	57

APPENDIX

Donohue, Thomas J., President and CEO, U.S. Chamber of Commerce, prepared statement	151
Giermanski, Dr. James R., Professor and Director, International Business Studies, Belmont Abbey College, prepared statement	154
Gillan, Jacqueline S., Vice President, Advocates for Highway and Auto Safety, prepared statement	157
Johnston, Jim, President, Owner-Operator Independent Drivers Association, Inc., prepared statement	162
La Sala, James, International President, Amalgamated Transit Union, AFL–CIO, prepared statement	165
Pikrallidas, Susan G., Vice President, Public Affairs, AAA, prepared statement	153
Wytkind, Edward, Executive Director, Transportation Trades Department, AFL–CIO, prepared statement	168

CROSS BORDER TRUCK AND BUS OPERATIONS

WEDNESDAY, JULY 18, 2001

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m. in room SR–253, Russell Senate Office Building, Hon. Ernest F. Hollings, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. ERNEST HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

The CHAIRMAN. Good morning. The Committee will come to order. This morning we have a hearing on Mexican trucking and it would probably be in order to say that this is not a hearing to repeal NAFTA, as somebody would think my holding the hearings due to my opposition to NAFTA at the time, this would be my first chance to repeal it.

The truth of the matter is that I have the highest regard for this new President, President Fox, and the opportunity, I think we really do have a chance with Mexico and I am going to do my dead level best to make NAFTA work. In that light, when I see the headlines this morning, United States files scrutiny of trucks, of tougher policy for Mexican carriers. Not tougher at all in what we require of our own trucks and truck drivers.

I hear that that is the irony of what we are going to use is use this to block Mexican trucking. On the contrary, we are not doing anything to discriminate against Mexican trucks. We have to make sure our trucks and trucking is not discriminated against. And it is a two-way street. We have got some catch up ball to practice in the sense that two years ago, almost, well, a year and a half, we created the Federal Motor Carrier Safety Administration, and the Clinton Administration appointed Clyde Hart the acting administrator, who helped us write it, and since January, this new administration hasn't even appointed one, so all of us politicians are running around flailing about safety, safety, safety, and we hadn't even appointed a safety administrator.

The 27 checkpoints coming in from Mexico to the United States, and 22 of them have inspection facilities, so we have got to get some inspection facilities there. We have got to beef up our own work. I want to commend Senator Murray of Washington, the chairman of the Appropriations Subcommittee on Transportation because she has fashioned the right requirements on the appropriations bill that was marked up yesterday in the full—day before,

last week, I guess it was, the transportation appropriation measure that will be debated probably tomorrow.

Those provisions in there are objective and necessary and the ones that would be required of us, and, Mr. Secretary, I see there is some plans on course that the administration has, but we are going to have to get into that, because, for example, we found that the administration was opposing the fact of making a safety check at the site so that we could see the facilities and everything else down in Mexico, and the administration was saying no, all that was unnecessary, was just to send the paperwork up and we would audit the paperwork.

That is not a safety check. Those are the kind of things that we want to be fair to our own trucking, and we want to be fair to Mexican trucking. With that, I put my full statement in the record and yield to our distinguished ranking member.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

I would like to welcome all of the witnesses here today, including Secretary Mineta, to discuss this very important issue.

If the Administration wants to open the border, we need to address safety concerns and make sure Mexican drivers and companies are playing by the same set of rules that our companies and drivers are held to.

The language in the Senate Appropriations bill increases the amount of funding for border safety activities to $103 million—$15 million more than the Administration's request.

The DOT IG asserts that more inspectors and improved inspection facilities are needed to ensure that unsafe Mexican trucks and drivers do not come into the United States and endanger American lives. We don't have these safeguards today.

We should not ignore all of the safety and worker regulations that United States companies are required to comply with in the name of free trade. This debate demonstrates the problems associated with treaties like NAFTA. Because these trucks will be operating on our highways and in our towns we are finally looking at the difference between operating a business in the United States and operating a business in Mexico.

We already have an important trade relationship with Mexico. United States Customs data show that there were over 4.5 million commercial motor vehicles crossings at the United States-Mexico border in 1999 into the commercial zones. No one is proposing that we stop that existing traffic. We will however, require safety improvements before the DOT can grant authority for Mexican trucks to travel *beyond* those commercial zones.

It is one thing to allow Mexican trucks to operate in defined border zones, but it is an entirely different proposition when they will be operating in your town or my home town.

This language is not discriminatory, but requires that there be adequate funding for inspectors and facilities, and to ensure that we have the needed access to information about Mexican trucks and drivers and access to Mexican trucking companies to perform safety audits. These measures will allow us to open the border safely.

Yes, the panel ruling required the United States to lift the blanket moratorium on Mexican trucks. But the panel ruling very clearly stated that the "United States may not be required to treat applications from Mexican trucking firms in exactly the same manner as applications from United States or Canadian firms, as long as they are reviewed on a case-by-case basis". It seems to me that safety ought to be a higher priority than increasing our truck traffic across the border.

If you want to talk about free trade and our obligations under NAFTA, that is fine. But we have an obligation to the American public, to our citizens—it is our responsibility to ensure the safe operation of trucks within U.S. territory, whether ownership is United States, Canadian or Mexican—we should prioritize our obligations and put safety at the top of the list.

Questions have been raised about the effectiveness of the Mexican drug and alcohol testing program for commercial drivers. About 10 years ago, I pushed through an amendment to make sure that we required drug and alcohol testing because it

would save lives—this same standard should apply to all truck drivers on United States highways, regardless of where the truck is registered.

We know that Mexico allows heavier trucks on their highways. We also know that one fully loaded 18-wheeler does the same amount of damage to the highway as 9,600 cars. The safety issues and costs of heavier Mexican trucks on United States roads must be addressed before we open the border.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator McCAIN. I thank you, Mr. Chairman, for holding this morning's hearing. It is particularly appropriate in light of an appropriations bill, which included provisions concerning the cross-border implementation of NAFTA, that may be on the floor as early as today or certainly very soon. I think it is a very important hearing. Some will be approaching today's hearing from a trade perspective, others will be taking a truck safety perspective. I will be approaching it from both.

I firmly believe that we must abide by all of our obligations under NAFTA. I believe we must implement the cross border provisions and can do so while carrying out a strong and balanced safety enforcement agenda. While Chairman Hollings and I may hold differing views on NAFTA as it relates to trade, we have worked closely over the years in an effort to promote safety, which has been one of this Committee's top priorities.

Senator Hollings and I worked on a bipartisan basis to help craft the safety provisions included in TEA–21. We also joined together in sponsoring legislation to create the Federal Motor Carrier Safety Administration, working to ensure the critical issue of motor carrier safety was not overlooked within the Department. Ken Mead and his staff were critical to this legislative initiative, designed to improve truck and bus safety and to make our highways safer. And the continued work by the IG in monitoring work with the new safety agency remains key to our Committee's oversight efforts.

In my judgment, we must continue to address motor carrier safety across the board and on a nondiscriminatory basis. I will remain a strong advocate of highway safety, and will do so as an equally enthusiastic advocate of free trade.

Let me say from the outset I strongly support the President's plan to implement the cross border provisions under NAFTA. Since the Clinton Administration's last-minute announcement to prevent cross border operations in the four border states in December 1995, I have consistently and repeatedly prodded the Administration to let us know what was needed from the Congress, what resources were necessary in order for us to comply with our legal obligations under the trade agreement—I emphasize our legal obligations—to address any legitimate safety issues and safety concerns, to address the Administration's publicly stated rationale for the delay. Of course, these efforts landed largely on deaf ears because the former Administration simply did not intend to open the border. Its goal was simply to appease special interests. Period.

On February 6th, the former Administration's blanket refusal to implement the cross border provisions was determined by a dispute panel to be in violation of the North American Free Trade Agree-

ment. In response to that finding, President Bush announced the United States would open the border and do so by the end of year.

I applaud the President for understanding the necessity of abiding by our trade agreement and also for proposing additional resources to ensure safety resources to carry it out at the same time. If we do not comply with NAFTA, the Mexican government holds full authority to impose harsh sanctions on our exports into their country.

The Mexican government could impose sanctions immediately but has demonstrated the willingness to allow the United States additional time in order to finalize rules that will ensure compliance with our federal laws and regulations and to ensure safety of Mexican trucks that will be operating in the U.S.

Unfortunately, the other body has taken action as part of the fiscal year 2002 DOT Appropriations bill to prevent the President from abiding by NAFTA. It adopted an amendment to prohibit the federal approval of any Mexican carriers to operate in this country. This is wrong. It is in direct violation of NAFTA. It is discriminatory. And, it must not prevail.

Last week, the Senate Appropriations Committee approved its version of the DOT Appropriations bill, which could be brought before the Senate any time. This appropriations bill provides significant funding to enable the Department of Transportation to hire more inspectors and build more inspection facilities at the southern border, and I commend the Committee for this action. I have concerns, however, over a number of requirements included in the bill that if enacted without modifications, could effectively prevent the opening of the border indefinitely.

I strongly support balanced transportation safety initiatives, and stand ready to work with my colleagues to strengthen our safety enforcement regime uniformly. But I cannot support provisions that place unnecessary requirements on Mexican operators that are not required of Canadian or American operators. I am also concerned that while some of the provisions are well-intended, they could be improved upon to ensure the most efficient use of resources. Above all, I cannot support provisions designed to simply prevent the opening of the border and maintain delay under the guise of safety.

Given the DOT Appropriations bill could be on the floor as soon as today, I will be very eager to hear Secretary Mineta's views regarding the pending bill's provision. I urge this Committee to consider the Secretary's views carefully as he is one of the most respected members of the Cabinet and a former colleague of ours. I am also very interested in hearing the views of the DOT Inspector General and the rest of the witnesses.

I pledge to do all I can to ensure the scare tactics of the special interests do not prevail. I will fight to ensure that the border is opened by the end of this year and is done so in a safe and balanced manner. I thank you, Mr. Chairman.

The CHAIRMAN. Very good. Senator Dorgan.

STATEMENT OF HON. BYRON DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, thank you very much. It is not a secret that I think NAFTA has been a failure both on the Mexican side and Canadian side for U.S. interests. This discussion is broader than just that, and let me just describe my concerns. We are trying to plug together two economies that in many ways are very difficult to connect. The Inspector General report of just May 8th of this year has the following information.

Currently, the only permanent inspection facilities at the United States Mexican border are in Calexico and Otay Mesa, California. Two of them. At 20 crossings, of the other 25 border crossings, FMCSA inspectors did not have dedicated telephone lines to access databases and validate commercial driver's licenses. At 19 crossings, inspectors had no space to inspect more than one or two trucks at a time. At 14 crossings inspectors had one or two spaces to park vehicles placed out of service.

The Inspector General's report is 2 months old. Go to the *San Francisco Chronicle,* a reporter did a fascinating report, riding with a Mexican trucker. Rode 3 days, the trucker slept 7 hours, 3 days, 7 hours. There are no minimum standards of service. There are no logbooks, there is a requirement but they do not keep logbooks, no drug testing. The fact is there isn't anything near the standards we impose on American truckers with respect to the Mexican truck industry and it seems to me we have every right in this country to want to make sure we have continued safety on America's highways.

Mexican truckers are paid an average of about $7 a day. In most circumstances, they are driving trucks that when inspected at our borders show very significant serious safety violations. I won't go over that, but it is in the IG's report.

Now, Mr. Chairman, the ultimate perversion of our trade policies it seems to me will be a future in which unsafe Mexican trucks haul unfairly subsidized Canadian wheat into U.S. cities. And you will pardon me for thinking that is just nuts. The fact is it is not radical to demand policies that require both fair trade and safe highways, and that is what this issue is about. There isn't anyone who in my judgment can tell us that there is a ghost of a chance in any near term to have a system with respect to the Mexican truck industry that anywhere nearly equates to what we do in this country to assure safety on America's highways, safety inspections, logbooks, minimum hours of service, drug testing and on and on down the line.

That does not now exist with the Mexican trucking industry, and we ought not point to some trade agreement which incidentally I did not support in the first instance, but we ought not point to a trade agreement to suggest that requires us to allow that trucking industry to move those vehicles into this country.

So, Mr. Chairman, this will be a fascinating hearing. I think it is very important. I do not know whether I will offer an amendment to adopt the House standards on the Senate floor, but I am considering that, and my feeling is at this point we simply ought to say no, you cannot do this until we have standards that assure safety on United States highways with respect to Mexican trucks.

The CHAIRMAN. Very good. Senator Boxer.

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Thank you very much, Mr. Chairman, for holding this hearing. I asked for it and you complied and I greatly appreciate it. It is a very important issue to my home state as Mr. Mineta knows. My state has about 23 percent of all the NAFTA truck traffic. If our nation's highways are completely open to these trucks, I am concerned that there will be many unsafe trucks or I should say I know there will be many unsafe trucks driving on our highways and our roads.

In 1999, there were 4.5 million commercial motor vehicles crossing at the border. It is estimated that most of those crossings were made by 80,000 trucks. The opening of the border is expected to increase the number of NAFTA trucks. Currently, the DOT has 190 applications from companies wanting full access. Unless safety standards are improved and enforced, the result will be that Californians, whether driving to work or whether driving their kids to soccer games, Mr. Chairman, will be sharing the road with drivers who are sleep deprived and whose trucks are not safe.

And I respect my colleagues who say that my opposition to this is a special interest, and I plead guilty. I have a special interest in ensuring that the people of my state who I represent are safe. That is my concern and that is my interest. I would ask unanimous consent that my statement be entered into the record.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Good morning. Mr. Chairman, I appreciate you holding a hearing on this important topic today.

This is a key issue for the state of California. My state has about 23 percent of all of the North American Free Trade Agreement (NAFTA) truck traffic. If our nation's highways are completely open to these trucks, I am concerned that there will be many unsafe trucks driving on our highways and roads.

In 1999, there were 4.5 million commercial motor vehicles crossing at the border. It is estimated that most of these crossings were made by 80,000 trucks.

The opening of the borders is expected to increase the number of NAFTA trucks. Currently, the Department of Transportation has 190 applications from companies wanting full access. Unless safety standards are improved and enforced, the result will be that Californians-whether driving to work or to their children's soccer game-will be sharing the road with drivers who are sleep deprived and whose trucks are not safe.

There are several issues that I hope will be addressed today.

First, I am concerned about the safety standards of NAFTA drivers. If we compare U.S. standards to those in Mexico, we can see that Mexican workers are not protected. For example, U.S. drivers can drive up to ten hours consecutively and work up to 15 consecutive hours, with a mandatory eight hours of rest. Overall, U.S. truck drivers cannot drive more than 70 hours during each eight day period. Mexican drivers do not have such protections. They are forced into working long hours-and tired drivers are not safe on our highways.

For the protection of all drivers on the highways, U.S. drivers have random drug tests, medical condition disqualifications, and must be 21 to receive a commercial drivers' license. This is not true for cross-border truck drivers.

Second, I am concerned about the condition of the trucks. Cross-border trucks are not required to have as comprehensive standards as U.S. trucks in areas such as anti-lock brakes, underride guards, night visibility, and front brakes.

Cross-border trucks have a higher weight limit of 135,000 pounds versus 80,000 in the U.S. Trucks that weigh more than the limit will cause highways and roads

to deteriorate more quickly. Also, heavier trucks result in accidents because they cannot brake as quickly. For example, a 100,000 pound truck travels 25 percent further after the driver steps on the brakes than will an 80,000 pound truck.

Third, I am concerned about lax standards in hazardous materials. If there is an accident and certain chemicals are not labeled, this can be a life-threatening situation for police and firefighters who arrive at the scene of the accident.

Fourth, I am concerned about enforcement. Currently, one percent of all trucks crossing the border are inspected. The Inspector Generator has stated that more inspectors-at least 139-are crucial as a deterrent to unsafe trucks.

Mr. Chairman, I look forward to discussing these issues with the witnesses, and I thank you again for holding this hearing.

Senator BOXER. In about 1 minute I'd like to share with the Committee a chart that summarizes my concerns. It is kind of small, but I am going to read it. In the United States, the rules on hours of service, 10 hours of consecutive driving, up to 15 hours of consecutive duty, 8 hours consecutive rest, maximum of 70 hours of driving in the 8-day period.

In Mexico, hours of service laws, zero. There are none. Random drug tests. In America, yes for all drivers. In Mexico, none. Medical condition disqualification, in the United States, yes, you can disqualify a driver because of a medical condition. In Mexico, no. Driver's age for interstate driving, 21 in America. 18 in Mexico. Logbooks in Mexico, not required. Are they required in our country? Yes. Maximum weight, 80,000 pounds in the United States, 135,000 pounds in Mexico. Roadside inspections, yes in the United States, no in Mexico. Vehicle safety standards, we have comprehensive standards for components such as anti-lock brakes, night visibility of vehicles and front brakes. In Mexico, less rigorous, for example, front brakes are not required. Hazardous material rules. We have district standards, training, licensure and inspection regime. In Mexico, it is lax, fewer identified chemicals and substances and fewer licensure requirements.

[The information referred to follows:]

Senator BOXER. So, Mr. Chairman, I don't think that you need a degree in truck safety to understand the differences here. As Senator Dorgan has said, you are talking about two very, very different regimes here, and the important thing is that we make sure that the trucks on our highways are safe and that the drivers in those trucks are rested.

Anything less than that is putting our people at risk. Period. End of quote. I do not see how we could rationalize it any other way. I want to see this trade go forward, but I want to see it go forward in a manner which protects the people who are on the highways. And that is, that is the essence of my statement. And I again thank you so much for this hearing. I think it is timely and very important.

The CHAIRMAN. Very good. Senator Allen.

STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. I am coming here, Mr. Chairman, to get more information because I know there may be a vote, however inappropriate it may to be have policy amend-

ments on appropriations bills, this is probably the place these issues ought to be discussed—in the Committee that deals with transportation. I know that Senator McCain argues very strongly for proper discipline and protocol in legislating matters and process.

As far as NAFTA, I do not think that this is so much an argument over whether NAFTA is good or bad. I generally think on balance NAFTA has been very good for our country, and respectfully disagree with Senator Dorgan on one aspect. It doesn't matter what they are hauling, whether it is wheat or avocados. The question is more like what I believe Senator Boxer said, and the question is really safety, the issue of safety and that is it and the fact that the United States has entered into the NAFTA agreement means that we have to comply with certain agreements.

Well, I think we should keep our word, and again, I do think on balance, NAFTA is been very good for both countries. But on the issue of safety, the United States retains the right and jurisdiction to monitor safety and have safety standards on our roads. And we do want to have free trade, but the safety of our roads cannot be compromised. We have a right to set standards. And, if Mexico wants to have speed limits that are higher than ours, it may. I wish our speed limits were higher on our interstates personally, but regardless, that is set by the states in our country, and if Mexico wants to set higher ones, that is fine, on their roads. On the other hand, they have to abide by our laws when they are on our roads and that is simply a matter of our sovereignty and jurisdiction.

Regarding the Mexican license procedures, they can have whatever they choose, but it seems to me that we ought to be assured that those drivers from Mexico or residents of Mexico who are driving on our roads do meet whatever our requirements are for our safety. Whether they have front and back brakes and so forth on trucks in Mexico is up to the people of Mexico, however, if a Mexican truck is going to drive on the roads of California, Virginia, Texas, or New Hampshire, they ought to have the same safety equipment that we require on our roads.

And the fact that Mexico doesn't have hours of service rule, I almost wish you had your chart there, but regardless, the fact is they do not have many hours of driving restrictions or they have no requirements, and that is their business. The only thing that would matter to us on that issue would not be to make Mexico have the same rules as we do on their roads, but to have some assurance that when a driver is coming into the United States, find out how long have they been behind the wheel prior to coming to our border in those previous 24 hours. That is all that matters to us.

So there are some parts of that that are probative and useful. There are other parts that I don't think are. But that is the only way that I think it matters to us is what have they been doing for the 24 hours previously. I think that our open policy is one that is fully consistent and dependent on the safety issues involving both trucks and the men and women who are behind the wheel and driving them.

I personally do not have a great deal of confidence in the ability at this point of the Federal Government or the states to implement

a plan to ensure the safety of our roads and further advance economic benefits of free trade for both the people of Mexico and the people of the United States. And I think it is very important, Secretary Mineta, Mr. Mead, to address these safety concerns and these inadequacies with our current system.

No one should be blissfully saying everything is fine and we can handle it, and I think that the administration's efforts and specifically it is not just efforts, it is actual allocation of money, appropriations, to hopefully address these inadequacies to make sure there are those safety inspections of those trucks as well as our trucks, United States trucks, as well as making sure that the drivers are properly licensed and capable of handling these rigs on our roads is very important and I think that is going to be the most essential thing to me is convincing not just this Senator from Virginia, but other Senators that these appropriations and the increased staffing and the facilities that would be created for inspections generally at the border will adequately protect the safety of motorists on the roads of the United States. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kerry.

STATEMENT OF HON. JOHN KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Mr. Chairman, thank you very much for having this hearing. I'd like to ask unanimous consent the full text of my statement be put in the record.

The CHAIRMAN. Without objection.

Senator KERRY. I sent a letter together with nine colleagues to the administration recently reflecting our concern, the concern that a number of us who have been pro-trade about the question of, the Senator I just heard him talking about safety issues, and I am deeply concerned about the gap between what happens in the United States, what happens, we are all familiar with the issue here of the safety inspection itself, concerns about increased pollution on our roads, as there is no compliance in certain cases with inspections there, safety. The question of drivers who are fatigued, who come into the United States by a whole different standard in this country.

Normally, in the trade relationship, Mr. Chairman, as you know better than anybody, we are talking about goods going from one country to another. Last year in Massachusetts, we exported over $1.1 billion worth of goods to Mexico. That was a 60 percent increase over the prior year, but in this particular case, you are not just talking about the goods crossing the border, you are talking about a vehicle and an individual in the sense of job coming across that continues from what took place in another country here and our country.

It is really a variance on the norm that has guided our thinking about these relationships, so I think it is appropriate for us to be thinking considerably differently about what is proper for us, even in the context of NAFTA and the agreements and the finding of the board recently about what our requirements are. There were some very clear imperatives that ought to guide us in this.

I might add that I wrote the President last month to express the dissatisfaction a number of us had. I was joined by nine colleagues, all of whom have very strong free trade credentials. We have yet to have any kind of substantive response to those concerns that we have expressed, so I am glad you are having this hearing today as an opportunity to explore some of these concerns.

[The prepared statement of Senator Kerry follows:]

PREPARED STATEMENT OF HON. JOHN KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Mr. Chairman, thank you for holding this timely hearing.

I'd like to make clear at the outset that I take very seriously the importance of honoring our international trade agreements. If we are to expect other nations to abide by international agreements, we must play by the rules as well. So I fully support the President's stated desire to open the border to Mexican-domiciled trucks so that we are in compliance with the February ruling of the NAFTA arbitration panel.

Mexico is a valuable trading partner for my state and a strong ally for our nation. Last year, Massachusetts exported $1.1 billion million worth of goods to Mexico—a 60 percent increase over the previous year. Since NAFTA took effect in 1994, our state's exports to Mexico have more than doubled. Mexico is now Massachusetts' seventh-largest trading partner. Clearly, I do not want to see damage done to our relationship with this important trade partner.

That being said, I believe that when it comes to allowing Mexican trucks on United States highways, highway safety and our international obligations need not be mutually exclusive.

I think it's pretty clear that the Administration's rhetoric regarding highway safety did not match the rules that the Federal Motor Carrier Safety Administration promulgated this spring. Last month, I wrote to the President to express my dissatisfaction with these rules and I was joined by nine of my colleagues, all of whom have very strong free trade credentials. Unfortunately, we have yet to receive a substantive response.

According to the rules proposed by the Administration, Mexican-domiciled trucks will not be subject to thorough safety reviews until at least 18 months after receiving full access to American roads, and may not ever be subject to on-site safety reviews. I believe that this delay could seriously jeopardize highway safety, road conditions and environmental quality. The Mexican government does not have a domestic truck safety system that is equivalent to United States law—a fact acknowledged by the NAFTA panel. Mexico does not have hours-of-service laws and has only recently proposed the use of logbooks to record driving history. These facts raise the possibility that cross-border truckers could easily enter United States highways in fatigued condition. The Department of Transportation Inspector General has argued repeatedly that "fatigue is a major factor in commercial vehicle crashes."

The lack of sufficient inspection resources at the border and the proposed 18-month delay between the approval of general cross-border trucking applications and actual safety enforcement means that trucks may easily enter the United States over federal weight and size limits, a condition both inherently more dangerous to travelers and more stressful to our roadways. The sheer size of these vehicles ensures that when trucks are involved in highway accidents, the damage is disproportionately greater than in non-truck crashes. Although large trucks were involved in only 4 percent of injury-only and property-only motor vehicle crashes in 1998, they were involved 9 percent of fatal crashes. Greater truck size or weight could easily lead to more serious accidents, resulting in more truck-related fatalities on our highways.

I am pleased that Senator Murray—working with my good friend Senator Hutchison who is on this committee—has crafted language in the Transportation Appropriations bill that addresses many of these safety concerns.

I would also like to see the bill address some of the environmental concerns raised. I'm afraid that without the ability to safeguard emissions standards on trucks entering the US, we may find a further dirtying of the air in cities not only around the border, but up to Dallas, Little Rock and other cities on major interstates that connect to border crossings. I may offer an amendment to address this problem by requiring a joint DOT and EPA study of the impact on US air quality of full implementation of NAFTA's cross-border trucking provisions as a precondition for a full border opening.

Nevertheless, I know that Senator Murray and Senator Hutchison worked many hours to develop the language in the bill, and I am grateful, Senator Hutchison, for the leadership that you both have demonstrated and I thank Chairman Hollings for his leadership on this issue as well.

The CHAIRMAN. Just a second now, Mr. Secretary. I am going to insert in the record what you will find in the Committee report on the transportation appropriation bill on the Senate side entitled on the one side the problem and the solution on the other. The Murray truck provisions that are included in that appropriations bill. You can see it outlined actually, I think, the administration had asked for 80 million and we increased it some 15 million dollars to see if we couldn't beef up these inspection points, otherwise there was that question, too, of the blanket refusal to permit Mexican trucks into the United States and it came before the NAFTA arbiter panel in the matter of cross border trucks and I will include that finding also in the record, but I quote just a couple of sentences.

It is not disagreeing, that is, the finding is not disagreeing that the safety of trucking services is a legitimate regulatory objective, nor is the panel imposing a limitation on the application of safety standards properly established, and apply pursuant to the applicable obligations of the parties under NAFTA.

United States authorities are responsible for the safe operation of trucks within United States territory, whether ownership is United States, Canadian or Mexican, so we are not in violation of NAFTA, and we welcome you to the Committee and are delighted to hear from you at this time.

[The information referred to follows:]

The Problem

Absence of Border Inspectors

At present, federal and state border inspectors are on duty 24 hours-a-day at only 2 of 27 border crossings. Mexican trucks crossing the border during off hours are not subject to inspection.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT Inspector General certifies that all border crossings accommodating Mexican trucks have inspector coverage when the border is open.

[Note: "Mexican trucks" here, and hereafter in this document, refer to Mexico-domiciled commercial motor vehicles operating beyond the commercial zone]

The Problem

More Fully Trained Inspectors Needed

At present, the level of inspector resources is not adequate to handle even the current level of limited traffic from Mexican trucks—much less the influx of trucks expected once the border is fully opened. It takes anywhere from 6 months to a year to actually hire and fully train a new safety inspector.

The Solution as addressed in the Murray Truck Safety Provision

The Appropriations bill fully funds the Administration's request for 80 additional border inspectors. The Murray provision prohibits the full opening of the border until the DOT Inspector General certifies that all of these inspectors are fully trained as safety specialists capable of conducting compliance review and that the Administration has not accomplished this goal by transferring experienced inspectors elsewhere in the country to the border so as to undermine the level of inspection coverage and safety elsewhere in the nation.

The Problem

Inspection Plans Are Inadequate

The DOT plans to issue conditional operating certificates to Mexican trucking firms to enter the United States based largely on the answers from a questionnaire. The DOT will perform a full safety audit of these firms within 18 months of the operating certificate being granted. The firm can operate freely in the United States throughout this 18-month period.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision requires the DOT to perform a full safety audit of each Mexican trucking firm *before* any conditional operating certificate is granted and then perform a full follow-up safety audit again within 18 months before a permanent operating certificate can be granted.

The Problem

Inspection Venue is Inadequate

The DOT is planning to perform its safety audits of Mexican trucking firms at the border rather than at each firm's facilities. For both United States and Canadian trucking firms, the DOT conducts compliance reviews at each firm's facilities.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision requires that all safety audits of Mexican trucking firms take place on-site at each firm's facilities.

The Problem

Mexican Trucks Have No Record Of Compliance with Hours-Of-Service

Only in the last few months has Mexico established hours-of-service rules and the vast majority of Mexican truckers are exempt. As such, Mexican truckers will have no experience with compliance with such rules and United States inspectors will not know how long a trucker has already been driving when they arrive at the border.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT Inspector General certifies that the Federal Motor Carrier Safety Administration has implemented a policy to ensure compliance on the part of Mexican truckers with pertinent hours-of-service rules. The DOT will be required to give a distinctive DOT number to all Mexican trucks operating beyond the commercial zone to assist state inspectors in enforcing hours-of-service regulations.

The Problem

Validity of Driver's Licenses, Vehicle Registration and Proof of Insurance Are Not Verifiable And Are Not Routinely Checked

Most border crossing inspection stations do not even have telephone lines much less computer linkages to confirm that licenses carried by Mexican truckers are valid. Many state inspectors do not routinely check the status and validity of the licenses, registration or insurance of Mexican drivers/vehicles that are inspected at the roadside. This is true even where the telephone or computer links do exist. The Mexican computer databases regarding licenses are terribly inadequate.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT Inspector General certifies that the information infrastructure of the Mexican authorities is sufficiently accurate and accessible to verify licenses and that adequate telephonic and computer links exist at *all* border crossings and in all mobile enforcement units operating adjacent to the border to ensure the opportunity to verify licenses. The DOT will require all federal and state inspectors to electronically verify the status and validity of the license of every Mexican trucker crossing the border.

The Problem

Federally-Funded Inspectors Not Enforcing Federal Regulations

Even though most state truck inspectors are compensated largely with federal tax dollars, many inspectors at the border do not enforce federal registration regulations when they differ from state requirements. For example, only California inspectors require Mexican trucks to show proof of operating authority. Moreover, state inspectors, when they find a deficiency that is a violation of federal but not state law, do not always refer the case to a federal inspector for enforcement.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT requires that all state inspectors funded in part or in whole with federal funds will check for violations of federal regulations. All violations detected by state inspectors of federal law will be either enforced by state inspectors or forwarded to federal authorities for enforcement action.

The Problem

Inadequate Facilities for Truck Inspections

At seventy percent of border crossings, motor carrier inspectors currently have space to only inspect 1 or 2 trucks at a time. At more than half of the border crossings, inspectors currently have only 1 or 2 spaces to park vehicles placed out of service, undermining the ability of the inspectors to order unsafe trucks off the road.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT Inspector General has certified that there is adequate capacity to conduct a sufficient number of meaningful truck inspections to maintain safety.

The Problem

Insurance Should be Valid, Easily Verified, and carry the same minimum liability requirements applied to US and Canadian motor carriers

Public liability insurance is a basic requirement for motor carriers operating in the US. Different minimum levels exist for passenger, household goods, hazmat and cargo operations. In addition, US insurers have a working relationship with the DOT and notify them in situations where a motor carrier's insurance lapses, at which time the DOT will revoke operating authority.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision would require that a motor carrier provide proof of valid insurance with an insurance company licensed and based in the United States. These same requirements currently apply to Canadian motor carriers operating in the United States.

The Problem

Inadequate Capacity To Check Compliance With United States Weight Limitations

Mexican trucks are currently permitted to operate in Mexico at axle and gross weights which are far higher than United States standards. Overweight trucks pose a greater safety risk to the driving public but there is little if any infrastructure to weigh trucks at the border.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT has equipped all Mexican border crossings with Weigh-In-Motion (WIM) systems as well as fixed scales suitable for enforcement action. The DOT will be required to verify the weight of all commercial vehicles entering the United States

The Problem

Inadequate Data On Safety Record Of Mexican Trucking Firms and Drivers

Unlike the United States, Mexico does not currently have a comprehensive mechanism to collect data on the safety record of Mexican trucking firms and drivers.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT Inspector General certifies that there is an accessible database containing sufficiently comprehensive data to allow for safety performance monitoring of all Mexican firms applying for operating certificates and for all Mexican drivers that may enter the United States. Also, the DOT IG must certify that measures are in place similar to those in the United States to ensure that Mexican drivers who lose their licenses cannot obtain another one through surreptitious means.

The Problem

Critical Safety Rules Not In Place

DOT has rushed to implement the rules to allow Mexican trucks to enter the United States. At the same time, several safety-related rulemakings which pertain to Mexican carriers and are required by law, have not been finalized.

The Solution as addressed in the Murray Truck Safety Provision

The Murray provision prohibits the full opening of the border until the DOT publishes in final form the following overdue regulations:

- rules establishing minimum requirements for motor carriers, including foreign motor carriers, to ensure they are knowledgeable about federal safety standards, including the administration of a proficiency exam;
- rules implementing measures to improve training and provide for the certification of motor carrier safety auditors;
- rules requiring the development of staffing standards to determine the appropriate number of federal and state motor carrier inspectors for the Mexican border;
- rules prohibiting foreign motor carriers from leasing their vehicles to another carrier to transport products to the United States while the firm is subjected to a suspension, restriction, or limitation on its right to operate in the United States; and
- rules disqualifying permanently from operating in the United States any foreign motor carrier that is found to have operated illegally in the United States.

The CHAIRMAN. John, excuse me. I apologize.

STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR FROM NEVADA

Senator ENSIGN. Thank you, Mr. Chairman. I actually have to apologize. I have a Banking Committee markup and I have to be going to that, but I am pleased that you are having this hearing today because I think that this is a very important issue. As somebody living in the Southwest who has the CanaMex Highway coming right through our state, I think it is very important that we have absolute safety requirements met for the public, address environmental concerns, and all the various issues that the other Senators have been talking about this morning. I think having a hearing and discussing these issues this morning, making sure that we are able to enforce United States laws on United States highways, and making sure that the trucks, whether they are from Canada or Mexico or the United States, are meeting all of those safety and environmental concerns. I think it is very important so I applaud you for having this hearing. I apologize. I will be coming in and out. Hopefully the Banking Committee markup won't take too long. Thank you, Mr. Chairman.

The CHAIRMAN. I understand. Secretary Mineta.

STATEMENT OF HON. NORMAN Y. MINETA, SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

Secretary MINETA. Mr. Chairman and Senators of the Committee, it is a great pleasure for me to have this opportunity to appear before you and to have this chance to explain our plans for the safe admission of commercial trucks and buses into the United States from Mexico.

Approved by Congress in 1993, the North American Free Trade Agreement was based on a single premise, that all of the countries in North America would be integrated into one free trade area. However, NAFTA's requirements that all countries in North America open their borders to commercial vehicle traffic still has not been implemented 8 years after ratification.

Last February, a NAFTA arbitration panel determined that the United States had violated its legal obligations to Mexico. It authorized Mexico to impose significant economic sanctions. President Bush has assured President Fox that the United States would move in a timely manner to meet our NAFTA obligations.

I acknowledge the significant concerns that everyone has expressed, including the public, about the NAFTA issues. Recent votes by the United States House of Representatives and the United States Senate Appropriations Committee on this matter have sent a very clear message. Congress will insist that the United States have a rigorous, effective safety program in place prior to implementing the truck and bus access provisions of the NAFTA.

Now Mr. Chairman, as all of you know, I have been the Secretary of Transportation since the 25th of January of this year. You have my personal assurance that I also share the same commitment that all of you have expressed. The Bush Administration wants to work with Congress to reach consensus on a plan to meet our NAFTA obligations without sacrificing safety. I am disappointed, therefore, that the House voted to bar the use of any departmental funds in the next fiscal year to process applications for Mexican carriers that seek to operate outside United States commercial zones.

As the Administration has formally stated, on at least one previous occasion, President Bush's senior advisors would recommend that he veto any bill containing provisions that foreclose the possibility of meeting our NAFTA obligations. While I am grateful to the Senate Appropriations Committee for providing funding for the inspectors and improvements described later in this testimony, I have serious concerns that the numerous conditions that the Committee at this point has placed, that the Committee has placed on actions to open the border. I believe that four core principles must guide our efforts to implement the NAFTA truck and bus access provisions.

First, safety is the Department of Transportation's highest priority, and we will not sacrifice safety to implement NAFTA's trucking and bus provisions. And with the support of Congress, Mexico's government, federal and state enforcement officials, and the industry, I think we can implement an effective safety enforcement program and meet our NAFTA obligations by January 1, 2002. The President's budget lays out requirements to do that. However, if our ongoing work should prove that we need more time, then we will take it. If we will need more resources, we will insist upon them. But in the end, we will do the job right.

Second, every Mexican firm, vehicle, and driver that seeks to operate in the United States at the border or beyond must meet the identical safety and operating standards that apply to United States and Canadian carriers. Nothing less than this is acceptable.

Third, the United States must fully comply with our NAFTA obligations. Not everyone on this Committee supported approval of NAFTA in 1993. As a Member of Congress, I did. But only after careful consideration of the possible impact on a wide range of issues, including safety. I concluded then and I continue to believe that the free and open trade fostered by NAFTA is the best, is in

the best interests of the people of this nation and of our economic future. The Mexican government has assured the United States that it will allow United States trucks access to Mexico, and as Secretary of Transportation, now my task is to work with the Congress and decide how to meet our existing and very real international legal obligations.

Fourth, Mr. Chairman, Mexican carriers lawfully operating in the United States must be guaranteed the same high standards of fairness and protection that we offer United States and Canadian carriers. There is a technical term in NAFTA that gives Canadian, Mexican and United States carriers operating in one of the other countries so-called national treatment, and that means that we must provide a level playing field for competition. Because Mexico's safety enforcement regime differs in significant ways from that of Canada and the United States, the arbitration panel granted us reasonable flexibility in choosing the best way to ensure a Mexican carrier's compliance with our safety regulations.

There can be civil discussions about what constitutes reasonable flexibility. I must say, however, that I am concerned about the tenor of some of the debate. Some seem to argue that a Mexican carrier, precisely because it is from Mexico, cannot and will not comply with our laws. In implementing NAFTA, President Bush and I will insist on full compliance with our safety laws, but we will not accept enforcement requirements that create a de facto system that unfairly discriminates against Mexican drivers and carriers.

As a result of decisions taken by the previous administration, the administration or the Department of Transportation did not on January 20th of this year have a program that would allow us to open our southern border to commercial vehicle traffic, nor did we have an adequate plan for developing one. Today, we are well on the way to having the effective safety enforcement program that will allow us to move forward with NAFTA by the year's end.

In May, the Department of Transportation proposed several rules relating to the carrier application process that we need to implement for border opening. The public comment period on the draft rules closed 2 weeks ago, and we anticipate issuing final rules sometime in October. These rules represent only one part of the department's comprehensive safety implementation plan. The actual safety considerations in implementing our NAFTA obligations are in fact very different from the picture that has been painted by some opponents.

Our plan places heightened requirements on Mexican carriers currently operating in the commercial zone along the border, more scrutiny than currently exercised, and it means a new stricter system outside the commercial zone. My written testimony provides details of our implementation plan, and the resources that the department needs to carry it out.

Of course, none of us can guarantee that a Mexican truck, Canadian truck or for that matter a United States truck will never have a catastrophic accident somewhere in the United States. However, I can guarantee that the United States Department of Transportation directs and will continue to direct its full efforts on a daily basis to preventing that accident. Our NAFTA safety implementa-

tion plan will bring greater resources and a substantially enhanced focus on enforcement.

Opening the border to Mexican trucks and buses by the beginning of next year will require considerable effort, but I am thoroughly convinced that we can fulfill our NAFTA obligations while putting in place an effective safety enforcement regimen. I will close, Mr. Chairman, by reiterating my personal commitment and that of the Bush Administration to work with the Congress to find an acceptable plan for NAFTA implementation, a plan that allows us to meet the four principles of safety and equity that I outlined today. Mr. Chairman, that is the end of my statement. I ask unanimous consent that my full statement be made a part of the record.

[The prepared statement of Secretary Mineta follows:]

PREPARED STATEMENT OF HON. NORMAN Y. MINETA, SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman, Members of the Committee, it is a pleasure to appear before you today and to have the opportunity to explain our plans for the safe admission of commercial truck and bus traffic to the United States from Mexico.

Introduction

Approved by Congress in 1993, the North American Free Trade Agreement was based on a simple premise—that all of the countries in North America would be integrated into one free trade area. Eight years later, one major portion of NAFTA has yet to be implemented—the requirement that all countries in North America be open to commercial vehicle traffic. This matter has generated vigorous dispute and considerable misunderstanding—on both sides of the border, in the public and private sectors.

A NAFTA arbitration panel ruling in February of this year determined that the United States had violated its legal obligations to Mexico. President Bush has assured President Fox that the United States would move in a timely manner to meet our NAFTA obligations.

In May, the Department of Transportation proposed several rules relating to the carrier application process, rules that will be needed to implement the border opening. These rules form only one part of the Department's comprehensive safety implementation plan. The rules themselves will not be final until October, and applications for operating permits cannot be requested by Mexican carriers until then. The public comment period on the draft rules closed 2 weeks ago.

I want to acknowledge the significant concerns that some members of Congress and the public have expressed. Recent votes by the House of Representatives and the Senate Appropriations Committee on this matter have sent a clear message: Congress will insist that the United States have a rigorous, effective safety program in place prior to implementing the truck and bus access provisions of NAFTA.

Mr. Chairman, you have my personal assurance that I share this very same commitment to implementing a truly effective NAFTA safety program.

You will hear today that the Bush Administration is prepared to enhance and significantly expand our safety implementation plan. I want to work with Congress to try to reach consensus on a plan and the resources required to meet our NAFTA obligations without sacrificing safety.

Today I will discuss the practical steps that the Administration is taking to meet that objective. My remarks focus on two topics: (1) the four principles that guide the Department's work to implement NAFTA; (2) the specifics of the Department's safety implementation plan regarding Mexico's truck and bus access.

Guiding Principles

Four core principles guide our work to implement the NAFTA truck and bus access provisions.

First, safety is the Department of Transportation's highest priority, and we will not sacrifice safety to implement NAFTA's trucking and bus provisions. With the support of Congress, Mexico's government, Federal and State enforcement officials, and the industry, I think we can implement an effective safety enforcement program and meet our NAFTA obligations by January 1, 2002. The President's budget lays out requirements to do that. However, if our ongoing work

should prove that we need more time, we will take it; if we need more resources, we will insist upon them. We will do the job right.

Second, every Mexican firm, vehicle and driver that seeks authority to operate in the United States—at the border or beyond—must meet the identical safety and operating standards that apply to United States and Canadian carriers. Nothing less than this is acceptable.

Third, the United States must fully comply with our NAFTA obligations. Not everyone on this Committee supported approval of NAFTA in 1993. As a Member of Congress I did, but only after careful consideration of the possible impact on a wide range of issues, including safety. I concluded then, and I continue to believe, that the free and open trade fostered by NAFTA is in the best interest of the people of this Nation and our economic future. The Mexican government has assured the United States that it will allow United States trucks access to Mexico. As Secretary of Transportation, my task is to work with Congress to decide how to meet our existing and very real international legal obligations.

Fourth, Mexican carriers lawfully operating in the United States must be guaranteed the same high standards of fairness and protection that we offer United States and Canadian carriers. There is a technical term of the NAFTA that gives Canadian, Mexican and United States carriers operating in one of the other countries so-called national treatment. That means we must provide a level playing field for competition. Because Mexico's safety enforcement regime differs in significant ways from that of Canada and the United States, the arbitration panel granted us reasonable flexibility in choosing the best way to ensure a Mexican carrier's compliance with our safety regulations. There can be civil discussion about what constitutes reasonable flexibility.

I must say, however, that I am concerned about the tenor of some of the NAFTA implementation debate. Some seem to argue that a Mexican carrier—precisely because it is from Mexico—cannot or will not comply with our laws. President Bush and I will insist on full compliance with our safety laws. But we will not accept enforcement requirements that create a *de facto* system that *unfairly discriminates against* Mexican drivers and carriers.

All four of these guiding principles must be met in implementing NAFTA's truck and bus access provisions. Let me now turn to a summary of the specifics regarding the Department's comprehensive safety implementation plan.

Implementation of the NAFTA Truck and Bus Access Provisions

On January 20 of this year, the Department of Transportation did not have a program, nor an adequate plan, that would allow us to open the border. Today we are well on the way to having the effective safety enforcement program that will allow us to move forward with NAFTA by year's end.

None of us can guarantee that a Mexican truck, a Canadian truck or, for that matter, a United States truck will never have a catastrophic accident somewhere in the United States. I *can* guarantee that the efforts of three DOT agencies—FMCSA, FHWA, and NHTSA—are directed, on a daily basis, to helping prevent that accident. Our NAFTA safety implementation plan will bring greater resources and a substantially enhanced focus on enforcement.

I know that the actual safety considerations in implementing our NAFTA obligations are very different from the picture painted by some opponents. I would like to address a few of those points.

I will begin with a discussion of the new resources requested by the Administration. I will then describe the comprehensive safety enforcement program we propose to carry out, which has five basic elements:

(1) a safety review of truck and bus firms before the awarding of operating authority;
(2) An expanded vehicle inspection regime, including significantly more safety compliance inspections for all commercial vehicles and enough inspectors to staff all border crossings during the times commercial vehicles are allowed to cross;
(3) audits of drivers to assure compliance with licensing, hours of service regulations and all other driver requirements;
(4) significant border infrastructure improvements; and
(5) an extensive industry education program conducted on both sides of the border.

Full implementation will involve close coordination—already underway—with Federal and State officials in the United States, with the Mexican government, and with the truck and bus industries on both sides of the border. In short, the program focuses on firms, vehicles, drivers, infrastructure and education.

Resources. The Administration's budget request for FY2002 seeks an unprecedented increase in funds to prepare us for the new cross-border traffic. These funds would provide the increased number of Federal and State inspectors and inspection facilities that both our Inspector General and a "Blue Ribbon" Commission, which I had the honor to chair, called for in 1999.

To support comprehensive State and Federal safety enforcement activities at the southern border, the Department requested $88.2 million in additional funds, which included $13.9 million to hire 80 additional Federal inspectors to perform safety inspections and conduct safety audits of Mexican carriers. We plan to have all Federal enforcement personnel hired and trained by December 2001. In addition, we requested $18 million to support staffing of State inspection facilities, increasing significantly State motor carrier safety inspection activities at the border.

The Department also requested $54 million to provide the Federal share of costs for construction and improvement of State commercial motor vehicle inspection facilities. The Department requested $2.3 million for immediate construction of areas to park commercial vehicles that are placed out-of-service for safety violations. We anticipate working closely with our Federal and State colleagues to conduct inspections. Currently 23 border commercial crossings do not have permanent inspection facilities. We want to help the border States address this gap.

Operating Authority for Mexican Truck and Bus Firms. On May 3, 2001, the FMCSA published three Notices of Proposed Rulemaking to govern the application process for Mexico-domiciled carriers seeking United States operating authority. The purpose of the rulemakings was to specify a process whereby Mexican-domiciled carriers may be granted conditional United States operating authority, and later, if its safety compliance record justifies, permanent operating authority. Here is how the process would work:

First, a carrier must specify whether it seeks authority to operate within the commercial zone or outside the commercial zone. Carriers with a currently valid authority to operate within the commercial zone will have a 1-year transition period to begin the process described below, leading to permanent commercial zone operating authority.

Second, a carrier must undergo a mandatory *safety review* by FMCSA to obtain conditional operating authority. Mexican-domiciled carriers must provide detailed information on their operations, and make specific certifications regarding their ability to comply with United States safety regulations before they may obtain conditional operating authority.

Such requirements include United States safety regulations, including hours-of-service requirements, drug and alcohol testing regulations, the carrier's safety monitoring program, and the obligation to maintain an accident register. Carriers would, for example, be obligated to supply the name of their insurance carrier and drug and alcohol testing service. The FMCSA will independently validate such coverage in each case prior to granting conditional authority. To perform these safety reviews, FMCSA will establish a consolidated safety review center. At FMCSA discretion, any such reviews may be conducted in person, at an appropriate Federal office at the border or at the carrier's place of business in Mexico.

Third, upon successful completion of the safety review, a carrier would be granted a provisional operating permit valid for 18 months.

Fourth, during the 18-month period, FMCSA will begin to collect safety and operational data on the carrier in the Motor Carrier Management Information System (MCMIS). The FMCSA will pull all available data from Mexican databases on carriers, vehicles, and drivers, but we will rely on our own information systems to continually monitor the safety of carriers operating in the United States. Data on authority, vehicles, drivers, violations, accidents, insurance, and other safety information will be tracked by United States safety information systems. State and Federal inspectors at the border and throughout the United States will have complete access to the safety data maintained on Mexican carriers.

Investigators will review information in MCMIS collected on the carriers and documents required under Federal safety regulations. This includes records on driver medical qualifications, hours of service, drug and alcohol testing, and vehicle inspection, repair and maintenance. If safety problems are detected, FMCSA would take immediate action to help bring carriers into compliance or remove their provisional operating authority. To complement the new entrant regime, it will be necessary to modify existing regulations to provide appropriate penalties for any carrier that operates outside the commercial zone without valid operating authority. FMCSA will do so this Fall.

Fifth, after sufficient observation data has been accumulated on a given carrier (after approximately 4–12 months), the carrier must submit to a mandatory *safety audit.* The safety audit requires a face-to-face meeting with FMCSA inspectors and

may, at FMCSA's discretion, take place at an appropriate Federal office at the border or at the carrier's place of business in Mexico. The safety audit incorporates review of all safety inspection and performance data gathered on the carrier, as well as an examination of the carrier's required records to prove compliance with United States carrier, vehicle and driver safety regulations.

Finally, after successful completion of the safety audit, and prior to the end of the 18-month provisional operating authority, FMCSA will determine whether to award a permanent operating authority.

Taken in sum, this process will provide considerable scrutiny of the motor carrier's ability to comply with United States safety standards. It should be noted that this new regime means heightened requirements for Mexican carriers currently operating in the commercial zone—*more* scrutiny than currently exercised—and it means a new, stricter system outside the commercial zone. These requirements go significantly beyond that imposed on United States and Canadian cross-border operations, for which there are currently no such waiting period or other new entrant requirements. The Department considers this regime an appropriate level of scrutiny and consistent with the national treatment provisions of NAFTA.

The Department expects most of the carriers now operating in commercial zones to apply to continue that type of operation. We do not, in other words, expect a large number of immediate applications for authority to operate beyond the commercial zones.

Vehicle Compliance. All Mexican-domiciled vehicles seeking United States operating authority must comply with United States safety and performance standards for United States commercial vehicles. Based upon consultations with the industry, FMCSA believes that Mexican carriers that seek to operate outside the commercial zone will be equipped with the modern vehicles that compare favorably with the average over-the-road vehicle in the United States.

Over 50 percent of northbound trucks get inspected now. Based on United States Customs fees and license plate readings, there are at least 63,000 Mexican vehicles entering United States commercial zones. Our Inspector General has estimated the number may be as high as 85,000. In FY 2000, more than 53,000 safety inspections were performed on these Mexican trucks. FMCSA estimates that this is roughly twice the rate of inspections performed on domestic commercial vehicles. While there are 4.5 million *crossings* of the border each year, most trucks are engaged in drayage operations, making multiple border crossings daily.

The Department seeks to make routine Level 1 inspections—the most thorough type of vehicle and driver check—the rule for all Mexican-domiciled vehicles operating in the United States. Interim facilities must be created for inspections and for parking vehicles placed out of service. During the 1-year transition period for NAFTA truck and bus access, the Department has planned to deploy teams of inspectors on both sides of the border to make Level 1 inspections available to carriers seeking United States operating authority.

California has already invested in inspection stations and has successfully brought out-of-service rates for Mexican commercial vehicles down to a level comparable with United States-based trucks. In that State, a Level 1 inspection—actually getting under the vehicle—is performed on each commercial vehicle that does not display a current Commercial Vehicle Safety Alliance (CVSA) decal indicating that an inspection has been performed within the last 3 months. In FY 2000, the out-of-service rate for Mexican trucks inspected in California is 27 percent and the national average is 24 percent.

With construction of additional permanent state inspection facilities and inspectors requested by the President, far more Level 1 inspections can be conducted, and a screening system similar to that of California could be implemented all along the border. DOT will work with States to locate the new facilities where commercial vehicles cannot evade inspections and ensure that truck size and weight enforcement is performed at each location.

Hiring of more Federal inspectors is underway. The FMCSA is now recruiting eighty new Federal inspectors. Combined with our current Federal inspection staff of 60, we would more than double our Federal safety presence at the border and exceed the level of Federal inspectors recommended by the DOT Inspector General in his December 1998 report.

As stated above, the Department also is seeking $18 million to double the number of State safety inspectors. With this increase, a combined State and Federal enforcement staff will total an impressive 496 inspectors. To put that figure in better perspective, there were only seven Federal safety inspectors at the border in December 1995, and about 45 State inspectors. If our FY 2002 budget request is approved, it would provide a 10-fold increase in overall Federal and State inspectors since 1995.

This should allow us to meet DOT's goal of having vehicle inspectors on duty during all hours when the commercial crossings are open for business.

Driver Standards. The Level 1 CVSA inspections described above also include review of driver credentials. The expanded regime that includes vehicle inspections will thus also yield greater scrutiny of drivers. There will be no distinction between the requirements for drivers from Mexico, the United States or Canada. In the case of hours-of-service compliance, for example, the driver must produce logs that indicate authoritatively his or her driving time start and restart periods in Mexico for the runs that include a border crossing. The clock does not stop at the border, and we will not tolerate lapses.

Infrastructure Improvements. Our infrastructure improvements apply not only to the physical safety inspection facilities covered by the President's infrastructure request. We continue to work with our Mexican colleagues on the information and safety networks linking the two nations. Our actions involve a major initiative to improve the safety information systems that are available to Federal and State enforcement officials in the United States. We will be able to verify certain carrier application information directly with Mexican transportation officials, automate the review of applications, provide real-time safety performance and other data to Federal and State inspectors and effectively monitor the safety performance of Mexican motor carriers operating in the United States. All inspectors will have access to available United States and Mexican driver license, carrier, and other safety databases by January 1, 2002.

The Department of Transportation is working with Mexico to increase regulatory compatibility between our countries, establish cooperative agreements on the exchange of safety information, and provide technical assistance to build United States-compatible compliance and enforcement programs in Mexico. The objective is to bring Mexican safety requirements up to United States standards. The adoption and implementation of comparable programs in Mexico will provide greater assurance that vehicles entering the United States are already in compliance with United States safety standards.

Implementation and Education. The Department is committed to being proactive in helping Mexican carriers understand applicable U.S law and regulations. The FMCSA, in concert with Mexico and the border States, will conduct a series of safety compliance seminars to educate Mexican carriers and drivers about compliance with Federal and State motor carrier safety regulations. The seminars will take place on both sides of the border this Fall. When rules are finalized, meetings such as this will thoroughly explain the new application requirements. The seminars will supplement ongoing efforts to translate and distribute educational materials to Mexican carriers and drivers.

Also, with the Free Trade Alliance San Antonio, the Department is co-sponsoring a NAFTA Information Conference in that city on October 21–24, 2001. The conference will include all Federal and State agencies that have border enforcement responsibilities. The Departments of Transportation, Labor, and Agriculture, the United States Customs Service, the Immigration and Naturalization Service, the Environmental Protection Agency, and State enforcement officials will conduct panels explaining the various requirements that motor carriers must meet when operating in the United States. The Governments of Mexico and Canada will make similar presentations about their requirements and all three countries will distribute bilingual reference books that summarize their operating

Conclusion

Opening the border to Mexican trucks and buses by the beginning of next year will require considerable effort. But I am thoroughly convinced that we can fulfill our NAFTA obligations while putting in place an effective safety enforcement regime.

I am disappointed, therefore, that the House voted to bar the use of any Department funds next fiscal year to process applications for Mexican carriers that seek to operate in the United States outside the commercial zone. As the Administration has formally stated, President Bush's senior advisors would recommend that he veto any bill containing provisions that foreclose the possibility of meeting our NAFTA obligations. While I am grateful to the Senate for providing funding for the inspectors and improvements described in this testimony, I have serious concerns about the numerous conditions the Senate has at this point placed on actions to open the border.

I want to close by reiterating my personal commitment, and that of the Administration, to work with the Congress to try to find an acceptable plan for NAFTA implementation—a plan that allows us to meet the four principle s of safety and equity

that I outlined at the beginning of this testimony. Mr. Chairman, I will be pleased to respond to any questions you or the Committee may have.

The CHAIRMAN. It will be part of the record. Let us go first with Mr. Mead.

STATEMENT OF HON. KENNETH M. MEAD, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION

Mr. MEAD. Thank you, Mr. Chairman. I will submit my prepared statement for the record. Our statement today is based on three reports, and it focuses on current conditions at the border, and actions that need to be taken to implement a solid safety strategy.

I want you all to know, I am honored to be here with Secretary Mineta. He and his team are drawing very heavily, and most responsibly on our work. As the law began to focus on this issue, what we have seen from our work, including visits from my staff to all 27 of these border crossings, is that the United States has made some improvements in its inspection presence and controls, and Mexico, even, has made some progress, too.

But it is very clear that substantial additional actions are needed to reasonably ensure the safety of trucks and qualified drivers at the southern border, especially if they wish to traverse into the interior of the United States. I would like to highlight the actions as we see them in the Inspector General's office, but before doing so, I do want to point out that the focus on Mexican trucks ought not to obscure the need to continue improving the safety of United States trucks and drivers.

Last year, more than 5,300 people died in United States truck crashes, and that is equivalent to a major airline crash every 2 weeks. Over 9,000 United States motor carriers currently have unsatisfactory safety fitness ratings. I believe safety oversight has been strengthened at the Department since passage of the 1999 Act, and I think it is important that this level of emphasis be sustained, if not indeed increased.

As for a Mexican truck driver and truck safety, until Mexico fully implements safety requirements and has a tight oversight program, the fact is that we will need to have sufficient controls in place in the United States to ensure safety. We found a direct correlation between the condition of Mexican trucks entering the United States, the number of inspections, and the level of inspection resources at the border.

The chart being displayed shows that, and this chart is in my prepared statement. This purple line is the out-of-service rate. When the safety violations are so serious that you cannot let a truck go on the road any longer, it is placed out of service. The out-of-service rate for Mexican trucks decreased from 44 percent in fiscal year 1997 to 37 percent in fiscal year 2000.

That improvement correlates with the increase in the number of inspections, which is shown by the dark line, from about 17,000 inspections in fiscal year 1997 to 56,000 in fiscal year 2001. The out-of-service rate for United States trucks nationwide is about 24 percent.

Mr. Chairman, California has an inspection presence during all operating hours at its major Otay Mesa facility, and it inspects each truck that does not have a current inspection decal.

The out-of-service rate for Mexican trucks crossing at the Otay Mesa border crossing is 24 percent, substantially better than the Mexican trucks entering through other crossings with a lesser inspection presence. In fact, the rate runs as high as 50 percent out-of-service at one border crossing in Texas. Many of the safety program elements that we endorse and we understand DOT plans to adopt, are based on that California model. I want to highlight six critical elements of a safety strategy that should be in place when the border is open.

First, is staffing, placing inspectors at all commercial border crossings during all operating hours. Currently, inspectors are not on duty at all border crossings during all hours of operations. For example, my staff was at the Laredo facility in Texas, that is one of the major crossings, on a weekend day, and the trucks went right on through. No inspector was there, and that needs to be corrected.

In 1998, we estimated 139 inspectors were needed to provide coverage at all border crossings during all operating hours. The Department increased the authorized number of inspectors at the southern border from 13 in 1998 to about 60 in fiscal year 2001. The President's budget for 2002 includes about $14 million to hire 80 additional enforcement people. These funds are really needed. I think that chart illustrates why, and it is important that these 80 people be deployed at the border. Over time, that can change. If the States build permanent inspection facilities and increase the staffing, maybe these inspectors can be deployed into other locations. But we think it is important that you have inspection coverage at the border crossings now.

Second, is safety reviews and inspections. We feel that performing safety reviews before granting Mexican carriers authority to operate in the United States, and inspecting the long haul vehicles and drivers before they enter and operate in the United States, would be a good move.

At least initially, DOT will have to decide on a case-by-case basis whether safety reviews need to be performed on-site in Mexico at the carrier's location. That decision is going to depend on a number of factors, such as the availability and quality of the applicant safety performance data. And I think the Department will need some discretion to decide where it is going to do these reviews. Because long-haul carriers will be new entrants, their vehicles ought to be inspected as they enter the United States unless the vehicle passed a United States inspection within the preceding 3 months. The vehicle will carry a decal just like those at the Otay Mesa facility in California. Vehicles come through there, and every 3 months, they get inspected and get a new sticker.

Long haul drivers ought to be inspected at the border to make sure they have a valid license and a logbook, and that they are in compliance with hours of service rules. This should apply to passenger buses and their drivers as well, which could well be the subject of a separate hearing some day. So inspectors can readily distinguish between these Mexican long-haul trucks and the Mexican trucks that are only going to the commercial zone adjacent to the border, Mexican long-haul trucks ought to have identification num-

bers that distinguish them from vehicles authorized to operate only in the commercial zones.

Mr. Chairman, the 1999 Motor Carrier Act specifies that new entrant requirements, including safety reviews, will apply to domestic and foreign carriers. DOT has not implemented this provision yet for United States carriers. It is important that this be done for safety reasons, as well as to provide evenhanded treatment to United States carriers and Mexican carriers.

Third, is enforcement—taking strong prompt enforcement action against carriers that do not comply with safety regulations, and authorizing states to place vehicles out of service for operating illegally in the United States. In 1999, we reported that 52 Mexican domiciled carriers were operating illegally in 20 states outside the four Southern border States, and the border had not even been opened.

We found this problem continues. In 2000, inspections throughout the United States show that 56 Mexican carriers operated illegally in 25 states outside the four Southern border States. The 1999 Act that you enacted provided stiff fines and disqualification sanctions for carriers exhibiting this type of behavior. That provision of law is due to expire when the border opens, and we think it makes sense that that provision of law be carried over so you can take action against carriers operating illegally and evading the safety net that the Department puts in place.

Another point I think needs to be tended to is that DOT has not yet issued an order that gives the States the authority to place these vehicles out of service if they are found to be operating without authority. I understand DOT will do this.

Fourth is facilities—providing adequate facilities and space to conduct inspections and to place unsafe vehicles out of service. Currently, as you pointed out in your opening remarks, the only permanent facilities at the U.S.–Mexico border are the State facilities in California. Construction is under way at two others crossings, in New Mexico and Arizona.

I can give you some interesting statistics here. At the 25 crossings without permanent facilities, the inspectors use space provided by the U.S. Customs Service. At eight of those, DOT has small, portable buildings, and I mean small. At 19 crossings, inspectors only have space to inspect one or two trucks at a time. At 14, and this is important, they only have one or two spaces to park trucks that they place out of service. If you have an out-of-service rate of even 25 percent, that is one in every four trucks, and if you only have spaces to park two trucks, you are going to have some trouble.

This problem is going to require time to be fully resolved, but we think there are a number of near-term actions that the Department can undertake with the help of some other agencies. We contacted the General Services Administration and found that land is available on and adjacent to 16 of these crossings. It is true that the other Federal agencies have long-term plans for using that land. But many of their plans aren't yet funded so the Department may be able to obtain agreements to use some of it in the near term, such as for paving a parking lot.

The fifth and sixth elements of the strategy are rulemakings and education outreach. To establish the elements of the safety strategy

as legal requirements, obviously rulemakings will be required. The rulemakings that are currently out in draft will need to be revised to reflect the elements of the safety strategy that is outlined in the Secretary's statement. I think education and outreach are necessary for the obvious reason, familiarizing the drivers and carriers in Mexico on what the safety requirements are. Thank you, Mr. Chairman.

[The prepared statement of Mr. Mead follows:]

PREPARED STATEMENT OF HON. KENNETH M. MEAD, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to testify on motor carrier safety at the U.S.-Mexico border. Since 1998 we have issued three reports dealing with the Department of Transportation's efforts to improve safety at the border. Our statement today is based on those reports and our ongoing work, and focuses on the (1) current safety conditions at the southern border, and (2) actions the Department needs to take to implement a comprehensive safety strategy for the southern border.

What we have seen from our work—that includes visits to all 27 commercial border crossings—is a need to strengthen safety controls at the southern border. (Exhibit A, for a map and listing of the border crossings). During fiscal year (FY) 2000, 37 percent of the Mexican trucks inspected were placed out of service because they had serious safety violations. (Exhibit B, for a listing of out-of-service rates by crossing)

The United States has made improvements in its inspection presence and controls, and Mexico has made progress in establishing safety oversight requirements. However, it is clear, that additional actions are needed to reasonably ensure the safety of commercial vehicles and drivers as they enter at the southern border, operate within the commercial zones, and traverse the United States.

Specific actions that need to be taken include:

- Placing inspectors at all commercial border crossings during all operating hours. There is a direct correlation between the condition of Mexican trucks entering the United States and the level of inspection resources at the border.
- Performing (1) safety reviews *before* granting Mexican-domiciled carriers conditional authority to go into the interior of the United States, and (2) inspecting all long-haul vehicles and drivers *before* they enter and operate in the United States. (Long-haul vehicles are those authorized to travel beyond the U.S. commercial zones.)
- Taking firm enforcement actions against carriers that do not comply with U.S. safety regulations, and authorizing States to place vehicles out of service for operating beyond authority or without authority.
- Providing adequate facilities to conduct inspections and place unsafe vehicles out of service.
- Revising the recently issued proposed rulemakings on application procedures and a monitoring system to require safety reviews and physical inspections of trucks and drivers before they operate in the United States, and issuing the final rules.
- Conducting workshops and outreach sessions to provide information to potential applicants on U.S. procedures and safety regulations.

In the course of developing the Department's plans for implementing the North American Free Trade Agreement's (NAFTA) provisions, the Office of the Secretary, Federal Motor Carrier Safety Administration (FMCSA), and Office of Inspector General have held extensive discussions about our work and the elements of a comprehensive safety strategy. We understand the Department is committed to incorporating substantially all of the actions discussed above into its safety strategy. This would include placing inspectors at all border crossings during all operating hours, safety reviews, and physical inspection of trucks and drivers desiring to operate in the United States beyond the commercial zones. We endorse this approach and believe, when implemented, it will provide a more solid predicate for ensuring the safety of Mexican trucks and drivers operating in the United States.

The key to the effectiveness of the safety strategy will then be in implementation of the details, including deploying sufficient inspectors, performing thorough safety reviews and inspections, and taking firm enforcement action against carriers that do not comply with U.S. safety regulations. We will continue to audit and monitor the Department's progress in developing and implementing its safety strategy.

The actions needed to support the Department's safety strategy will also require funding. The Administration requested $88.2 million in additional funding for FY 2002 to facilitate implementation of NAFTA cross-border trucking provisions. The FY 2002 Transportation Bill approved by the House of Representatives does not provide additional funds for this purpose, while the Bill approved by the Senate Appropriations Committee provides $103 million in additional funding.

It is important to note that we should not let the current focus on Mexican commercial vehicles obscure the need to continue to improve the safety of U.S. trucks and drivers. In 2000, more than 5,300 people died in truck crashes in the United States. This equates to a major airline crash with 200 fatalities every 2 weeks. Also, in the United States, one out of every four trucks inspected at a roadside stop is placed out of service for safety violations. In FY 2000, 9,900 (2 percent) of the 560,000 interstate motor carriers operating in the United States had an unsatisfactory safety rating. Moreover, 426,000 (76 percent) of the interstate motor carriers had not been subjected to a compliance review by FMCSA and were operating without a safety rating.

The Motor Carrier Safety Improvement Act of 1999 established FMCSA and set *safety* as its highest priority. FMCSA has made progress in increasing the number of compliance reviews, increasing civil penalties for noncompliance, and shutting down unsafe carriers. It is important that this level of emphasis be sustained domestically.

Current Safety Conditions at the Border

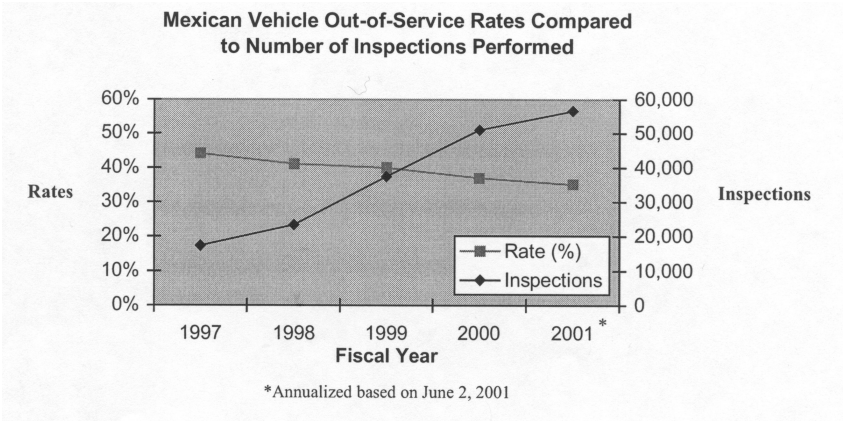
The out-of-service rate for Mexican trucks is declining. We determined that 37 percent of the Mexican trucks inspected in FY 2000 were removed from service because of serious safety violations. This represents an improvement from FY 1997 when 44 percent of the Mexican trucks inspected were removed from service. The out-of-service rate for U.S. trucks inspected nationwide in FY 2000 was 24 percent.

Available data also show that Mexican drivers were placed out of service at the same rate—8 percent—as U.S. drivers nationwide during FY 2000. However, these data may not be comparable because U.S. inspectors at the border crossings did not have the capability to verify that Mexican Commercial Drivers Licenses (CDLs) were current and authentic during FY 2000. That capability is now available so data obtained in FY 2001 should provide a comparable basis for driver out-of-service rates.

NAFTA countries agreed to use standards established by the Commercial Vehicle Safety Alliance (CVSA) that include minimum safety requirements and criteria for placing trucks and drivers out of service for noncompliance. In the United States, Federal and State safety inspectors perform vehicle inspections using CVSA criteria. A vehicle receives a CVSA decal when it passes a Level 1 inspection—the most rigorous involving a physical inspection of the truck's compliance with all safety requirements. The decal is valid for 3 months.

Trucks are put out of service for a variety of serious safety violations, including inoperative and defective brakes, defective frames and steering systems, and bad tires. Truck drivers are placed out of service because they do not have valid CDLs, are not in compliance with hours-of-service rules, or do not have logbooks to document the number of hours they were on duty.

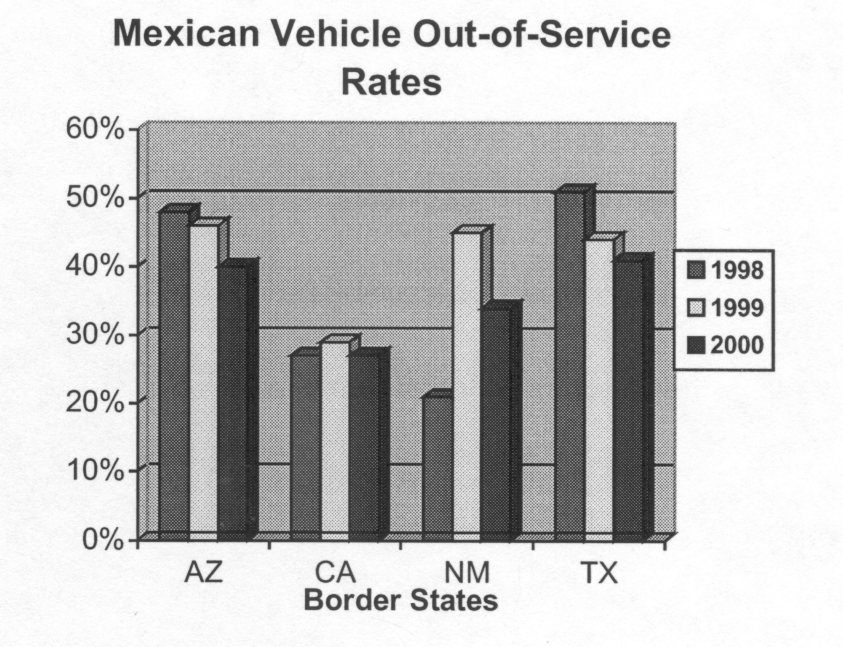
There is a direct correlation between the condition of Mexican trucks entering the United States and the level of inspection, resources at the border. That is, the more likely the chance of inspection the better the condition of the vehicle. As the following chart illustrates, out-of-service rates at the border have declined as the number of inspections performed increased.



California has an inspection presence during all operating hours at its two major crossings and inspects each commercial truck that does not have a current CVSA inspection decal. Consequently, the condition of the Mexican trucks entering at the Mexico-California border is much better than those trucks entering through all other border States that do not have an inspection presence during all operating hours.

For example, during FY 2000, the out-of-service rate for Mexican trucks inspected in California was 27 percent. This compares to out-of-service rates of 40, 34, and 41 percent in Arizona, New Mexico, and Texas, respectively. During this same timeframe, the range of the out-of-service rates varied significantly among the border crossings, from 24 percent in Otay Mesa, California, to 50 percent at the Bridge of the Americas in El Paso, Texas.

Exhibit B shows the out-of-service rates for the last 2 fiscal years at each of the southern border crossings.



Until Mexico fully implements safety requirements and an oversight program, the United States will need to have sufficient controls in place to ensure the safety of Mexican trucks and drivers entering and operating in the United States. At this time, there are some outstanding questions about the workload this will generate. These questions include how many Mexican carriers will apply for long-haul authority, where the carriers are located, and which and how many trucks they will operate in the United States.

It is a matter of speculation as to how many carriers will want to operate long-haul vehicles in the interior of the United States beyond the commercial zones. This decision will be affected by a number of factors, including economic conditions and the need to comply with U.S. safety regulations. While all carriers are not likely to apply, available information shows that the number of carriers that could seek to operate in the interior could vary significantly. For example:

- 10,000 Mexican carriers currently have authority to operate in the United States.
- 4,750 Mexican carriers had vehicles inspected at the southern border in FY 2000.
- 1,500 of the 4,750 Mexican carriers with vehicles inspected at the border came from States south of Mexico's border States, primarily from the Mexico City area.
- Over 70,000 Mexican carriers are domiciled in Mexican States away from the border States.

Regarding the number of trucks, a September 20, 2000 FMCSA report estimated that about 80,000 trucks were operating at the U.S.-Mexico border and that 63,000 trucks were from Mexico. One analysis used to make the 63,000 estimate relied on 1998 data for the total number of trucks registered in Mexico. However, in 1999, the number of registered Mexican trucks grew by 18 percent, and indications are that this trend is continuing. This would mean that the number of Mexican trucks operating at the border could range from 63,000 to 89,000 trucks. Our analysis showed that 26,600 Mexican trucks were inspected at least one time at the border during FY 2000.

Actions the Department Needs to Take to Implement a Safety Strategy for the Southern Border

Our work points to the need to strengthen controls at the southern border in order to provide reasonable assurance of the safety of Mexican trucks and drivers operating in the United States. The Department recognizes the need to strengthen controls and is developing a safety strategy. In the near term, developing an inspection capability that includes providing inspectors and inspection facilities at the border crossings, and using that capability to enforce compliance with U.S. safety regulations are key to ensuring the safety of Mexican trucks and drivers.

In this regard, there are **six areas** that will need to be addressed in the near term as part of the safety strategy. They are: **Staffing, Safety Reviews and Inspections, Enforcement, Facilities, Rulemakings, and Outreach.** We believe these are strong elements that would enhance the Department's safety strategy, facilitate the implementation of NAFTA's provisions, and ensure the safety of Mexican trucks and drivers operating in the United States.

1. **Staffing.** *Deploying additional onsite inspectors during all operating hours at all southern border crossings.*

Currently, inspectors are not on duty at all border crossings during all hours of operation. In 1998, we estimated that 139 inspectors were needed to provide sufficient coverage at all crossings during operating hours. FMCSA increased the authorized number of inspectors at the southern border from 13 in FY 1998 to 60 in FY 2001. Currently, 58 of the 60 authorized positions are filled. The following chart shows, by border State, the number of Federal inspectors onsite and the number we estimated was needed.

Federal Inspectors at the U.S.-Mexico Border
as of July 2001

State	Border Crossings	Out-of-Service Rate FY 2000 (%)	Truck Crossings in FY 2000	Number of Federal Inspectors Assigned	Total Number of Federal Inspectors Recommended *
Arizona	6	40	347,466	7	18
California	4	27	1,028,020	0	16**
New Mexico	2	34	35,910	1	6
Texas	15	41	3,133,619	50	99
Totals	**27**	**37**	**4,545,015**	**58**	**139**

*"Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Report Number TR-1999-034, December 28, 1998.
**To place inspectors at two border crossings during all operating hours, to add inspectors to verify commercial drivers, and to perform inspections on passenger buses and drivers.

The Administration's budget request for FY 2002 includes $13.9 million to hire 80 additional enforcement personnel for the southern border. Deploying the additional 80 enforcement personnel at the border would bring the total number of authorized Federal inspectors there to 140, and be responsive to our 1998 recommendation. However, over time the requirement for Federal inspectors to be physically located at the border crossings is likely to change if the States establish permanent inspection facilities and increase their inspection staffs.

The Department is developing a deployment plan for these 80 enforcement personnel as part of its safety strategy. If the 80 enforcement personnel are not deployed onsite at the border in the near term, sufficient inspectors will not be in place at all border crossings during hours of commercial vehicle operations except for two of California's crossings. We will be monitoring the development of the Department's deployment plan for the 80 enforcement personnel as well as the actions taken by the States.

2. **Safety Reviews and Inspections.** *Performing safety reviews before granting conditional authority to operate in the United States, and inspecting all long-haul vehicles and drivers before or as they enter the United States.*

Safety reviews should be performed and successfully completed before conditional authority is granted to new entrant carriers. At least initially, the Department will need to decide on a case-by-case basis whether safety reviews should be performed onsite at the applicant carrier's location to: verify the accuracy of safety performance data and required safety management programs (including drug and alcohol testing, driver qualifications, and driver's hours-of-service), inspect vehicles, and ensure applicants are knowledgeable of U.S. safety regulations. The decision on where safety reviews should be performed will depend on the availability and quality of the applicant's safety performance data. Also, inspecting vehicles onsite during a safety review would reduce the impact on traffic congestion of performing vehicle safety inspections at the border.

Because the long-haul carriers are new entrants, their vehicles should be inspected as they enter the United States unless they have a current CVSA inspection decal indicating that the vehicle has passed a U.S. inspection within the preceding 3 months. Long-haul drivers should be inspected at the border to verify they have a valid CDL, a logbook, and that they are in compliance with hours-of-service rules. For inspectors to readily identify long-haul vehicles, vehicles should be assigned identification numbers that distinguish them from vehicles authorized to operate only in commercial zones.

The Motor Carrier Safety Improvement Act of 1999, Section 210, specifies that new entrant requirements shall apply to all motor carriers, domestic and foreign. The new entrant requirements call for safety reviews to ensure applicant carriers are knowledgeable about Federal Motor Carrier Safety Regulations. FMCSA has not yet implemented Section 210 of the Act for U.S. carriers. It is important that this be done for safety reasons and to provide evenhanded treatment for U.S. and Mexican carriers.

Passenger buses also receive access to the United States under NAFTA. During FY 2000, there were only 100 passenger buses inspected at southern border crossings. However, the U.S. Customs Service reports that about 300,000 bus crossings occurred at the border during FY 2000, and 80 percent of those were at 3 ports of

entry: San Diego, California, and Laredo and Hildalgo, Texas. Inspections of buses and drivers should also be part of the Department's safety strategy.

3. **Enforcement.** *Implementing procedures for monitoring the safety performance of new entrants with conditional authority and taking firm action against those carriers that do not comply with safety regulations and those that evade the safety net and enter the United States without authority.*

Effectively enforcing safety regulations requires a system that tracks a carrier's safety performance and triggers action for noncompliance with U.S. safety regulations. These triggers should initiate the issuance of deficiency letters and suspension notices of U.S. operating authority. This will be particularly important during the 18-month period when new entrants are operating under conditional authority. FMCSA's proposed rulemaking defines the 18-month conditional period as a time of enhanced safety oversight for new entrants. At the end of the 18-month period, the conditional authority would become permanent if a carrier's most recent safety review is satisfactory.

A key element of FMCSA's ability to take firm enforcement action is a system that provides good safety performance data and allows inspectors immediate access to those data. To accomplish this, FMCSA is developing a single access system that will provide inspectors information from FMCSA and Mexican databases on carrier safety performance. FMCSA needs to ensure the system is completed and deployed by the end of 2001 as currently scheduled.

Strong enforcement will be needed for the minority of carriers that are egregious offenders and a risk to public safety. The Motor Carrier Safety Improvement Act of 1999, Section 219, provided fines and disqualification sanctions for Mexican carriers operating without authority or beyond their authority in the United States. The fines range from $10,000 to $25,000. However, the Act's provision has not been implemented, and this provision will expire when NAFTA cross-border trucking provisions are implemented. A comparable provision will have to be carried over to deal with carriers operating beyond or without authority in the United States.

In 1999, we reported that 52 Mexico domiciled motor carriers were operating *improperly* in 20 States outside the 4 southern border States, and 202 motor carriers were operating improperly beyond the commercial zones within the border States. These carriers were operating beyond authority or without authority. Our ongoing work shows this problem continues. Data on FY 2000 roadside inspections throughout the United States show that 56 Mexican carriers operated *improperly* in 25 states outside the 4 border States.

Also, FMCSA has not issued an order on enforcement of registration requirements provided in Section 205 of the Motor Carrier Safety Improvement Act of 1999. This order would give the States the authority to place vehicles out of service if found operating without authority or beyond the scope of authority granted.

FMCSA needs to take swift action to give States the authority to enforce the operating authority requirements.

4. **Facilities.** *Obtaining available land at southern border crossings to provide inspectors space and facilities needed to safely perform inspections and park vehicles placed out of service.*

Currently, the only permanent inspection facilities at the U.S.-Mexico border are the State facilities in Calexico and Otay Mesa, California. Construction is underway for two permanent State inspection facilities in Santa Teresa, New Mexico, and Nogales, Arizona. Both of these facilities will be adjacent to the U.S. Customs Service port of entry lots.

At the 25 border crossings where permanent facilities are not available, Federal and State inspectors work within the U.S. Customs Service's port of entry lots. FMCSA has provided portable buildings at eight of these crossings. At 19 of the 25 crossings, FMCSA inspectors have space to inspect only 1 or 2 trucks at a time, and at 14 crossings have only 1 or 2 spaces to park vehicles placed out of service. It takes at least 2 years to get permanent inspections facilities built. In the near term, FMCSA must secure additional space at the border crossings to safely perform inspections and place vehicles out of service.

Not all of the space requirements can be easily addressed because land is not readily available at all border crossings. However, we contacted the General Services Administration (GSA) and found that land is available on or adjacent to the U.S. Customs Service port of entry lots at 16 border crossings. Although other Federal agencies have long-term plans for using most of this available land, many of the plans are not yet funded. For example, at the Pharr border crossing, with about 370,000 truck crossings in FY 2000, there are 14 acres in GSA's inventory for which there are no currently funded plans.

FMCSA may be able to obtain agreements to use available land in the near term without impacting other Agencies' long-term plans for the space. Resolving the space issue will likely require high-level attention because it will involve extensive coordination with other Federal agencies, tenants, and lessors.

5. **Rulemakings.** *Revising the recently issued proposed rulemakings on application procedures and a monitoring system to require safety reviews and physical inspections of trucks and drivers before they operate in the United States, and issuing the final rules.*

Two proposed FMCSA rulemakings establish new application procedures for Mexican carriers seeking new operating authority beyond and within the commercial zones, and require carriers to provide detailed information about their safety practices and to self-certify compliance with U.S. safety regulations. A third rulemaking proposes implementing a safety monitoring system to determine whether Mexican carriers operating in the United States comply with safety regulations.

FMCSA issued the three Notices of Proposed Rulemaking on May 3, 2001. The period for public comment on the proposed rules closed on July 2, 2001, and FMCSA plans to finalize the rules by the end of October 2001. However, the rulemakings will need to be revised to incorporate changes that are made as the Department develops its safety strategy. For example, the existing proposed rules do not include requirements that a safety review be completed before conditional operating authority is granted, or that long-haul vehicles and drivers be inspected before they enter and operate in the United States.

One of FMCSA's proposed rulemakings requires carriers currently operating within the commercial zones to reapply for operating authority under the "new entrant" program. Under the Motor Carrier Safety Improvement Act, the "new entrant" provision applies to carriers seeking "new" authority, not those with existing authority. In the near term, FMCSA may be able to reduce its workload by focusing its efforts on carriers that are truly new entrants in that they do not have authority to operate in the United States at all.

6. **Outreach.** *Conducting workshops and outreach sessions to provide potential applicants with guidance on how to complete applications, which should result in more complete and accurate applications and facilitateqtimely processing.*

FMCSA's strategy includes provisions to sponsor eight 1-day workshops that provide an overview of the Federal safety rules and the border States' rules. This would also help provide the target audience for the workshop and show motor carriers how to apply for operating authority. These workshops should provide excellent opportunities for the Mexican carriers and FMCSA to benefit from an exchange of information. The limitation we see at this time is the plan to conduct these workshops before finalizing the rulemakings covering the application processes and the monitoring system.

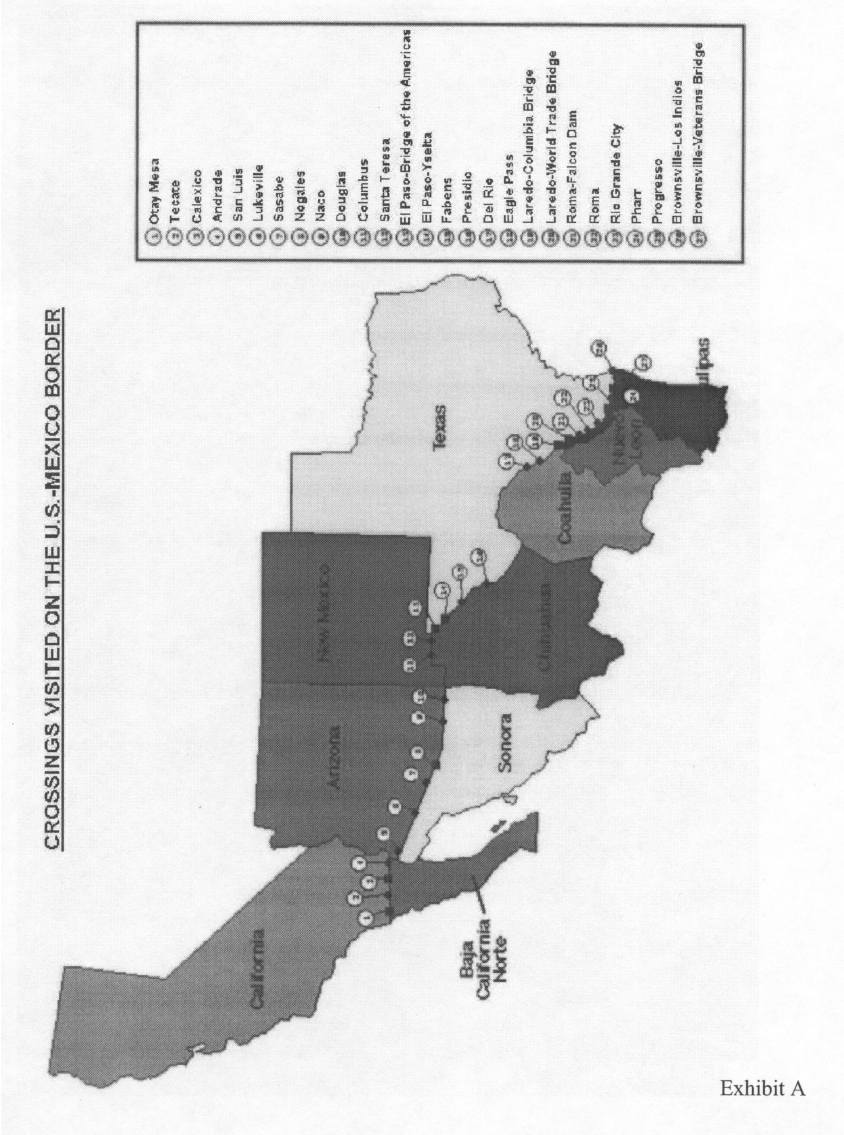

CROSSINGS VISITED ON THE U.S.-MEXICO BORDER
California
Baja California Norte
Arizona
New Mexico
Sonora
Texas
Chihuahua
Coahuila
Nuevo Leon
Tamaulipas
Otay Mesa
Tecate
Calexico
Andrade
San Luis
Lukeville
Sasabe
Nogales
Naco
Douglas
Columbus
Santa Teresa
El Paso-Bridge of the Americas
El Paso-Ysleta
Fabens
Presidio
Del Rio
Eagle Pass
Laredo-Columbia Bridge
Laredo-World Trade Bridge
Roma-Falcon Dam
Roma
Rio Grande City
Pharr
Progresso
Brownsville-Los Indios
Brownsville-Veterans Bridge

Exhibit A

Out-of-Service Rates for Mexican Trucks by Border Crossing

Location	FY 2000 Truck Crossings	FY 1999 Out-Of-Service Rate (%)	FY 2000 Out-of-Service Rate (%)
California:			
Otay Mesa	683,703	26	24
Tecate *	61,707	*	*
Calexico	281,032	35	38
Andrade *	1,578	*	*
Other *		34	31
California Total	*1,028,020*	*28*	*27*
Arizona:			
San Luis	41,522	44	31
Lukeville *	3,887	*	*
Sasabe	2,775	*	*
Nogales	258,201	47	40
Naco	8,293	*	*
Douglas	32,788	50	53
Other *		34	29
Arizona Total	*347,466*	*47*	*40*
New Mexico:			
Columbus	4,892	*	40
Santa Teresa	31,018	45	33
Other *		44	36
New Mexico Total	*35,910*	*45*	*34*
Texas:			
El Paso - BOTA	725,064	61	50
El Paso Ysleta		44	46
Fabens	198	**	**
Presidio	9,051	*	*
Del Rio	61,018	42	28
Eagle Pass II	107,540	*	55
Laredo-Columbia	1,502,978	54	47
Laredo-World Trade Bridge			46
Laredo Bridge II		48	34
Roma Falcon	14,551	**	**
Roma		*	28
Rio Grande City	22,793	35	39
Pharr	367,217	56	42
Progresso	11,401	48	32
Brownsville- Los Indios	311,808	40	43
Brownsville- Veterans		43	42
Other *		40	37
Texas Total	*3,133,619*	*44*	*41*
Summary	*4,545,015*	*40*	*37*

* FMCSA's automated inspection file as of March 2000, does not specify which border crossing. Therefore, there is not a rate for this crossing. However, inspections were performed within the commercial zone and the rate is shown under "other."

** Customs officials stated that small pickup trucks and vans carrying goods enter at these two crossings. Also, these bridges have weight limitations of 50,000 and 58,420 pounds, respectively.

Exhibit B

The CHAIRMAN. General Mead, your testimony is good, but when we learned that there are only two checkpoints of the 27, in other words, trucks can come over at 25 other points without inspection, you couldn't be happy about that, can you?

Mr. MEAD. No, sir.

The CHAIRMAN. The fact of the matter that we haven't even appointed a Federal Motor Carrier Safety Administrator, we have had six, going on 7 months, and they have not even sent one to us, you cannot be happy about that?

Mr. MEAD. No. This has been a problem for almost a year and a half.

The CHAIRMAN. NHTSA itself, you only set up the administrator, that took 7 months, just last week. But at the end of the year last year on the Firestone tire hearing before this Committee, we learned that of 99 million recalls, motor vehicle recalls in a 5-year period, that NHTSA, National Highway Safety Transportation Administration, had yet to order one of the 99 million. That was Secretary Slater's testimony at that time.

The only reason they are being recalled I guess is on account of the trial lawyers. It was only on account of the trial lawyers that we learned about Firestone, 200 deaths. Then it finally came—in other words, we got, I got confidence in you, but we got a lot of work to do on the safety side. I mean, we sound strong and pretty in our plan and this point, point five, point nine and everything else, but we are seeing darn little safety when they do not even set up an administrator and they do not even make a recall and 99 million recalls and when the distinguished chairman on the House side said the tires were being replaced with faulty tires, the administration said it would take us months to find out about the replacement tires. We do not know whether they are safe or not.

So let us gear it up. You are in charge. You are the inspector general. Secretary Mineta, with respect to the time it is going to take, now, we say we are going to open the border, but we got less than 6 months. Do you think we can do all of these things you have attested to and General Mead has attested to by January 1st?

Secretary MINETA. Yes, sir, I do. First of all, there are, our request was for $88.2 million.

The CHAIRMAN. Right.

Secretary MINETA. Roughly $56 million of it was for facilities. $54 million to the states for facilities, and some $2.6 million as I recall for Federal, for Federal facilities. And then $18 million is in there for additional inspectors. The recommended number by the attorney general, I mean by the Inspector General is the number that we are following, and so——

The CHAIRMAN. We got enough money because we have given you on the Senate side, we plan to give you at least 15 million more.

Secretary MINETA. The House knocked out all the money and then also prohibited us from processing any motor carrier applications. But if we have the financial resources and get the inspectors in place, I am still hoping to be able to comply with that, hopefully in the January timeframe.

The CHAIRMAN. General Mead just testified, attested to, what about that, are you going to replace those at all of the 27 check-

points and everything? California is good, but can we get a California check at the other 26?

Secretary MINETA. Well, what we are hoping is that we will have that CVSA decal procedure being followed as part of the procedure on inspections. And the—the part about California is that all of the states get motor carrier safety money. California receives roughly $8 million in MCSAP money. But they have on top of that implemented it with about $30 to $35 million of their own California money in order to do the inspection program at Calexico and Otay Mesa.

None of the other states—I take it back. Arizona and New Mexico have some money of their own into it, in addition to the MCSAP money. But the other states, the states have not put in as much money as the state of California.

The CHAIRMAN. What about land? We released the land that you need now down there or what?

Secretary MINETA. Land is something that we do need. As the Inspector General mentioned, we need the land to perform the truck inspections and to park out of service vehicles. And we are working on those agreements right now at the locations. To me, land is not going to be a problem.

The CHAIRMAN. My time is going to be up, Mr. Secretary. With respect to conditions, you said in your opening statement you had serious concerns about the conditions that the Appropriations Committee in its transportation appropriations bill enunciated. What are those things that you have serious concerns about?

Secretary MINETA. There were a number of things, I am trying to recall some of them. Requirements, for instance, of weigh motion devices and scales at crossings. I have no problem if we want to do both. I am not sure why we would want to put in both weigh-in-motion devices as well as scales at the border crossings.

There are a number of issues in terms of certification that are being placed on me in terms of the safety of the trucks, in terms of, and I have, as I say, no problem with the inspection portion of it, but there are a number of the requirements in the Murray amendment that were troublesome to me, and raised some concerns.

The CHAIRMAN. Can you itemize those for the Committee and give it to us because we will be debating the transportation appropriation bills. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. Mr. Chairman, we are all frustrated at the slow pace of the nominating process, but I think it is important and, in light of your previous statement, to point out that the office of truck safety administrator was created in January 1 of the year 2000. The previous administration never sent over a nominee to fill that job.

The CHAIRMAN. Clyde Hart was enacted.

Senator MCCAIN. There was never a nomination sent over. To accuse this administration——

The CHAIRMAN. I am trying to get the post filled. We cannot fill it unless they send one over. They did not have to send one over under the Clinton Administration. They just put the fellow there and he administered.

Senator MCCAIN. That is curious logic.

The CHAIRMAN. That is not curious logic. It is fact.

Secretary MINETA. Hopefully at the 1 o'clock briefing that Mr. Fleisher has every day, he will be announcing the President's nomination for the Administrator of the Federal Motor Carrier Safety Administration.

Senator MCCAIN. Something that hasn't happened since January 1st of the year 2000. I thank you, Mr. Mineta. First of all, Mr. Mead, do you have any disagreement with Secretary Mineta's statements, not only principles, but specifics as to how the Department of Transportation would implement the NAFTA trucking and bus access provisions? Do you have any additions to that, or deletions?

Mr. MEAD. I think we are in substantial agreement. One point needing closure, I believe, is whether the Department establishes a rule or a policy that before Mexican trucks can come into the interior States, the trucks will be inspected and pass the inspection, and the drivers will be inspected as well. Either that, or the vehicle has a current decal indicating that that type of inspection has occurred in the preceding 3 months.

I know the Administration has committed to increasing very substantially the number of those inspections, but I think the details of exactly how that would be implemented will need to be worked out.

Senator MCCAIN. In other words, the model that is now pretty much in place in California?

Mr. MEAD. Yes. Even more robust than California. A difference in California, sir, is when trucks come across the border, the truck gets inspected, but California does not inspect the carrier per se to make sure, for example, that all of its drivers are qualified. The Department's plan will have to go into checking the carrier itself, as well as the individual trucks and drivers.

Senator MCCAIN. Thank you. Secretary Mineta, You have stated a couple of times now that you have reservations or objections to the language which was put into the DOT Appropriations bill that will be up on the floor shortly. How serious are those concerns? Are you prepared at this time to say whether those concerns are strong enough to prompt the threat of a Presidential veto and finally, do you believe that those provisions cause the United States to be in violation of NAFTA?

Secretary MINETA. First of all, in my statement, Senator, I did indicate that there are senior advisors to the President who have indicated they would recommend a veto if the present language stays in the bill and does come to the President for signature.

Senator MCCAIN. The Senate version.

Secretary MINETA. The Senate version. Yes, sir. And also, as to whether or not those provisions are in violation of NAFTA, they would indicate that it is.

Senator MCCAIN. Well, I know that there will be further discussions and an examination of this issue with the Administration. Though there are many people involved in the deliberations, we need to have a very definitive position from the Administration on this issue since I think it would affect the level and tenor of the debate. It would be helpful to know the President's position not only as to whether it will provoke a veto if the Senate Appropria-

tions bill language were allowed to stand, but also whether those provisions would, upon review of the Administration, be in violation of the North American Free Trade Agreement.

Secretary MINETA. We are in the throes of preparing that comparison in terms of the conditions of the Murray amendment, but let me just give some general observations, that the terms of the amendment are overly rigid and burdensome, and that thought about whether or not we could be doing many of the things through administrative regulations rather than having it in the statute.

The cumulative effect of the 22 separate requirements, standing alone, many of the requirements would be acceptable, but taken in the aggregate, they could result in a violation of our commitments under NAFTA.

The additional cost that would be above what we had submitted originally, we, as I said submitted an $88.2 million request. The Senate did add, based on I believe it was Senator Hutchinson's amendment, $15 million, but in order to fully implement all of the requirements, it would cost an additional $77.3 million above the funds that had been requested by the President.

Senator MCCAIN. Thank you very much. Mr. Mineta, should all Canadian trucks be inspected? Mr. Mead? Yes? No?

Mr. MEAD. I don't think the same circumstance applies to the condition of Canadian trucks.

Senator MCCAIN. Thank you, Mr. Chairman. My time has expired.

The CHAIRMAN. Thank you. Senator Dorgan.

Senator DORGAN. Mr. Chairman. Let me ask you, Secretary Mineta, more specifically on the Murray provisions which in my opinion are not as effective as the Sabo amendment in the House. Which of the Murray provisions could not be complied with? I mean, it seems to me that if you oppose the Murray provisions, it is perhaps because you cannot comply with some or all of the provisions. Which of the provisions do you believe you are not able to comply with?

Secretary MINETA. Subsection 1–A of Section 343, that the Department of Transportation must conduct two full compliance reviews with satisfactory or better results of Mexican carriers who wish to go operate outside a commercial zone, and one of those would be a review prior to granting conditional authority and a second would be prior to granting permanent authority. Again, in terms of making sure that our inspection services are not any different from United States to Mexican, to Canadian carriers, that is not required of United States or Canadian carriers.

In terms of——

Senator DORGAN. Mr. Mineta. Mr. Secretary—just on that point, we do not require reciprocal requirements. For example, inspect meat from Canada. Right now today there is going to be a truckload of fresh meat coming to North Dakota from Canada. We do not accept that—we accept that. We have well-established that in Canada they have a rigid inspection process for meat which we accept. So it's not reciprocal treatment all around.

As we begin this process of certifying whether Mexican trucks are safe, this provision, Part A, talks about a full safety compliance

review consistent with and you are saying that that is unnecessary or that you cannot comply with it?

Secretary MINETA. I am saying that when that truck comes into the United States, that truck will have to observe all the rules, regulations and laws of the United States.

Senator DORGAN. But are you not able to comply with that Section A or you just disagree with it?

Secretary MINETA. No. In terms of conducting two full compliance reviews, to me would be very, very costly, very difficult to do.

Senator DORGAN. You think unnecessary?

Secretary MINETA. Compliance reviews, including going to Mexico to the terminals that they operate, and to deal with the inspection of the records at their site.

Senator DORGAN. So you believe it is unnecessary. Let me go on. Other than that one, are there other——

Secretary MINETA. I am not saying it is unnecessary. I am saying that under these two requirements of two full compliance reviews that that is, I think, more than what we really have to do.

Senator DORGAN. That is unnecessary. Mr. Secretary——

Secretary MINETA. We will be doing compliance reviews.

Senator DORGAN. Mr. Secretary, if you think it is unnecessary, fine, just say that. If you think it is too costly or unnecessary. I understand. Are there other portions of the Murray amendment that you believe you cannot comply with or that you think are unnecessary?

Let me come back to that just for a moment. I want to ask a question about numbers. Mr. Mead, you and Secretary Mineta talked about 80 new inspectors at the border. Now, my understanding is that in the budget submission to the Congress, 40 of those are in fact inspectors, and 40 of those are investigators. Is it your understanding that the investigators, which will be doing I think what is anticipated in Part A that the Secretary just described, they are not going to be out there on the line inspecting trucks so if you only have 40 rather than 80 as both you and the Secretary testified to, that comes up to a substantial number short of what you indicated in your testimony is necessary to have full coverage at the border. Can you describe that problem?

Mr. MEAD. Yes, it would. We have had some discussions in the Department about this. You should know that the 140 inspectors figure is one that we calculated in the Inspector General's office in 1998, made a recommendation on, and this Administration accepted. It was calculated on the assumption that you have inspectors at the border crossing during all hours of operation for each one of the crossings. There was some discussion earlier that maybe we do not need to deploy all of these inspectors at the border, but I think that issue has been resolved in the affirmative: they will be placed at the border and they will be inspectors.

Senator DORGAN. Mr. Mead, do you agree that we are short of that. The Secretary is testifying there are 80 new positions. Is it not the fact that 40 of those will not be inspecting trucks at the border?

Mr. MEAD. I believe that the Department is now committed. The Secretary will speak to this. We specifically had this discussion,

and I think that they are all going to be inspectors and they are all going to be at the border.

Senator DORGAN. General Mead, they are either going to be inspectors and inspecting trucks or they are going to be conducting investigations. My point is that the Secretary's testimony says that we have 80 new inspectors. The submission to the Congress for appropriations talks about 40 inspectors and 40 investigators. Those are very difference functions. Now, which of those functions will not be done in your judgment?

Mr. MEAD. Well, I understood that it was 80 inspectors. That is what I understood.

Senator DORGAN. So then where is the resources? Where will the resources for the investigations come from? My understanding from the appropriations submission is that you are talking about 40 inspectors and 40 investigators, and part of this discussion we just had about the Murray amendment is the requirement for safety compliance reviews. That is all investigated.

You are investigating the circumstances of that truck line, that industry. That is as opposed to full-time inspectors being available when a truck is presented at the border, and I just think someplace here we are short 40 people in terms of what is being represented in the Committee.

Mr. MEAD. I see your point. The staffing for the Motor Carrier Administration has been increasing sharply since the law was passed. And for 2002, they have asked for 850 people, compared to 714 in 2001. So some of those people would have to do the investigations.

Senator DORGAN. Let me just for the record, let me indicate that the Office of Inspector General report, interim report on the status of implementation, you say FMCSA has not released its plan for where these additional personnel will be stationed, however 40 will be inspectors and 40 will be investigators. Normally inspectors inspect commercial vehicles, drivers and—normally inspectors inspect commercial vehicles and drivers and investigators conduct compliance reviews of motor carriers.

My point is that the 80 number that has been given us today to try to assure us that you have got plenty of inspectors is not an 80 number that complies with what is in your report and in my judgment, doesn't correspond with what Mr. Mineta is saying the 80 would be used for. So we are missing—something is not being represented here.

Secretary MINETA. May I respond?

Senator DORGAN. Sure.

Secretary MINETA. The amount of money that we have requested is something like $50 million for facilities and then we have requested some $18 million for inspectors. You are correct. Some of those people are investigators, but they are also interchangeable. There is also an additional $18 million that will be going for state inspectors at the border. So it is not just the 80 additional that we are adding to the 60 we already have.

We are also implementing through the MCSAP program to the states additional inspectors at the crossing. Now, you were just asking a little while ago, are you going to be conducting compliance reviews? Yes, we are. But as you say, those are done by investiga-

tors, but these are interchangeable in terms of inspectors and investigators. And they can sit there and wear one hat 1 day and change it and do their inspections. They are not just clothed as investigators, or clothed as inspectors. They can take their hat off and go from a border crossing inspector to do compliance review at a terminal site in Guadalajara, Cancun, Chihuahua, or whatever and do inspections at the border. If we don't have that kind of flexibility to do this, then we will have to have more than what we have already requested in terms of money for the people we need to do the job.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman. I have been reading through all this. Senator Dorgan, whatever his bill is, actually lists several perspectives or principles that I think make a great deal of sense. They meet United States requirements. That there is full-time enforcement program with respect to compliance requirements, that you implement the Inspector General's recommendations, there is an ongoing program of monitoring, an evaluation in place.

I think a lot of that is very probative and helpful to me in this. One thing you could do is probably translate all this money that we are talking about in here into how many more full-time employees. How many more personnel will there be with this? Have you done any calculations on how this amount of money will calculate into the number of people actually inspecting and ensuring safety compliance?

Secretary MINETA. Our request, original request was based on our——

Senator ALLEN. Let us just assume you are adding another $15 million at least.

Secretary MINETA. We are adding $18 million in order to, when the Inspector General talked about needing 80 additional inspectors. That was what our $18 million request was based on to come up with the 80 additional bodies on top of the 60 that were already there. And then the balance, there is another $18 million that will go for state inspectors.

Senator ALLEN. How many will that translate to?

Secretary MINETA. 180 in terms of state inspectors.

Senator ALLEN. All right. Now, you are talking about needing land. If these trucks are defective, you park them. Generally, in the United States if they are parked, it is because they simply are not going to move them until they fix them. And maybe this is a common sense approach. Why don't we just require those trucks to turn around and go back to Mexico and let Mexico figure out where to park them while putting on some markings on it so that they do not just change the tractor.

Say the trailer was the problem, as opposed to the actual tractor. Why not just turn around and let Mexico worry about where the heck they are going to park them as opposed to us worrying about getting more land. Whoever is carrying the freight is pretty upset they have to bring another shipment vehicle.

Mr. MEAD. They often do send them back. It is just that logistically, you have all these trucks coming across and the chance of getting one that is fatally defective from a safety standpoint is

fairly high right now. They have to have somewhere to put them, even temporarily while they write out the paperwork, before they can turn them around and send them home. The point here is that when you only have room for a couple of trucks, that is not sufficient, and we ought to take advantage of whatever land we can use, even temporarily, that is on the site to park these out-of-service trucks.

Senator ALLEN. You were explaining this as if these trucks are just sitting there for a long while until some mechanic comes—or whatever they are going to do with them—or bring that tractor and send the other back.

Mr. MEAD. Sometimes that happens. I saw one of these inspections where you wouldn't want to turn the truck around—it did not have any brakes.

Senator ALLEN. In a roundabout way it might make the compliance people in Mexico be more concerned, as we would be, if that truck had gotten through. You mentioned on the analysis of those vehicles that had decals and you found the various compliance rates or defect rates of 24 percent in California, 50 percent in El Paso or somewhere in New Mexico.

Have you done any analysis of the truck that did have the decals to verify the credibility of those inspections and whether those—even in this country, there are folks who get their vehicles inspected and they wonder why some vehicles are passing inspection that shouldn't be passing it. Do you have any verification of the accuracy or credibility of those with decals?

Mr. MEAD. I have not done a quantitative analysis, Senator Allen, but I have spoken directly to the people at the Otay Mesa facility and asked that question. They said yes, they do see a difference—the fact is that the recurring 3-month inspection does have an effect. It is true sometimes you get a truck in there with the decal on it and it has a safety problem, but it tends not to be as grave as some of the others you might find, such as no brakes.

Senator ALLEN. Mr. Secretary, I think you ought to be quantifying success in whether you are doing things right in the ongoing aspects of this, and how are you going to quantify the safety compliance of these tractors and trailers and the capabilities of the drivers as this goes forward.

I think this is a very ambitious program to get this all done by the end of this year. But regardless of all of that, how are you going to quantify it? What matrix are you going to use to give us assurance other than there is a Mexican truck that has gotten in a wreck and that is less per mile than it is for United States trucks, and that sort of thing, as opposed to waiting until there is a wreck and comparing that collision record versus United States or Canadian vehicles. How are you going to determine that?

Secretary MINETA. Let me take first the driver's side. There is a commercial driver license requirement in Mexico. Mexico is building its database so that when that driver comes to the border, we are going to be able to have direct online capability into the data on that driver, through the commercial driver's license database, and be able to check it out that way.

We will also require as they are at the border, a physical inspection of the driver in terms of the license requirement, so that both

in terms of what Mexico is developing in its database and improving upon it, building that database, and our ability to get into it, I feel that we are working toward making sure that we have driver's safety requirements built in.

Second, as it relates to the truck site, again, when you look at the amount of traffic at the border, most of it is drayage. Some 4.5 million trips back and forth. That 4.5 million is across the border, just back and forth. Pick up a trailer, bring a trailer over, tractor goes back, picks up another trailer. It is back and forth. Those opeations are conducted by about roughly 80,000 trucks, I believe, is the number generally.

Now, of the 80,000 trucks, roughly, I think about 63,000, as I recall, 65,000 were Mexican trucks. And of the Mexican trucks, I believe, something like 47,000 were inspected. So of the trucks that are back and forth, of the Mexican trucks that are going back and forth, we have a relatively high number being inspected right now. That will be intensifying in terms of what we are attempting to implement through our appropriations request.

So that we have both on the driver's side, as well as on the truck side, the ability to do the kind of inspections that the arbitration panel said, "United States, you are in violation of the NAFTA treaty, but also United States, you can impose your rules, regulations and laws against the Mexican carriers coming in." And that is all we are trying to do is to use those safety regulations, no more, no less, and to apply it against those trucks coming in.

Now, I do not believe we are prepared to be able to deal with the whole truck, whether it is coming in just across the commercial zone back and forth, or the truck that decides to come through that is destined for Cleveland or Chicago or New York. Because under the NAFTA agreement, again, I don't recall the exact dates, but I believe it said that by 1995, trucks would be allowed to go beyond the commercial zone to within the border of the four border states.

And then in the year 2000, January 1, 2000, I believe it was, they would be able to go anywhere in the United States. Since the 1995 and 2000 deadlines were not met, we are going to be collapsing both of those to allow both commercial zone traffic, as well as beyond commercial zone traffic to be implemented on January 1, 2002. And we will have again the kind of rigorous inspection of the driver and the trucks of those long haul operators.

On the other hand, my observation has been the long haul operators in Mexico are as good truck operators as United States truck companies. And so my concern is really more with the drayage type operation. We will have equal focus on the long haul carriers. But I have found them to be very good truck operators.

Senator ALLEN. Mr. Chairman, let me just——

The CHAIRMAN. It is about a 10-minute answer and Senator Boxer has been waiting.

Senator ALLEN. No. 1, if you would provide us a specific bill of analysis, legal analysis as to why you think that the Murray amendment or any of these somehow are in legal violation of NAFTA.

Finally, gentlemen, I think to get sufficient confidence-at least in the Senate-to support what you are trying to do as far as the safety compliance, you in the administration are going to have to perform

more duties than you may think are necessary to get enough votes for this, so I——

Secretary MINETA. I am willing to step up to that if I am given the resources to meet those requirements.

The CHAIRMAN. Senator Boxer.

Senator BOXER. Thanks, Mr. Chairman. I have to say I cannot overstate my concern, and sometimes at hearings you feel better, you know, after a while. You come in with a concern. You feel better. I am feeling worse. Mr. Mead, I say to you, you have a lovely smile, but you have got some situation to monitor here, and we are going to be counting on to you monitor it in the most straightforward way.

When we talk about Senator Dorgan's question about 40 inspectors and 40 investigators and Mr. Mineta says well, they are interchangeable. If I had an accident and I go to an insurance company and someone investigates that accident, I do not want that guy fixing my car. It is a very different set of skills. So let us be careful and precise.

Now, my understanding is we are currently inspecting, Federal Government, 1 percent of the trucks, and out of that 1 percent, and you can fudge it any way, you can come up with any number you want, and I will show you where I got that, 36 percent of those failed that inspection and Mr. Mead talks about a truck, he couldn't bring it back over the border because it had no brakes. Well imagine, we are only inspecting 1 percent.

And then I look at my state that is putting tens of millions of dollars of its state money, and we talk about unfunded mandates. This was one of the issues with NAFTA that was raised by many of us. You know, what happens when the state now has to fund some of the problems?

Mr. Mead, where would you be if California said today, this is a Federal Government responsibility, we did not sign on to NAFTA, we are out of the inspection business. Where would you be?

Mr. MEAD. I am glad you raised that. Do you know for years on this NAFTA issue, there has been a dispute between the Federal Government and the States?

Senator BOXER. I do not want you to get into that. I am asking you where would you be if the state——

Mr. MEAD. If California were to stop inspecting, you would be in real trouble; there is no doubt about it. You have nice facilities there, and we need to replicate them all along the Southern border.

Senator BOXER. We have a situation where we are responsible for NAFTA and we have a huge unfunded mandate on the states and some of the states aren't stepping up to the plate. Maybe they do not have the resources. They have other problems, priorities. I am in no position to be critical. But this is very discouraging to me.

Now, Secretary Mineta, you say that you recommend to the President that he veto the bill if the Murray language goes through. I want to read to you the description of what Murray is, and by the way it is Murray-Shelby, Mr. Chairman. This is bipartisan.

Language prohibits the DOT from granting operating authority until a number of safety and compliance measures are put in place. These measures include adequate border staffing, inspection facili-

ties, the ability to check the validity of Mexican driver's licenses, vehicle registration, and to verify insurance.

Now, I do not think this is a radical trade busting amendment here, and I say this, if the President vetoes this legislation, the transportation appropriation because of this, I think he is going to be subjected to a lot of criticism and I think it will be well-placed. We have to ensure that our people are safe.

Even with our own truck drivers, we have problems today. A lot of us are worried that they are working too long. My goodness. I was at a press conference a year ago with victims, and I say this to my colleagues, because we all do these, we all meet the families of victims. And look in their eyes and trucks where the drivers were tired and so on and so forth. I have shown you the difference in the laws here. They do not have random drug testing there. They get paid 7 bucks a day. We have a different situation than we have in countries where we have very similar laws. So I would hope there would be no veto threat, but rather that we roll up our sleeves and get the work done.

Mr. Mineta, I want to ask you this. You threatened to veto if the Murray-Shelby language goes through. Do you threaten to veto if the House action goes through? You did not mention that.

Secretary MINETA. Senator Boxer, let me recap what I said, and I apologize.

Senator BOXER. I have so little time. Can you just answer the question.

Secretary MINETA. First of all, I misspoke. The—first of all, it is not my recommendation about a veto. That came from senior advisors to the President. If I said Murray amendment, I apologize. I really meant the House language, the House-passed bill.

Senator BOXER. Okay.

Secretary MINETA. I apologize if I said——

Senator BOXER. So in other words, the senior staffers to the President are not recommending a veto if the Murray-Shelby language stays. They are if the Don Young——

Secretary MINETA. I am talking about the difficulty in some of the requirements in Murray, but the veto was regarding the House-passed bill.

Senator BOXER. That is important. I am glad that you clarified that because I look at the Murray amendment, I can't imagine why anybody would veto over something I think is pretty mild. I have a number of questions and my time is running out so let me just before it runs out say the areas I am concerned about.

The proposed rules for Mexican trucks require carriers to maintain copies of their proof of insurance in all trucks crossing the border. Do Federal inspectors check for the proof of insurance at this time? Mr. Mead?

Mr. MEAD. Yes, they do, but the carriers often just buy 1 day insurance when they are coming across.

Senator BOXER. That is very interesting.

Mr. MEAD. What we would like to see, based on our work, is an inspection of the carrier itself and their certificate of insurance. The insurance information would be entered into an automated database, and when a truck tries to get clearance to come into the United States, an inspector would enter the firm's identifying infor-

mation and access the database showing evidence that the firm has insurance.

Senator BOXER. My time is up but this has made me even more nervous. A 1-day insurance and then by the way, only 1 percent of the trucks are inspected. Imagine how many trucks are going back and forth with no insurance, and wait until, God forbid, something happens to someone we care about in our states. This is a nightmare. We are not ready for this. We will be some day. We are not ready for this. I am increasingly concerned. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Stevens.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Mr. Secretary, I want to make sure about this because I have a substantial disagreement over the current version of our transportation bill from the Senator from Arizona. Am I to understand that your statement about the veto reference was that it applied to the House bill, but not to the Murray-Shelby amendment?

Secretary MINETA. That is correct. I misspoke on that in terms of the veto. The veto message, so to speak, that it applied to the House bill.

Senator STEVENS. I thank you for that and I hope that Senator McCain's assistants will convey that to him because it is going to be substantial scrutiny and it changes a statement I was going to make, Mr. Secretary, because our Appropriations Committee voted unanimously to accept the amendment that is in the bill on the basis of the representation that was made to us that the administration preferred that substantially as opposed to the House version of the bill, that there was still some items they wished to negotiate, but they did support that amendment to go to conference.

Now, I think it is very important for us to do that, to have that understanding of where the administration stands as we go to the floor. But one thing that bothers me, Mr. Mead, is as I understand it, there is a series of these areas, crossings and I should say parenthetically as chairman of the Appropriations Committee, I took portions of the Committee down to the border 2 years ago and was appalled at some of the things we saw down there in terms of lack of inspection and the way trucks were just coming through. How many of the border crossings—we do not have full inspection staffs. What is that figure? There are 27 crossings, right?

Mr. MEAD. 25. The example I gave about Laredo, that is probably the busiest crossing. They do not have sufficient coverage there for all operating hours even during the weekdays. And on the weekends, they had none at all. So that needs to change.

Senator STEVENS. I apologize for coming in late. I had another meeting, and I have got to leave in a few minutes for another. But we will not get the full shot of these testimonies today. Did any of you talk about the number of these trucks that have been involved in accidents in our country? Do we have that accident rate?

Mr. MEAD. No. And we do not know.

Senator STEVENS. You estimate that the number of Mexican trucks operating across the border can range from 63,000 to 89,000 and that 26,000 of them were inspected at least one time during fiscal year 2000, right?

Mr. MEAD. Yes, sir.

Senator STEVENS. If we have the funds that are in this bill we were talking about, particularly the Senate version, can you give us an estimate how much the inspections will increase? If we approve the money that was asked for plus the additional $15 million that we have provided in the Senate version bill, do you know how many inspections there will be, how that would increase inspections and how many border crossings we will cover?

Mr. MEAD. We will have every border crossing covered during all operating hours. However, the analysis has not been done to determine how many inspections that will translate into, and it probably ought to be done. There is also the point Senator Dorgan raised about the number of investigators that would be needed to perform safety reviews, which would be different from actually inspecting the trucks at the border. I apologize for that Senator Dorgan, I did not quite grasp the question.

Senator STEVENS. My memory was when we discussed NAFTA, that there was an understanding that these trucks that were not inspected would not go beyond 25 miles from the border. Is that 25-mile limitation still in place?

Mr. MEAD. Yes. What you are referring to is a commercial zone, which is usually 20 miles, and in some cases, I think it is even less than that. Mexican trucks can go in there now, but they need operating authority to do so.

Senator STEVENS. Operating authority in terms of inspection of the system that they run, right, rather than individual trucks?

Mr. MEAD. Sir, now only individual trucks are inspected.

Senator STEVENS. It is. I thought there was inspection of a system of the organization and that they ran the trucks.

Mr. MEAD. A review of a Mexican carrier is not yet in place. That is part of the Department's proposal, and it needs to be put in place. Right now they just inspect trucks and drivers.

Senator STEVENS. I am interested in Senator Dorgan's comparison of the Canadian border to the Mexican border. I am sure we have great friends on both sides of the border, but the Canadian side is based on an understanding of the totality of inspections on their side, as compared to the totality of inspections on our side. We have sort of a mirror. What they do, we do, as I understand it. Do we have that arrangement with the Mexicans? Do they perform inspections on their side of our trucks?

Mr. MEAD. We have not seen evidence of that.

The CHAIRMAN. Evidence of it.

Senator STEVENS. Are our trucks allowed into Mexico as freely as their trucks are allowed into our country?

Mr. MEAD. It is the same restriction. Our trucks do not go into the interior of Mexico, they go down to the commercial zone.

Senator STEVENS. I am interested now in these 25 states where they have showed up. How do we get those statistics where, we found these trucks in 25 other states?

Mr. MEAD. Because a policeman inspected them, Senator Stevens. A policeman stopped the truck and it turned out to be a Mexican truck operating illegally without any authority at all outside the border states.

Senator STEVENS. Did you have any of your investigations talk about violation of immigration laws on those trucks? I heard about some. I am wondering if you sent them up?

Mr. MEAD. No, sir, I'm not familiar with that.

Senator DORGAN. Mr. Chairman, would the Senator from Alaska yield?

Senator STEVENS. I do not have any time left, I do have to leave. I would say this to my friend, we are committed to this amendment, Mr. Secretary, because we voted unanimously for it. When we get to the floor, if you have some suggestions to make, I hope you deliver them to us and I hope we do not find opposition to something we approved on the basis of representation that is something that the administration favored as opposed to the House bill.

The CHAIRMAN. That's exactly why I asked that you list those serious concerns or the conditions, and I would say in the Committee bill. Go ahead.

Senator DORGAN. The Senator from Alaska indicated he felt from some discussions that the administration perhaps supported the Murray amendment coming out of the Committee. From the testimony here, it wasn't clear to me whether they simply do not oppose it or I guess the testimony is they would veto the Sabo amendment.

Senator STEVENS. They indicated they preferred it to the House version of the bill.

Senator DORGAN. The reason I ask the question, does that mean they support the Murray amendment?

Senator STEVENS. That was our understanding. They weren't overjoyed with it, but they preferred it to the House bill, and we were told there would be some discussion about some of the provisions that we have not had yet.

The CHAIRMAN. Mr. Secretary, on behalf of the Committee, do you favor the Senate bill?

Secretary MINETA. No, sir. I do not.

The CHAIRMAN. Why not?

Secretary MINETA. Because of the requirements it places on me in terms of some of the certification requirements, even in terms of as I look at weigh-in-motion devices and scales at the same place. I do not know why we would want to do that. Why would we want to put weigh-in-motion devices at an inspection station? Weigh-in-motion devices cost maybe three quarters of a million dollars.

Senator STEVENS. May I suggest, Mr. Secretary, that you get together with the chairman and ranking member of that Subcommittee. This bill is going to come up early next week, and it is currently scheduled to have 1 day. It sounds to me like it could take more than a day to explore this amendment unless we resolve some of your objections before it gets there, and I think we could.

Secretary MINETA. We will do that. Senator, in response to your request about accident rates for Mexican trucks within commercial zones, the accident rate is .07. Now, as far as I know, there have only been 56 trucks that have gone beyond the commercial zone

into other states, and, but that is, that determines the accident rate is .07.

The CHAIRMAN. Senator Nelson?

Senator NELSON. I will wait until the next round.

The CHAIRMAN. Senator Fitzgerald?

STATEMENT OF HON. PETER FITZGERALD, U.S. SENATOR FROM ILLINOIS

Senator FITZGERALD. Thank you, Mr. Chairman. I want to welcome the Secretary and the Inspector General to the Committee. I want to compliment the Secretary. I think he has been doing a wonderful job as the head of the Department of Transportation and I think your experience is showing. You have vast knowledge in a wide range of areas.

I think I just want to reiterate what Senator Stevens said. If we could get some clarification as to the DOT's position with respect to the Murray-Shelby amendment, maybe different than the White House's opinion, in any respect, we ought to iron those differences out and get some clear guidance before we have that bill on the floor.

This past Sunday, Vincente Fox, the President of Mexico, was in Chicago, and Senator Durbin and I had the opportunity to talk to him about this very issue. And I do know that this is a very important issue, and our solving it will go a long way toward enhancing our friendship with our neighbors to the south. I do hope that our country can comply with NAFTA, and I think that if we can put a man on the moon or even have a successful test of our missile defense system, we should be able to find a way to comply with NAFTA while at the same time having proper oversight over the safety of our trucks in this country.

But I do not think that the safety issue should be minimized. It is a legitimate issue. As you know, in my state of Illinois, we had a situation where there were bribes for commercial driver's licenses, schemes which resulted in some trucking firms paying bribes to have inspectors from the Secretary of State's office issue driver's licenses to people who are not qualified—commercial driver's licenses—and we had some serious injuries, even fatalities.

In one case, an unqualified truck driver was driving a truck just south of our northern Illinois border with Wisconsin, a piece fell off the truck, it hit the car behind them, there were seven children in that car who died in the fiery accident, and the parents survived. They lost seven kids. So there are serious consequences that have real-life implications if we do not ensure the safety of our trucks.

I guess I would want to ask, Mr. Mead, do you believe that if you received the additional funding that you requested, and that you did the things you were going to do, that that would reasonably guarantee that the safety of Mexican trucks would be comparable to that of United States and Canadian trucks?

Mr. MEAD. Well, as you know, the Inspector General makes recommendations. We do not administer the programs, but we made some recommendations. I believe from the Secretary's statement that the Department is saying that it is prepared in substantial part to adopt them. I think this is very ambitious. I think the administration's budget request of $88 million extra was very much

needed, and I am sure that the plus up that the Senate provided, although it wasn't in the President's budget request, could probably be put to good use at the border.

Senator FITZGERALD. My understanding is that right now Mexican long haul trucks that are headed for Canada are able to travel through the United States, and maybe I am not informed properly on that, but if their destination is in Canada, as opposed to in the United States, are they able to pass through?

Mr. MEAD. Technically yes.

Senator FITZGERALD. They are?

Mr. MEAD. I think so.

Senator FITZGERALD. And are they doing that now?

Mr. MEAD. Yes.

Senator FITZGERALD. Is there any evidence that those Mexican trucks which are passing through the United States on the way to Canada are less safe than our United States trucks, or do we have any information on that?

Mr. MEAD. No. No evidence.

Senator FITZGERALD. But they are driving through on their way to Canada right now without restriction?

Mr. MEAD. That is my understanding. I can't quantify that. I don't know how much, but it is technically legal.

Senator FITZGERALD. So that is kind of a—that is a little bit of a glitch here then. Also, my understanding is a United States firm that owns a Mexican trucking company is able to have its subsidiary company from Mexico drive on our highways. Is that correct?

Mr. MEAD. Yes. That carrier is considered a Mexican domiciled carrier, with U.S. ownership. The trucks we are speaking of today are primarily Mexican domiciled carriers, with Mexican ownership.

Senator FITZGERALD. The bottom line, if you have the United States firms that own Mexican trucking companies and you have Mexican trucking companies whose destination is Canada, there are a lot of Mexican trucks coming through the United States right now as we hold this hearing, without restriction.

Mr. MEAD. I wouldn't go so far as to quantify it. I can't support the quantification that you just did.

Senator FITZGERALD. There would be some?

Mr. MEAD. There would be some. Yes, sir.

Senator FITZGERALD. Okay. One final question, in that accident that we had in Illinois, there was evidence that the driver was unable to read English. And that clearly can be a problem if you cannot read our road signs here in the United States. Has there been any discussion about some kind of requirement that the drivers from Mexico be able to understand our road signs?

Mr. MEAD. Yes. They are supposed to be able to do so.

Senator FITZGERALD. Okay, and that is current law now? Current requirements?

Mr. MEAD. Yes.

Senator FITZGERALD. Okay. With that, Mr. Chairman, thank you very much.

The CHAIRMAN. Back to you, Senator Nelson.

STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA

Senator NELSON. Mr. Chairman, thank you. I want to refer to Senator Boxer's chart here and ask the two panelists if that is an accurate comparison in your understanding of the difference between the Mexican standards and the United States standards?

Secretary MINETA. Senator Nelson, the—those are United States requirements, and it is true that Mexico does not have those laws. But by the same token, once their driver or their truck comes into the border, then they are required to comply with United States laws, rules and regulations. And that is what we are attempting to, since I have been there since the 25th of January, my whole effort has been to make sure that trucks and drivers that are coming in are safe.

We could have all the laws that we might have, whether it is on trucking or on other things, but they do not necessarily apply in a foreign country, and so yes, that is correct. Those are United States laws. That is the state of Mexican law, but our laws do not apply in Mexico, but our laws do apply to their trucks and drivers when they come in.

Mr. MEAD. There have been a couple of developments in the past year that put an asterisk on that. The logbooks, where drivers record where they are going and how long they have been driving, are now required of Mexican drivers, and that is an important step because before March of 2000, Mexico did not require them except for hauling hazardous material.

The next step would be hours of service, but at least logbooks are required to record the time that they are driving. We understand that they recently adopted vehicle inspection standards. I think it is also fair to say they have made some progress in establishing databases that record carrier information and which drivers have commercial licenses.

Senator NELSON. Well, I think from this comparison, Mr. Mineta, the Secretary, would understand, as well as any of us up here having been a very distinguished member of the House, and representing a constituency, that the American people, if they know this and know that trucks from Mexico operating under these standards, they are simply not going to tolerate this. The American people, if they knew this, that Mexican trucks were operating on United States highways with these kind of lax or lessened conditions, you know, are going to absolutely insist of their elected representatives that we not allow this to occur.

Now, let me ask you, if in fact that the Congress did not provide the adequate funding for the inspections, what would the administration respond? Would you continue the current implementation schedule?

Secretary MINETA. I am not sure what you mean, because we wouldn't be able to implement anything. We do not have any, based on the House bill, they have knocked out all the $88.2 million funding that we requested, and they adopted the Sabo amendment which prohibits us from processing any motor carrier applications. So based on the House bill, we have nothing to do.

Senator NELSON. So if at the end of the day in appropriations, it was not provided for all of the additional inspections and so

forth, would those Mexican trucks still be allowed to enter the United States and operate on the American highways?

Secretary MINETA. Within the commercial zone, they would still, I believe be able to operate.

Senator NELSON. And I am sorry that I wasn't here earlier to hear you define the commercial zone.

Secretary MINETA. 20 miles within the border.

Senator NELSON. Mr. Chairman, thank you very much.

The CHAIRMAN. Thank you, Senator Dorgan has one point of clarification.

Senator DORGAN. Mr. Chairman, I want to go back to this issue of inspectors because while I disagree with the Secretary, I have great respect for the Secretary and I am pleased that he has come today to answer questions.

The success or failure of what the administration and the Secretary want to do depends directly on a couple of things, one of which is having adequate resources to do the inspections, and I made the point that the Inspector General indicates that they have previously estimated they would need 139 inspectors to provide sufficient coverage at all crossings during operating hours. And that there are now 58 inspectors in place, 60 authorized, 58 in place, and that there are, according to the Secretary's testimony, 80 additional Federal inspectors to perform safety inspections.

But my question was, is it not the case that 40 of those 80 are investigators to do the compliance reviews and so on, if so, if that is the case, if they are only 40 additional inspectors, it seems to me you are short of doing the inspections that you say are necessary in order to ensure safety on America's roads. Mr. Mead wanted to speak to that and I want on to another question. Mr. Mead, am I correct here in the way that I look at these numbers?

Mr. MEAD. Yes. There is money in the budget for the state inspectors. What happened here was we did our calculation of how many Federal inspectors you would need, inspectors, not investigators, and the number was about 139. We made that recommendation in 1998 based on our calculation. As you know, we make recommendations, people are free to accept or reject them.

The Federal Motor Carrier Safety Administration thought, yes, we can see the point for 140, but of the 80, which is what you are referring to, we need 40 of those as investigators, people that would do things like safety and compliance reviews, and the other 40 we will put right at the border. When we learned of that, and we reflected this in our report to you, we said, "no", our calculation was that we needed 139 Federal Inspectors at the crossings to provide coverage. Now, if the Department needs additional Federal people to do compliance reviews or safety reviews, then they would have to provide you an estimate of what the plus up would be to do those or which current resources they would use to perform these reviews.

Secretary MINETA. Mr. Chairman, the—in terms of the combination of state and Federal enforcement people, these are inspectors, the total will be 496. Now, to put that figure in perspective, in December 1995, there were seven Federal safety inspectors at the border and about 45 state inspectors. So we have gone from roughly

52 now to 496 if we get our request approved. And I am not sure really where this division of 40 comes.

Senator DORGAN. Mr. Secretary, while you are getting that, I mean it comes from what I had read previously to you. The—let me also just mention that the map that the Inspector General provided in his IG report shows that we have had Mexican trucks in North Dakota, and yet you seem to suggest that it is just sort of a minimum problem of having these trucks violate the 20-mile limit. I do not know.

Secretary MINETA. I have been told there are 56 trucks in that situation. 56 carriers.

Senator DORGAN. 56 carriers. That is a big difference. But how on earth would we know how many trucks have come in if the Inspector General was telling us the states in which they have been apprehended and my point is they have been moving up in North Dakota. I do not know at this point what's been happening except I do not—look, Mr. Chairman, I don't think there is a ghost of a chance of accomplishing what you want to accomplish at the end of this year, and I just think that there is a lot of fuzzy math being used in all of these numbers about inspectors and compliance and so on. I am only interested in the issues of trucker safety and I do not think there is a ghost of a chance of accomplishing what you want to accomplish at the end of this year.

Secretary MINETA. Well, Senator, I am trying my best to try to put an effective program together. That is my responsibility. So given the resources we have in terms of money and people, and to try to—where very little had been done in the past, I am trying to get the resources and the people to make sure that safety, because that is our paramount interest, that safety is adhered to, and so again, I am trying to make sure that in terms of inspections at the border, whenever those border crossings are open, that we in fact will have inspectors there. To me, that is an obligation that I want to follow really closely.

The CHAIRMAN. Very good.

Senator NELSON. Mr. Chairman? May I just ask one followup?

The CHAIRMAN. We have two other panels here.

Senator NELSON. I understand. Just a very quick followup, Mr. Chairman, if I may. I just want to make sure that I did not misunderstand the Secretary. Senator Murray is ready to come to the floor, I think tonight with her transportation appropriations bill. And in there, she is going to have either an amendment offered or it is already going to be in the bill, I know not which.

The CHAIRMAN. It is in the bill.

Senator NELSON. Prohibiting DOT from granting operating authority until a number of safety and compliance measures are put in place. And those, Senator Boxer has already articulated, such as adequate border staffing, inspection facilities, the ability to check the validity of the Mexican driver's licenses, vehicle registration and verifying insurance.

Now, is it the administration's position that you do not support that provision in the transportation bill?

Secretary MINETA. You mentioned the insurance provision, Mr. Chairman, may I respond on that?

The CHAIRMAN. Yes.

Secretary MINETA. In the Murray language, as I recall, it says that the insurance must be provided by an American insurance company. There are no other laws that require that United States companies be the insurer of a foreign entity doing business here. And some questions have been raised as to whether or not that is a WTO violation. I have not gotten to the end of the story to see whether or not that in fact is true.

But there are a number of those kinds of requirements in the Murray—I can implement or certify to I think in terms of driver licenses, we have the ability to get on-line with their information system. Their system may not be as robust or as good as ours, but I think given the time that they have had to try to implement it, I think they have made very strong efforts at trying to get their commercial driver's license requirements up.

Senator NELSON. So your answer is there are parts that you support. There are parts that you do not support, but when confronted with how we will be voting, the administration is opposed to the provision included within the transportation appropriation, is that correct?

Secretary MINETA. Because of the certification requirement on me. You know, I——

Senator NELSON. Okay. I do not want to take the time of the chairman.

The CHAIRMAN. We have got to move on. Senator Boxer.

Senator NELSON. I just want to add that I think, Mr. Secretary, you are one of the people in government that I admire most and I think that policy as articulated by the administration is clearly out of step with the American people.

The CHAIRMAN. Senator Boxer.

Senator BOXER. Mr. Chairman, I will be very fast here. Under the administration's proposed rules, Mr. Mineta, for allowing NAFTA trucks access, offenses committed by NAFTA motor carriers call for letters to be sent to the company that they work for, but for the same violations, United States drivers are subjected to fines, suspension of operating authority, and even criminal penalties.

Now, how is this a level playing field for United States drivers which you say that you support? How is it a United States, how are United States drivers in a level playing field situation when if they have an offense, they are subject to all kinds of fines and revocations and all you need to do is send a letter to the company?

How could you stand behind that? I don't understand.

Secretary MINETA. Well, they will be, first of all, subject to the same fines and violations. When you added operating authority, I am not sure how we impact on the operating authority of the carrier through a driver violation. On that, I would have to take a look at it. But in terms of fines, penalties, those are, would be meted out.

Senator BOXER. Where is the paper on that because the paper we saw is quite different. Do you have paper where you made this recommendation? Is it equal to the truck drivers in America, exactly equal, the same kind of penalties, because we have not seen that information.

Secretary MINETA. Let me get it for you, but as far as I know——

Senator BOXER. Where is it? Where would I find that information?

Secretary MINETA. In May, we proposed rules. They were in the Register. The comment period has now closed on those rules, but in that proposed rulemaking, that was in there.

Senator BOXER. So you are saying there will be equal penalties for the Mexican driver as there are for the American driver, and I have yet to see that, so I look forward to reading that rule and I will do that during the next panel.

Secretary MINETA. We will get that to you.

The CHAIRMAN. Secretary Mineta, you can tell by the question, what we did in the Appropriations Committee, we have worked very closely with your Department of Transportation and our staff here at the authorizing Committee and for example, with respect to insurance, a requirement that they be based in-country, in the United States, licensed in the United States is required by Canada of us and us from Canada, and you got that information that there had to be a United States company license to cover that Mexican carrier.

We got that from your department, so let us get together this afternoon here and with your department and outline the various points in the Shelby-Murray amendment because we will be debating it and the whole intent that was passed out unanimously from our Appropriations Committee is to present a bill that the President would sign. We are not trying to be confrontational. It is very interesting and amusing in a sense. Our differences this morning is not with Mexico. It is with us. Thank you very, very much.

Secretary MINETA. I think I want to thank you as well, Mr. Chairman. But no, it's——

The CHAIRMAN. You all both have been very helpful to the Committee.

Secretary MINETA. It is always been my pleasure to be before this Committee and to be with my colleagues from the House, as well. I never had the opportunity to serve with you, Senator, but you know, in terms of the chairmanship of this Committee, your stewardship has been great and so I appreciate your leadership.

The CHAIRMAN. You have been admired by all of us on the Senate side for years. So thank you very, very much. Will the next panel come forward, please, the next two panels. We have Captain Steve Vaughn, the president of the Commercial Vehicle Safety Alliance, James P. Hoffa, the general president of the International Brotherhood of Teamsters, Duane Acklie, the chairman of the American Trucking Associations, Edward Emmett, president of the National Industrial Transportation League, Ms. Joan Claybrook, the president of Public Citizen, and Mr. Peter J. Pantuso, president and CEO of the American Bus Association.

Let us try and do it as orderly and as quickly as we can. The reason I am combining the two panels is so that we will get their full statements in before the Committee before we have this roll call.

We welcome you all and we really appreciate your patience and understanding of the situation we have got here this morning. All of the full statements will be included in the record and we will ask five or six, at least a half hour there, to try to summarize within

5 minutes your particular presentation. We will start here on the left with Captain Vaughn.

Captain VAUGHN. Thank you.

The CHAIRMAN. Move the microphone so you can be heard, Captain.

STATEMENT OF CAPTAIN STEVE VAUGHN, PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE

Captain VAUGHN. Thank you very much, Mr. Chairman. My name is Steve Vaughn and I currently serve as the president of the Commercial Vehicle Safety Alliance. Thank you for allowing me to testify on behalf of CVSA.

CVSA represents law enforcement agencies in all 50 states, Canadian provinces, and Mexico. If I may, Mr. Chairman, I would like to submit a written statement for the record that supersedes the statement by CVSA on Monday, July 16th, 2001. Technical changes were made to Section 4 of our previous submission, and I will give that to the Committee.

Chairman HOLLINGS. Move that microphone a little bit closer, please.

Captain VAUGHN. How is that?

Chairman HOLLINGS. Go ahead. That is much better.

Captain VAUGHN. I will offer you today both through the testimony today and through our written statement CVSA's perspective on the most recent border plan for consideration that has been addressed in a very comprehensive manner last week by the Senate Appropriations Committee. Also I believe that our written statement addresses the questions and concerns that were discussed here earlier by this Committee in the earlier testimony.

Furthermore, I will discuss the approach the Commercial Vehicle Safety Alliance has recommended since the issue has become a high priority this year. And last, I will touch upon the rulemaking recently proposed by the Department of Transportation.

CVSA offers its support and assistance in the directive of the Appropriations Committee that a full safety compliance review of Mexican carriers be conducted before entering the United States However as a practical matter, we suggest that a different approach also be considered.

As I will shortly point out in more detail, conducting case studies is one of the initiatives CVSA recommends in our plan. We think this will better serve the intended results of this specific directive as well as many of the other provisions. We have studied these provisions of the Appropriations Committee specifying a determination of the appropriate level of inspectors at the border and their on-duty requirements, as well as the level of other infrastructure facilities. We urge that serious consideration be given to limiting the number of openings at the border crossings designated by each state as a commercial motor vehicle crossing.

Almost 96 percent of all commercial vehicle traffic occurs at 10 of the 27 southern border crossings. By phasing in the opening of the border and limiting commercial traffic to the 10 crossings, a more realistic determination of the need for full-time staffing and other infrastructure requirements can be made. Just as important in the short term, it will be easier for both the United States DOT

and border state enforcement agencies to better allocate and concentrate resources where they are most needed.

As I already indicated earlier this year, when the NAFTA issue rose to the forefront, CVSA developed a plan to address this issue. It is designed to gather information on and educate those carriers that seek authority to do business throughout the United States. In all of the NAFTA discussions in recent years, there has been little, if any, data collected on these carriers.

This lack of information with respect to Mexican carriers is largely due to the fact that one, until recently there have been very few safety regulatory requirements on Mexican carriers which would be comparable to those placed on carriers in the United States and Canada. Two, there are a limited number of personnel trained and continually performing oversight functions in Mexico. And three, the current motor carrier safety information infrastructure has not been in place long enough to capture and record the results of the oversight being performed by the Mexican Government.

The key elements of our plan are to, in conjunction with Mexico, prepare an analysis of the Mexican government's current and planned safety regulations, policies, procedures and penalty structures as related to the oversight of the commercial vehicle industry.

In-depth, 1-day case studies on the Mexican motor carriers seeking cross-border authority. These onsite visits in Mexico will include the evaluation of company safety management practices, review of crash records, knowledge and compliance with United States regulations, vehicle inspections, driver selection and training, dispatch operations, maintenance programs, drug and alcohol testing programs and overall company management—many of the elements that are contained in compliance reviews that were addressed earlier.

Most importantly, this will be done jointly with the Mexican government officials and this can serve as a training for them as well, as they have sought our assistance.

Conduct CVSA Inspection Familiarization Seminars or similar seminars at strategic locations across Mexico, and to be coordinated with the government and industry associations.

Develop educational kits for the motor carriers and drivers which can be provided during case studies, inspection seminars and roadside inspections.

Develop options for technology implementation. In addition, to the tools available, which were mentioned by Mr. Mead, we can use the CVSA decal which we apply in California as a means to award vehicles that are inspected and found not to have any critical safety defects.

Create a database for recording and managing the information from the above activities. This information can be fed into the Motor Carrier Management Informational System known as MCMIS so that both Federal and state enforcement officials in both Mexico and the United States have access to the data.

Mr. Chairman, it is important to recognize that this approach, which CVSA is presenting, will allow the existing institutional and technology infrastructure to be used to facilitate operations without having to make major changes to policy, procedures, legislation, or

expend a large amount of resources. Equally important is that these activities are front-loaded so that we can have information to make more informed decisions on what to do and what not to do.

This is extremely critical since our member agencies are implementing commercial vehicle safety programs based on carrier performance. CVSA is uniquely qualified to be a lead partner in carrying out this plan with our mission and goal to foster uniform international commercial vehicle safety standards.

We appreciate the efforts made by the Federal Motor Carrier Safety Administration in issuing its rulemaking. However we have serious reservations about this approach and confining NAFTA planning to rulemaking alone. It precludes the necessary cooperation and partnership with the states and with groups such as CVSA that can be of great assistance in this effort.

We also have concerns about DOT's proposal. It places almost the entire emphasis on state enforcement activity along the border and thus a greater burden on state inspectors throughout the United States and Canada. Our detailed analysis and concerns about the proposed rules have been filed in the docket.

We hope that Secretary Mineta will stress to FMCSA the importance of a cooperative, true partnership approach on the NAFTA issue. We believe that provided with the proper direction and authority, by working in a cooperative fashion, we can keep our commitment to Mexico, provide the appropriate safety assurances to the traveling public, and limit the operational impacts. Thank you, Mr. Chairman, for the opportunity to speak before this Committee and I will answer any questions you might have.

[The prepared statement of Captain Vaughn follows:]

PREPARED STATEMENT OF CAPTAIN STEVE VAUGHN, PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE

I. Introduction

My name is Steve Vaughn, and I currently serve as the President of the Commercial Vehicle Safety Alliance (CVSA). I am also a Captain with the California Highway Patrol presently serving as the Commander of the Motor Transport Section Thank you for holding this hearing and for inviting me to testify on behalf of CVSA and the State of California.

CVSA is an organization of commercial vehicle enforcement agencies and industry representatives in the U.S., Canada, and Mexico. It's mission is to achieve uniformity, compatibility and reciprocity of commercial vehicle inspections and enforcement activities throughout North American through effective motor carrier, driver, vehicle, cargo safety standards, compliance, education, and enforcement.

To briefly highlight some of our accomplishments since we were organized in 1980, we point to the development of the North American Uniform Inspection Standard; our internationally recognized inspection sticker that is awarded to commercial vehicles that are found to be defect free which serves as an effective roadside screening process; our uniform Out-of-Service Criteria; a complete training course and certification program for over 7,500 inspection officers in North America as well as standards for maintaining certification; uniform inspection procedures for vehicles transporting spent fuel and high level radioactive and transuranic waste; uniform cargo tank inspection procedures, and uniform bus inspection procedures.

While the Motor Carrier Safety Assistance Program (MCSAP) through its grant program to the states serves as the underpinning of a national commercial vehicle safety program, CVSA is the organization responsible for the uniform practices and procedures of this both national and international inspection and enforcement program. Without CVSA, the MCSAP program would not be the success that it is today.

Mr. Chairman, there are a wide range of issues with respect to NAFTA that I know you and other Members of the Committee want to discuss today. To assist

with today's hearing, we have divided our comments into three parts which we believe should be considered. First, we will comment on the provisions of the very comprehensive NAFTA plan of the Senate Transportation Appropriations bill passed by the Appropriations Committee last week. Secondly, we will describe the approach to the NAFTA issue that CVSA as an organization has recommended since this issue rose to the forefront at the beginning of this year. Thirdly, I will describe in some detail how California has been handling the NAFTA issue since the early 1990's. As you know, my home state has been anticipating the opening of the border for some time and has committed significant state resources to the NAFTA effort.

We certainly appreciate the fact that the members of this Committee, the Senate Appropriations Committee, and indeed, all members of Congress want to be sure that the Mexican trucks that cross the border to do business throughout this country are safe and meet U.S. standards. We view the current process of debate and discussion on how to deal with this important issue as a constructive process. We are confident that in the end a final border plan will be produced that satisfies everyone's concerns and that will be fair to the United States and Mexico. As the leading safety enforcement association in North America, we pledge our cooperation and support to make this happen.

II. Senate Appropriations Committee Plan

Our review of the key provisions in the Appropriations bill dealing with NAFTA is as follows.

A. Safety Audits

With respect to the requirement of a full safety compliance review of a Mexican carrier on site before entering the U.S., we would suggest that FMCSA's effort should begin with the current drayage operations (those carriers who are now conducting drayage operations and are applying for the additional authority to go beyond the commercial zones) because they are carriers that have already agreed to comply the Federal Motor Carrier Safety Regulations. Thus, they should be expected to already know U.S. safety requirements and have the supporting documentation and evidence with respect to drug testing procedures, maintenance programs, driver selection and training and all other major items that are checked when a compliance review is done on a carrier in the U.S. We offer our assistance in conducting these reviews.

The information and data gathered from these audits should be very helpful in determining an overall border enforcement plan both in the short and long term.

With respect to this provision, we offer one technical correction. There are only three U.S. carrier rating levels: satisfactory, conditional, and unsatisfactory.

B. Driver License Verification

With respect to the requirement that Federal and State inspectors verify electronically the status and validity of the license for each driver of a Mexican motor carrier commercial vehicle, we believe this would be too burdensome on inspectors, result in excessive and unnecessary bottlenecking at the border, and would not sufficiently accomplish the intended affect. We recommend that the license check be done as a part of the complete vehicle and driver inspection process, rather than as a separate action. The purpose of this license check should be to determine the validity of the Mexican driver's license.

C. Distinctive DOT Transportation Number for Mexican Carriers

We suggest that the purpose of assigning such identification number would be to enforce all Federal Motor Carrier Safety Regulations, not just the U.S. hours-of-service regulations.

D. Requirement That State MCSAP Funded Inspectors Check Violations of All U.S. Federal Regulations

We recommend that this provision be clarified to specify that these inspectors only check for violations of Federal Motor Carrier Safety Regulations (FMCSR) or those adopted by their home state that are compatible to the FMCSR. Enforcement of other federal regulations is the responsibility of the appropriate federal agency.

E. Use of Weigh-in-motion (WIM) Systems at All Border Crossings

As much as we can appreciate the intent and purpose of this provision, after careful consideration, we would propose limiting such requirement to those crossings which have been designated by the state as commercial motor vehicle border crossings.

F. Proficiency Examination Requirement for Foreign Motor Carriers as Well as New Carriers in the U.S.

The term "proficiency" should be clearly defined.

G. New Regulations for Training and Certification of Motor Carrier Safety Auditors

We actively supported inclusion of this provision in the Motor Carrier Safety Act of 1999 and support going ahead with a rulemaking process as soon as possible as required in the Senate appropriations bill.

H. Establishment of Standards for Determining the Appropriate Number of Federal and State Inspectors at the Border and the On-duty Requirements for These Inspectors

We understand the intent of Congress with respect to these issues and after careful deliberation with our border state members, we suggest that very serious consideration be given to limiting the opening of the border to Mexican carriers, at least in the first phase, to those crossings which have been designated by the state as commercial motor vehicle border crossings (2 in California, 1 in Arizona, 1 in New Mexico, and 9 in Texas). We think this is a way to more realistically both determine and fulfill the need for full time staffing as well as all other adequate infrastructure requirements at the border. Furthermore, we believe the individual border states should be permitted flexibility in determining their staffing needs.

I. Inspector General Certification

Finally, we support DOT Inspector General certification of all important safety measures as identified in the appropriations bill relative to the opening of the border.

III. What CVSA's Approach to NAFTA Has Been

A. NAFTA Border Issue Requires Information and Education First

A fundamental approach when attempting to address the issue of transportation safety, regardless of mode, or whether national or international traffic, is to gather enough information so an accurate assessment of the necessary actions can be determined . This couldn't be more true than when faced with the challenge of assuring that Mexican trucks and buses that cross the border to do business throughout the United States are safe. Yet even though NAFTA has been a major topic of discussion over the last several years, there has been little, if any, information on the safety fitness of such carriers. The safety fitness of the Mexican operators currently doing business and being inspected along the borders today in the commercial zones may, or may not, be indicative of operators that may engage in long haul travel into the U.S. once the border is opened. We believe it is necessary to try and obtain the facts with respect to these carriers before the border is opened through a plan I will shortly describe.

This lack of information with respect to Mexican carriers is largely due to the fact that: 1) there have been few safety regulatory requirements placed on the Mexican industry which would be comparable to those placed on carriers in the United State and Canada until recently; 2) there are a limited number of personnel trained and continually performing oversight functions in Mexico; and 3) the current motor carrier safety information infrastructure has not been in place long enough to capture and record the data resulting from the oversight being performed by the Mexican government.

In addition to obtaining this needed information, we must at the same time lend our hand to help educate the Mexican carriers. Therefore, our strategy can be summed up as "gather information, plan, and educate". This strategy has been the hallmark of CVSA's approach to all safety challenges since it was created more than 20 years ago. It has been the key ingredient in the success we have had in getting not only all of the state jurisdictions in this country, but also, all of the Canadian provinces to agree to uniform and reciprocal North American enforcement standards and procedures. We have every reason to believe that this approach will succeed with Mexico as well.

Earlier this year CVSA developed a plan to specifically implement this overall strategy. It's key elements are as follows:

- In conjunction with Mexico, prepare an analysis of the Mexican government's current and planned safety regulations, policies, procedures and penalty structures as related to the oversight of the commercial vehicle industry.
- Conduct 1-day "Case Studies" (audits) on the Mexican motor carriers seeking cross border authority. These on site-visits in Mexico will include the evaluation of company safety management practices, knowledge and compliance with U.S.

regulations, vehicles inspections, driver selection and training, dispatch operations, maintenance programs, and overall company management. These "Case Studies" would be conducted on at least a representative number of those carriers (currently believed to number approximately 200 in total) that have applied for authority to operate in the U.S. beyond the commercial zones. Most importantly they would be conducted jointly with Mexican government officials.

- Conduct CVSA "Inspection Familiarization Seminars" at strategic locations across Mexico, to be coordinated with the Mexican government and CANACAR, CANAPAT, CONATRAM, and ANTP.
- Develop educational kits for motor carriers and drivers which could be provided during the case studies, inspection seminars and roadside inspections.
- Develop options for technology implementation that will facilitate freight and passenger movements across the borders and provide incentives for deployment.
- Create a database for recording and managing the information from the above activities. This information can be fed into the Motor Carrier Management Information System (MCMIS) so that both federal and state enforcement officials in both Mexico and the U.S. have access to the data. This will provide the basis for determining what the nature of high-risk Mexican motor carriers may be and to develop whatever appropriate roadside enforcement practices may be necessary at the border as well as in this country.

A more detailed description of the CVSA plan is attached at the end of this statement.

CVSA believes this plan can be implemented on a timely basis. It is possible for case studies to be done on a significant number of Mexican carriers in 60 to 90 days.

We feel that as an organization CVSA is uniquely qualified to be the lead partner in carrying out this plan. We are an international organization with members in Mexico and know how to approach matters from an international perspective Mexican government officials are familiar with and have participated in CVSA activities and programs. The case studies would be performed by a team of at least four people: 2 U.S. CVSA state inspectors, 1 FMCSA inspector, and a minimum of one representative of the Mexican government. We believe the CVSA plan will be more acceptable to the Mexicans than if it were to be solely presented to them as a plan of the U.S. Department of Transportation alone.

B. The NAFTA Border Plan Cannot Just Be Confined to Rulemaking Alone

As you are aware, the U.S. DOT has issued three recent notices of proposed rulemaking on NAFTA border issues. We have reservations about having so rigidly confined this process to rulemaking alone because this approach does not allow for the constructive and open dialogue necessary to address all of the safety concerns that are being expressed at today's hearing. To the best of our knowledge, the U.S. DOT did not consult or meet with key groups and organizations in this country, including CVSA a major safety enforcement partner, to obtain input on dealing with the NAFTA issue before assuring the current rulemaking. Certainly a rulemaking is not necessary to implement the key elements of the CVSA plan I have just described. To advance the cause of safety and to promote free and safe trade with our friends to the south, CVSA strongly believes that it will take cooperation from U.S., Canadian and Mexican federal government agencies, as well as state and provincial government agencies and industry. Safety is the responsibility of each of these groups and information sharing is critical to advancing the cause and ensuring the utmost contribution by each group.

C. An Analysis of the Current DOT Proposed NAFTA Rules

While CVSA recommends taking a proactive approach and identifying potential issues before the border opens, DOT suggests conducting similar activities after the border opens and places a greater burden on state inspectors. We believe that by conducting the research before the border opens, and by limiting border crossings, either by carrier or border locations, we can enhance safety on our highways.

To subject the Mexican carriers to a cursory paperwork review process at the border as the DOT proposes to be followed by intensive roadside monitoring through the inspection process after they commence operations throughout the United States does not reflect proper priority in assuring safety, nor does it adequately address the issue of safety compliance.

In addition, the DOT proposal prescribes "expedited action" to be taken against Mexican carriers operating in this country who do not meet seven criteria established in this rulemaking. The expectation by DOT is that the seven items will be identified by enforcement personnel during roadside inspections. In all seven cases,

these items cannot currently be established at the roadside. Most of these criteria are violations that are discovered only during traditional Compliance Reviews done face to face with carrier management and at the carrier's place of business, not during roadside inspections. Drug testing is an excellent example. Review of detailed information at the carriers place of business establishes that the carrier has met, or did not meet, federal requirements. In addition, the ASPEN software and other systems such as the Inspection Selection System used by roadside enforcement do not provide the inspector with the necessary information to assure compliance to the established criteria.

D. Current State of Readiness at the Border

Much of the discussion about NAFTA to date has been about adequacy of resources at the border including both inspectors and the infrastructure to support inspection activities. Progress is being made. My own state of California has certainly made a special effort in this regard which has been ongoing for many years and I will speak in more detail about California's efforts shortly. California's plan through the use of the CVSA inspection sticker ensures that every vehicle that crosses the border is inspected, at a minimum, once per quarter. The other border states are certainly making every effort to strengthen their resources. At this point, I will again put an option on the table we suggested in our comments on the Senate appropriations plan, and that is to initially open the border at only those crossings which have been designated by the state as commercial motor vehicle crossings.

Although the DOT and CVSA plans differ in timing and detail, the common element is a higher level of enforcement oversight at least in the short term. No matter what plan this Committee and the Congress may finally decide is appropriate, we must realize this is a one-time plan to deal with a very special set of circumstances. At some point in time after the border is open, it is certainly our goal and belief that operations between Mexico and the U.S. will be no different than our current operations with Canada. In the short term, we believe an approach that best ensures safety in this country, but one that is fair to the Mexican carriers, and provides support to the effort of the Mexican government officials can best benefit all involved parties. That is why our emphasis on education and outreach to them is such an important part of our plan and must go hand in hand with the on-site carrier reviews we recommend, or the safety audits recommended in the Senate Appropriations plan.

IV. California Commercial Motor Vehicle Safety Program NAFTA Preparation Overview

Since enactment of the NAFTA treaty, the Governor, and the Business, Transportation and Housing Agency (BT&H) of California, have continually supported the CHP's commercial vehicle inspection program. Recognizing that additional facilities, personnel, and equipment would be necessary to prepare for additional Mexican commercial motor vehicles crossing the border, the Administration approved and funded the addition of these resources.

BT&H, in anticipation of the implementation of NAFTA, directed the California Highway Patrol to begin the construction of the Calexico and Otay Mesa Inspection Facilities at a combined cost of approximately $32.5 million. The Otay Mesa Inspection Facility opened in May 1996 and the Calexico Inspection Facility opened in December 1996. Their hours of operation mirror the hours of operation at the US Customs commercial port of entry. These facilities provide a means for commercial vehicle inspection personnel to immediately identify and correct problems with drivers and commercial vehicles as they cross the border into California.

The CHP maintains a compliment of nine commercial officers and 15 commercial vehicle inspection specialists at the Otay Mesa Inspection Facility. Five commercial officers and 9 commercial vehicle inspection specialist have also been assigned to the Calexico Inspection Facility. In addition, the Governor has allocated funding to allow the CHP's Rainbow Inspection Facility (seven officers and 12 CVIS) and San Onofre Inspection Facility (11 officers and 20 CVIS) to expand their hours of operation and to enforce the NAFTA provisions of the Commercial Zone. Furthermore, six Mobile Road Enforcement officers are assigned north of the Commercial Zone (San Diego, Orange, and Imperial Counties) to enforce these regulations.

The California Highway Patrol offers Mexican Inspectors, Motor Carrier Specialists and trucking industry representatives with the opportunity to observe our inspection techniques. With the approval of the Administration, the CHP continues to provide Level 1 commercial vehicle inspection training to Mexican enforcement personnel at the Calexico and Otay Mesa Inspection Facilities, the Winterhaven Platform Scale, and at Tijuana and Mexicali.

The California Highway Patrol has continued to provide support to the Mexican trucking industry by both providing and participating in training seminars and industry events. Furthermore, industry support has been provided by maintaining an effective liaison with Mexican commercial vehicle enforcement representatives.

With the support of BT&H, the California Highway Patrol continues to confer with governmental agencies of the United States and Mexico in an attempt to link their computerized Commercial Driver License and Commercial Vehicle Registration databases, while retaining the security of each country's databases.

Thanks in large part to the Administration's redirection of state funds, the CHP's commercial vehicle safety program has helped bring about an improved safety compliance rate of Mexican commercial vehicles operating in California. In fact, their out-of-service rate is comparable to US commercial vehicles entering California through the Otay Mesa and Calexico Inspection Facilities. Since 1999, the out-of-service rates for both country's commercial vehicles have remained consistently lower than the other border states. Mexican motor carriers want to comply with federal and state safety standards and try to maintain their vehicles to avoid paying higher US wages for towing and vehicle repair. However, some Mexican motor carriers understandably are experiencing difficulty interpreting the intricacies of federal and state regulations.

In 1996, the CHP developed a conversational Spanish training course with emphasis on commercial vehicle nomenclature. The class was provided to all field commercial enforcement officers and commercial vehicle inspection specialists. Departmental personnel also provided train-the-trainer training to law enforcement officers from Arizona, New Mexico and Texas

Enforcement Program

In 1991 Assembly Bill (AB) 1355 was enacted in California which prohibits foreign based MCs from operating in California beyond specified commercial (border) zones without a Certificate of Registration (CR) issued by the ICC. The provisions of AB 1355 enacted California Vehicle Code (VC) Sections 34517 (Commercial Zones: Vehicles from other Countries) and 22651.4 (Foreign Commercial Vehicles: Impoundment).

The CHP conducts on-and off-highway commercial vehicle and driver inspection throughout the state. The CHP's commercial program currently consists of nearly 1,000 personnel involved in full-time enforcement of commercial vehicles. Approximately 240 officers and 280 non-uniformed Commercial Vehicle Inspection Specialists (CVIS) are dedicated to 19 Inspection Facilities and 34 platform scales statewide. An additional 250 non-uniformed Motor Carrier Specialist (MCS) are dedicated to the off-highway inspection of both truck and bus terminals. Finally, approximately 150 officers are funded each year by the Governor and are deployed as Mobile Road Enforcement officers throughout the state.

Through the efforts of these dedicated individuals, California commercial enforcement personnel continue to conduct nearly 22 percent of all roadside inspections. Governor Davis, BT&H Secretary Maria Contreras-Sweet, and Commissioner Dwight Helmick of the CHP have vowed their continued support for improving the safety on California highways and assuring that California is ready for the opening of the border with Mexico once the NAFTA issue is resolved.

Thank you for the opportunity to present this testimony today.

Statistics

Statistics

OUT-OF-SERVICE STATISTICS FROM
CALEXICO AND OTAY MESA INSPECTION FACILITIES
(LEVEL ONE INSPECTIONS)

CALEXICO INSPECTION FACILITY

MEXICAN MOTOR CARRIERS			UNITED STATES MOTOR CARRIERS		
1997		% OOS Rate	1997		% OOS Rate
Number of vehicles inspected	1,037		Number of vehicles inspected	2,160	
Number of drivers placed OOS	26	3 %	Number of drivers placed OOS	53	2 %
Number of vehicles placed OOS	331	32 %	Number of vehicles placed OOS	691	32 %
1998			1998		
Number of vehicles inspected	873		Number of vehicles inspected	2,771	
Number of drivers placed OOS	19	2 %	Number of drivers placed OOS	29	1 %
Number of vehicles placed OOS	241	28 %	Number of vehicles placed OOS	831	30 %
1999			1999		
Number of vehicles inspected	1,710		Number of vehicles inspected	2,256	
Number of drivers placed OOS	56	3 %	Number of drivers placed OOS	49	2 %
Number of vehicles placed OOS	609	36 %	Number of vehicles placed OOS	710	31 %
2000			2000		
Number of vehicles inspected	2,275		Number of vehicles inspected	2,113	
Number of drivers placed OOS	87	4 %	Number of drivers placed OOS	67	3 %
Number of vehicles placed OOS	847	37 %	Number of vehicles placed OOS	712	34 %

2001 YTD			2001 YTD		
Number of vehicles inspected	1,347		Number of vehicles inspected	1061	
Number of drivers placed OOS	16	1 %	Number of drivers placed OOS	16	2 %
Number of vehicles placed OOS	431	32 %	Number of vehicles placed OOS	327	31 %

OTAY MESA INSPECTION FACILITY

MEXICAN MOTOR CARRIERS			UNITED STATES MOTOR CARRIERS		
1997		% OOS Rate	1997		% OOS Rate
Number of vehicles inspected	8,568		Number of vehicles inspected	4,867	
Number of drivers placed OOS	220	3 %	Number of drivers placed OOS	104	2 %
Number of vehicles placed OOS	2,511	29 %	Number of vehicles placed OOS	1,053	22 %
1998			1998		
Number of vehicles inspected	10,653		Number of vehicles inspected	4,810	
Number of drivers placed OOS	206	2 %	Number of drivers placed OOS	71	1 %
Number of vehicles placed OOS	2,860	27 %	Number of vehicles placed OOS	1,305	27 %
1999			1999		
Number of vehicles inspected	10,101		Number of vehicles inspected	5,832	
Number of drivers placed OOS	197	2 %	Number of drivers placed OOS	43	1 %
Number of vehicles placed OOS	2,638	26 %	Number of vehicles placed OOS	1,130	19 %
2000			2000		
Number of vehicles inspected	9,089		Number of vehicles inspected	5,970	
Number of drivers placed OOS	120	1 %	Number of drivers placed OOS	26	0 %
Number of vehicles placed OOS	2,068	23 %	Number of vehicles placed OOS	1,329	22 %
2001 YTD			2001 YTD		
Number of vehicles inspected	4183		Number of vehicles inspected	3435	
Number of drivers placed OOS	50	1 %	Number of drivers placed OOS	17	0 %
Number of vehicles placed OOS	1088	26 %	Number of vehicles placed OOS	824	24 %

CALEXICO AND OTAY MESA INSPECTION FACILITIES COMBINED

MEXICAN MOTOR CARRIERS			UNITED STATES MOTOR CARRIERS		
1997		% OOS Rate	1997		% OOS Rate
Number of vehicles inspected	9,605		Number of vehicles inspected	7,027	
Number of drivers placed OOS	246	3 %	Number of drivers placed OOS	157	2 %
Number of vehicles placed OOS	2,842	30 %	Number of vehicles placed OOS	1,744	25 %
1998			1998		
Number of vehicles inspected	11,526		Number of vehicles inspected	7,581	
Number of drivers placed OOS	225	2 %	Number of drivers placed OOS	100	1 %
Number of vehicles placed OOS	3,101	27 %	Number of vehicles placed OOS	2,136	28 %
1999			1999		
Number of vehicles inspected	11,811		Number of vehicles inspected	8,088	
Number of drivers placed OOS	253	2 %	Number of drivers placed OOS	92	1 %
Number of vehicles placed OOS	3,247	27 %	Number of vehicles placed OOS	1,840	23 %
2000			2000		
Number of vehicles inspected	11,364		Number of vehicles inspected	8,083	
Number of drivers placed OOS	207	2 %	Number of drivers placed OOS	93	1 %
Number of vehicles placed OOS	2,915	26 %	Number of vehicles placed OOS	2,041	25 %
2001 YTD			2001 YTD		
Number of vehicles inspected	5530		Number of vehicles inspected	4496	
Number of drivers placed OOS	66	1 %	Number of drivers placed OOS	33	1 %
Number of vehicles placed OOS	1519	27 %	Number of vehicles placed OOS	1151	26 %

The CHAIRMAN. Thank you very, very much, Captain Vaughn. Mr. Emmett.

STATEMENT OF EDWARD M. EMMETT, PRESIDENT, THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. EMMETT. Thank you Mr. Chairman and Senators. I am Ed Emmett. I appear this morning as president of the National Industrial Transportation League. The League is an organization that dates back to 1907 which represents the shippers of freight of all kinds using all modes of transportation, both domestic and international.

In other words, League members are the customers of the trucking industry. And even though all modes of transportation are used, there is no question that the vast majority of shippers and receivers view trucking as the key to successful operations. Quite simply, trucking is the life line of our economy.

In recent years, there have been some major changes in the world of shippers and receivers in the way they do business, and I think that comes into play today, certainly seeing some of the confusion that came out of the earlier panel. We have in place what are called just-in-time delivery systems, where shippers and receivers, retailers and manufacturers of all types, rely on timely delivery of products from source to destination. Along with that, we now have a globalization of commerce, much more international commerce, and of course NAFTA is a part of that.

The combination of those two makes it absolutely critical that we have trucking capacity from the United States to Mexico and vice versa. Safe, efficient trucks going to and from Mexico need to be part of the equation of the United States economy. I must say at this point, and I believe it was Senator Allen who raised the issue earlier, as far as shippers and receivers in the United States are concerned, the only efficient truck is a safe truck. The absolute worst thing that could happen to a shipper or receiver would be to have their shipment sitting out of service on a truck somewhere rather than getting there just in time as the delivery system requires.

So, we are absolutely committed to having safe, efficient operations. Having said that, we look forward to working with the Congress and the Administration and any of the other groups here to be sure that that system gets put in place. However, we believe strongly that simply banning all Mexican trucks is the wrong way to go.

We much prefer rigorous enforcement. Senator Boxer's chart, or table, does point out the difference between what occurs in Mexico and what occurs in the United States, but it is our clear understanding that any Mexican truck and Mexican driver operating in the United States will have to comply with U.S. laws, will be subject to the same penalties as U.S. drivers and so we take that as a given and if that needs to be clarified, then we certainly want to work with you to clarify that.

The reason a simple ban, we believe, would be inappropriate, is that safety is better addressed directly rather than through economic means. It is better to have the inspectors in place, make sure the inspections occur, and deal with it that way. The second

reason is that a total ban produces the maximum economic harm for our members, because it says there will be no trucks available to do that just-in-time delivery between the United States and Mexico. So, we would much prefer a system that allows at least the good operators in Mexico into the country.

Third, and this follows on the second, to make a blanket judgment against all Mexican truckers, is I know it may sound a little harsh, but it really borders on racial profiling of a whole nation. Because there are some bad apples, no matter what that number is, I do not think it is fair to tell a Mexican truck owner, the owner of a company who may run an absolutely perfect operation, maybe even one of those operators who is going to Canada that was mentioned earlier, it is absolutely unfair to tell them that even if they are willing to meet all the criteria you put before them that just because they are Mexican, they are not allowed to operate in the United States. That just doesn't strike us as right.

And fourth, as has been mentioned, and I certainly am not an international lawyer so I do not want to get into this too far, but to continue the ban does seem to violate NAFTA. We believe that the measures of NAFTA need to be fulfilled fully.

With that in mind, Mr. Chairman, I know you have a long day and I keep hearing about votes and further meetings. I am actually going to give you back a little bit of your time and I will be happy to answer any questions, but the League stands ready to work with you and the Administration in any way possible. And I was particularly pleased to hear you, Mr. Chairman, at the beginning, talk about Senator Murray's approach as being preferable, I believe in what you said, and that is what we wanted to come say, even though some of the specifics might need to still be worked out.

[The prepared statement of Mr. Emmett follows:]

PREPARED STATEMENT OF EDWARD M. EMMETT, PRESIDENT, THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Good morning, Mr. Chairman and members of the Committee. I am Ed Emmett, president of The National Industrial Transportation League.

The League is a voluntary organization of shippers conducting industrial and commercial enterprises in all States of the Union and all over the world. Formed 94 years ago, the League is the nationwide organization representing shippers and receivers of all types of commodities, using all modes of transportation, including trucks, to move their goods in intrastate, interstate, and international commerce.

The League representatives of member companies are transportation and logistics professionals, the people who design the distribution systems for their products, arrange for their transportation, and pay the transportation bills. Some of our member companies also own and operate their own truck fleets. Therefore, the League is vitally interested in this important issue.

The League has a long history of supporting highway safety for the general public as well as for commercial traffic. As customers of trucking companies, League members rely on freight being delivered in a safe manner. The League is also aware of the need for efficient transportation if the U.S. economy is to realize its potential. Make no mistake, though, transportation safety and efficiency are not counter forces. Unsafe transportation is the ultimate inefficiency.

Given that background, the League is very concerned with provisions in the fiscal year 2002 Department of Transportation Appropriations Bill, recently passed by the House, that could delay or prohibit the full implementation of the North American Free Trade Agreement (NAFTA) with respect to trucking.

On July 6, the League sent a letter to the Senate Appropriations Committee, strongly urging the Committee to delete the House language that prohibits Mexican trucks from being granted operating authority and to restore the funding needed to ensure effective inspections for U.S.-Mexico cross-border trucks. Our goal was to ad-

dress the issue of truck safety directly, rather than through protectionist measures masquerading as safety. Over the years, special interests trying to protect their market share have used "safety" arguments to keep competitors away. Such arguments have proven false in the past, and, I believe, will be proven false in this instance.

Please keep in mind that each truck entering the U.S. from Mexico must comply with every U.S. safety regulation, both those relating to the truck and those relating to the driver. Full implementation of NAFTA will not change that. The League will be the first to argue for strong truck safety provisions. However, the House provision is not about safety. It is protectionism.

If Congress really wants to address international truck safety, then we would support DOT having the additional funding it has requested to inspect trucks and drivers at the U.S.-Mexican border. That is the way to protect the American driver from unsafe trucks and drivers, not by refusing to let trucks into the country, whether or not they are safe. DOT-funded safety inspectors are the first and best line of defense against those that are unsafe, whether they be Mexican, Canadian, or U.S. The more inspectors there are and the better tools they are given, the more trucks and drivers they can inspect and decide whether to put out of service.

I have stated that the proposed ban on Mexican trucks is protectionism. That is true, but I fear it could be worse than that. None of these arguments were raised about Canadian trucks. Why not? Even if there is a higher percentage of Mexican trucks that are deemed unsafe under U.S. laws, why choose to punish all Mexican truckers? Those who have supported this all-encompassing approach would never support enforcing traffic laws against one race of people differently than against others. That would be considered "racial profiling." If a ban on Mexican truckers is put into effect, will that not be viewed as "racial profiling" on a national level?

It is also important to remember that NAFTA is about partnerships between the United States, Canada, and Mexico. Clearly, the U.S. is treating its partners differently and, in fact, has been found in violation of the treaty.* The previous Administration refused to fully implement NAFTA, yet they took no steps to address the perceived problems with Mexican trucks. Mexico deserves fair treatment under the terms of NAFTA.

1. A five-member NAFTA Arbitration Panel unanimously determined "that the U.S. blanket refusal to review and consider for approval any Mexican-owned carrier applications for authority to provide cross-border trucking services was and remains a breach of the U.S. obligations under Annex I (reservations for existing measures and liberalization commitments), Article 1202 (national treatment for cross border services), and Article 1203 (most-favored-nation treatment for cross border services) of NAFTA."

In addition to the safety and fairness considerations, there are, obviously, economic considerations. The "giant sucking sound" that NAFTA opponents warned of before NAFTA was signed, and which referred to U.S. jobs that would be lost, actually turned out to be the sound of economic benefits accruing to both countries. NAFTA has directly led to a three-fold increase in the value of trade between the U.S. and Mexico.

However, the full benefits of NAFTA are not being realized. Shippers and carriers find that the way cross-border trucking operations are conducted today is very inefficient, since costly extra handling via "border shuttle" carriers is required. They want the increased efficiency and flexibility from running trucks straight through to their ultimate destination, without the extra cost of shuttle operations. Giving them this flexibility and reducing those costs helps them to compete.

If the U.S. border is not opened to its trucks, Mexico has announced its intention to retaliate by raising customs and import fees on U.S. goods, and has raised the possibility of banning the importation of certain commodities. U.S. businesses and manufacturers are the ones that will have to pay these higher fees, and U.S. workers and consumers will be the ultimate losers. Given global competition and the economic situation, it would only take a slight increase to price those U.S. goods targeted for retaliation out of the market completely. Ultimately, these increased costs will be passed on to the U.S. consumer in the form of higher prices, and to U.S. workers in possible layoffs of manufacturing jobs.

Mr. Chairman and Senators, the continued banning of all Mexican trucks from U.S. highways is simply the wrong way to go. It is the wrong way to make our highways safer. It is the wrong way to provide for economic growth. And, it is the wrong way to treat a neighboring nation, a partner, and a group of people.

The CHAIRMAN. The Murray-Shelby amendments, on to the transportation appropriations bill reported out of the floor to the United States Senate was unanimous and bipartisan. Mr. Hoffa.

STATEMENT OF JAMES P. HOFFA, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. HOFFA. Mr. Chairman and Members of the Committee. My name is James P. Hoffa, I am president of the International Brotherhood of Teamsters. I want to thank you for the invitation to testify here today regarding the cross border trucking impact on highway safety. The Teamsters Union has submitted extensive comments for the record. I will summarize my testimony in what I am going to be saying regarding cross border trucking.

I recently had the opportunity to meet with the President of Mexico, Vincente Fox, last Monday and we had a frank and open discussion in the meeting in the half-hour that we had together, and I raised the issue of highway safety with him, and he indicated an acknowledgment that it is his objective not only to raise the standard of living of the people in his country, but also I believe he acknowledges that they have a long way to go with regard to highway safety and with regard to the equipment they use and driver training.

I give that you comment because it is a recent interview that I had with him and met with him. I was impressed with his candor with regard to the issue.

First, let me dispel a few myths about why the Teamsters Union is so concerned about this issue. About 625,000 of our 1.4 million members turn a key on a truck to start their workday. Their workplace is our nation's highways and city streets. And these drivers deserve as safe a workplace as any person working in a factory. Since 1994, the Teamsters Union has been on the record telling Congress and the administration that neither the United States nor Mexico had the necessary safeguards in place to assure the safety on our highways.

After Congress and many other groups, including the Teamsters, raised safety concerns, the Clinton Administration wisely chose to institute the current moratorium. Now, for those who would believe that the border remain closed as a political favor to the Teamsters, they need only read the words of the latest Inspector General's report. As they should review the administration's own submission, they can also review the administration's own submission to the NAFTA resolution dispute resolution panel. I will get to those in a minute. But first I want to address another issue.

Some claim that the only reason the Teamsters care about Mexican trucks is the fear that lower wage Mexican drivers will take our jobs away. While there is a concern that unscrupulous drivers will entice and exploit Mexican drivers to violate our laws and to make deliveries from point to point in the United States when delivering international loads. However, we welcome an opportunity to talk to our Mexican brothers and sisters about working conditions in that country, and we also hope that some day, we will have the right to go down there and organize.

Ultimately, if there is parity in wages and benefits, as there is with Canadian drivers, then there is no incentive for employers to

violate our labor laws. Returning to the safety question, there is real evidence that trucks from Mexico cannot meet all the United States safety standards. Let us look at the facts.

The Inspector General's latest report indicates that still only 1 percent of Mexican trucks crossing into commercial zones are inspected. Of these inspected more than one of three is placed out of service for serious safety violations. In Texas and Arizona, for more than 75 percent of the Mexican trucks crossing, the out-of-service is over 40 percent. There are those that argue that drayage trucks are not representative of the fleet of long haul trucks that will be utilized once the boarder is open but listen to what the United States itself said in its submission to the NAFTA panel. I am going to quote it. This is what our people said.

In terms of safety, the service provided with the drayage trucks, those that run with a 25-mile limit, is no different from that provided by the long haul trucks. Furthermore, there is no evidence that the Mexican long haul carriers are safer than Mexican drayage carriers. They haul goods on the same roads, through the same cities and towns through which long haul trucks operate.

Indeed, many of the Mexican trucks that are now inspected at the border have traveled considerable distances from the interior of Mexico just to get to the border and thus are in fact, long haul trucks just getting to our border. Plus, there is no guarantee that drayage truck operators would not seek to operate the trucks beyond the commercial zone which we have already talked about. And that is the problem we have been talking about. We talked earlier about 65 trucks that have been impounded or found to be operating as far as North Dakota. That was last year's statistic and those are the only ones that are caught, so what has changed? Why is it that the administration is now in such a rush?

In fact, the administration's announcement of its intent to open the border by the 1st of the year was a major tactical error. They gave away any leverage they had to compel the Mexican government to continue to improve its safety program. Frankly, the United States is under no legal obligation to implement the findings of the NAFTA panel. Under the terms of the NAFTA, the United States is entitled to disregard the panel's recommendation and simply allow Mexico to take equivalent reciprocal measures. Or it could negotiate compensation for a new grant of trade benefits to Mexico.

Now, let us dispel another myth that under NAFTA the United States cannot initiate safeguards to protect its own highways. If you have not already done so, I encourage each member of this panel to read the NAFTA dispute panel's report. It made a point of stating that "the parties to NAFTA may set the level of protection that they consider appropriate in pursuit of legitimate regulatory objectives. In fact, one of the recommendations of the NAFTA panel states that given the different enforcement mechanisms currently in place in Mexico and the United States, it may not be unreasonable for the DOT to address legitimate safety concerns by declining to rely largely on self-certification by Mexican carriers seeking authority to operate in the United States." That ends the quote.

This leads to the one final point I'd like to discuss, the proper action for Congress to take to address the safety concerns of the Mexican carriers. It is clear from the NAFTA panel report that the United States is within its rights to not rely on a stack of paperwork to determine the safety of carriers coming out of Mexico. Unfortunately, representative Sabo's common sense amendment to require a safety review before the DOT would grant conditional operating authority was not given a chance to be voted on by the House. But the vote on his more restricted amendments, barring funds from review and processing of any Mexican carrier was passed by an overwhelming vote of 285–143.

I think that vote was indicative of the frustration that many Members of Congress feel about the administration's failure to recognize a serious safety concerns of unsafe trucks on our highways. The vote should be a wake-up call to everyone who is ignoring the potential danger of this wrong-headed policy.

DOT needs to put a process in place that ensures the safety of our highways and that should include one, more properly trained safety inspectors at the border crossings to maintain surveillance 24 hours a day 7 days a week.

Two, permanent inspection facilities with enough space to take care of out of service trucks so we can put them in a place where they cannot be on our highways.

Three, equipment to weigh the commercial vehicles entering the United States.

Four, an adequate enforcement program to assure that Mexican truckers will comply with hours of service regulations.

And five, a safety audit of Mexican carriers before the DOT grants conditional operating authority. These are just a few of the criteria that should be met before the cross border trucking provisions of NAFTA are implemented. These and other necessary provisions are included in House Resolution 152 that we support. They are also included in the Senate transportation appropriations bill.

The Teamsters Union strongly supports these legislative measures that ensure the safety of American highways. That is what the 285 Members of Congress wanted when they voted for the Sabo amendment. That is what the American public wants and that is what the Teamsters want and their families, and we deserve no less. I will be willing to answer questions if you have any.

[The prepared statement of Mr. Hoffa follows:]

PREPARED STATEMENT OF JAMES P. HOFFA, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Chairman Hollings, Senator McCain and Members of the Committee:

My name is Jim Hoffa, and I am General President of the International Brotherhood of Teamsters. I am pleased to appear today before this Committee on behalf the 1.4 million members of the Teamsters Union and the hundreds of thousands of our members who literally make their living on our nation's highways.

The Teamsters Union has taken a serious interest in the work that Congress and, in particular, this Committee has undertaken to ensure safety on our nation's highways. It was just 2 years ago that most of the people on this panel and on the following panel were testifying before you on the need to strengthen motor carrier safety here in the United States.

And now, as this Committee moves forward with hearings concerning the issue of whether Mexican-domiciled motor carriers should be allowed to operate throughout the United States, we are pleased to have the opportunity to share our views on this important safety issue.

In general, the Teamsters Union believes that the United States is not prepared to begin approving Mexican carrier applications to operate throughout the United States because the safety of Mexican carriers cannot be assured. But before I delve into this issue, I think it's important that we first review how the United States got to this point.

When the North American Free Trade Agreement (NAFTA) was enacted in 1993, the existing moratorium on the registration of Mexican motor carriers was initially left in place; however, operating authority for Mexican carriers was planned to be phased-in over an eight-year period. The first phase was to have occurred in 1995, when Mexican trucks were to be allowed to operate beyond the commercial border zones into the four border states (California, Arizona, New Mexico, and Texas). In 2000, Mexican carriers were scheduled to operate throughout the United States. To alleviate safety concerns, the agreement also provided for the establishment of a Land Transportation Standards Subcommittee whose function was to implement a work program to harmonize the truck and bus safety standards of the United States and Mexico.

In 1995, however, when the first phase was scheduled to occur, and again in 2000, it was apparent that Mexico had not yet made the kinds of safety improvements that were required when the schedule was agreed upon. Although the Clinton Administration initially planned to implement the first phase of the schedule, when Congress and numerous groups including the Teamsters Union made it aware of the serious safety concerns it acted responsibly and kept the moratorium in place. These concerns were outlined in four separate Congressional letters to the President: One in 1997, which was signed by 236 House Members on both sides of the aisle; another in June of 1999, which was signed by 258 House Members; another in November 1999, which was signed by 48 Senators, many of which serve on the Senate Commerce Committee; and another sent just 2 months ago to President Bush by Senator John Kerry (D-MA) and 9 other Senators who supported NAFTA but are concerned about the safety implications of cross-border trucking. The Teamsters Union wishes to submit all of these letters for the record.

In response to the moratorium, Mexico sought consultations under NAFTA's Article 20 dispute resolution mechanism. And from 1995 through January 2000 various consultations and meetings took place, but the parties could not resolve the serious safety issues at hand. An arbitration panel was then formed on February 2, 2000. During the year-long panel proceedings, the United States vigorously opposed the entry of Mexican carriers into the United States because of serious safety concerns and the United States' inability to adequately ensure the safety of the traveling public if Mexican carriers were to enter the United States prior to Mexico's establishment of a comprehensive safety regime. The United States explained the problem as follows:

> Mexico's existing truck and operator safety rules are not yet compatible with those in the United States and large and important gaps remain. Mexico does not impose key record-keeping requirements. It has no roadside inspection program and thus does not generate reliable nationwide statistics on vehicle out-of-service rates. Mexico has only recently begun a limited program of on-site inspections and audits, and Mexican enforcement resources remain quite limited. Mexico and the United States do not yet have a functioning data exchange arrangement.
>
> All this means that when Mexican trucks cross into the United States, there is no assurance that, based on the regulatory regime in place in Mexico, those trucks already meet U.S. highway safety standards.

In the *Matter of Cross-Border Trucking Services*, Secretariat File No. USA–MEX–98–2008–01, Counter-Submission of the United States at 48 (Feb. 23, 2000), the United States further explained that these safety problems could not be adequately addressed through border inspections:

> [T]he effectiveness of any [border inspection] program is limited given the huge number of trucks that cross the southern border each day, the time and resources required to conduct even a small number of rigorous inspections, and the commercial disruptions that would accompany any system other than occasional spot-checks. *As a practical matter, the deterrent effect of any reasonably practicable system of border safety inspections is limited since the likelihood of inspection on any given cross-border transit is small.*
>
> Since a border inspection system alone cannot sufficiently assure safety compliance, the United States is in a position in which it must rely on Mexico, much

as it relies on Canada, to ensure that the great preponderance of its trucks already meet U.S. standards by the time they arrive at the border.

On February 6, 2001, the NAFTA panel issued a report which determined that "the inadequacies of the Mexican regulatory system provide an insufficient legal basis for the United States to maintain a moratorium on the consideration of applications for U.S. operating authority from Mexican-owned and/or domiciled trucking service providers." It also held that the United States was and remains in breach of its obligations under Annex I (reservations for existing measures and liberalization commitments), Article 1102 (national treatment), and Article 1103 (most-favored-nation treatment) to permit Mexican nationals to invest in enterprises in the United States that provide transportation of international cargo within the United States.

It is important, however, to note what the Panel did not determine. According to its *Findings, Determinations And Recommendations,* Secretariat File No. USA–MEX–98–2008–01, the panel "is not making a determination that the Parties of NAFTA may not set the level of protection that they consider appropriate in pursuit of legitimate regulatory objectives. It is not disagreeing that the safety of trucking services is a legitimate regulatory objective. Nor is the Panel imposing a limitation of the application of safety standards properly established and applied pursuant to the applicable obligations of the Parties under NAFTA."

In fact, in its report, the Panel even provided U.S. authorities permission to establish inspection and licensing requirements that are not "like" those in place for U.S. carriers, so long as their expectations are the result of legitimate safety concerns.

> With regard to the inspection and licensing requirements of Mexican trucks and drivers operating in the United States, the circumstances may well not be "like," even though those trucks and drivers are fully subject to the U.S. regulatory regime. For example, given the different enforcement mechanisms currently in place in Mexico and in the United States as of the date of this Report, it may not be reasonable for the Department of Transportation to address legitimate U.S. safety concerns by declining to rely largely on self-certification by Mexican trucking firms seeking authority to operate in the United States.
>
> If the United States implements differing specific requirements for Mexican carriers from those imposed on U.S. and Canadian carriers, in order to meet legitimate U.S. safety concerns, it must do so in good faith and those requirements must conform with the requirements of Chapter Nine and other relevant NAFTA provisions. [Secretariat File No. USA–MEX–98–2008–01 *Findings, Determinations, and Recommendations]*

Such legitimate objectives are addressed in Article 904.2 of NAFTA: "Notwithstanding any other provision of this Chapter, each party may in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the level of protection that it considers appropriate."

Therefore, the United States has two choices: (1) it can establish a program, which requires Mexican trucks to meet more stringent standards than is the case under current U.S. law. The Teamsters Union believes the United States would be acting responsibly in fulfilling its safety obligations to the American public by establishing such a program and that such action would not be in conflict with NAFTA. Or (2) it can refuse to implement the findings of the NAFTA Panel because it is under no legal obligation to do so. *Let me repeat that: The United States is under no legal obligation to implement the findings of the NAFTA panel.*

Under U.S. law, the health, safety and welfare of U.S. citizens is paramount, and to the extent NAFTA conflicts with any U.S. law dealing with health, environment, and motor carrier/worker safety, U.S. law prevails. 19 U.S.C. § 3312(a). Even under the terms of NAFTA, the U.S. is entitled to disregard the panel's recommendation, and simply allow Mexico to take equivalent reciprocal measures or negotiate compensation or a new grant of some trade benefits to Mexico. Indeed, the United States has not traditionally allowed foreign countries or international bureaucracies to dictate its domestic policy, particularly where the health and safety of U.S. citizens is concerned.

Despite these options, the Bush Administration has indicated that it plans to begin processing Mexican carrier applications at the behest of the NAFTA panel, and has set a target date of January 2002 for doing so. It is in accordance with this decision that the Department of Transportation (DOT) has proposed three rules, which, unfortunately, achieve the opposite of what is permitted under the NAFTA Panel ruling. In order to save time, I'd like to dispense with the details of our spe-

cific concerns with the proposed rules and instead submit our comments to the docket for the record.

What I would like to emphasize, however, is that the DOT's proposals actually allow greater latitude in several key areas for Mexican-domiciled carriers and drivers than currently apply to U.S. and Canadian companies and drivers under U.S. law. In fact, the Department's proposed 18- month safety review process for Mexican carriers is more lenient and far less comprehensive than inspections of U.S. carriers since, among other things, those done for Mexican carriers would be off-site. Affectively, the DOT proposal creates a safe harbor for Mexican-domiciled entrants to the market and a competitive disadvantage for U.S. interests.

Moreover, the rules appear—although surely the DOT is not—to be almost entirely uninformed about the real risks that these dangerous provisions pose to the U.S. public.

We believe that the U.S. is acting far too quickly, with far too little attention to the actual and potential costs, and at the risk of causing hazardous material spills, horrific truck crashes and other unnecessary suffering and death on U.S. highways. After all, the serious safety concerns expressed by the United States before the NAFTA panel have not yet been resolved.

Now I want to take a moment and highlight some of the United States' own submissions to the NAFTA Panel because I think it is crucial that when this Committee considers whether to act on this issue that all of the Members take a close look at and compare what the United States Government, under the direction of the DOT and the United States Trade Representative (USTR), submitted to the NAFTA Panel and what the two agencies are asserting now—two entirely different things.

> Trucking firms operate in Mexico under a far less comprehensive and less stringent safety regime than that in place in either Canada or the United States. The Mexico safety regime lacks core components, such as comprehensive truck equipment standards and fully functioning roadside inspection or on-site review systems. In light of these important differences in circumstances, and given the experience to-date with the safety compliance record of Mexican trucks operating in the U.S. border zone, the United States decision to delay processing Mexican carriers' applications for operating authority until further progress is made on cooperative safety efforts is both prudent and consistent with U.S. obligations under NAFTA. (Secretariat File No. USA–MEX–98–2008–01, June 8, 2000)

> The safety of Mexican carriers cannot be ensured on a case-by-case basis. Rather, as the United States has explained, highway safety can only be assured through a comprehensive, integrated safety regime. (Secretariat File No. USA–MEX–98–2008–01, June 8, 2000)

> U.S. safety inspectors may easily audit, inspect, and enforce compliance vis-á-vis firms based in the United States, and can rely on Canadian inspectors to enforce Canadian rules and regulations in a similar manner, but this is not the case for companies based in Mexico. In light of these important differences, and given the experience to-date with the safety compliance record of Mexican trucks operating in the U.S. border zone, the United States is within its rights to insist that the necessary regulatory and enforcement framework be in place—and working—prior to authorizing Mexican trucking firms to operate across the U.S. roadway system. And, given the high volume of cross-border truck traffic, and the fact that truck safety regulation requires a comprehensive, integrated regulatory regime, border inspections alone are not sufficient. (Secretariat File No. USA–MEX–98–2008–01, April 24, 2000)

> Roadside inspections alone, without on-site inspections, accident and carrier information, and other elements of a safety regime, are not sufficient to identify problem carriers. Thus, a Mexican carrier's safety performance cannot be assured simply because, for example, it uses only new trucks in its U.S. operations that are more likely to pass roadside inspections. (Secretariat File No. USA–MEX–98–2008–01, June 9, 2000)

> The Government of Mexico cannot identify its carriers and drivers so that unsafe conduct can be properly assigned and reviewed. While we understand that the Government of Mexico is engaged in an effort to register all of its motor carriers and place them in a database that would facilitate the assignment of safety data, that database does not contain any safety data. Therefore, Mexico cannot track the safety fitness of its carriers and drivers. (Secretariat File No. USA–MEX–98–2008–01, June 9, 2000)

> It is the position of the United States that Mexico must develop and implement a safety oversight program that ensures that Mexican carriers planning to engage in cross-border transportation meet minimum safety standards, and which allow the Mexican and U.S. Governments to share relevant and complete motor carrier noncompliance data. Without such carrier safety performance history, the United States cannot conduct a meaningful safety fitness review of Mexican carriers at the application stage. In light of this . . . the Mexican case-by-case approval scenario would be unworkable. (Secretariat File No. USA–MEX–98–2008–01, June 9, 2000)

> No review of a Mexican carrier based solely on an unverifiable application for operating authority can give the United States a sufficient level of confidence regarding the safety of that carrier's vehicles, no matter how detailed an application is required. (Secretariat File No. USA–MEX–98–2008–01, June 9, 2000)

> Mexico has not yet completed the process of establishing safety enforcement mechanisms with respect to a number of important areas of truck safety. (Secretariat File No. USA–MEX–98–2008–01, June 9, 2000)

> Mexico has neither promulgated final safety standards for motor carrier inspections nor implemented a safety oversight and enforcement program for carriers seeking U.S. operating authority. (Secretariat File No. USA–MEX–98–2008–01, June 9, 2000)

> When Mexican trucks cross into the United States, there is no assurance that, based on the regulatory regime in place in Mexico, those trucks already meet U.S. highway safety standards. (Secretariat File No. USA–MEX–98–2008–01, June 9, 2000)

These admissions become even more disturbing when you read the DOT Inspector General's (IG) interim report, which was issued shortly after the DOT published its proposed rules. The report, entitled *Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions* (Report No. MH–2001–059, May 8, 2001) found that while some improvements have been made since the IG last investigated the safety of Mexican trucks in 1998, Mexican trucks are still not as safe as U.S. and Canadian trucks, and U.S. border inspection facilities are still inadequate to evaluate and monitor the safety of Mexican trucks as they cross the border.

According to the IG, there are only two permanent inspection facilities, both of which are state facilities in California. Of the 25 remaining border crossings, a vast majority lack dedicated phone lines to access safety databases and therefore cannot perform as simple a safety check as validating a commercial driver's license. Further, almost all of these inspection facilities lack adequate space to inspect vehicles and/or place dangerous vehicles out of service. In addition, there are not currently enough inspectors to adequately staff border operations. The IG indicates that DOT has requested increased funding to hire additional personnel, and if all such funding is approved, DOT will be able to hire and train an additional 80 inspectors. However, this is not enough to implement all three proposed rules. Although the number of inspectors would meet the minimum recommended by the IG in its 1998 report if all 80 are designated to border operations, only 40 have been designated by the DOT as inspectors. The remainder are designated as investigators who will conduct compliance reviews. As such, the number of inspectors still falls far short of the 1998 goal. Indeed, the IG indicates that its 1998 recommendation was conservative and that even more inspectors are actually needed. Thus, there is no basis to believe the situation will be improved by the time the DOT begins processing Mexican carrier applications to operate throughout the United States, and in each of your congressional districts, by January 2002.

The IG also reported that over 4.5 million trucks entered the U.S. at the southern border in FY2000. Of those, 46,114 inspections were performed—less than one percent. Now, some will claim that this number is skewed: That the 4.5 million trucks that entered the U.S. was the result of 80,000 trucks crossing the border more than once in FY2000. The Committee Members should not be fooled by this assertion because assuming for a moment that this figure is correct—and it may very well be correct—then the situation is even worse than we thought. In fact, this means that on average each of those 80,000 trucks traveled across the border about 56 times in FY2000. Taking past inspection rates into consideration (less than 1 percent inspected), this would mean that about 800 of those trucks were inspected. The Committee should then question how so many trucks that crossed the border 56 times in one year went un-inspected. If the rather low 80,000 figure is accurate, then it

is the Teamsters' position that every truck should have been inspected, and Mexico's out-of-service rate should be equal to if not better than the United States.

But the fact is that, of those trucks that were inspected in FY2000, 36 percent of them were placed out-of-service as a result of being in an unsafe condition. While that rate has improved from the 1997 out-of-service rate of 44 percent, it is still 50 percent high than the U.S. out-of-service rate and even higher than the Canadian out-of-service rate of 17 percent. The Teamsters Union needs not to remind this Committee that it was not too long ago that we were all concerned about the United States' own high out-of-service rate of 24 percent. A higher out-of-service rate for foreign motor carriers that are not going to be directly monitored by the DOT should be an even greater concern.

The average out-of-service rate for Mexican carriers, however, may not accurately reflect the entire picture. But not because of what our opponents have been claiming: That the high out-of-service rates for Mexican carriers are due to the fact that most of the trucks taken out of service are drayage trucks that provide a different service than that provided by long haul trucks. Even the DOT disagrees with that in each of the U.S. submissions to the NAFTA Panel:

> In terms of safety, the service provided by drayage trucks is no different from that provided by long-haul trucks—they haul goods on the same roads, through the same cities and towns through which long-haul trucks operate. Furthermore, the Government of Mexico has presented no evidence that Mexican long-haul carriers are safer than Mexican drayage carriers. Indeed, many of the Mexican trucks that are inspected at the border have traveled considerable distances from the interior of Mexico to the border and thus are, in fact, long-haul trucks. Plus, there is no guarantee that drayage truck operators would not seek to operate their trucks beyond the commercial zone once the moratorium is lifted. [Secretariat File No. USA–MEX–98–2008–01]

> In order to truly evaluate the accuracy of the average out-of-service rate for Mexican carriers, the Committee must look at the rates for each of the four border states, individually. At the state funded, permanent inspection facility in Otay Mesa, California, the out-of-service rate for FY 2000 was 23 percent, comparable to U.S. rates. The total out-of-service rate for California was 26 percent. This is because California has a comprehensive state funded inspection program. California, however, only receives 23 percent of the commercial cross-border traffic. By comparison the out-of-service rate for Texas, which receives 69 percent of all commercial cross-border traffic, was 40 percent. At the El Paso, Texas, border crossing alone, the out-of-service rate for FY 2000 was an alarming 50 percent. Meanwhile, the out-of-service rates for New Mexico and Arizona are 32 and 40 percent, respectively. Combined, these out-of-service rates make up the 36 percent average out-of-service rate. Taken separately, these rates are a recipe for disaster, particularly in Texas.

Equally troubling is the fact that Mexico still has not harmonized its safety standards with the United States and Canada, as NAFTA requires. The IG confirmed that Mexico still hasn't established an effective drug and alcohol-testing program. Mexico still has no hours of service regulations and has only recently *proposed* in its *Diario Official* logbook requirements to record hours of service. And to this day, no database exists for our two nations to exchange information on past violations of Mexican drivers and carriers.

Despite these serious concerns, the IG found that the DOT does not yet have an implementation plan to ensure safe opening of the U.S.-Mexico border to commercial vehicles, according to the Inspector General. In this regard, the IG recommended that the DOT take the following actions:

> Finalize and execute a comprehensive plan that identifies specific actions and completion dates for the implementation of NAFTA's cross-border provisions (including staffing and facilities), and that reasonably ensures safety at the southern border and as the commercial vehicles traverse the United States.

> Increase the number of Federal safety inspectors at the U.S.-Mexico border to at least 139 (our 1998 estimate of 126 plus the 13 authorized in 1998) to enforce Federal registration and safety requirements during all port operating hours, and provide the requisite inspection facilities.

Unfortunately, none of these actions have been taken. It is therefore incomprehensible to understand how the DOT will be prepared to begin processing applications from Mexican carriers by the end of this year. We are clearly nowhere near ready to implement NAFTA's cross-border trucking provisions. And it is impossible for the

Bush Administration to do in one year what the Clinton Administration could not do in eight.

For these reasons, the Teamsters Union supports House Resolution 152. We also support the provisions that were included in both the House and Senate Transportation Appropriations bills. In fact, many of the provisions in the Senate bill came out of the House Resolution.

It is important to stress that we still believe that the ban on cross-border trucking should be continued—the U.S. has that option under NAFTA, as explained earlier in this testimony. But if Congress chooses against going in that direction, then it must at least ensure that the many safety issues highlighted in the IG report are resolved *before* the DOT begins processing Mexican carrier applications—not after. Safety should *never* be an afterthought.

Now I understand that our opponents will claim that such actions discriminate against Mexico and Mexican-citizens. Nothing could be farther from the truth. The Teamsters Union has the largest Latino membership amongst all the unions in the AFL-CIO, and our members know that this issue has nothing to do with discrimination. In fact, we'd like to submit for the record a letter to both the House and Senate from the President of the Teamsters' Hispanic Caucus, Bob Morales. In it, President Morales, writes what this issue is really about: corporate greed.

> The Administration does not want the border to be opened for the benefit of the poor Mexican driver desperate to reach for a better life. Rather, it will be opened for monetary gain to a trucking industry reaching for better and higher profits through unrestricted motor carrier access to the United States, and, of course, for political gain with Mexican President Vicente Fox.
>
> The impoverished Mexican may drive the truck, but he will never see the profit. That will belong to the industry, which will pay him a meager wage, and use him to hide behind the official NAFTA policy that exploits the poor in Mexico, while endangering both Mexican and Mexican-American U.S. Citizens with unsafe and largely unregulated trucks.
>
> Thus, Mexican drivers are offered at best four things: first, the spur of poverty; second, the incentive of a wage slightly higher than the meager wages that consign most of their countrymen to a kind of economic involuntary servitude; third, unsafe vehicles, and no rest; fourth, a requirement that they drive across the border, into and across the United States, and deliver their cargo on time and in good condition. And this is what Latinos, on both sides of the border, are supposed to think is a good deal. [Letter to Congress from Teamsters Hispanic Caucus President, July 11, 2001]

The fact is that for Latinos on both sides of the border—the drivers coming across from Mexico and the Mexican-American families that are living here in the in the United States—this is a potentially dangerous deal. And without a much-needed re-evaluation of the NAFTA cross-border trucking provisions, there will inevitably be a tragic crash, a loss of life, and a devastated family, on one or both sides of the border.

Mr. Chairman, the Teamsters Union urges you and the members of this Committee to turn this policy around and to get the DOT off the fast track and on the right track before it's too late.

Thank you again for providing me the opportunity to testify. I'm happy to answer any questions that you might have.

The CHAIRMAN. Thank you very much. Ms. Claybrook.

STATEMENT OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN

Ms. CLAYBROOK. Thank you, Mr. Chairman, Members of the Committee. I am pleased to be here to testify on behalf of Public Citizen, a national public interest organization that has 150,000 members around the United States on the issue of Mexican trucks. Let me be clear, we endorse what the Senate Appropriations Committee has put together. We think it is absolutely essential. And with all due respect to my colleague on this panel, we are not calling for a permanent ban. That is a red herring and our proposals

are not racist and I would like to make that completely clear for this record.

We are concerned about safety. In short, our belief is that the administration's now revised proposals are totally inadequate and it is going to take action by the Congress to correct this problem. We believe that the NAFTA ruling when you read it clearly allows for the United States Government to set strong safety standards. Not only do the Mexican trucks have to meet our standards, but we can set tougher requirements under the NAFTA ruling than even for the United States itself.

There is a fatal flaw in NAFTA. It sets a deadline for opening the border, but it doesn't set a deadline for the Mexican trucks to meet our standards, and that delinking of those two particular requirements means that we are now in this very difficult situation because the Mexican government has not taken the initiatives it should have to issue strong safety standards. In fact, the standards that they have proposed are extremely weak, much weaker than ours. They are voluntary for the first year and their enforcement—what they would enforce is a paper penalty yet the Administration would still allow these trucks to operate in the United States.

In the United States, these trucks would be put out of service, and they wouldn't be allowed to operate, so there is not comparability between Mexican and United States requirements. That puts tremendous pressure on the United States government and on the border facilities.

We believe what the administration has proposed is disgraceful. It is totally inadequate. It is a paper audit and it is not an onsite audit. The only way that we are going to be able to deal with these issues is an onsite audit. The other issue that is very important to remember is that when there is a dispute under trade agreements, there is a process of negotiation and bargaining if you would, horse trading, between countries that does allow some leeway so that there is time to meet the government standards in the United States, and the U.S. government has not done that.

They are setting a very short deadline of next January for the opening of the border and we think that that is not possible to meet and totally beyond the capacity of the Mexican government and our border facilities. Among other things, Mexico has no functioning database, so even when Mexican trucks come across the border, there is no ability to really check whether or not these trucks that are coming across the border have had any problems in Mexico. There is no database on the drivers and there is no working database on the companies, as there is in Canada, and as there is in the United States.

Mexican trucks are allowed to be heavier than ours. There must be a continuous weigh station so that when these trucks come across we can catch those that are heavily overweight. Not only are they much more dangerous, and many documented studies have shown that much heavier trucks are much more dangerous, but they also ruin our highways. We have enough trouble with our infrastructure as it is without having more. We cannot rely alone on the border facilities, and they must be beefed up, as they are totally adequate on this point. There is no permanent facility in any

of the border areas, except for California, and 66 percent of the traffic that crosses comes across in Texas.

So we have submitted extensive comments to the docket justifying our views, the docket of the Department of Transportation submitted as an attachment to my full testimony requiring why we think that there has to be onsite audits for these Mexican companies.

The other thing I would like to mention is as to California. Although California is cited as a model because there is a label that is put on the truck and that is considered a very efficient and effective way, I would like to point out three deficiencies in the California model.

One is that California inspectors cannot verify the validity of the truck's operating authority. The decal may be there, but they have no ability to verify the validity of the operating authority. Second, the California inspectors have themselves said that there is evidence of the decals being used on more than one truck, that is, blue doors on brown trucks and brown doors on white trucks. They take that door with the decal on it and they just switch it to another truck, and that truck in fact hasn't been inspected and there is no operating authority for it. And then third, California has not, so far checked the driver's hours of service or driver's licenses. Hours of service are basically nonexistent in Mexico and these drivers could be very tired and I think the Committee knows there is a tremendous correlation between fatigue and accidents and crashes. With these heavy trucks, that fatigue means that people are going to be killed, or they are going to be desperately injured. It is going to mean that traffic is stopped for hours.

So we believe that we have to take the initiative here. We urge the Congress to do this. We urge the Congress to act on this authority and perhaps the fastest way to do it initially is in the appropriations bill. We are urging the Commerce Committee to do this on an authorization basis so that there is no getting around these kinds of requirements, which we think are absolutely essential. Thank you very much, Mr. Chairman, for the opportunity to testify.

[The prepared statement of Ms. Claybrook follows:]

PREPARED STATEMENT OF JOAN CLAYBROOK,
PRESIDENT, PUBLIC CITIZEN

Mr. Chairman and Members of the Committee:

I am pleased to offer this testimony on the United States' and Mexico's lack of preparedness for the opening of the southern border of the U.S. to commercial carrier traffic, under the short-sighted timetable set out in the North American Free Trade Agreement (NAFTA). I am President of Public Citizen, a national public interest organization with 150,000 members nationwide that represents consumer interests through lobbying, litigation, regulatory oversight, research and public education. My comments today will focus on the inadequacy of the Bush Administration's proposed rules for the admission of Mexican carriers and the dire need for further steps by Congress to assure the safety of American motorists, before the border is opened to nationwide commercial traffic.

The Committee is addressing a critical safety issue. Under the current system in the U.S., 5,000 people are killed and 101,000 injured every year in crashes involving large trucks. Large truck crashes also cause disasters on the highway, including hazardous materials spills and costly traffic delays. The Congress, government and safety advocates have worked for many years to improve this record, enhancing U.S. safety regulations and establishing enforcement mechanisms with teeth. Now we

may see these accomplishments, and the areas where additional work is needed, imperiled by an influx of dangerous large trucks. I urge this Committee to look closely at our recommendations and at the recent actions taken by the Senate Appropriations Committee and to delay opening the border until safety is assured.

NAFTA Failed to Provide Safety Incentives With Teeth, Creating a False Double Bind

I will first address the reason that a trade agreement has put us in a false double bind, in which it appears that we must choose between domestic safety and the imperatives of trade. In short, the problem is that NAFTA was drafted with a fatal flaw. NAFTA required the United States to open its border to Mexican trucks in phases beginning in 1995. While the agreement also required Mexico to draft and implement trucking safety regulations commensurate to those in the United States and Canada, the agreement failed to link these required Mexican domestic safety improvements to the timetable for the U.S. to open the border to Mexican commercial trucks.

Without acting at all on its domestic obligations, almost 3 years ago the Mexican government brought a dispute before a NAFTA arbitration panel to open the southern U.S. border to nationwide commercial traffic. Last summer, the Mexican government finally issued a fledgling set of very basic rules for commercial carrier safety. Public Citizen's analysis of the rules shows that they are deficient in many ways and do not compare favorably to U.S. law.

These new Mexican commercial carrier inspection standards are far weaker than those of the U.S. Among other flaws, the new laws require roadside inspections to be done within an unreasonably short time period. For hazardous materials carriers, inspections must be completed within a mere 20 minutes. They also merely require a fine and warning letter for a number of violations that would cause a truck to be placed out of service in the U.S. In addition, the rules, which were just issued last summer, are voluntary for the first year, and are to be phased in over 2 years.

Other difficulties show the still-considerable gaps between Mexico's new rules and the absence of any practical consequences for infractions. While Mexico has agreed to implement a drug and alcohol testing program, it has no laboratories that are U.S.-certified for drug testing. In addition, while Mexico has enacted a law requiring driver logbooks, U.S. border officials admitted that they have yet to see a single Mexican logbook.

Most importantly, despite a promise to establish comprehensive domestic safety systems, Mexico has not limited its drivers' hours of service. Mexican officials claim that the general labor laws applying to every workplace provide for an 8-hour workday, but there is no evidence that any general limitation on working hours is enforced as to commercial drivers, and anecdotal evidence in news stories suggests that working hours are very long indeed. Fatigue is a significant cause of often-catastrophic truck crashes. Although Mexican drivers crossing the border will ostensibly be bound by U.S. hours-of-service limits, it will be impossible to enforce U.S. laws without both meaningful enforcement of Mexico's new logbook requirements and enactment of hours-of-service laws in Mexico.

In short, little has changed since the Clinton Administration, prompted by safety concerns, refused to take steps to open the border in 1995. Mexico has not yet put in place a regulatory system comparable to that of the U.S. and Canada. The out-of-service rate for Mexico-domiciled trucks that cross the border is a significantly higher rate - 36 percent - than the out-of-service rate for trucks in the U.S., which is 24 percent. Border areas are still woefully short on federal inspectors, who numbered a mere 50 in March 2001, and lack the resources to ensure that unsafe trucks are not admitted.

Despite this well-demonstrated lack of progress on safety standards for commercial carriers in Mexico, the NAFTA panel ruled on February 6, 2001 in Mexico's favor and found that the U.S. was in violation of its treaty obligations under NAFTA. While this has been depicted in the press as meaning that the U.S. must either open the border or face trade sanctions, the panel's ruling was actually far more solicitous of Clinton Administration's demonstrated concern for safety than has been explained.

The NAFTA arbitration panel found that the United States may implement different admission procedures for Mexican carriers than apply to U.S. or Canadian carriers, in order to ensure that Mexican carriers will be able to comply with U.S. regulations. Furthermore, the U.S. may impose requirements on Mexican carriers that differ from those imposed on domestic or Canadian carriers, so long as the decision to impose such requirements is made in good faith and with respect to a legitimate safety concern. Therefore, although the panel ruled that the U.S. could not maintain its ban on all Mexican carriers, under the ruling the U.S. can evaluate

Mexico-domiciled carriers on a case-by case basis and can refuse to issue them operating authority if a particular carrier will not be compliance with U.S. safety regulations.

In the aftermath of this ruling, the Bush Administration has adopted the course of action that is least likely to protect public safety, and is the most subservient to the over-arching goal of free trade. Despite 5 years of U.S. government documentation of major safety problems by such neutral parties as the General Accounting Office and the Department of Transportation's Office of Inspector General, the Bush Administration has rushed to propose a set of three totally inadequate regulations for monitoring and oversight of Mexican carriers and the processing of applications for operating authority in the border zones and beyond. The Administration's new proposals fail to hold Mexican carriers even to the same standards U.S. carriers must meet.

This course of action by the U.S. DOT is particularly disgraceful given that there are other options available that are far more likely to protect public safety. These include both trade mechanisms and opportunities contained in the implementation of the panel decision. I will address the trade options first.

When governments involved in a trade dispute are truly concerned about the disagreement underlying the dispute, and seek to maintain their own laws in the face of a hostile ruling, the countries frequently engage in a process of negotiation called compensation. In this process, countries will trade off concessions to satisfy outstanding trade rulings. Thus, the United States could exchange its victory in the World Trade Organization case against Mexico on high fructose corn syrup to maintain U.S. domestic highway safety rules. Comparable amounts of revenue can also be exchanged as compensation to balance accounts between countries. Alternatively, the United States could simply award Mexico additional trade benefits to compensate for maintaining our safety rules and restrictions upon U.S. access for Mexican trucks.

Instead, as I will explain, the Bush Administration's proposed rules fail even to require that Mexican carriers fully comply with existing U.S. law. Because the NAFTA panel ruling expressly provided permission for U.S. authorities to establish case-by-case review of applications for operating authority as well as inspection and licensing requirements that are not "like" those already in place for U.S. or Canadian carriers, the U.S. could establish a program which requires Mexican trucks to meet more stringent standards than is the case under for U.S. and Canadian carriers under current U.S. law. This type of accommodation by the panel is highly unusual in a trade ruling, and is an open invitation for the U.S. to act responsibly to fulfill its safety obligations to the American public.

Despite such considerations by the panel, FMCSA has proposed rules which achieve the opposite of what is permitted under the ruling. The agency's proposals actually allow greater latitude in several key areas for Mexican-domiciled carriers and drivers than apply to U.S. and Canadian trucking companies and drivers. The Administration's proposed rules create an 18-month "safe harbor" for Mexican carriers by limiting their penalties for infractions, undercutting any incentive for Mexican carriers to follow U.S. law and misleading new Mexican entrants as to the seriousness of their infractions.

For example, under the proposed rules, the agency's 18-month safety review of newly admitted Mexican carriers need not be performed on-site. Compliance reviews for U.S. carriers, however, must occur on-site. In addition, during a Mexican carriers' 18-month "safe harbor," for the following offenses carriers will be sanctioned only by a deficiency letter or an expedited safety review—a review which they presumably would have received within 18 months regardless of the offense:

- using a driver without a valid Commercial Driver's license or its equivalent;
- operating without insurance,
- using drivers who have tested positive for drugs and alcohol; and
- using a vehicle that has been placed out of service without correcting the violation incurring the penalty.

For U.S. carriers, these violations would incur fines for the driver or the carrier, and could even trigger criminal penalties, including jail time.

Comparisons Between Mexico and Canada on Commercial Carriers Are Inappropriate and Misleading

Some commentators have misleadingly compared the U.S.-Mexico relationship regarding commercial carrier access to that of the United States and Canada. But this is comparing apples and oranges, because Canadian domestic safety standards are very similar to those in the U.S. and unlike Mexico, Canada maintains up-to-date

databases on Canadian trucking companies and drivers that are accessible to U.S. authorities. Canadian databases, like those in the U.S. and unlike Mexico's, include driver conviction records and carrier out-of-service records. As proof of Canadian success in these areas, the out-of-service rate for Canadian trucks traveling in the U.S. is even lower than the out-of-service rate for U.S. trucks. In sum, the United States can rely on Canada to enforce its own, comprehensive safety regulations with respect to Canadian carriers. The United States does not have such a relationship with Mexico.

The Administration's Proposed Rules Are A Safety Scandal

In its latest series of three proposed rules, the Federal Motor Carrier Safety Administration (FMCSA) contemplates granting operating authority to Mexican carriers without creating a process that will assure the safety of American drivers. Despite the clear lack of preparedness, the agency's proposed rules are scheduled to be implemented before the end of the year—in less than 6 months. To evaluate the safety fitness of Mexican carriers, the agency intends to rely heavily on an unpopulated—that is, an empty—database that currently lacks the basic information necessary to process Mexican applications or to perform a safety review.

The agency also allows 18 months to pass before a safety audit is completed, while carriers are permitted to cross the border and roam throughout the United States. Eighteen months is far too long to wait for verification of a company's compliance and safety record. In addition, it is likely that FMCSA will not perform the audits in an expeditious fashion. The proposed rules provide that the agency's "safety oversight program" will continue indefinitely after the 18-month period has expired if the agency fails to conduct a safety review within the allotted time. During this time unaudited Mexican carriers can continue to operate throughout the U.S.

How the Proposed Rules Fail to Assure Safety

In the paper-based universe created by the proposed new DOT rules, operating authority is granted by U.S. officials if the application from a carrier is complete. This approach falls far short of the assurances that are needed for safety. For example, the application asks carriers to certify their knowledge of, and intention to follow, U.S. regulations by checking boxes indicating the answer is "yes," yet fails to provide a box to check "no"! Although applicants must describe their plans to monitor employee logbooks and implement an accident monitoring system, the FMCSA has no process in place to verify this or any other information provided the application. The Department of Transportation has never implemented a verification process for Mexican truck registration information, and as a result, according to DOT's own Inspector General, much of the information that the DOT currently has in its databases regarding Mexican-domiciled carriers is outdated or unverified.

Indeed, the instructions on the proposed applications contained in the rule suggest that applicants' business information *cannot* be compared or cross-checked, because the application forms instruct applicants to enter the name of the carrier exactly the same way each time a name is required, or, the form implies, the department's data system may list two slightly different names as two different companies. This instruction suggests that the DOT has no way to cross-check the owners, addresses, and other information of a company to ensure that a company is not counted twice. A simple typographical error in the name of a carrier for an entry of inspection or crash data into the database, then, could prevent the agency from matching negative safety data with that carrier. In addition, carriers with a poor safety record could re-register under a new name to get a second "chance" in the DOT database.

According to the proposed rules, for the agency's 18-month Mexican carrier safety review, FMCSA will examine "performance-based safety information" in its Motor Carrier Management Information System (MCMIS), as well as the documents that must be maintained by motor carriers under the rules. FMCSA officials have stated that the purpose of the 18-month interval is to allow U.S. officials to compile inspection and truck crash information on a carrier during its operation in the United States. At the same time, it is undisputed that the Mexican carriers will face a "learning curve" similar to that of other new entrant carriers—indicating that these new carriers will necessarily be more dangerous in the beginning of their operations. Using the public highways as a testing ground for the safety of inexperienced foreign carriers is outrageous and completely unnecessary.

Mexico is supposed to maintain its own database of inspections and crash information. If Mexico were conducting regular roadside inspections and compiling crash data consistently and reliably, this database would be useful in evaluating the safety fitness of Mexican carriers before they are granted operating authority in the U.S. Unfortunately, members of the Land Transportation Standards Subcommittee,

a group assembled under NAFTA to achieve comparable safety standards among the treaty's countries, admitted that this database is not yet populated with any meaningful data, such as inspection and crash data. There is no evidence of the level of access that Mexican authorities on the road have to the database, nor do we know whether the information being added has any assurance of reliability. And even if the information is being added, it may not be representative of a Mexican carrier's safety fitness on U.S. roads because Mexican inspection standards are considerably weaker than those in the U.S.

According to FMCSA's proposed rules, the required 18-month safety review may be conducted within the United States or at the carrier's place of business in Mexico. This proposal is inadequate on its face. Any meaningful audit system should, without doubt, require an on-site evaluation and inspection of the carrier's place of business.

The integrity of the application and review process is critical because the high out-of-service rates and anecdotal evidence regarding the status of the Mexican trucking fleet show that tremendous improvement would be necessary to meet U.S. safety standards. This situation is nothing short of critical, given that U.S. border inspection facilities lack the resources and large number of new inspectors that will be needed to pick up the slack created by weak Mexican regulations and enforcement.

Our Stretched Border Resources Will Not Protect the Public

The already inadequate inspection force at the border will be completely unprepared for the influx of newly admitted carriers. The number of federal inspectors at the border is less than half of the number that was estimated to be necessary in 1998, and that number did not include the investigators that will be necessary for the agency to conduct its 18-month safety reviews. Hiring and training a new FMCSA inspector requires at least 6 months—additional inspectors, even were they authorized today, would not be in place before the end of the year.

Most states, including the border states, are completely unprepared to deal with the increased traffic that will result from opening the border. Texas, which has the most border crossings and the highest traffic volume of Mexico-domiciled carriers, does not have permanent inspection facilities at any crossing point. The Texas legislature recently passed a resolution asking Congress to recognize the impact that further opening the border to Mexican trucks will have on Texas and its resources. The Texas legislature also asked Congress for increased funding, amounting to an amazing $11 billion, to offset the costs of greater infrastructure needs for border crossings and trade corridors within its state.

In fact, most of the border crossings are sorely in need of infrastructure improvements. Most border states do not have full-time state inspectors at the border during all hours of operations. While plans for building projects have been made, no permanent inspection facilities have been built since 1998, and no permanent facilities exist outside the California border areas. A recent study documented that border crossings lack Internet connections, inspection space, and space to park out-of-service vehicles. In preparing a May 2001 DOT Inspector General report, investigators visited all 27 border crossings and found that at 20 crossings, FMCSA inspectors did not have dedicated phone lines to access databases, such as those for validating a driver's license; at 19 crossings, FMCSA inspectors had space to inspect only 1 or 2 trucks at a time; and at 14 crossings, FMCSA inspectors had only 1 or 2 spaces to park vehicles placed out of service. In addition, the sites' out-of-service space was shared with inspection space at a majority of the crossings. FMCSA must address these serious shortcomings before the volume of cross-border traffic increases or trucks crossing the border are operating throughout the United States.

Our research has also shown that once a truck gets beyond the border, it is not likely to face inspection or verification of operating authority, called registration, by either state or federal officials. This is truly a tragic impediment to enforcement, because the primary means of enforcing U.S. standards for Mexican carriers during the 18-month safety oversight program is for U.S. officials to suspend or revoke a carrier's registration. However, trucks crossing the border are only checked for registration when they are inspected, and only 1 percent of trucks crossing the border are inspected at all. Even at the border, it is unlikely that illegal trucks will ever get caught, because only federal inspectors and California's state inspectors routinely check for certificates of registration. U.S. customs officials and other state inspectors do not routinely check for valid registration.

Mexican Drivers Will Escape New Penalties for Dangerous U.S. Commercial Drivers

Another proposed rulemaking by FMCSA would disqualify the commercial drivers licenses of drivers who are convicted of serious driving violations, such as drunk driving, leaving the scene of an accident, violating railroad-highway grade crossing signs, excessive speed, and reckless driving, regardless of whether the offense was committed while driving a personal vehicle or a commercial vehicle. This new rule, a significant step toward insuring the safety of commercial vehicle traffic, cannot presently be enforced with respect to Mexican drivers, due to the lack of data in the shared Mexico-U.S. database about the personal driving records of Mexican truck drivers. Therefore, it appears that FMCSA will not be able to enforce this law for Mexican commercial drivers due to practical constraints, demonstrating once again that safety steps applicable to U.S. and Canadian commercial drivers will far less frequently be applied to Mexican drivers, and that the penalties for infractions committed by Mexican carriers and drivers will, for technical reasons, in practice be far less severe.

Recommendations

We support the well-tailored proposals passed last week by the Senate Appropriations Committee. A plan for strengthening border oversight and crafting a reliable system for the admission of safe Mexican commercial carriers cannot be rushed or addressed in a piecemeal fashion. Only a comprehensive plan that addresses all of these safety concerns will insure the safety of U.S. highways and the public. Our recommendations are the minimum that should be required and are as follows:

- As the Senate Committee required, FMCSA must require on-site safety reviews of Mexican carriers prior to granting operating authority. FMCSA must not test the safety of Mexican carriers on U.S. motorists. On-site safety reviews can evaluate factors indicating the ability of a carrier to comply with U.S. laws, while review of a paper application cannot. Safety compliance reviews, conducted at a carrier's place of business with independent federal verification of drivers' license validity, equipment safety, inspection and repair facilities, safety management controls, and interviews with on-site company officials, among other elements of a complete safety compliance effort, should be the primary basis for evaluating the safety of Mexico-domiciled carriers and should be a predicate of operating authority, as they are in the United States.
- As recommended by the Senate Committee, FMCSA should require Mexican carriers to complete a proficiency test to demonstrate their knowledge of U.S. laws and safety regulations. The Motor Carrier Safety Improvement Act of 1999 directs the Secretary of DOT to establish minimum requirements for applicant motor carriers to ensure that they are knowledgeable about federal motor carrier safety standards; it also directs the Secretary to consider the establishment of a safety proficiency examination for these applicants to test their knowledge of safety requirements. This requirement is supported by law and is reasonable prior to a grant of operating authority.
- As indicated by the Committee, FMCSA must increase the number of full-time federal inspectors at the border and help states to supply state inspectors so that inspectors are present at all border crossings during all hours of operation. According to the General Accounting Office, each of the 161 state and federal inspectors who were on the job in March 2000 would have to inspect an incredible 24,800 Mexican trucks annually to inspect those then crossing the border. The DOT Inspector General should be required to certify, as the Committee indicates, that an adequate number of inspectors have been hired and trained to perform meaningful border and on-site safety inspections. FMCSA must provide for the hiring and training of additional inspectors to conduct the on-site safety reviews. As the Committee required, DOT should require that trucks be permitted to cross the border only at times when inspectors are on duty.
- FMCSA must require that the licenses, certificates of registration, and proof of insurance of all drivers and trucks crossing the border are checked and verified, and that a far more substantial proportion of trucks crossing the border are inspected. In addition, the border should not be opened until DOT has assured Congress that Mexico's information infrastructure is established, accurate, functional and informative, as the Committee specified.
- As the Committee required, FMCSA must ensure that all border crossings have permanent inspection facilities that include weigh stations (Weigh-In-Motion systems), dedicated phone lines for accessing databases, and ample space to con-

duct inspections as well as parking places for out-of-service vehicles. Until all 27 border areas are upgraded, and until the Inspector General certifies that telephone connections and computer links exist at all border crossings and mobile enforcement units, commercial carriers should be limited to crossing where there are adequate inspection facilities. As the Committee required, DOT should be required to electronically verify the license of carriers crossing the border. In addition, DOT should be required to electronically verify the registration information of carriers.

- As the Committee provided, the border should remain closed until DOT Inspector General certifies that FMCSA has put in place a plan to ensure compliance with U.S. hours-of-service rules. To assist with enforcement, the Inspector General should also certify that DOT has assigned Mexican trucks an operating number to allow state inspectors to track the carrier's movements.
- As the Committee required, state inspectors who receive federal funds should be made to check for violations of federal law, including the validity of registration and drivers' licenses. DOT should also implement, as the Committee required, a system similar to that for U.S. drivers that prevents Mexican drivers from being able to acquire a new license if their license has been lost as a penalty for legal infractions.
- As the Committee provided, prior to opening the border, DOT must issue rules regarding: (1) proficiency examinations; (2) improved training for domestic safety auditors; (3) staffing standards for inspection sites at the U.S.-Mexico border; (4) prohibitions on foreign motor carriers' leasing vehicles to another carrier while suspended for rule infractions; (5) disqualifications of carriers that have operated illegally in the U.S.

The border must not be opened until all of these conditions are met.

In Mexico, Graft Infects Every Aspect of Society

By Laurie Goering

About 10 times each day in Mexico City, the transit policeman pulls over a traffic offender. The encounter is nearly always the same.

The driver offers a bribe of about $4, eager to avoid a drive to the nearest police delegation and a wait of an hour or more to be issued a formal $30 ticket. The officer accepts. On his salary of just $275 a month—too little for a home of his own or a car—the extra money is crucial to paying basic bills for his wife and two children, he insists.

"We have to accept. It's out of necessity," says the 10-year veteran of the force, leaning against his white squad car. "Anyway, we're not the ones asking. Corruption comes from both sides."

Since ending 71 years of one-party rule in Mexico last year, President Vicente Fox has made battling Mexico's deeply entrenched corruption a top priority. But the scale of the job—excising a cancer that has metastasized into nearly every aspect of Mexican life—is enormous.

In Mexico, anyone with a few dollars to spare pays for a driver's license, rather than taking the test and standing in line for most of a day. Businessmen seeking a license to open a new store are asked for a hefty "voluntary donation" to speed the process. Mexican newspapers run almost daily headlines about police involved in kidnapping rings, drug traffickers bribing their way out of prison or state companies firing whistle-blowers.

In the most recent Transparency International ranking, Mexicans themselves put their country nearly in the top third of corrupt nations worldwide, closer to Nigeria, the most corrupt, than Finland, the least.

A daunting task

"Corruption is almost a lifestyle here," says Guadalupe Loaeza, a Mexico City author of books on Mexican social conditions. "It's part of our mentality and it's hard for us to fight against it."

The fight, however, has begun. In January, Mexico's first Commission for Transparency and Combating Corruption was installed, and it has moved quickly to begin identifying and combating corruption problems, particularly in the nation's executive and administrative branch.

An initial study of corruption problems in 205 federal institutions found 5,328 separate kinds of corruption, said Hugo Gutierrez, the executive secretary of the commission.

Staff in those offices came up with 7,118 ideas on how to stop corruption—but also 2,427 kinds of problems standing in the way of doing that, including everything from low salaries to reluctance to turn in corrupt colleagues.

To find solutions, the commission is turning to foreign examples, from cash controls at Las Vegas casinos—"dealers don't even have pockets in their pants," Gutierrez notes—to transparency agreements that have worked to cut customs and industry corruption in nations like Panama.

The commission has signed anti-corruption accords with the nation's major universities, labor groups, farm organizations and bankers and lawyers associations. Even the Institutional Revolutionary Party, or PRI, which ruled Mexico with a corruption-tainted iron grip for 70 years, has signed on.

Coordinated attack needed

What is clear, Gutierrez says, is that successfully cracking down on corruption will require a coordinated attack on many fronts, from training public workers in professionalism and ethics to ending impunity for violators. Complicated bureaucratic processes will have to be trimmed, sanctions revamped, workers trained to be more efficient, and society at large persuaded, through education and public-relations campaigns, not to pay la mordida—the bite.

"We have to strengthen the ethical infrastructure of our people," Gutierrez said.

A new sign on his office wall sports an apple with a bite missing, and a bright red slash across it. "Don't feed corruption," it says.

The fight won't be an easy one. Members of the Mexican Congressional Commission and Public Security have begun introducing legislation considered key to the anti-corruption effort, including a rewrite of a national law of responsibilities for public workers and a measure to allow suspected ill-gotten gains of corruption to be frozen while a suspect is tried.

Anti-corruption advocates also hope to pass a new law giving the public and the media access to basic government data, boost penalties for influence peddling and create a federal register of public workers to make it easier for government employers to check for past corruption violations.

Fighting corruption "is our highest priority," says Armando Salinas, the president of the congressional commission and a member of Fox's National Action Party, or PAN. "Mexicans say they want no more of it."

Passing all the new reforms, however, will be a challenge. Miguel Barbosa, another member of the congressional committee, says he has already begun to see lobbying against the measures by powerful interests that have grown rich on corruption and have plenty of money to spread among friendly members of Congress.

"This isn't going to be easy," he said. "Politics have changed in Mexico, but the interests have not."

Victor Gandarilla, a PRI member on the commission, agrees.

"People say this is another Mexico, but we're continuing with the same Mexicans," he said. In his view, the best way to turn Mexicans against corruption "is for them to see it punished."

Punishing corruption is critical, analysts say, to the new government's efforts being taken seriously. But some corruption, especially that associated with drug trafficking, will be hard to prosecute, much less stop.

Fernando Tenorio, the head of Secure Cities, a program through Mexico's National Institute of Penal Sciences, says an increasing percentage of Mexico's corruption is "not just corruption but organized corruption" that involves rings of criminals, from private security officers to prison guards.

Unraveling those networks, which have based themselves on cartels, will be tough. Tenorio believes firings combined with professionalization programs—his program offers master's and doctorate programs for judges and public administrators—is the answer.

"It's unthinkable that we're going to eliminate corruption but it could be reduced to tolerable levels in 6 years," the length of Fox's term, he predicted.

Among other keys to rooting out entrenched corruption in Mexico, national and international analysts say, is sending out undercover officers to offer bribes, then following up with suspensions, loss of government jobs, fines and arrests and convictions for those who take them. Anti-corruption officials say they plan just that.

PRI as watchdog

Mexico's newly strengthened democracy also should play a key role in the effort. With the PRI now out of power and eager to return, it will act as a watchdog on spending in Fox's new PAN government, analysts say.

Finally, the government will need to boost salaries for key underpaid workers, and remove what Alberto Aziz, a professor at the Center for Investigation and Ad-

vanced Study in Social Anthropology calls "laws so absurd you have to violate them," from driver's exams asking what Violation 36 is, to bureaucratic licensing processes that take years unless bribes are paid to bypass the system.

Perhaps the best sign that things really might change in Mexico is an increasingly evident shift of attitudes on the street. A foreign businessman who told Mexican colleagues recently about paying off a traffic cop was met not with knowing nods but with disdain.

"How is the country ever going to change if you keep doing that?" they demanded angrily.

Since Fox's election and the end of one-party rule in Mexico, "people are feeling more like citizens," Tenorio suggests. "I think if the government puts forward a good example, people will follow it.

Recent Mexican Trucking Rules Do Not Solve Serious Safety Hazards:

NAFTA Ruling Could Expose U.S. Public to Dangerous Cross-Border Trucks

February 7, 2001

A final ruling was handed down February 6, 2001 following a complaint filed by Mexico under the North American Free Trade Agreement (NAFTA), in which Mexico argued that its commercial trucks should be allowed unlimited access to U.S. highways. A NAFTA arbitration panel, after meeting for months in secret, found that the U.S. must allow Mexican commercial trucks to carry cargo throughout the U.S. or else pay trade sanctions for our refusal to comply, regardless of a well-documented history of U.S. safety concerns.

NAFTA outlined an arbitrary schedule that allowed Mexican carriers limited access to U.S. border states in 1995 and access to the entire U.S. by January 2000. NAFTA also created cross-border working groups on vehicle standards and safety, and Mexico agreed to improve safety at home. But the safety provisions of NAFTA, predictably, have no teeth, because the timelines for both partial and full commercial access were not linked to any progress in the safety of Mexico's trucking fleet.

And the promised improvements have not been made. Due to the serious and unresolved concerns about the grave risk to U.S. motorists of crashes with dangerous, overloaded trucks, until the panel decision, Mexican trucks were limited to a small zone near the border. Last January, President Clinton explained that the Mexican highway inspections and monitoring system was inadequate to assure safety.

Although Mexican trucks in theory have to comply with U.S. law before they can cross the border, in practice the U.S. needs Mexico to improve safety at home because U.S. border inspectors cannot possibly check every cross-border truck. In fact, studies by the Department of Transportation Inspector General and the General Accounting Office showed that even though less than one percent of cross-border Mexican trucks were inspected, 35 percent of those trucks had to be taken out of service because of serious safety violations. For all of these reasons, the Clinton Administration's policy was that Mexican trucks would not be allowed full access to the U.S. until considerable safety and oversight improvements were complete.

Last July, the Mexican government finally established a set of fledgling "standards" for commercial trucks and the authority and guidelines for roadside inspections. But a majority of the new inspection standards for critical items such as tires, headlights and hazardous materials are merely voluntary in the first year. Even once they become mandatory, the new rules are far from comprehensive, and in many cases they could provide legal cover for very dangerous practices.

The rules provide the basis for roadside inspections only on Mexico's *federal* highways—only 10 percent of Mexican roads— without additional money for inspectors or inspection sites. Until a system of privately owned inspection areas is established, the rules say that inspection checks will be "random" and done by "General Road Inspectors." There is no mention of special training programs or of any increase in the number of safety checks near border areas.

I. Summary of Flaws and Omissions in the Recently Enacted Mexican Rules

When the final ruling was announced, the United States Trade Representative stated that President Bush supports allowing the Mexican trucking fleet unlimited access to the U.S. Public Citizen examined the new rules issued by Mexico to ascertain whether they are likely to reduce the risks posed by a fresh onslaught of Mexican trucks. Across every category, researchers found, the rules come up short.

A. General Problems:

Industry Wrote the Rules: Industries that will profit from the lack of adequate safety rules for cross-border trucks had a heavy hand in crafting the regulations. The second and third pages of the Mexican government's new rules identify the participating groups as the National Association of Producers of Buses, Trucks, and Tractor Trailers, the National Chamber of Motor Transport Hauling, the National Chamber of Rubber Industry, the National Chamber of Iron and Steel Industries, and the National Association of the Chemical Industry, as well as about twenty other companies and industry alliances.

Very Limited Application: Only a very small portion of the roads in Mexico are part of a national set of highways and thus under federal oversight. Over 90 percent of the surface mileage in Mexico on which trucks operate are under provincial and local jurisdiction. Trucks on these roads are not subject to inspection under the new rules.

Severe Time Limits on Inspections: Although the new inspection process requires 31 separate equipment checks, with more than 143 actions to test components of the truck, the rules state that the maximum time for an inspection of a *general cargo* carrier is 30 minutes, while an inspection of a *hazardous materials* carrier is limited to an even less generous 20 minutes. In the U.S., there is no time limit for inspections, and discovery of a serious infraction may trigger a comprehensive safety inspection, which can take hours.

Total Lack of Monitoring and Oversight: Although creation of a joint U.S.-Mexico database is in progress, it is years from completion. Company and driver safety records will be difficult to track until much better systems (that include roadside compliance data) are developed and fully implemented as an enforcement and monitoring tool.

Still No Hours-of-Service Limitations: Hours-of-service regulations limit the number of hours that commercial drivers may spend behind the wheel of large, dangerous trucks and have been a focus of safety efforts in the U.S. Mexico has no limitations in this area whatsoever. In fact, Mexico's new rule on logbook inspections states that "The driver's hours of service is designed *by company, according to its needs*." This statement surely was enshrined in regulation by companies that profit by maintaining control over their workers' hours and, in context, evinces a near-total disregard for the safety of other drivers on the highway.

Two-Year Across-the-Board Exemptions for New Vehicles: New vehicles are exempt from all standards and inspections for 2 full years from the date of manufacture.

Safety Problems Are Treated in Isolation: The rules do not work cumulatively, so vehicles with multiple, but borderline, safety problems will be able to stay on the road.

The Deterrence Effect of Fines is Unclear: Although fines are authorized, the rules do not state their amount or consider their deterrent effects against industry profits.

II. Severe Safety Defects Are Systematically Overlooked by the New Rules

To fully convey the serious limitations of the newly-created Mexican inspection and certification regime, we compiled a list of the safety failures covered by the regulations. The violations listed below would result in a vehicle's automatic or very probable removal from U.S. highways (called an "out-of-service order"). In Mexico these safety violations merely incur a fine and a promise to fix the problem within twenty days.

Sections of the Recent Mexican Regulations

That Allow Unsafe Mexican Vehicles to Remain on the Road

For the following types of failures, an out-of-service order would be **automatic** under U.S. law, but in Mexico will merely incur a ticket and a promise to fix the problem within 20 days:

Transport of Hazardous Materials *(Section 4.2)*

1. Incompatible materials in the same shipment
2. Bulk loads improperly blocked or secured

3. Identifications and warnings do not match material being transported
4. More than 25 percent of anchoring components are missing
5. Use of tanks not designed or authorized for transported products
6. Escaping, leaking or spilling material from a transport tank
7. Failure to carry the appropriate Transport Emergency information

Logbooks *(Section 4.2)*

1. Non-existent

For the following types of failures, an out-of-service order would be extremely probable under U.S. law, but in Mexico will merely incur a ticket and a promise to fix the problem in 20 days:

Lighting Systems *(Section 4.1)*

1. Electrical system fuses missing and bridged instead with wire, aluminum or other materials
2. Worn, exposed wires, missing insulation, wire twisted with other cables
3. Headlights missing or inoperable when needed for climatological reasons or night travel
4. Brake lights missing or inoperable

Windshield Wipers *(Section 4.3)*

1. No windshield wipers and spray jets

Windshield *(Section 4.4)*

1. Shattered or missing windshield

Tires, Inner Tubes and Belts *(Section 4.5)*

1. Tires: walls cut or damaged, structural material exposed, not designed for highway use, tire tread separation, rubbing against adjacent surfaces, exposed radial belts, tires separating from wheels

Wheels and Rims *(Section 4.6)*

1. Bent, broken or cracked wheel rims

Frames, Rails or Truck Chassis; Semi-Trailer/Trailer Frame *(Sections 4.7 and 4.8)*

1. Cracked, loose, bent or broken frame rails, including those permitting movement of the chassis, and twists, bends and weaknesses due to cracks in the vehicle chassis

Fuel System *(Section 4.9)*

1. Gas cap missing, filling pipe permits fuel spillage and fuel lines leak

Vehicle Load Securing *(Section 4.1)*

1. Cracked, broken, stretched, twisted, worn, ruptured and knotted load securement chains, and cables and cut, burned or punctured synthetic belts
2. Separation of load containment side boards or stakes, or the inadequate height of side walls which are unable to prevent load from falling

Exhaust System *(Section 4.11)*

1. "Unsafe" mounting of, or broken or damaged parts of exhaust pipes for gases, smoke, and/or multiple collectors

Steering System *(Section 4.12)*

1. Loose steering wheel or detached joints, missing U-bolts or securing bolts for steering column
2. Steering gear box detached from its mounting on the chassis or a rupture in the gear box or its mounting brackets

Suspension System *(Section 4.13)*

1. No springs on mechanical suspension
2. Pneumatic suspension with cracked suspension frame or loose U-bolts.

Pneumatic Brake System *(Section 4.14)*

1. Curled, obstructed or broken hoses or pipes
2. Brake drums with cracks on their sides
3. Detached or loosely mounted brake chambers
4. More than 20 percent of the brake system's "push rods" out of adjustment

Hydraulic Brake System *(Section 4.15)*

1. Inoperative brake linings (non-moving) and/or oil contamination of brake drums

2. Missing brake lining segments

Electric Brake System *(Section 4.16)*

1. Missing, non-existent, ruptured or defective brake on vehicle wheel

Cabin (Truck Cab) *(Section 4.18)*

1. Inoperative instruments and interior controls, including inoperative air pressure gauge for air brakes, emergency warning signal, emergency brake control, seatbelts, fire extinguishers
2. No seats
3. No "speed control device" (throttle)

Although inapplicable to commercial trucks, the rules are also lax about the safety of passenger buses:

Passenger Area in Buses *(Section 4.19)*

1. No emergency equipment, no emergency exit, inoperative emergency exit, holes in bus passenger area floor, seats not secured to floor, no seatbelts, inoperative interior lights

The translated text of the Mexican regulations is available on the Public Citizen Web site at *www.citizen.org.*

A more comprehensive report on the serious safety hazards of the NAFTA panel decision and the options open to the Bush administration is available on the Public Citizen Web site at *www.citizen.org/pctrade/nafta/reports/truckstudy.htm*

Mexico's Trucks on Horizon Long-distance haulers are headed into U.S. once Bush opens borders

Robert Collier, Chronicle Staff Writer

Altar Desert, Mexico—Editor's Note: This week, the Bush administration is required by NAFTA to announce that Mexican long-haul trucks will be allowed onto U.S. highways—where they have long been banned over concerns about safety—rather than stopping at the border. The Chronicle sent a team to get the inside story before the trucks start to roll.

It was sometime way after midnight in the middle of nowhere, and a giddy Manuel Marquez was at the wheel of 20 tons of hurtling, U.S.-bound merchandise.

The lights of oncoming trucks flared into a blur as they whooshed past on the narrow, two-lane highway, mere inches from the left mirror of his truck. Also gone in a blur were Marquez's past 2 days, a nearly Olympic ordeal of driving with barely a few hours of sleep.

"Ayy, Mexico!" Marquez exclaimed as he slammed on the brakes around a hilly curve, steering around another truck that had stopped in the middle of the lane, its hood up and its driver nonchalantly smoking a cigarette. "We have so much talent to share with the Americans—and so much craziness."

Several hours ahead in the desert darkness was the border, the end of Marquez's 1,800-mile run. At Tijuana, he would deliver his cargo, wait for another load, then head back south.

But soon, Marquez and other Mexican truckers will be able to cross the border instead of turning around. Their feats of long-distance stamina—and, critics fear, endangerment of public safety—are coming to a California freeway near you.

Later this week, the Bush administration is expected to announce that it will open America's highways to Mexican long-haul trucks, thus ending a long fight by U.S. truckers and highway safety advocates to keep them out.

Under limitations imposed by the United States since 1982, Mexican vehicles are allowed passage only within a narrow border commercial zone, where they must transfer their cargo to U.S.-based long-haul trucks and drivers.

The lifting of the ban—ordered last month by an arbitration panel of the North American Free Trade Agreement—has been at the center of one of the most high-decibel issues in the U.S.-Mexico trade relationship.

Will the end of the ban endanger American motorists by bringing thousands of potentially unsafe Mexican trucks to U.S. roads? Or will it reduce the costs of cross-border trade and end U.S. protectionism with no increase in accidents?

Two weeks ago, as the controversy grew, Marquez's employer, Transportes Castores, allowed a Chronicle reporter and photographer to join him on a typical run from Mexico City to the border.

The 3-day, 1,800-mile journey offered a window into a part of Mexico that few Americans ever see—the life of Mexican truckers, a resourceful, long-suffering breed who, from all indications, do not deserve their pariah status north of the border.

But critics of the border opening would also find proof of their concerns about safety:

—American inspectors at the border are badly undermanned and will be hard-pressed to inspect more than a fraction of the incoming Mexican trucks.

California—which has a much more rigorous truck inspection program than Arizona, New Mexico or Texas, the other border states—gave full inspections to only 2 percent of the 920,000 short-haul trucks allowed to enter from Mexico last year.

Critics say the four states will be overwhelmed by the influx of Mexican long-haul trucks, which are expected to nearly double the current volume of truck traffic at the border.

—Most long-distance Mexican trucks are relatively modern, but maintenance is erratic.

Marquez's truck, for example, was a sleek, 6-month-old, Mexican-made Kenworth, equal to most trucks north of the border. But his windshield was cracked—a safety violation that would earn him a ticket in the United States but had been ignored by his company since it occurred 2 months ago.

A recent report by the U.S. Transportation Department said 35 percent of Mexican trucks that entered the United States last year were ordered off the road by inspectors for safety violations such as faulty brakes and lights.

—Mexico's domestic truck-safety regulation is extremely lax. Mexico has no functioning truck weigh stations, and Marquez said federal police appear to have abandoned a program of random highway inspections that was inaugurated with much fanfare last fall.

—Almost all Mexican long-haul drivers are forced to work dangerously long hours.

Marquez was a skillful driver, with lightning reflexes honed by road conditions that would make U.S. highways seem like cruise-control paradise. But he was often steering through a thick fog of exhaustion.

In Mexico, no logbooks—required in the United States to keep track of hours and itinerary—are kept. Marquez slept a total of only seven hours during his 3-day trip.

"We're just like American truckers, I'm sure," Marquez said with a grin. "We're neither saints nor devils. But we're good drivers, that's for sure, or we'd all be dead."

Although no reliable statistics exist for the Bay Area's trade with Mexico, it is estimated that the region's exports and imports with Mexico total $6 billion annually. About 90 percent of that amount moves by truck, in tens of thousands of round trips to and from the border.

Under the decades-old border restrictions, long-haul trucks from either side must transfer their loads to short-haul "drayage" truckers, who cross the border and transfer the cargo again to long-haul domestic trucks. The complicated arrangement is costly and time-consuming, making imported goods more expensive for U.S. consumers.

Industry analysts say that after the ban is lifted, most of the two nations' trade will be done by Mexican drivers, who come much cheaper than American truckers because they earn only about one-third the salary and typically drive about 20 hours per day.

Although Mexican truckers would have to obey the U.S. legal limit of 10 hours consecutive driving when in the United States, safety experts worry that northbound drivers will be so sleep-deprived by the time they cross the border that the American limit will be meaningless. Mexican drivers would not, however, be bound by U.S. labor laws, such as the minimum wage.

"Are you going to be able to stay awake?" Marcos Munoz, vice president of Transportes Castores jokingly asked a Chronicle reporter before the trip. "Do you want some pingas?"

The word is slang for uppers, the stimulant pills that are commonly used by Mexican truckers. Marquez, however, needed only a few cups of coffee to stay awake through three straight 21-hour days at the wheel.

Talking with his passengers, chatting on the CB radio with friends, and listening to tapes of 1950s and 1960s ranchera and bolero music, he showed few outward signs of fatigue.

But the 46-year-old Marquez, who has been a trucker for 25 years, admitted that the burden occasionally is too much.

"Don't kid yourself," he said late the third night. "Sometimes, you get so tired, so worn, your head just falls."

U.S. highway safety groups predict an increase in accidents after the border is opened.

"Even now, there aren't enough safety inspectors available for all crossing points," said David Golden, a top official of the National Association of Independent Insurers, the main insurance-industry lobby.

"So we need to make sure that when you're going down Interstate 5 with an 80,000-pound Mexican truck in your rearview mirror and you have to jam on your brakes, that truck doesn't come through your window."

Golden said the Bush administration should delay the opening to Mexican trucks until border facilities are upgraded.

California highway safety advocates concur, saying the California Highway Patrol—which carries out the state's truck inspections—needs to be given more inspectors and larger facilities to check incoming trucks' brakes, lights and other safety functions.

Marquez's trip started at his company's freight yard in Tlalnepantla, an industrial suburb of Mexico City. There, his truck was loaded with a typical variety of cargo—electronic components and handicrafts bound for Los Angeles, and chemicals, printing equipment and industrial parts for Tijuana.

At the compound's gateway was a shrine with statues of the Virgin Mary and Jesus. As he drove past, Marquez crossed himself, then crossed himself again before the small Virgin on his dashboard.

"Just in case, you know," he said. "The devil is always on the loose on these roads."

In fact, Mexican truckers have to brave a wide variety of dangers.

As he drove through the high plateaus of central Mexico, Marquez pointed out where he was hijacked a year ago—held up at gunpoint by robbers who pulled alongside him in another truck. His trailer full of canned tuna—easy to fence, he said—was stolen, along with all his personal belongings.

What's worse, some thieves wear uniforms.

On this trip, the truck had to pass 14 roadblocks, at which police and army soldiers searched the cargo for narcotics. Each time, Marquez stood on tiptoes to watch over their shoulders. He said, "You have to have quick eyes, or they'll take things out of the packages."

Twice, police inspectors asked for bribes—"something for the coffee," they said. Each time, he refused and got away with it.

"You're good luck for me," he told a Chronicle reporter. "They ask for money but then see an American and back off. Normally, I have to pay a lot."

Although the Mexican government has pushed hard to end the border restrictions, the Mexican trucking industry is far from united behind that position. Large trucking companies such as Transportes Castores back the border opening, while small and medium-size ones oppose it.

"We're ready for the United States, and we'll be driving to Los Angeles and San Francisco," said Munoz, the company's vice president.

"Our trucks are modern and can pass the U.S. inspections. Only about 10 companies here could meet the U.S. standards."

The border opening has been roundly opposed by CANACAR, the Mexican national trucking industry association, which says it will result in U.S. firms taking over Mexico's trucking industry.

"The opening will allow giant U.S. truck firms to buy large Mexican firms and crush smaller ones," said Miguel Quintanilla, CANACAR's president. "We're at a disadvantage, and those who benefit will be the multinationals."

Quintanilla said U.S. firms will lower their current costs by replacing their American drivers with Mexicans, yet will use the huge American advantages—superior warehouse and inventory-tracking technology, superior access to financing and huge economies of scale—to drive Mexican companies out of business.

Already, some U.S. trucking giants such as M.S. Carriers, Yellow Corp. and Consolidated Freightways Corp. have invested heavily in Mexico.

"The opening of the border will bring about the consolidation of much of the trucking industry on both sides of the border," said the leading U.S. academic expert on NAFTA trucking issues, James Giermanski, a professor at Belmont Abbey College in Raleigh, N.C.

The largest U.S. firms will pair with large Mexican firms and will dominate U.S.-Mexico traffic, he said.

But Giermanski added that the increase in long-haul cross-border traffic will be slower than either critics or advocates expect, because of language difficulties, Mexico's inadequate insurance coverage and Mexico's time- consuming system of customs brokers.

"All the scare stories you've heard are just ridiculous," he said. "The process will take a long time."

In California, many truckers fear for their jobs. However, Teamsters union officials say they are trying to persuade their members that Marquez and his comrades are not the enemy.

"There will be a very vehement reaction by our members if the border is opened," said Chuck Mack, president of Teamsters Joint Council 7, which has 55, 000 members in the Bay Area.

"But we're trying to diminish the animosity that by focusing on the overall problem—how (the opening) will help multinational corporations to exploit drivers on both sides of the border."

Mexican drivers, however, are likely to welcome the multinationals' increased efficiency, which will enable them to earn more by wasting less time waiting for loading and paperwork.

For example, in Mexico City, Marquez had to wait more than 4 hours for stevedores to load his truck and for clerks to prepare the load's documents—a task that would take perhaps an hour for most U.S. trucking firms.

For drivers, time is money. Marquez's firm pays drivers a percentage of gross freight charges, minus some expenses. His 3-day trip would net him about $300. His average monthly income is about $1,400—decent money in Mexico, but by no means middle class.

Most Mexican truckers are represented by a union, but it is nearly always ineffectual—what Transportes Castores executives candidly described as a "company union." A few days before this trip, Transportes Castores fired 20 drivers when they protested delays in reimbursement of fuel costs.

But Marquez didn't much like talking about his problems. He preferred to discuss his only child, a 22-year-old daughter who is in her first year of undergraduate medical school in Mexico City.

Along with paternal pride was sadness.

"Don't congratulate me," he said. "My wife is the one who raised her. I'm gone most of the time. You have to have a very strong marriage, because this job is hell on a wife.

"The money is okay, and I really like being out on the open road, but the loneliness . . ." He left the thought unfinished, and turned up the volume on his cassette deck.

It was playing Pedro Infante, the famous bolero balladeer, and Marquez began to sing.

"The moon of my nights has hidden itself.

"Oh little heavenly virgin, I am your son.

"Give me your consolation,

"Today, when I'm suffering out in the world."

Despite the melancholy tone, Marquez soon became jovial and energetic. He smiled widely and encouraged his passengers to sing along. Forgoing his normal caution, he accelerated aggressively on the curves.

His voice rose, filling the cabin, drowning out the hiss of the pavement below and the rush of the wind that was blowing him inexorably toward the border.

How NAFTA Ended the Ban On Mexico's Trucks

The North American Free Trade Agreement, which went into effect in January 1994, stipulated that the longtime U.S. restrictions on Mexican trucks be lifted.

Under NAFTA, by December 1995, Mexican trucks would be allowed to deliver loads all over the four U.S. border states—California, Arizona, New Mexico and Texas—and to pick up loads for their return trip to Mexico. U.S. trucking firms would get similar rights to travel in Mexico. And by January 2000, Mexican trucks would be allowed throughout the United States.

However, bowing to pressure from the Teamsters union and the insurance industry, President Clinton blocked implementation of the NAFTA provisions. The Mexican government retaliated by imposing a similar ban on U.S. trucks.

As a result, the longtime status quo continues: Trucks from either side must transfer their loads to short-haul "drayage" truckers, who cross the border and transfer the cargo again to long-haul domestic trucks.

The complicated arrangement is time-consuming and expensive. Mexico estimates its losses at $2 billion annually; U.S. shippers say they have incurred similar costs.

In 1998, Mexico filed a formal complaint under NAFTA, saying the U.S. ban violated the trade pact and was mere protectionism. The convoluted complaint process lasted nearly 6 years, until a three-person arbitration panel finally ruled Feb. 6 that the United States must lift its ban by March 8 or allow Mexico to levy punitive tariffs on U.S. exports.

Comparing Trucking Regulations

The planned border opening to Mexican trucks will pose a big challenge to U. S. inspectors, who will check to be sure that trucks from Mexico abide by stricter U.S. truck-safety regulations. Here are some of the differences:

Hours-of-service limits for drivers:

In U.S.: Yes. Ten hours' consecutive driving, up to 15 consecutive hours on duty, 8 hours' consecutive rest, maximum of 70 hours' driving in 8-day period.

In Mexico: No

Driver's age

In U.S.: 21 is minimum for interstate trucking

In Mexico: 18

Random drug test

In U.S.: Yes, for all drivers

In Mexico: No

Automatic disqualification for certain medical conditions

In U.S.: Yes

In Mexico: No

Logbooks

In U.S.: Yes. Standardized logbooks with date graphs are required and part of inspection criteria. In Mexico: A new law requiring logbooks is not enforced, and virtually no truckers use them.

Maximum weight limit (in pounds)

In U.S.: 80,000

In Mexico: 135,000

Roadside Inspections

In U.S.: Yes

In Mexico: An inspection program began last year but has been discontinued.

Out-of-service rules for safety deficiencies

In U.S.: Yes

In Mexico: Not currently. Program to be phased in over 2 years.

Hazardous materials regulations

In U.S.: A strict standards, training, licensure and inspection regime.

In Mexico: Much laxer program with far fewer identified chemicals and substances, and fewer licensure requirements.

Vehicle safety Standards

In U.S.: Comprehensive standards for components such as antilock brakes, underride guards, night visibility of vehicle.

In Mexico: Newly enacted standards for vehicle inspections are voluntary for the first year and less rigorous than U.S. rules.

Sources: Public Citizen, California Department of Transportation and Chronicle research

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The Coming NAFTA Crash:

THE DEADLY IMPACT OF A SECRET NAFTA TRIBUNAL'S DECISION TO OPEN U.S. HIGHWAYS TO UNSAFE MEXICAN TRUCKS

New Evidence Suggests that a NAFTA Ruling Allowing Mexican Trucks Access to U.S. Will Expose the Public to Significant Threats

Introduction

A legal ruling by a North American Free Trade Agreement (NAFTA) tribunal will be released in February 2001. The NAFTA ruling—requiring the U.S. to permit access to U.S. highways by Mexican trucks—may not only put American motorists and communities at great risk, but could destroy NAFTA itself. Ironically, this NAFTA ruling—which could bring NAFTA's threat to public health and safety directly into communities nationwide—comes as President George W. Bush calls for the expansion of NAFTA. Already his plan for the expansion of NAFTA to all the Americas faces a decidedly negative U.S. public opinion as a result of NAFTA.

The NAFTA dispute America faces about open-border trucking is indicative of the split in the U.S. over corporate managed trade: on one side are corporate pressures to use "trade" deals to further a broad agenda of deregulation regardless of the environmental, health or safety consequences; and on the other, the public pressures to demand that international commercial agreements do not undermine important social and environmental goals.

> "Just one unfortunate accident between an overweight, unsafe Mexican truck and a Texas school bus . . . could escalate into an international incident."—Former Texas Attorney General Dan Morales, *Los Angeles Times,* 3/18/96.

Imminently in early February, 2001, a final ruling will be issued in a simmering trade dispute between the U.S. and Mexico that pits commercial trucking interests against the public interest of safe highways. A preliminary ruling in the case rejected U.S. arguments regarding the lack of safety of Mexican trucks and ordered the U.S. to permit access by Mexican trucks to U.S. highways.

The North American Free Trade Agreement went into effect in 1994 with provisions allowing Mexican trucks increasing access to U.S. highways. These NAFTA provisions required the U.S. to open access to all U.S.-Mexico border states in 1995 and to permit Mexican trucks to travel throughout the entire U.S. as of January 1, 2000. Until these provisions are implemented, because of a pre-existing U.S.-Mexico agreement, Mexican trucks may operate in a border commercial zone ranging from 3 to 20 miles into the U.S. to drop off loads destined for U.S. interior states. There are no interior checkpoints to enforce the border zone, however, and Mexican trucks have been pulled over many times in the border states and beyond.

Other provisions of NAFTA require the U.S., Mexico and Canada to negotiate unified standards for truck safety and commercial driver licensing. Proponents of open border trucking argued that this would allow Mexico to develop domestic standards at least as protective as those in the U.S. Yet the standardization process was not linked in NAFTA to the opening of the border and has not thus far led to the establishment of cross-border, uniform safety standards. In defending the administration's decision to keep the border closed, the U.S. Department of Transportation (DOT) has repeatedly documented the significant safety risks Mexican trucks would pose to U.S. highways.

> "We are seeing some frightening violations: air brakes that aren't responding; brake and tail lights that are not working or missing entirely. It's scary stuff."—Lawrence Weintrob, Department of Transportation Assistant Inspector General on condition of Mexican trucks, *USA Today* 1/11/99.

Moreover, the standards that do exist for commercial trucks in the U.S. are hardly a model for safety. Some critical standards, such as restrictions on the number of hours that truckers may drive, date from the 1930s. A consensus has been growing on Capitol Hill that this and other safety measures need to be updated soon in order to protect the public highway. If U.S. standards are upgraded the U.S. and Mexico would have to go back to the drawing table on many issues, so that Mexican trucks and driving rules would not lag behind the new U.S. standards.

Because of all these concerns, while in office President Clinton maintained the limited access to the border commercial zones and did not allow any greater access to the four U.S. states bordering Mexico or the rest of the U.S.

In 1998, Mexico challenged Clinton's refusal to open the border before a NAFTA enforcement tribunal, demanding that the U.S. abide by its NAFTA commitments and open its highways.* On November 29, 2000, the NAFTA tribunal released its preliminary ruling on the case supporting Mexico's claim: the U.S. must open its highways to Mexican trucks or pay an as-yet-unnamed penalty to Mexico for refusing to comply with the NAFTA ruling. A final ruling is due to be made by February 5, 2001 and must be released to the public 15 days later.

The final ruling was supposed to be released December 29, 2000 and released to the public by January 14, 2001, according to NAFTA's pre-set tribunal time lines (final decision is supposed to be provided 30 days after the preliminary ruling and released to the public 15 days later). The delay of the ruling at least until February 5, 2001 may suggest that the NAFTA tribunal sought to allow a transition in the U.S. government to be completed so that President Bush, whose election had only been certified days before the preliminary ruling, would be the decision maker.

The preliminary ruling in the NAFTA truck case contained the legal sophistry which is becoming increasingly common in trade tribunal rulings as public oversight of this realm has increased. The panel ultimately ordered the U.S. to open its bor-

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*Mexico's initial complaint was that the U.S. did not open the U.S. border states in December 1995 as agreed under NAFTA. However, the NAFTA tribunal did not issue a preliminary ruling until after the NAFTA transportation schedule also required the U.S. to open up the entire country to Mexican truck traffic. Public Citizen has been unable to determine whether during the course of the dispute Mexico amended its complaint to include the U.S. refusal to open its highways countrywide or not, despite repeated inquiries to the United States Trade Representative, the Mexican Embassy, the American Trucking Association, as well as consumer, highway safety and labor organizations concerned with the case.

der, but did so using crafty language: the panel ruled that the U.S. can maintain its own truck safety standards as long as it *also* complies with NAFTA's provisions.

In fact, there was never any question whether the U.S. could keep its domestic truck safety rules on the books. The issue was whether those safety standards could be enforced in the context of Mexican trucks.

Owners of commercial fleets who wish to operate in the U.S. must apply for operating permits from the U.S. Department of Transportation. According to the NAFTA panel, the U.S. may require that Mexican trucking companies which apply to be able to cross the border will meet all U.S. safety and labor standards. While this sounds good in theory, in practice given the state of Mexican inspection and enforcement, the only way to monitor whether a company is upholding its obligations is to check every truck which crosses the border and maintain good records on the companies and trucks that fail inspection there or elsewhere in the U.S. Although our government has been working with Mexico to develop a common database to do just that since NAFTA was implemented, no system is currently in place, and we are years away from a workable monitoring process.

Additionally, although the imminent NAFTA border opening deadline creates pressure on Mexico to develop a meaningful motor vehicle safety standard and oversight system little progress has occurred. Although some new Mexican laws are on the books, compliance is voluntary for the first year, and there is little evidence on the level of the Mexican government's commitment to enforce the new rules.

What the preliminary panel ruling actually required was that the U.S. must comply with NAFTA and open its borders—regardless of our state of readiness to enforce critical American health and safety standards. If the U.S. also seeks to try to enforce U.S. safety requirements, it must do so on a truck-by-truck basis. The U.S. inspects approximately 40 percent of domestic trucks with inspections being merely one element of its multifaceted truck safety regulatory system.[1] And the safety standards in Mexico will not do much to assure American safety once the trucks cross the border. As described in this report, Mexico has only a fledgling truck safety system. Our experience thus far has demonstrated the risks. While fewer than 1 percent of Mexican trucks now entering the U.S. are inspected, fully 35 percent of those trucks are forced out of service due to serious safety failures.

To attempt to fully enforce U.S. truck safety standards in the context of Mexican trucks would require that every single Mexican truck be inspected on the border. When President Bush was governor of Texas, he signed a letter to the Clinton Administration criticizing the refusal to open the border.[2] The new administration may argue that the U.S. can ensure safety by inspecting each Mexican truck. But the government and the U.S. trucking industry (which seeks to hire cheap Mexican drivers) know this is impossible.

Currently, 2 million trucks are inspected in the U.S. annually. This includes the 1 percent of 4 million (or approximately 35,000) Mexican trucks now crossing that are checked. DOT estimates that an additional 3 million Mexican trucks would cross yearly if the border were open. Thus, to inspect all entering Mexican trucks, U.S. inspections per year must rise from 2 million to 9 million trucks. Currently, there are about 101 state commercial truck inspectors and 60 federal inspectors at the border who are able to cover 1 percent of the current 4 million Mexican trucks.* Thus, to cover every Mexican truck if the border were opened with even a cursory inspection would require 32,000 inspectors. It is unlikely that the administration will guarantee this enormous resource allocation or the necessary funding for the construction of the huge new inspection facilities that would be needed to avoid week-long border backups.

Yet, even if the U.S. had the additional resources to try to enforce U.S. safety standards on a truck-by-truck basis, the preliminary NAFTA truck ruling also included a cryptic reference to a NAFTA provision that could require the U.S. to treat U.S. and Mexican trucks identically for inspection purposes. In typical trade doublespeak, the preliminary ruling contains language suggesting that the U.S. could treat Mexican trucks differently for inspection purposes. However, at the same time, the ruling requires that the U.S. comply with NAFTA's Technical Barriers to Trade Chapter, which explicitly forbids domestic and foreign players from being treated differently.

> "We now have evidence that two-thirds of the trucks that come across the border are not safe; they don't meet our standards. And I intend to see the rules

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*Through interviews with state regulators, Public Citizen discerned that the state of Texas provides 45 commercial truck inspectors at the border, Arizona has 31 and California provides 25. Public Citizen was not able to find out the current number of state inspectors in New Mexico, but there were none in 1998, according to a Department of Transportation Office of Inspector General Audit Report.

are followed before I follow the rules on this."—President Clinton on delaying the NAFTA truck provisions, 10/99.

Amid the presidential election chaos, the crucial story of the NAFTA truck ruling received little media coverage outside the "trade press." Yet, the upcoming decision has enormous policy and political implications. President Bush has two basic options:

- to reject the NAFTA tribunal's orders to open the border and compensate Mexico for keeping the border closed until Mexican trucks can meet U.S. safety requirements; or
- to allow Mexican trucks to enter the U.S. and risk that inevitable future crashes will lead to additional loss of life and to a massive public backlash against NAFTA.

The high price to be paid under either response scenario—either financially, to maintain safety, or personally and politically, with increasing fatalities and injuries if the border is opened to unsafe trucks—demonstrates that NAFTA is a severely flawed agreement.

President Clinton noted three major problems that were unsolved when he kept the border closed in 1995:

- major differences between U.S. and Mexican safety regulations;
- major differences in the application and enforcement of the safeguards; and
- the inability of states and federal regulators to effectively enforce U.S. standards on Mexican trucks.[3]

Those concerns are still valid—permitting greater access for Mexican trucks will endanger U.S. motorists, which is why U.S. consumer and highway safety groups urge President Bush to keep the border closed until the safety issues are addressed and to compensate Mexico as NAFTA's rules require.

President Bush's response to this crisis will significantly impact American public opinion regarding trade and President Bush's public image. Many people in the corporate business lobby that financed Bush's campaign and inauguration are eager for him to open the border and allow underpaid Mexican drivers to transport the corporations' cheap-labor Mexican-made goods to the U.S. for sale (long haul drivers in Mexico earn about 6¢ a mile compared to about 28¢ a mile for U.S. drivers).[4] Most other Americans—especially in the border states of Texas, California, Arizona and New Mexico—are legitimately concerned that a flood of unsafe, basically unregulated freight trucks from Mexico would pose a significant threat to the quality of life and to highway safety. The safety threat is so significant that a California trucking *industry* association opposes opening the border, foreseeing a backlash against all trucking when the inevitable accident occurs.

The current NAFTA truck crisis is one of the most dramatic examples of how "trade agreements" such as NAFTA reach far beyond appropriate commercial issues and can threaten vital domestic health and safety standards, even when these standards are applied equally to domestic and foreign commerce. If U.S. federal highway safety officials conclude that Mexican trucks do not meet U.S. safety standards, why should that well-substantiated safety policy be challengeable before a NAFTA dispute resolution tribunal as a trade barrier?

Indeed, raising Mexican truck safety standards would have an enormous benefit for the safety of Mexican motorists and communities. Currently, Mexico has a highway fatality rate more than three times that of the U.S. or Canada. With the opening of the border according to an arbitrary timeline that is set and enforced under the NAFTA agreement without any connection to compelling safety considerations, safety advances in Mexico and the U.S. will lose critical leverage for improving standards.

In short, the panel's decision will force the opening of the border to occur far too soon. The border should remain closed until there is a consensus that meaningful safety standards and oversight are in place.

The continuing trend is that "trade" agreements will undermine safety, health and other domestic social policies. This ongoing diminishment of our hard-won health and safety safeguards fuels the backlash against NAFTA and the World Trade Organization (WTO).

Background

Among its 900 pages of rules and regulations, NAFTA includes provisions requiring standardization of NAFTA countries' truck length, weight, safety and drivers'-licensing standards.[5] NAFTA also required that by 1995, Mexican trucks be per-

mitted to drive throughout U.S.-Mexico border states and that by January 1, 2000, trucks from any NAFTA country could drive anywhere in all NAFTA countries.[6] Absent these NAFTA border openings, Mexican trucks are permitted to travel in a border commercial zone up to 20 miles into the U.S. to unload and pick up freight to take back to Mexico.[7]

However, the two sets of truck-related NAFTA commitments were not linked. Thus, even though U.S. and Mexican standards were not harmonized, the U.S. still faces NAFTA rules which required it to allow access to U.S. highways by Mexican trucks. Yet, before the initial 1995 NAFTA-required opening of U.S. highways in the border states, the General Accounting Office found the same serious truck safety problems that were initially reported by border safety inspectors: of the few Mexican trucks that overwhelmed U.S. highway inspectors were able to examine, more than half had to be taken off the highway for serious safety violations.[8] Indeed, fewer than 1 percent of Mexican trucks that cross the border are inspected by U.S. safety inspectors.[9]

Given the data on serious safety problems, the U.S. announced that the initial 1995 border-state opening had to be delayed until Mexican truck safety was improved. Mid–1998, Mexico filed a formal challenge of that U.S. policy before a NAFTA dispute resolution tribunal.[10] At the end of 1998, the U.S. DOT again reviewed the Mexican truck border inspection data to determine whether to recommend a border opening and concluded that the same serious failings existed.[11] DOT thus maintained the status quo of only permitting the Mexican trucks in the limited commercial zone. It will be far from adequate to merely bulk up federal and state inspection resources at a few border checkpoints, because the most dangerous parts of the trucking fleet will inevitably be drawn to cross the border at the weakest inspection areas, where oversight is the most tenuous.

The safety problems of the Mexican trucking industry are legion. The Mexican government provides little to no regulatory oversight to its trucking industry. Moreover, as documented in a 1996 *Los Angeles Times* exposé, Mexican drivers work under notoriously poor conditions where extremely long hours and driver fatigue are often the requirements for keeping a job. Long-haul truck drivers in Mexico who bring freight to the shipping terminals at the U.S. border call their runs "working on the blade of the knife" because of the dangers of Mexican highways. This, in turn, contributes to excess preventable highway deaths in Mexico.[12]

> Although Mexico does not keep track of highway fatalities by type of vehicle, Mexico has an overall highway fatality rate more than three times that of the U.S. or Canada.

NAFTA has concentrated these underpaid, overworked drivers in the border areas. There, the lucrative temptations of transporting narcotics, undocumented migrants, and contraband, like weapons and stolen cars, contribute to a border area that is more like the Wild West than the modern West. Indeed, Mexican trucks are posing an increasing threat to motorists in Texas border counties. The percentage of Texas border county truck fatalities and incapacitating injuries from trucks registered in Mexico nearly doubled between 1997 and 1998.

When NAFTA passed 7 years ago, Mexico promised to improve its national truck safety standards to meet U.S. safety requirements covering inspection and enforcement. However, Mexican law does not require many fundamentals of highway safety policy that are elements of the U.S. motor carrier oversight program. For example:[13]

- There are no hours-of-service restrictions for drivers;
- Although a new policy require use of logbooks will soon be required in Mexico, U.S. inspectors have yet to see even one in use at the border;
- Roadside inspections are now voluntary and will be "phased-in" over the next 2 years, as will be vehicle out-of service standards, however, it is unclear if these programs are funded;
- Driver's licensing requirements are brand-new and permit commercial drivers under the age of 21;
- There is no safety rating system;
- Truck weight limitations are significantly higher; and
- Hazardous materials rules are significantly more lax.

It is this comprehensive safety regulatory system in the U.S. which provides the measure of safety for American motorists. Trucking firms are required by law to implement and enforce safety programs established under federal guidelines for their

drivers and vehicles to help ensure safety. Roadside and spot inspections provide an added level of safety both by deterring trucking companies from shirking the rules and by actually pulling the most dangerous trucks off the highway.

Without such a system in place, evidence to date that Mexican trucks are significantly less safe than U.S. trucks and thus pose greater risks to motorists is not surprising. The latest analysis of safety data from September 2000 shows that substantially more Mexican trucking firms pose significant threats to drivers than U.S. firms. Additionally, more than 5 years of border and highway inspections have shown that Mexican trucks have had to be pulled off the highway for serious safety violations at alarmingly high rates and much higher than U.S. truck rates.

"There must be no trading of human lives for dollars in the zeal to facilitate truck commerce."—Robert Dibble, Senior VP for government relations National Association for Independent Insurers, *National Underwriter,* 1/18/99.

Lastly, even without the additional traffic, a border-opening would cause a critical shortage of U.S. safety inspectors to perform the rapidly growing task of monitoring Mexican trucks for safety concerns at the U.S. border. Currently, more than 99 percent of Mexican trucks cross the border without inspections because of short staffing, despite the acknowledged problems with safety on Mexican trucks.[14] The majority of these inspections are of the most cursory type allowed, the so-called "walk arounds." In addition to missing important safety problems, such inspections are also missing shipments of narcotics and stolen goods, such as automobiles and weapons, crossing the border. Meanwhile, the deluge of trucks across the Mexican border has been growing rapidly—now over 4 million a year—even without the opening of U.S. highway border beyond commercial zones, and it is predicted to skyrocket—perhaps by 3 million annually—if more access is permitted.

> "You learn quickly, or you die young."—34-year veteran truck driver Vicente Sanchez on the highway safety dangers facing Mexican truck drivers, *Los Angeles Times*, 3/18/96.

Already, the increase in Mexican trucks within the limited border zone has had an adverse affect on safety in the U.S. The Texas border counties, within the commercial border zone, have seen a dramatic increase in highway fatalities and serious injuries from trucks with Mexican registrations. In one dramatic case in California, a Mexican truck was involved in a 10-car pileup that killed four California motorists north of San Diego—well north of the commercial zone. These fatal accidents are bound to increase if the border is opened and the number of trucks increases rapidly without Mexican safety systems in effect, given that U.S. inspectors are already overwhelmed.

Highway safety groups felt it was imperative for the NAFTA tribunal hearing Mexico's truck challenge to consider these dangerous realities. Thus, while the NAFTA tribunal was hearing the case, American safety experts asked to present evidence to the tribunal on the negative health and safety impacts of allowing unlimited access for Mexican trucks onto U.S. highways. In an ominous premonition of the NAFTA tribunal's decision, the tribunal refused to take any oral or written testimony from highway safety experts regarding Mexican truck standards or truck safety compliance.

On November 29, 2000, the preliminary report of the NAFTA truck panel was released. The panel ruled that the U.S. had violated NAFTA by prohibiting unsafe Mexican trucks from roaming freely (either within the U.S. border states or throughout the country, depending on whether Mexico amended its complaint). Under NAFTA dispute settlement rules, if the U.S. does not agree to open the border to Mexican trucks, it can offer to compensate Mexico with new trade benefits or cash payments. However, if Mexico refuses to negotiate terms of compensation, NAFTA permits Mexico to *take* compensation in the form of levying trade sanctions against the U.S.

As noted above, the clever drafting of the panel opinion may force the U.S. into the position of choosing from only one of the above three options. However, assuming for the sake of argument that another option exists, it would be to open the border and then attempt to try to enforce U.S. safety standards truck-by-truck. Yet, even with granting additional truck access, the already swelling flood of trucks from Mexico since NAFTA's inception is putting a strain on federal and state truck safety inspectors.

Currently, there are about 2 million roadside inspections of large trucks throughout the U.S. This number includes Mexican truck border crossings. The U.S. Department of Transportation's total budget for the Federal Motor Carrier Safety Administration, which is the federal agency responsible for such inspections, for fiscal year 2001 is $269 million.[15] In 1999, the most recent year for which data is available, 4.1 million trucks crossed the Mexican border into the U.S., according to the U.S.

Customs Service.[16] Given the increase in Mexican truck traffic since NAFTA (about 2.5 million crossed in 1993), border inspectors are only able to inspect fewer than 1 percent of the Mexican trucks.[17] With the borders wide open to Mexican truck traffic, Department of Transportation officials estimated at an October 1999 field hearing in Los Angeles that as many 7 million trucks could cross the U.S. border annually.[18] For U.S. truck safety inspectors to ensure that each of these Mexican trucks was inspected at the border, U.S. truck inspections would have to jump from 2 million annually to 9 million. More than 5,000 Americans die each year in large truck crashes, almost entirely involving U.S. trucks which are lighter and relatively safer than Mexican trucks. Allowing a deluge of heavier, relatively less safe large trucks onto U.S. highways is likely to increase highway deaths attributable to large trucks.

I. Absence of Mexican Truck Safety Rules or Enforcement

Large truck crashes already pose a considerable danger to U.S. motorists. In 1999, there were 5,362 fatalities in the U.S. caused by large truck crashes—up 20 percent from a low of 4,462 in 1992.[19] This included 433 deaths in Texas, 363 in California, 108 in Arizona, and 66 in New Mexico in 1999. In comparison, in the same year there were 691 fatalities in all aviation accidents—a sum which totals just 13 percent of the number of people killed in large truck accidents.[20]

These fatalities occur even though the U.S. regulatory system provides some safeguards against the most dangerous trucks—limiting hours of service, implementing and enforcing vehicle safety standards, limiting total vehicle weights, requiring licensing and training for drivers, and operating a regulatory system to remove the most dangerous vehicles and ensure safety systems are in effect in U.S. trucking firms. But even the U.S. truck safety regulatory program has been harshly criticized and is under pressure to be upgraded. For just one example, the current pressure from non-union U.S. carriers to have drivers work outside of the hours of service rules is recognized as a significant threat to U.S. motorists.

Although Mexico does not keep track of highway fatalities by type of vehicle, Mexico has an overall highway fatality rate more than three times that of the U.S. or Canada. Mexico has a death rate of 7.5 fatalities for every 10,000 vehicles on the road compared with 2 per 10,000 vehicles for the U.S. and Canada in 1996, the most recent year comparable data are available. [21]

Allowing Mexican trucks onto U.S. highways will exacerbate the current problem significantly. The Mexican truck safety standards that exist are significantly less stringent than U.S. standards. Little training has historically been required of drivers and Mexican's licensing requirements are more lax. Below is a chart comparing U.S. and Mexican safety requirements:

Safety Consideration	In U.S.	In Mexico
Hours-of Service Limits for drivers	Yes. 10 hrs consecutive driving, up to 15 consecutive hours on duty, 8 hours consecutive rest, maximum of 70 hours driving in an 8-day period	No
Driver's Licensure [22]		
Time period:	2 to 6 years	10 years
Age of driver:	21 years old min. for interstate	18 years old
Skills test: [23]	Yes—for all drivers	New skills test for new drivers
Medical card:	Yes—federal requirement	No—medical qualification on license
Automatic disqualification for certain medical conditions:		
National monitoring system:	Yes	No
Drug testing req'd for domestic and international drivers:	Yes to detect violations Testing and documentation required	Information system still in infancy DOT personnel indicate that some drivers are found w/o documentation.

[23] About half the states have grandfathered-in higher limits on the interstates and limits on state highways vary considerably.

Safety Consideration	In U.S.	In Mexico
Logbooks	Yes, standardized logbooks with date graphs are required and part of inspection criteria	While a new law is on the books, to date no Mexican-style logbooks have been seen by U.S. inspectors at the border; new rules do not standardize logbooks in U.S. format
Weight Limits (in pounds)	80,000 is the federal Gross Vehicle Weight limit	As high as 135,560
Single Axle	20,000	14,300
Tandem Axle	34,000	42,990
Tridem Axle	34,000	49,604
Five Axle	80,000	97,000
Six Axle	80,000	106,900
Turnpike Double	80,000	135,560
Roadside Inspections	Yes	Not currently. New rule is to be phased in over 2 years, but the program is currently voluntary.
Out-of-Service Rules for Safety Deficiencies	Yes	Vehicle out of service rules will be phased in over 2 years, and are currently voluntary.
Hazardous Materials Regulations	A strict standards, training, licensure and inspection regime	Much laxer program with far fewer identified chemicals and substances, and fewer licensure requirements
Vehicle Safety Standards	Comprehensive standards for components such as antilock brakes, underride guards, night visibility of vehicle	Newly-enacted standards for vehicle inspections are voluntary for the first year and far from comprehensive
Safety Rating System	Yes	No

Anecdotal evidence from news stories suggests that the long hours Mexican drivers are required to spend behind the wheel in order to keep their jobs significantly contribute to Mexico's highway fatalities. Long-haul truck drivers in Mexico who bring freight to the shipping terminals at the U.S. border call their runs "working on the blade of the knife" because of the dangers of long hours in unsafe trucks.[24] On an average 14 hour run from central Mexico to the border a driver might pass hundreds or thousands of white crosses at the side of the road signifying fatal crashes.[25]

Although the Mexican government committed to increase its truck safety standards and oversight in time for the NAFTA border openings, in practice few gains have been made. After NAFTA went into effect in 1994, the three NAFTA countries established a Land Transportation Standards Subcommittee (LTSS) to address the differences in the countries' regulatory standards. However, to date this committee has accomplished little and certainly has not accomplished a leveling-up of Mexican highway safety standards.

The latest LTSS draft report trumpets the committee's success at establishing new technical subgroups and creating side-by-side charts of rules and standards between the NAFTA countries. The committee report notes that it "continues to work beyond the timeframes established" by NAFTA to address "reaching compatibility in some areas," which has been a "difficult task."[26] Until the standards and enforcement in Mexico are as protective as those in the U.S., it will remain a challenge for border authorities to be sure that Mexican trucks are in compliance with U.S. safety standards.

Mexico currently does not have a mandatory inspection system for large trucks, nor does Mexican law provide authority to pull dangerous trucks off the highway. Mexico published new rules in July 2000 on truck inspection procedures and criteria to place trucks out-of-service.[27] However, these rules are only

voluntary for the first year. Then they are to be "phased in" over 2 years according, to U.S. DOT officials.[28] However, Mexico does not have a safety audit system in place or compliance review programs.[29] In addition, there is no evidence of the level of funding or enforcement resources for even the newly-required measures.[30]

Mexico has failed to establish a border truck safety inspection program. In 1995, Mexico stated to the U.S. its intention to start inspecting its trucks at the border and issuing inspection decals as part of Mexican preparation for NAFTA open-border trucking. However, it has not done so to date.[31] With the pledge to initiate a truck inspection system, 285 Mexican personnel trained to be border truck inspectors since 1993. However, many of the officials and trained workers have left the program and there has been little enforcement activity to date.[32]

"Let's keep those Mexican trucks down south until we're sure they won't pose a major safety threat. I don't want to become roadkill in the name of free trade."—*Fort Worth Star Telegram* editorial writer Jack Smith in 11/2/99 column, who was hit by a Mexican truck.

While U.S. roadside inspections are an effective tool that increases motor vehicle safety, Mexico's lack of roadside inspections is a serious deficiency in its regulatory apparatus. A 1998 study by the U.S. Department of Transportation's Motor Carrier Safety Analysis, Facts and Evaluation department (in the Office of Motor Carriers) found that highway inspections successfully avoided 347 truck crashes. The report found that by both removing dangerous trucks from the highway and by providing deterrence to safety violations, truck inspection saved $47 million dollars in crash-related costs, about $135,000 per crash. The study also found that a carrier's out-of-service rate declined as the number of inspections increased. These findings indicate that the risks[33] to people and communities in Mexico and the U.S. posed by Mexican trucks could be mitigated by an effective, comprehensive inspection program by Mexican authorities. Absent these programs in Mexico, drivers and communities are left without any protection. In the U.S., given the structural and budgetary impossibility of inspecting every Mexican truck if the border were to be opened, the number of people newly exposed to additional harm could be huge.

Mexican trucks are heavier than is permitted under American standards and thus pose greater safety dangers. According to the most recent National Truck Crash Profile, 83 percent of the *fatal* truck crashes in the U.S. involved trucks with gross vehicle weight over 26,000 pounds in 1998.[34] The gross weight limit for U.S. trucks is 80,000 pounds on federal highways, although many states have grandfathered-in exceptions. Mexican truck limits are substantially higher. The most common Mexican truck, the six-axle semi-trailer, which comprises 37 percent of the Mexican carrier fleet, is permitted a gross weight of 106,900 pounds. The second most common Mexican truck, the five axle semi-trailer which makes up 35 percent of the Mexican carrier fleet, has a gross weight limit of 97,000 pounds—33 percent and 21 percent higher than the American standard respectively.[35]

Mexican trucks also damage U.S. highways and bridges even more severely than U.S. trucks because of their heavier weights on both single and tandem axles. In addition, most Mexican trucks are designed with "walking beam suspensions"—heavier duty suspensions for driving on the dirt roads that are still in widespread use in Mexico. This type of vehicle suspension transmits weight to the road in a much more damaging way. Damage to U.S. highways is both a financial and safety concern. There is already a huge backlog in the U.S. of highways and bridges in need of repair that is disproportionately subsidized by the gas taxes paid by passenger car drivers, because commercial carriers underpay their share. The damage would also create safety hazards and dangers when repairs are made.

The Mexican hazardous materials control system is much more lax than the U.S. and presents a continuing danger to the public. Although Mexico has regulations on the transportation of hazardous materials, many substances which must be identified in the U.S. need not be marked with an official placard in Mexico. Unmarked materials would endanger highway safety personnel such as fire fighters and police officers, who would be unaware of the nature of the hazardous substance and its proper treatment. Because some hazardous materials are excluded from Mexico's regulations, Mexican drivers are not given the special licensing training and certification which is required to transport those substances in the U.S.[36] According to a recent study by the Teamsters, "[a]s many as 25 percent of trucks coming to the U.S. from Mexico contain toxic or hazardous materials . . . and only 1 out of 14 of those trucks is properly marked to show the dangerous chemicals that are inside."[37]

Mexico has no limitation on hours-of-service for drivers, meaning exhausted drivers put themselves and others at risk. Currently, Mexico does not set any limits to the length of time drivers can spend behind the wheel. U.S. sets

limits, known as "hours-of-service," which are monitored by a driver's log books. Mexico has recently published regulations requiring drivers to maintain logbooks, but U.S. border inspectors have yet to see a single logbook.[38] Fatigue-related factors are one of the most significant causes of fatalities for U.S. large truck crashes. The National Transportation Safety Board found driver fatigue to be a factor in 30 percent of truck crashes.[39] Truck companies in Mexico require unusually long hours for their drivers to maintain their jobs, leading to an increase in truck crashes due to fatigue. Even the best firms require as much as 16 hours a day behind the wheel and serious crashes on Mexican highways are common.[40] Allowing truck drivers without hours-of-service limitations onto U.S. highways is likely to increase the number and percentage of fatal crashes.

"The evidence is that Mexican trucks aren't as safe as they should be."—Former Chairman of House Transportation Committee, Rep. Bud Schuster, *USA Today,* 10/20/99.

Working conditions for Mexican truck drivers are poor. Mexican drivers are notoriously overworked by U.S. standards. It is not unusual for drivers to work 7 days a week, making runs of about 1,400 miles from Mexico City to the U.S. border with only a few hours of sleep before the next haul. Some drivers report being required to drive 36 hours straight with only a 6 hour break before returning to the road. Drivers are paid poorly for this hard work, as little as $400 a month.[41] The risks are high, Mexican truck drivers have almost all been involved in fatality-causing accidents, according to anecdotal reports (Mexico does not keep highway fatality data by type of vehicle).[42]

U.S. owners of Mexican carriers use NAFTA to skirt U.S. safety and labor standards. In 1998, 150 Mexico-based motor carriers with DOT identification numbers listed U.S. citizens as the majority owners. Two-thousand, two-hundred Mexican motor carriers were registered as having Mexican addresses in DOT's operating database, but U.S. addresses in the identification number database.[43] Increasingly, American firms are buying up Mexican trucking companies, gaining access to lower wage drivers, lower regulatory safety regulations and lower worker safety requirements. These owners can use these cheaper trucks and drivers to compete against the safer trucks and higher wage drivers in the U.S. Opening the border without either ensuring a working Mexican regulatory process for truck safety or having the resources to inspect every truck creates a perverse incentive to gain financially by racing to the bottom in safety.

II. Recent Evidence Shows Mexican Motor Carriers are Substantially Less Safe than Carriers in the U.S.

In 1999, development of the Federal Motor Carrier Safety Administration as an independent truck and bus safety enforcement and monitoring executive agency within the U.S. Department of Transportation signified an increasing amount of U.S. public awareness to truck safety issues.

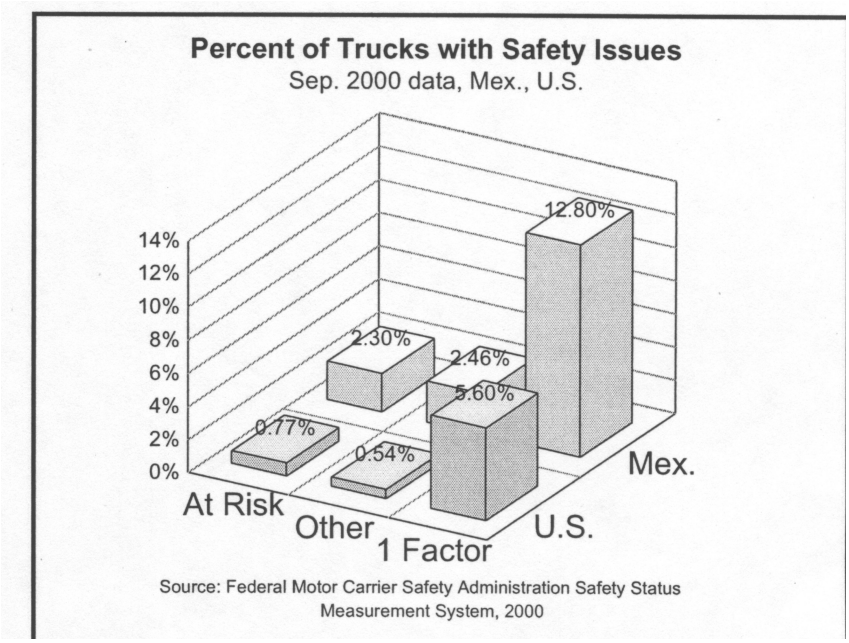
Data collected and analyzed by the new agency under its "Safety Status" program on the relative safety of motor carriers (trucking and bus companies) provides increasingly detailed information about the safety and regulatory compliance of each trucking company and the trucks and buses that are operated by these carriers. The program is a new statistical safety database that provides a more comprehensive evaluation of the actual performance and safety of trucking firms from the U.S., Canada and Mexico than ever before available. The program included* data on safety programs, crashes, drivers' safety records and vehicles. Using the Safety Status tracking data, Public Citizen examined the relative safety of the carrier fleet in Mexico and the carrier fleet in the U.S. and found that Mexican carriers are substantially less safe than U.S. motor carriers.[44]

Advocates of fully opening the border argue that the trucks now licensed to cross the U.S. border are Mexico's oldest, worst-maintained trucks and that this is why the inspection data is so negative. The thrust of this argument is that companies are using older trucks, called "drayage" trucks, to make the short runs from Maquiladora plants located in Mexico near the border. However, many of the Mexican trucks crossing the border actually come from Mexico's interior.[45] In addition, opening the border would mean that the worst trucks would be permitted new access in addition to the hypothetically safe trucks presumed to exist in the interior—

*The Safety Status data examines all trucking companies licensed by the Department of Transportation. For U.S. firms, this includes all freight trucking firms. For Mexico, this includes all of the companies that are licensed to bring a truck into the commercial zones of the border-states. These Mexican trucks are required to have DOT registration numbers.

meaning a large number of extremely unsafe trucks would still have access to the U.S.

Mexican motor carriers have much higher rates of deficient vehicle inspection indicators than U.S. carriers, regardless of years of operation experience. A Vehicle Inspection Indicator is determined by evaluating a trucking company's performance over the previous 30 months at roadside inspections, taking particular consideration of a company's out-of-service rates and the comprehensiveness of the inspection (whether it is a full inspection or the less stringent "walkaround" variety).[46] Comparisons of the "Safety Status" vehicle safety indicators in 2000 found that nearly 60 percent of Mexican carriers had deficient Vehicle Inspection Indicators, regardless of how long the carrier had been operating. By comparison, 32.8 percent new U.S. carriers had deficient Vehicle Inspection Indicators and 27.0 percent of experienced U.S. carriers had deficient Vehicle Inspection Indicators. While American carriers have improved performance after operating 2 years, the majority of Mexican carriers continued to have vehicle inspection problems even after 2 years of operations.[47] Because there are no roadside inspections in Mexico, the program analyzed the U.S. roadside and border inspection data of the Mexican trucks now licensed by the Department of Transportation to cross the U.S. border.



The Mexican carrier fleet now licensed to operate in the permitted 20-mile U.S. border zone has three times more "at-risk" carriers than the U.S. carriers, according to an analysis of 2000 data provided by the Federal Motor Carrier Safety Administration. The latest comprehensive examination of safety records found that 2.3 percent of Mexican carrier companies licensed to operate in the U.S. were considered "at risk" compared to 0.77 percent of U.S. carriers—a more than three-fold difference. "At risk" carriers are companies that rank in the worst 25 percent in at least two of the four safety measurements and have accident rates that are more than 200 percent of that of companies that are not rated "at-risk."[48]

Mexican truck carriers and Mexican trucks were more than three times as likely to have safety deficiencies than U.S. carriers in 2000. Mexican carriers are 3.5 times more likely to be identified with safety deficiencies than American carriers: 4.7 percent of Mexican carrier companies were identified to have some safety deficiencies, compared to 1.3 percent of U.S. carriers. The percentage of Mexican trucks with safety deficiencies was more than three times higher than U.S.

trucks—13.7 percent of Mexican trucks had safety deficiencies compared to 4.2 percent of U.S. trucks.[49]

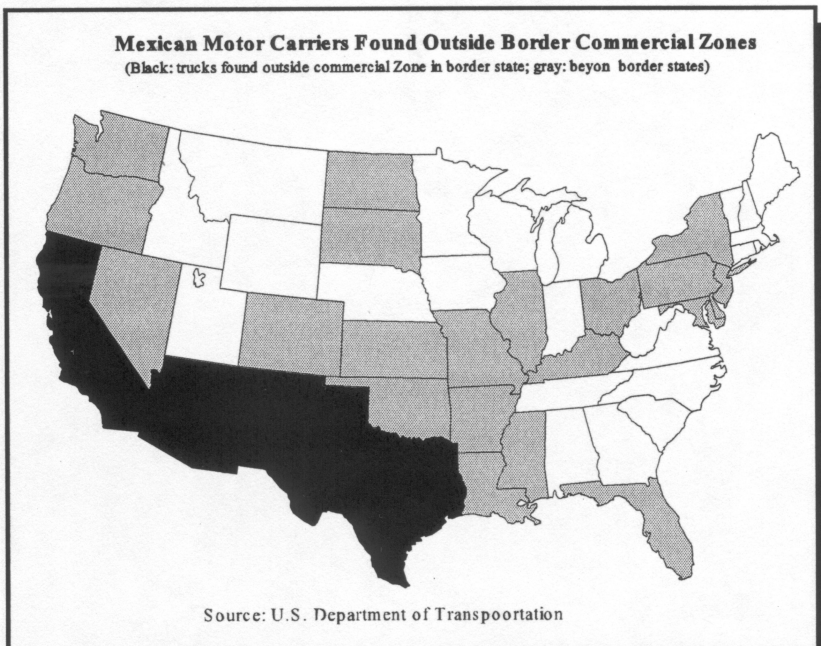
Mexican trucks are twice as likely to be deficient in one safety category as U.S. trucks. 12.8 percent of Mexican carriers were found to be deficient in at least one safety category, compared to 5.6 percent of U.S. motor carriers.

Mexican trucks are three times as likely as U.S. trucks to be deficient in the vehicle safety evaluation category as U.S. carriers. 10.5 percent of Mexican carriers were deficient in the "accident safety" category compared to 3.1 percent of U.S. carriers. The "accident safety" category evaluates a carrier on vehicle safety elements such as safety standards compliance review and roadside inspection data.

III. Mexican Standards and Enforcement Must Improve Because Every Mexican Truck Cannot Realistically be Inspected by U.S.

Proponents of opening the border argue that the U.S. should take care of its safety concerns by simply increasing border truck inspection resources—for instance, by inspecting every Mexican truck. Trucking industry representatives have made similar arguments while trying to spin the initial NAFTA ruling as somehow being a ruling in favor of U.S. safety policies. Yet the reality is that the skyrocketing number of Mexican trucks already crossing the border has greatly outpaced the number of inspectors to monitor these trucks and pull dangerous vehicles off the road.

Even without allowing access by Mexican trucks beyond the narrow border commercial zones, the number of Mexican trucks crossing the border have risen dramatically since NAFTA went into effect—by more than 300 percent in Texas and by nearly 50 percent in California, the two states where the majority of the crossings are made.[50] The number of Mexican trucking firms with Department of Transportation licenses to operate in the commercial zones is rising faster than the number of both U.S. and Canadian firms with DOT registrations to operate in the U.S.[51] If the U.S. commercial zone limitations were lifted, the number of Mexican trucks crossing into the U.S. is estimated to increase substantially. In 1999, 4.1 million trucks crossed the border from Mexico and some federal officials have indicated that an additional 3 million Mexican trucks will cross the border if the commercial zone limitations were ended—nearly a 75 percent increase.[52]



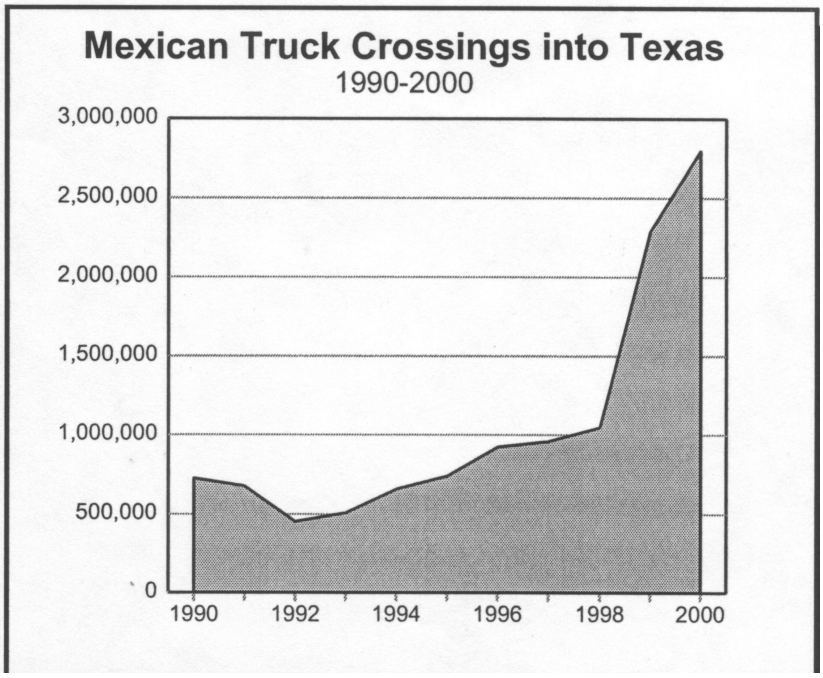
At the same time, the numbers of federal and state inspectors are grossly inadequate to monitor the number of trucks that are *already* crossing the border. For

just one example, in 1998, the DOT's Office of the Inspector General recommended that at least 120 federal safety inspectors be posted at the border to meet the critical need to remove dangerous trucks from the road, but by 2001 only 60 inspectors were funded.

At many crossings, only one safety inspector is detailed to examine the literally thousands of trucks that cross the border each day. If the border were fully opened, the inspectors who now are unable to handle the current traffic load could face millions more trucks. Yet all of these trucks would be authorized to travel throughout the border-states or even the entire country.

If estimates of the impact of opening of the border are realistic, seven million Mexican truck crossings per year would require inspection. Thus, to inspect all entering Mexican trucks, U.S. inspections per year must rise from 2 million to 9 million trucks. Currently, there are about 101 state commercial truck inspectors and 60 federal inspectors at the border who are able to cover 1 percent of the current 4 million Mexican trucks.[53] Thus, to cover every Mexican truck if the border were opened with even a cursory inspection would require 32,000 inspectors. Given the fledgling nature of the domestic Mexican truck safety inspection system, every one of these trucks would need to be checked by U.S. inspectors and massive, new border inspections facilities would need to be constructed to avoid huge backups. Since this enormous new allocation of inspection funding and personnel training is entirely unrealistic, only Mexico's establishment of a comprehensive, enforceable and well funded safety system can ensure improvements. But such a system is years away from being ready.

Border truck inspections are currently unable to meet the rising demand by increasing truck crossings. The General Accounting Office reported in March 2000 that despite efforts to increase collaboration of the federal and state inspectors at the border and some infrastructure investments, collective efforts have failed to keep up with the skyrocketing flood of trucks coming over the Mexican border even without further border opening.[54] The 161 federal and state truck inspectors would each currently have to inspect more than 24,800 Mexican trucks to inspect all the Mexican trucks *now* crossing the border.



There is an appalling lack of border truck inspectors. The total number of U.S. federal truck inspectors in 2000 was 40, less than a third of the number re-

quested by the 1998 Department of Transportation audit, and an additional 20 were scheduled to start in January 2001.[55] This figure of 60 is still less than half the recommended 126 inspectors to have two inspectors for every border crossing and additional inspectors for high-volume border crossings. In 1997, 13 federal and 97 state safety inspectors monitored the nearly 2000 mile U.S.-Mexico border when 3.5 million Mexican trucks entered the U.S.[56] At Pharr, Texas, two federal inspectors monitored five border crossings that received nearly 8 percent of the total Mexico truck traffic. New Mexico provided no state inspectors and the 37 Texas state inspectors only spent one-quarter of their time inspecting cross border trucks.[57] Requests to double the number of federal inspectors to 27 by Federal Highway Administration Regional Directors responsible for the Mexican border regions was rejected by federal budget negotiators in January 1998.[58] Similarly, the Texas Department of Public Safety's request for 127 inspectors was rejected. Instead only five new state inspectors were authorized: three in 1998 and two in 1999.[59]

Truck Crossings from Mexico into Texas increased 324 percent since NAFTA. Three quarters of the Mexican truck freight traffic enters the U.S. through Texas. Between 1990 and 1993, the year before NAFTA was implemented, truck traffic from Mexico into Texas decreased 29.8 percent to 509,477 crossings.[60] By 1999, 2.29 million trucks entered Texas from Mexico.[61] Based on the first 8 months of year 2000 traffic, Public Citizen projects that truck crossings from Mexico to Texas will have surged to 2,798,839 by the end of 2000—a 324 percent increase over the pre-NAFTA traffic. In comparison, rail car crossing to Texas increased 173 percent between 1990 and 1994, but grew at a more modest 158 percent rate between 1994 and 2000.[62]

Fewer than 1 percent of Mexican trucks are inspected at the border. Despite slight improvements in the number and percentage of Mexican trucks that are inspected at the border, very few Mexican trucks undergo safety inspections. Especially given the unusually high out-of-service rates for the trucks that are inspected, the failure to inspect more than 99 percent of Mexican trucks crossing the border represents an almost-total failure to protect U.S. motorists and border communities. In 1999, 0.8 percent of the 4.1 million Mexican trucks that crossed the border were inspected.[63] In 1998, 0.6 percent of the 3.9 million trucks that crossed the border were inspected.[64] In comparison, approximately 40 percent of the U.S. truck fleet was inspected in 1998.[65]

Some border crossings have no inspectors for hours every day. A Department of Transportation audit found that at some border crossings there are no U.S. or state inspectors present on most weekdays.[66] At other sites there were inspectors present during regular business hours, but no inspectors regularly assigned to evening or weekend hours.[67] Thus, the drivers of trucks that may have inspection problems can plan to cross at un-staffed hours. The 3 full-time and 3 quarter-time truck safety inspectors at the busy Laredo, Texas border crossing could average about 34 inspections a day.[68] However, on weekdays, an average of 4,800 Mexican trucks cross the border at Laredo making for an 0.7 percent inspection rate.[69]

The number of Mexican motor carrier firms registered with the U.S. has grown faster than either Canadian or U.S. registrations. Mexican companies with DOT licenses to operate within the commercial zone—and with the expectation that the border-states and the entire country will be open to Mexican haulers if the border is opened—have been growing more rapidly than the number of American or Canadian firms seeking DOT registrations. The number of active Mexican motor carrier companies registered with DOT grew by more than half between 1997 and 1999—54.9 percent. Over the same period, the number of American carriers grew by 21.1 percent and Canadian carriers grew by 27.2 percent.[70]

Mexican truck traffic to California increased by nearly half between 1994 and 1999. Since NAFTA's passage, northbound truck crossings from Mexico to California increased 48 percent to 949,651 trucks.[71] Top Mexican truck imports to California have grown three times as fast as top California truck exports to Mexico between 1997 and 2000. In the first quarter of 1997, California trucked $860 million worth of its top six goods to Mexico, and by the first quarter of 2000, the figure was $1.1 billion a 22 percent increase. In comparison, top Mexican truck exports to California grew 62 percent between the first quarter of 1997 and first quarter 2000, from $1.6 billion to $2.6 billion.[72]

Removing the limitations to operate only in the border state commercial zones will rapidly increase the number of Mexican trucks crossing the border. At a National Transportation Safety Board field hearing in Los Angeles in October of 1999, Department of Transportation officials predicted that an additional 3 million Mexican trucks will cross the border every year with the Mexican border commercial zone limitations eliminated.[73]

IV. Much Stricter Penalties and Enforcement Are Needed

The DOT Inspector General's office and safety advocacy groups have complained about lacking enforcement, low fines and failure to pull operating authority for repeated violations in the U.S. for domestic trucking corporations. These same practices of inadequate penalties currently the practice for operator violations. These inadequacies must be addressed for both domestic and Mexican trucks.

Both for Mexican trucks now allowed in the border zone and in the future, there must be greater U.S. penalties for Mexican operators violating their DOT permits. DOT must have a policy of *rescinding* permits to operate in the U.S. for Mexican trucking companies that routinely violate safety standards. Now, DOT uses minimal monetary penalties for the trucks it finds to be out of compliance. Given that 99 percent of trucks are not inspected and the fines for those which are caught violating safety standards are minimal, there is, in effect, no deterrence of potential violations.

Along the same lines, major fines must be levied for Mexican motor carriers found operating outside permitted areas without U.S. authorization. Of the 202 Mexican motor carriers found operating outside the existing commercial zones in 1998, only 3 enforcement actions were initiated. In 1999, only 2 actions * were initiated against carriers operating illegally outside the commercial zones, and none were taken against Mexican motor carriers operating outside the border states, despite being potentially thousands of miles from their permitted operating range.[74] Federal law provides the authority to penalize Mexican drivers operating outside the border commercial zone, but it also allows discretion to hit violators with heftier fines than state law provides.[75] Yet, these even this policy provides no minimum fines, only caps on how large a fine may be. Absent any punishment for violating the rules limiting Mexican drivers to the narrow commercial border zones, increasing numbers of trucks are likely to flaunt the law. This lack of sanctions creates incentives for dangerous conduct by companies who can profit by violating the law than improving the safety of their trucks.

"We simply cannot jeopardize highway safety by opening the border to increased truck traffic."—U.S. Trade Representative Charlene Barshefsky in letter to Rep. Jim Kolbe in 1996 on why the border wasn't opened in 1995.

V. Case Studies of Mexican Trucks Causing Fatalities on U.S. Highways

Already, the increase in Mexican trucks within the limited border zone has had an adverse affect on safety in the U.S. The Texas border counties, within the commercial border zone, have seen a dramatic increase in highway fatalities and serious injuries from trucks with Mexican registrations. In one dramatic case in California, a Mexican truck was involved in a 10-car pileup that killed four California motorists north of San Diego—well north of the commercial zone. These fatal crashes are bound to increase if the border is opened, and the number of trucks increases rapidly without meaningful Mexican safety systems in effect.

Mexican trucks are a significant and growing portion of Texas border counties truck accidents and fatalities. Mexican trucks are posing an increasing threat to motorists in Texas border counties. According to data from the Texas Department of Safety, trucks registered in Mexico accounted for 9.7 percent of the fatal commercial vehicle accidents in 1998—nearly doubling from 5 percent in 1997. Trucks registered in Mexico accounted for 13.5 percent of the incapacitating injuries in commercial vehicle crashes in 1999, up from 7 percent in 1997, according to preliminary data from the Texas Department of Safety.[76] If Texas' experience of increasing fatalities from Mexican trucks along the border were extrapolated to the entire state using the latest fatalities data, an additional 39 people would have died in crashes with Mexican trucks in Texas. If it were expanded to the entire country, an additional 530 people would have died in crashes with Mexican trucks.

Mexican truck caused deadly 10 car pile-up north of California's commercial zone. A Mexican truck driver crashed into a construction slowdown at 60 miles an hour in March 1997, killing four adults and injuring 4 others, one critically.[77] The driver fled the scene. The truck may have been overweight, but the towing company that removed it from the scene offloaded and sold some of its cargo of toma-

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* According to the Department of Transportation Inspectors General Office, fines for Mexican motor carriers in violation of operating regulations are too low to spur compliance with U.S. law. Texas and New Mexico send a warning letter for the first violation of operating outside commercial zones, and a $1,000 fine for the second violation with an additional $1,000 increase for each subsequent violation. In Arizona and California, the fines are $500 for operating outside the commercial zones. The Department of Transportation Inspector General criticized these small fines because companies consider them to be "a cost of doing business." Higher fines and loss of operating authority are needed to effectively deter infractions.

toes, so investigators will never know.[78] The crash occurred under dry road conditions and clear visibility, and a civil suit against the trucking company alleged that the driver ignored brake lights from the traffic congestion.[79]

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Mexican truck caused a chemical spill in Brownsville, Texas. In January 2000, a short-haul Mexican truck headed south in the commercial zone was responsible for a chemical spill that killed millions of fish. The driver fled to Mexico before authorities discovered he was uninsured and the brakes on his truck were inoperable.[80]

VI. Border Community Conditions Declining at Truck Border Crossings

Population growth near the U.S.-Mexico border has created a cauldron of declining social conditions. Long waits by trucks at the crossings fill Mexican border communities with unhealthy diesel exhaust. A surge in population has occurred on the Mexican side of the border without any of the requisite increases in infrastructure needs. Many Mexican border communities—called Colonias which are located near the export processing factories called Maquiladoras—lack even the most basic sanitation services or access to utilities like water or electricity. The border crossing areas attract smugglers and narcotics traffickers. The stranglehold the Mexican drug cartels have on border communities means the presence of additional crime, from money laundering to gun running. Competitive, violent gangs of drug traffickers make border communities especially vulnerable to high homicide rates and unsolved missing persons, cases known as "disappeareds." Added to this are the environmental and social problems caused by thousands trucks lining up daily for multiple-hour waits for crossing.

The majority of narcotics entering the U.S. come through Mexico. Mexican drug cartels operating at the border are one of the main conduits for narcotics entering the U.S. U.S. officials estimate that 60 percent of the cocaine entering the U.S. in 1998 passed through Mexico. Mexico is also a major source of marijuana and heroin—nearly all the 6 metric tons of heroin produced in Mexico in 1998 was destined for the U.S.[81] Total narcotics seizures at the Mexican border increased 78 percent between 1996 and 1999 to more than 1 million pounds—accounting for 77 percent of all seizures nationally.[82]

Border federal court districts are experiencing surging crime rates. Criminal cases in Texas' western district increased 182 percent since 1995 and grew in the southern district by 145 percent. The five federal court districts serving the U.S.-Mexico border region represent one-fourth of all federal court filings.[83]

Drug money is laundered through legitimate transportation companies. The large volume of drug money generated by Mexican drug cartels is laundered through ordinary businesses to conceal the source of the profits. The cartels favor transportation companies, like the trucking industry, because they can both launder money and facilitate the smuggling of drugs, weapons and cash.[84]

Low wages for Mexican drivers encourage the transport of contraband. Mexican truck drivers, who make as little as $400 a month, are often approached to transport drugs, money, weapons or undocumented migrants across the border. Low wages and the rising cost of living make these opportunities tempting for drivers trying to support their families. Indeed, Drug Enforcement Administration officials found that Mexican drug cartel leaders looked forward to the prospect of increasing the traffic of narcotics to the U.S. under NAFTA.[85]

Access to border crossings increases concentration of crime. Illegal smugglers of people, products and narcotics gather at border crossing communities for easy access to the traffic of people and trucks to transship their illegal goods. The drug cartels in Juarez across the border from El Paso have been linked to 500 murders in the 1990's and another 200 people have simply disappeared. Ciudad Juarez has become a haven for smugglers of cars, guns and drugs and has one of the highest homicide rates in Mexico, including the brutal rapes and murders of 238 women over several years in the late 1990's.[86]

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Increasing truck traffic exposes border community to dangerous levels of air pollution. Border crossings from Mexico to the U.S. are in use 24 hours a day, 7 days a week. During peak periods, the lines of idling trucks waiting to enter the

U.S. can run several miles long, contributing to pollution and safety concerns.[87] Diesel exhaust from Mexican truck traffic waiting to cross the border contributes to the high levels of air pollution on both sides of the border. Thirteen border cities exceeded or were expected to exceed ambient air quality standards in 1996—and traffic is the leading cause.[88] The border communities show high levels of respiratory disease and high levels of lead in children.[89]

VII. Recommendations

When should more access to U.S. roads be granted to Mexican trucks? The Mexican government must fulfill its promise to implement high safety standards and a regulatory framework necessary to enforce them. What is required is well known. A working regulatory system would need, at a minimum:

- considerable funding by the Mexican government to implement a Mexican truck safety program, including completion of the monitoring database for domestic and international trucking companies,
- safety standards for every truck and significant truck component—including tires, brakes, lighting, length, weight, etc.,
- enforcement of safety standards for motor carrier operators that establish fleet-wide responsibility,
- creation and enforcement of hours-of-service limits on drivers,
- enforcement of logbook requirements for drivers,
- better training and effective levels of staffing of Mexican safety inspectors,
- regular spot and roadside inspections,
- establishment of the legal authority of Mexican inspectors to take dangerous trucks out-of-service; and
- imposition of strong penalties to deter violations.

Once a comprehensive Mexican truck safety system is in place, the U.S. would need to ensure that safety standards are being enforced by doing a statistically significant number of border safety checks. This would require an additional commitment of resources by Congress to increase inspection staffing and building border inspection facilities.

Yet, even without any further border opening, U.S. resources devoted to border truck inspection are woefully inadequate. Significant improvements in border inspections need to be funded by the U.S. Congress simply to do a reasonable job inspecting the 4 million trucks that *already* enter the U.S. on an annual basis.

In November 1999 the report of the DOT Inspector General stated that "[a]dequate mechanisms are not in place to control access of Mexico-domiciled motor carriers into the U.S."[90] The report described the monitoring systems that would be necessary on the American side of the border to assure safety.

According to the Department of Transportation's Inspector General's report, U.S. controls and safeguards should, at a minimum, include:

- the use of automated data and state safety inspectors to monitor truck safety compliance;
- systems for verification of registration information;
- implementation of consistent enforcement policies for non-compliance;
- increased fines;
- and additional resources for the border program.

This is by no means an exhaustive list: any future opening of the border would require a major effort over several years to develop, implement and test these systems for their adequacy in protecting the American public. While both U.S. and Mexican governments have been taking some steps toward achieving these goals, their efforts to date fall far short of what would be required to protect the public health and safety.

VIII. Conclusion

The Mexican government has had 7 years to fulfill its commitments to enact and enforce a truck safety program that would ensure that the Mexican trucks seeking access to U.S. highways meet U.S. safety standards. Instead of fully complying with that requirement, the Mexican government has used NAFTA to attack U.S. truck safety enforcement.

Depending on how the conflict is resolved, this case could create a concrete NAFTA threat—deadly trucks—in every U.S. community with dire implications for already negative U.S. public opinion about NAFTA and additional dire implications for public safety.

Perhaps the most disappointing aspect of this NAFTA-based attack on highway safety is the fact that the data regarding public safety is so compelling. **Instead of permitting** *additional* access to Mexican trucks, the Bush Administration should focus on the scandal of the millions of dangerous Mexican trucks *now* rolling into the U.S. uninspected.

Since NAFTA, the number of Mexican trucks crossing the border has skyrocketed to 4 million per year. Because there is now no meaningful domestic Mexican truck safety program, overwhelmed U.S. border inspectors are all that stands between people living and driving in the 20-mile border zone in which Mexican trucks are permitted.

Although U.S. officials are only able to inspect less than 1 percent of the Mexican trucks *currently* crossing the border, safety inspectors have routinely found—*and continue to find* —that the severe safety problems that result in a truck being put "out-of-service" for Mexican trucks exceeds the out-of-service rates for U.S. trucks.

Meanwhile, the U.S. Department of Transportation estimates that opening the border would add another 3 million trucks crossing into the U.S. bringing the annual total to 7 million. It is not feasible from a financial or infrastructure perspective for the U.S. to inspect every single Mexican truck that crosses the border. And, if the NAFTA tribunal ruling were implemented, it would no longer be a 20-mile strip of the border-states, but the entire country which would be exposed to the new threat.

The U.S. must ensure domestic highway safety for motorists and communities. Given the current absence of any meaningful Mexican truck safety program, the high safety failure rates of Mexican trucks, and the impossibility of even inspecting all the Mexican trucks that would cross an open border, the only option to ensure safety is to continue to limit access to the narrow commercial zones and to significantly increase inspection to intercept more of the dangerous trucks already traveling in the border zone.

In terms of NAFTA, this means that the Bush Administration must resolve the current case by agreeing to pay the NAFTA sanctions and continue to limit access until there is a meaningful Mexican truck safety system. Otherwise, the public will learn, painfully and first-hand, the dangers that an anti-democratic and anti-safety decision by a secret international trade tribunal can bring to its front door.*

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* Public Citizen does not believe a price can be put on a human life, thus the cost of having to pay NAFTA sanctions to keep a basic safety measure should be viewed as yet more damage resulting from the flawed NAFTA. However, for those of the Chicago School ilk who would do a cost-benefit analysis of maintaining this safety measure: even a mere 1,000 additional crashes from the 7 million cross-border trucks would cost more than $100 million, according to Department of Transportation calculations on truck crash costs, a figure which is more costly than even a high trade sanction would be.

ENDNOTES

[1] "Mexico-Domiciled Motor Carriers," Department of Transportation, Office of Inspector General Audit Report, Nov. 4, 1999.

1[2] "Mexican Truckers Face U.S. Obstacle Course," *USA Today*, Feb. 5, 2001.

[3] NAFTA Border Opening Remarks, Secretary of Transportation Federico Pena, Dec. 18, 1995; White House Press Briefing, Mike McCurry, Dec. 18, 1995.

[4] "'Working on the Blade of A Knife,'" *Los Angeles Times*, Mar. 18, 1996.

[5] NAFTA, Annex 913.5.a–1(2)(a)

[6] NAFTA, Annex I, Schedule of the United States.

[7] U.S. Mexico Border: Issues and Challenges Confronting the United States and Mexico, GAO, Jul. 1999.

[8] "Commercial Trucking: Safety and Infrastructure Issues Under the North American Free Trade Agreement," General Accounting Office, GAO/RCED–96–61, Feb. 1996.

[9] "FY 1999 Windows of Opportunity for Drug Smuggling (Southwest Border)," U.S. Customs Service, Nov. 4, 1999; "NAFTA Offers Freedom of the Road: U.S. May Have to Open its Borders to Neighbor's Trucks, Regardless of Safety Concerns," *Financial Times*, Nov. 28, 2000.

[10] "Mexico Pursues the NAFTA Dispute Settlement Mechanism Regarding the Opening of Cross-Border," Embassy of Mexico press release, Jul. 24, 1998.

[11] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[12] "'Working on the Blade of a Knife,'" *Los Angeles Times*, Mar. 18, 1996.

[13] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[14] "FY 1999 Windows of Opportunity for Drug Smuggling (Southwest Border)," U.S. Customs Service, Nov. 4, 1999; "NAFTA Offers Freedom of the Road: U.S. May Have to Open its Borders to Neighbor's Trucks, Regardless of Safety Concerns," *Financial Times*, Nov. 28, 2000.

[15] Department of Transportation and Related Agencies Appropriations Fiscal Year 2001, Conference Report, House Appropriation Committee Summary Table.

[16] "FY 1999 Windows of Opportunity for Drug Smuggling (Southwest Border)," U.S. Customs Service, Nov. 4, 1999.

[17] "FY 1999 Windows of Opportunity for Drug Smuggling (Southwest Border)," U.S. Customs Service, Nov. 4, 1999; "NAFTA Offers Freedom of the Road: U.S. May Have to Open its Borders to Neighbor's Trucks, Regardless of Safety Concerns," *Financial Times*, Nov. 28, 2000; "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[18] "Foreign Trucking a Safety Concern; Inspectors Unprepared, a Federal Official Says," *Ft. Worth Star-Telegram*, Oct. 21, 1999; "Delay Urged in Loosening Truck Limits; Safety Concerns Have Some Officials Worried About Allowing Foreign Vehicles Free Movement in the U.S.," *Ft. Worth Star-Telegram*, Oct. 23, 1999.

[19] "Fatalities in Crashes Involving Large Trucks by State 1990–1999," Analysis Division, Federal Motor Carrier Safety Administration, Sep. 11, 2000.

[20] "Administrator's Fact Book," Federal Aviation Administration, U.S. DOT, October 2000.

[21] "Mexico's Traffic Death Rate Surpasses NAFTA Neighbors," *Journal of Commerce*, Jan. 6, 2000.

[22] A final rule issued by the Office of Motor Carriers on July 16, 1992, see 57 FR 31454 *et seq.*, declared that a Memorandum of Understanding had been signed by the U.S. and Mexican governments recognizing the "equivalence" of the U.S. Commercial Driver's License and the Mexican Licencia Federal de Conductor. Notwithstanding a declaration of functional equivalence between the licenses, however, real difference between the two countries' programs exist. Some of those differences are noted in the chart.

[23] Current U.S. regulations also require "English proficiency" for drivers in interstate commerce.

[24] "'Working on the Blade of a Knife,'" *Los Angeles Times*, Mar. 18, 1996.

[25] "'Working on the Blade of a Knife,'" *Los Angeles Times*, Mar. 18, 1996.

[26] "Meeting of the NAFTA Land Transportation Standards Subcommittee, San Juan del Rio, Oct. 23–27, 2000," draft report.

[27] "Meeting of the NAFTA Land Transportation Standards Subcommittee, San Juan del Rio, Oct. 23–27, 2000," draft report; briefing by the Transportation Consultative Group, Nov. 28, 2000.

[28] "Meeting of the NAFTA Land Transportation Standards Subcommittee, San Juan del Rio, Oct. 23–27, 2000," draft report; briefing by the Transportation Consultative Group, Nov. 28, 2000.

[29] "Background to New Entrant Safety Fitness Assurance Process," John A. Volpe Transportation Systems Center for Federal Motor Carrier Safety Administration, Mar. 2000.

[30] "Meeting of the NAFTA Land Transportation Standards Subcommittee, San Juan del Rio, Oct. 23–27, 2000," draft report; briefing by the Transportation Consultative Group, Nov. 28, 2000.

[31] "Background to New Entrant Safety Fitness Assurance Process," John A. Volpe Transportation Systems Center for Federal Motor Carrier Safety Administration, Mar. 2000.

[32] "Background to New Entrant Safety Fitness Assurance Process," John A. Volpe Transportation Systems Center for Federal Motor Carrier Safety Administration, Mar. 2000.

[33] "Roadside Inspection: Effectiveness and Assessment," Motor Carrier Safety Analysis, Facts and Evaluation Newsletter, vol. 3 no ii, Jan. 1998.

[34] "Large Truck Crash Profile: The 1998 National Picture," Analysis Division Federal Motor Carrier Safety Administration, Jan. 2000.

[35] "Comparative Truck Size and Weight Study: Volume III Scenario Analysis," U.S. Dept. Of Transportation, Aug. 2000.

[36] Memorandum by Jerry Donaldson, Advocates for Highway and Auto Safety, June 20, 2000.

[37] See NAFTA and Trucking, http://www.teamster.org/nafta_truck_safety.html.

[38] "Meeting of the NAFTA Land Transportation Standards Subcommittee, San Juan del Rio, Oct. 23–27, 2000," draft report; briefing by the Transportation Consultative Group, Nov. 28, 2000.

[39] "Staying Alive on Texas Roads; Increase Oversight of Big Rigs," *Austin American Statesman*, Jan. 22, 1999.

[40] "'Working on the Blade of a Knife,'" *Los Angeles Times*, Mar. 18, 1996.

[41] "The NAFTA Trucker," *The Teamster*, Nov., 1999; "'Working on the Blade of a Knife,'" *Los Angeles Times*, Mar. 18, 1996.

[42] "The NAFTA Trucker," *The Teamster*, Nov., 1999; "'Working on the Blade of a Knife,'" *Los Angeles Times*, Mar. 18, 1996.

[43] "Mexico-Domiciled Motor Carriers," Department of Transportation, Office of Inspector General Audit Report, Nov. 4, 1999.

[44] SafeStat Analysis Report, Sep. 23, 2000 for Mexican carriers and U.S. carriers; SafeStat Motor Carrier Safety Status Measurement System, version 8.1, prepared for the Federal Motor Carrier Safety Administration by John A. Volpe National Transportation Systems Center, Mar. 25, 2000. The comprehensive, layered data approach of examining Federal Motor Carrier compliance reviews, inspection status, safety measures, event data (like accident reports) and carrier descriptive data provides ratings for four specific safety areas (accident, driver, vehicle and safety programs) and identifies which specific carriers are in the worst quartile in at least two of these categories to discern relative safety. Carriers found to be deficient in at least two safety categories were deemed "at risk;" At risk carriers were found to be more than twice as likely to be involved in accidents as carriers that had no identified safety deficiencies. Public Citizen examined the aggregated data from the Safety Status Measurement System from September 23, 2000 for carriers based in Mexico and the U.S. and found significantly worse relative safety records for Mexican carriers.

[45] "'Working on the Blade of a Knife,'" *Los Angeles Times*, Mar. 18, 1996; "Mexico-Domiciled Motor Carriers," Department of Transportation, Office of Inspector General Audit Report, Nov. 4, 1999.

[46] SafeStat Analysis Report, Sep. 23, 2000 for Mexican carriers and U.S. carriers; SafeStat Motor Carrier Safety Status Measurement System, version 8.1, prepared for the Federal Motor Carrier Safety Administration by John A. Volpe National Transportation Systems Center, Mar. 25, 2000.

[47] "Background to New Entrant Safety Fitness Assurance Process," John A. Volpe Transportation Systems Center for Federal Motor Carrier Safety Administration, Mar. 2000.

[48] SafeStat Analysis Report, Sep. 23, 2000 for Mexican carriers and U.S. carriers; SafeStat Motor Carrier Safety Status Measurement System, version 8.1, prepared for the Federal Motor Carrier Safety Administration by John A. Volpe National Transportation Systems Center, Mar. 25, 2000.

[49] SafeStat Analysis Report, Sep. 23, 2000 for Mexican carriers and U.S. carriers; SafeStat Motor Carrier Safety Status Measurement System, version 8.1, prepared for the Federal Motor Carrier Safety Administration by John A. Volpe National Transportation Systems Center, Mar. 25, 2000.

[50] Texas Center for Border Economic and Enterprise Development data, updated May 10, 2000, available on the internet at www.tamiu/edu/cob/bti/trucks.; projection calculated by Public Citizen.

[51] "Background to New Entrant Safety Fitness Assurance Process," John A. Volpe Transportation Systems Center for Federal Motor Carrier Safety Administration, Mar. 2000.

[52] "Foreign Trucking a Safety Concern; Inspectors Unprepared, a Federal Official Says," *Ft. Worth Star-Telegram*, Oct. 21, 1999; "Delay Urged in Loosening Truck Limits; Safety Concerns Have Some Officials Worried About Allowing Foreign Vehicles Free Movement in the U.S.," *Ft. Worth Star-Telegram*, Oct. 23, 1999.

[53] Through interviews with state regulators, Public Citizen discerned that the state of Texas provides 45 commercial truck inspectors at the border, Arizona has 31 and California provides 25. Public Citizen was not able to find out the current number of state inspectors in New Mexico, but there were none in 1998 according to "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[54] "U.S.-Mexico Border: Better Planning, Coordination Needed to Handle Growing Commercial Traffic," General Accounting Office, March 2000.

[55] "Top Ten Management Issues," Department of Transportation Office of Inspector General Report No. PT–2001–017, Jan. 18, 2001.

[56] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[57] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[58] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[59] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[60] Texas Center for Border Economic and Enterprise Development data, updated May 10, 2000, available on the internet at www.tamiu/edu/cob/bti/trucks.

[61] Texas Center for Border Economic and Enterprise Development data, updated May 10, 2000, available on the internet at www.tamiu/edu/cob/bti/trucks.

[62] Truck Crossing into Texas from Mexico, 1990–1999; Truck Crossing into Texas from Mexico, 2000 YTD; Rail Car Crossing into Texas from Mexico, 1990–1999, all from Texas Center for Border Economic and Enterprise Development, May 10, 200 and Oct. 23, 2000; projection based on first 8 months of 2000 truck entries extrapolated to entire year.

[63] "FY 1999 Windows of Opportunity for Drug Smuggling (Southwest Border)," U.S. Customs Service, Nov. 4, 1999; "NAFTA Offers Freedom of the Road: U.S. May Have to Open its Borders to Neighbor's Trucks, Regardless of Safety Concerns," *Financial Times*, Nov. 28, 2000.

[64] Opening Statement of Jim Hall, Chairman of the National Transportation Safety Board, Third NTSB Hearing on Truck and Bus Safety: The Highway Transportation Aspects of NAFTA, Oct. 20–22, 1999, Los Angeles, CA.

[65] "Mexico-Domiciled Motor Carriers," Department of Transportation, Office of Inspector General Audit Report, Nov. 4, 1999.

[66] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[67] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[68] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[69] "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," Department of Transportation, Office of Inspector General Audit Report, Dec. 28, 1998.

[70] "Background to New Entrant Safety Fitness Assurance Process," John A. Volpe Transportation Systems Center for Federal Motor Carrier Safety Administration, Mar. 2000.

[71] *California and Baja California Border Indicators,* San Diego State University, California Center for Border and Regional Economic Studies, based on U.S. customs data 1994–1999.

[72] *California and Baja California Border Indicators,* San Diego State University, California Center for Border and Regional Economic Studies, based on Bureau of Transportation Statistics.

[73] "Delay Urged in Loosening Truck Limits,"*Fort Worth Star-Telegram*, Oct. 23, 1999.

[74] "Mexico-Domiciled Motor Carriers," Department of Transportation, Office of Inspector General Audit Report, Nov. 4, 1999.

[75] H.R. Res. 3419, 105th Cong. § 219 (1999).

[76] Texas Department of Public Safety data, 1997, 1998, 1999, preliminary.

[77] "Big Rig Driver Released From Jail; Police Have Not Charged the Man Arrested After a Chain-Reaction Accident that Killed Four," *Orange County Register*, Mar. 29, 1997.

[78] "Tow Firm's Contract Suspended; It Gave Away a Big Rig's Tomatoes After a Crash," *Orange County Register*, Jul. 16, 1997.

[79] "Survivors of Crash Victims File Lawsuit," orange County Register, Jul. 12, 1997.

[80] "Officials Spar on Letting Mexican Trucks Beyond Border," *San Antonio Express-News*, Mar. 19, 2000.

[81] "U.S.-Mexico Border: Issues and Challenges Confronting the U.S. and Mexico," General Accounting Office, Jul. 1999.

[82] Fiscal year 1999 Windows of Opportunity for Drug Smuggling (Southwest Border), U.S. Customs Service, Nov. 14, 1999.

[83] "DAs Quit Checkpoint Cases: Soaring Border Drug Arrests Add Much to Local Workloads," *Associated Press*, May 11, 2000.

[84] "U.S.-Mexico Border: Issues and Challenges Confronting the U.S. and Mexico," General Accounting Office, Jul. 1999.

[85] "The NAFTA Trucker," *The Teamster*, Nov., 1999.

[86] "Young Women Follow Journeys of Hope to Factories—and Then, to Violence; Bright Lights, Dark City," *Washington Post*, Jun. 25, 2000; "1 Killing but Many Victims; Ex-DEA Agent Phil Jordan Sees Drug Lords' Hand in his Brothers Slaying and Related Misfortunes," *Los Angeles Times*, Jul. 8, 2000.

[87] U.S.-Mexico Border: Better Planning, Coordination Needed to Handle Growing Commercial Traffic, GAO, Mar. 2000.

[88] "U.S.-Mexico Border: Issues and Challenges Confronting the U.S. and Mexico," General Accounting Office, Jul. 1999.

[89] "U.S.-Mexico Border: Issues and Challenges Confronting the U.S. and Mexico," General Accounting Office, Jul. 1999.

[90] "Mexico-Domiciled Motor Carriers," Department of Transportation, Office of Inspector General Audit Report, Nov. 4, 1999.

PUBLIC CITIZEN
July 6, 2001

U.S. Department of Transportation
Dockets Management Facility
Room PL–401
400 Seventh Street, SW.
Washington, DC.

Re:

1. Docket FMCSA–98–3297; 66 Fed. Reg. 22327 (May 3, 2001)
   Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border
2. Docket FMCSA–98–3298; 66 Fed. Reg. 22371 (May 3, 2001)
   Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border
3. Docket FMCSA–98–3299; 66 Fed. Reg. 22415 (May 3, 2001)

   Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States

Public Citizen appreciates the opportunity to comment on the Federal Motor Carrier Safety Administration's (FMCSA) proposed new and revised applications and safety monitoring procedures for opening the border to Mexican-domiciled trucks under the North American Free Trade Agreement (NAFTA). We believe that the proposed rules fail to acknowledge the inadequacy of the existing enforcement structure and will not protect the public from unsafe trucks crossing into the United States.

If the border opens by the January 1, 2002 deadline announced by President Bush, under these proposed rules, unsafe trucks will inevitably escape detection and travel freely throughout the United States, endangering motorists and risking a trade-related debacle. For these reasons, the issue has already triggered widespread and deep opposition. A group of ten senators who support NAFTA sent a letter to President Bush expressing reservations about the inadequate inspection force at the border and the proposed 18-month period in which carriers may operate without a

safety review.[1] A majority of House members have also indicated their concern about the safety of Mexican cross-border traffic in a recent vote denying funding for the processing of applications on behalf of Mexican carriers.[2]

Business interests argue that allowing long-haul trips from the interior of Mexico into the United States would be more efficient than the present system, but some Mexican truckers find that the present system of long-haul to short-haul transitions at the border is relatively quick and that the physical transfer of truck loads takes less time than it takes for customs officials to process cross-border paperwork.[3] Congestion at the border will increase, not decrease, as more businesses take advantage of Mexico's network of cheaper trucking and warehouse labor to ship cargo to the interior United States.

Little has changed since the Clinton Administration, prompted by safety concerns, refused to open the border in 1995. Mexico has not yet put in place a regulatory system comparable to those in the U.S. and Canada, as it is required to do under NAFTA. The out-of-service rate for Mexican-domiciled trucks crossing the border is still significantly higher than the out-of-service rate for trucks in the U.S. and Canada. The border is still woefully short on federal inspectors and resources to ensure that unsafe trucks are not admitted.

The United States must limit access to Mexican-domiciled trucks until it can implement an effective system to ensure that these trucks comply with U.S. regulations. The proposed rules are inadequate to meet that objective in a number of respects. The agency evidently plans to grant operating authority based only on a paper application, without verifying the information submitted by applicants. To evaluate the safety fitness of Mexican carriers, the agency intends to rely heavily on an unpopulated database that currently lacks the basic information necessary to process applications or to perform a safety review. The agency permits itself an 18-month window before completing a safety review of a Mexican carrier after it has been granted a certificate of registration, but 18 months is far too long to wait to verify a company's regulatory compliance and safety record.

The integrity of the application and review process is critical because information long available on the safety record of the Mexican trucking fleet shows that great improvement would be needed to meet U.S. safety standards. Border inspection facilities lack the resources and new inspectors necessary to pick up the slack created by weak enforcement of regulations on both sides of the border and inspect all Mexican trucks. As our comments show, once a truck gets beyond the border, it is not likely to face inspection or verification of operating authority by either state or federal officials.

The NAFTA arbitral panel ruling directing the U.S. to open the border expressly provided permission in its ruling for U.S. authorities to establish inspection and licensing requirements that are not "like" those already in place for U.S. carriers, so long as their expectations are the result of legitimate safety concerns.[5] Thus, the U.S. could establish a program which requires Mexican trucks to meet more stringent standards than is the case under current U.S. law. Such an accommodation is highly unusual in a trade ruling, and is an open invitation for the U.S. to act responsibly to fulfill its safety obligations to the American public.

Despite such considerations by the panel, FMCSA has proposed rules which achieve the opposite of what is permitted under the ruling. The agency's proposals actually allow greater latitude in several key areas for Mexican-domiciled carriers and drivers than currently apply to U.S. and Canadian companies and drivers under U.S. law. In fact, the agency's proposed 18-month safety review process imposes far fewer and generally less serious consequences for safety violations than applies in its absence, thus creating a safe harbor for Mexican-domiciled entrants to the market and a competitive disadvantage for U.S. interests.

NAFTA failed to link the development of a commercial carrier safety infrastructure in Mexico with the time-line for opening the U.S.-Mexico border to commercial trucks. The FMCSA is clearly struggling, in these rules, between the "rock" of the NAFTA-globalization juggernaut and "hard place" of its assigned mission to assure the safety of commercial carriers in the U.S. The proposed rules, however, answer to trade at the expense of safety. Because the agency puts trade first, and because agency decision makers are all too aware of the practical impediments to reasonable enforcement, the proposed rules demonstrate far less concern with technical feasibility than is usual in the agency's history.

The rules appear—although surely the FMCSA is not—to be almost entirely uninformed about the real risks that these dangerous proposals pose to the U.S. public, and to the image of "free" trade here at home. We are acting far too quickly, with far too little attention to the actual and potential costs, and at the risk of causing hazardous material spills, horrific truck crashes and other unnecessary suffering and death on U.S. highways. We urge the agency to reconsider its rules in light of

the real risks to American motorists and its safety mission, and to formulate its future proposals with full awareness of the practical consequences and importance of its actions.

I. The push to open the border to Mexican trucks without assurance of their safety is the result of a fatal flaw in the North American Free Trade Agreement.

The NAFTA agreement required the United States to open its border to Mexican trucks in phases beginning in 1995. The time-line laid down in the agreement was not linked in any way to Mexico's promise, also in the agreement, to improve its domestic level of safety for commercial carriers and to build up its oversight and safety inspection resources to levels commensurate with the U.S. and Canada.

Without acting whatsoever on its domestic obligations, almost 3 years ago the Mexican government brought a dispute before a NAFTA arbitral panel to open the southern U.S. border to cross-border commercial traffic. Last summer, the Mexican government, following work with trucking industry representatives, finally issued a fledgling set of basic rules for commercial carrier safety. The rules are voluntary for the first year and are phased in over 2 years. Public Citizen's analysis of the rules (*see* "Recent Mexican Trucking Rules Do Not Solve Serious Safety Hazards," attached) shows the rules are deficient in many areas, and do not compare favorably to protections provided by U.S. standards and rules.

Regardless of the lack of progress on safety standards in Mexico, the NAFTA panel ruled that the U.S. should open the border or face trade sanctions, thus demonstrating the untenability of the agreement's structure. Once the U.S. actually opens the border, it of course will have no leverage with Mexico to encourage it to continue or improve this regulation process.

Moreover, the massive funding for the necessary inspection and border resources amounts to an in-kind subsidy of federal dollars to cross-border companies that will grease the wheels of trade and further erode border communities and infrastructure. In this case, public tax dollars must be spent to facilitate a trade agreement, which will in turn enable the flow of commercial traffic across the border and enhance of the profitability of private trucking companies. Because the agreement itself allows no operating room to control expenditures at the border, and because the border's opening was not linked to a safety time-line, NAFTA is a gun to the head of both FMCSA and the U.S. budget for federal border inspections.

II. Mexico's fledgling commercial carrier regulatory system has little substance.

A. Mexico's new regulations are weak and not yet actively enforced.

The Mexican government finally began to honor its obligations under NAFTA last summer with the passage of new, albeit weak, regulations for commercial carriers. The inspection standards adopted under the new laws have been voluntary since their enactment a year ago, and have not been in place long enough to generate data. Planned to be "phased in" over the next 2 years, they become compulsory this summer, but there is as yet little evidence of enforcement or new funding for roadside inspections or database development. According to the translated text of the Mexican statute, the standards were drafted by a panel that included a number of industry representatives.[6]

The new Mexican inspection standards are far less stringent than U.S. standards, and have been written so as to work against a thorough inspection. While the inspections called for in the law include more than 143 actions to test components of the truck, inspectors must complete each inspection within an impossibly short time: 20 minutes maximum for a hazardous materials vehicle and 30 minutes maximum for a general cargo vehicle.[7] Although the Mexican inspection standards are purported to be "based" on Commercial Vehicle Safety Alliance (CVSA) out-of-service criteria, CVSA does not set limits on the time necessary to make an inspection. The standard CVSA Level I inspection takes an estimated 45 to 60 minutes to complete, and the discovery of a serious violation may trigger a longer, more thorough inspection that can take hours. The Mexican standard also provides for inspection facilities to be run by non-governmental third parties, which are likely to generate fees that will trigger conflicts of interest.[8] There is no reason to believe that the inspection process will be untouched by the corruption which, according to news reports, is a constant challenge for the government and people of Mexico.[9]

The new Mexican inspection regulations allow unsafe vehicles to slip through the cracks. New vehicles are completely exempted from inspections for 2 years after the date of manufacture.[10] Vehicles with multiple borderline infractions are not sanctioned because the inspection criteria are not cumulative. While the law allows for fines, it does not specify their amount, indicating that they may be so small that

carriers can treat such fines as a cost of doing business. A number of safety defects that merely incur a fine and a request that the problem be fixed within 20 days in Mexico would be sufficient cause to remove a truck from the road in the U.S. These defects include improperly stored hazardous materials, missing fuses, worn or exposed wires, a lack of windshield wipers, a shattered windshield, damaged tires, broken wheel rims, leaky fuel lines, worn or cracked load securement chains, loose steering wheels, cracked brake drums and inoperative brake linings.[11]

B. The new Mexican regulatory system is not supported by a regulatory infrastructure.

There is little evidence of funding or administrative structure for enforcing these laws. The wildly optimistic report released last fall by the Land Transportation Standards Subcommittee (LTSS), a group established under NAFTA to serve as a liaison among the governments of Canada, Mexico, and the United States in establishing a shared safety program, fails to emphasize the following serious problems documented in the report:

- Training for the road inspection program in Mexico fell apart.[12]
- Mexico has higher weight restrictions than the U.S., and no operational weigh stations.[13]
- Although Mexico has had a drug and alcohol testing requirement stemming from a 1998 Memorandum of Understanding with the U.S., Mexico has no laboratories that are U.S.- certified for drug testing.[14]
- The Mexican safety regulations are to be enforced only by Mexican federal officers, and only on Mexican federal highways, which represent 10 percent of all the highways in Mexico.
- There is no evidence to indicate the level of access that Mexican authorities on the highway have to the safety database they are developing or how regularly they are adding to it. Currently, the lack of information in the database renders it functionally inoperational.
- Mexico has required hours of service logbooks for hazardous materials drivers since 1993 and for all other commercial vehicle drivers since March 29, 2000,[15] but U.S. border officials have yet to see a Mexican logbook.[16]

C. Mexico still has no hours of service rules.

Unlike safety regulation in the U.S. and Canada, Mexican laws do not include hours of service rules. Mexican carriers often require their workers to drive for much longer periods per day than the U.S. statutory hours of service limit.[17] In fact, the new Mexican regulations leave carriers to design logbooks for hours of service "according to its needs."[18]

D. Assuring the safety fitness of trucks must be a priority in Mexico before they reach the border.

A functioning road inspection system in Mexico will be crucial for assuring the fitness of Mexican trucks *before* they reach the border. The Mexican trucking fleet is older and receives more out-of-service orders than the U.S. fleet when trucks are inspected at the border.[19] A recent report indicates that it would take some years and billions of dollars to bring the Mexican trucking fleet up to the quality of the U.S. fleet.[20]

III. Admission processes at the border will not filter out unsafe trucks.

A. The proposed application process for Mexican-domiciled trucks will not ensure compliance.

The proposed rules do not provide for verification of the information submitted in the paper application.

The application procedures for Mexican-domiciled carriers that are included in the proposed rules do not provide for verification of the claims and submitted information. They rely heavily on self-reporting and do not outline or mention any process by which the truth of this information will be ascertained. In fact, some of the application information requested by FMCSA may prove to be unverifiable.

Under the proposals, registration is granted primarily on the basis of information supplied by the applicant on the application and on the applicant's reassurance that it has knowledge of, and will comply with, relevant U.S. safety regulations.[21] *All the applicant must do to demonstrate knowledge of applicable regulations is check "yes."* Interestingly, there is no box to check "no."

The carrier also need only describe its "plan" for complying with drug testing and other programs, rather than submit proof that drug tests have been taken and results have been acceptable. Any inaccurate information supplied in an application likely will not be caught before a certificate of registration is issued.

The Department of Transportation Office of the Inspector General investigated and reported on the failure of FMCSA and its predecessor to verify information supplied by Mexican-domiciled carriers.

The Department of Transportation has never implemented a verification process for Mexican registration information, and as a result, much of the information that the DOT currently has in its databases regarding Mexican-domiciled carriers is outdated or unverified. A November 1999 Office of the Inspector General audit report found that "there was too much reliance on the information contained in the application [of Mexican-domiciled motor carriers] without verification."[22] The Inspector General found that there were no processes in place to confirm the claims.[23]

Furthermore, the report pointed out that the application process did not require that documents to be submitted with the application be certified copies.[24] The proposed rules present the same serious problems, but the negative effects of granting operating authority on the basis of inaccurate information will extend beyond the commercial zone to the entire United States, where such operating authority is granted.

The information requested may be distorted through error or fraud.

Much of the information provided by applicants may not be verifiable under current practices. The applicant is asked to report whether it is "affiliated" with a carrier that has been disqualified from operating in the United States, but it does not define "affiliated" and it is unclear whether FMCSA has the ability to track any of this information.

Indeed, the instructions of the proposed applications imply that applicants' business information *cannot* be compared or cross-checked. The application forms instruct applicants to enter the name of the carrier exactly the same way each time a name is required, or the department will list two slightly different names as two different companies. The instruction suggests that the DOT has no way to cross-check the owners, addresses, and other information of a company to ensure that a company is not counted twice. *A simple typographical error in the name of a carrier for an entry of inspection or crash data into the database, then, could fail to match negative safety data with that carrier.* In addition, carrier with a poor safety record could re-register under a new name to get a second "chance" in the DOT database.

Information on drivers' safety records may not be available.

While important safety information involves individual drivers' safety records, it is not clear that this information has been compiled in Mexico and would be included in the database. This omission presents another example of the problem in monitoring the Mexican trucking industry as opposed to the U.S. trucking industry. Information vital to determining the safety of drivers and carriers will inevitably be more accurate and more complete regarding U.S. drivers. As a result, danger signs that would be detected regarding U.S. carriers will not be detected in Mexican carriers, compromising the level of safety we have sought to achieve through regulation, and burdening only U.S. carriers while leaving Mexican carriers unaffected.

B. The database to be used in the safety review contains little data and will be completely inadequate in evaluating the safety of Mexican carriers.

Authorities have added little or no data to the database.

A significant problem with the proposed rules is their dependence on a joint database to be maintained between the U.S. and Mexico. Under the agency's proposal, registration is conditional upon a satisfactory safety review, including an evaluation of the "safety fitness" of the carrier as reflected in its inclusion in the Motor Carrier Management Information System (MCMIS) database. According to Department of Transportation officials at the Land Transportation Standards Subcommittee briefing last November, the database has been set up for Mexican carriers, but it is not yet "populated" with information.[25] Therefore, the database is likely to provide little or no data on a particular carrier.

While the Land Transportation Standards Subcommittee (LTSS) declares that Mexican carriers are being added to the database,[26] simple inclusion in the database is not nearly sufficient. Inspection data and crash data are necessary for any evaluation of the safety record of a carrier, and no evidence is available that Mexican authorities are entering this data. According to oral statements of a member

of Congress at a recent press conference, very little has been added about Mexican carriers on the Mexican side.

Safety information from Mexico is not comparable to U.S. data.

Even if data is entered into the database, the information gathered from Mexican reports, such as an out-of-service rate, is not likely to reflect the safety of the carrier by U.S. standards. The Mexican standards are weaker and the inspection standards remain voluntary until later this summer. Once the border is opened, the U.S. will retain little leverage with Mexico, and the FMCSA will have no way to improve any shortcomings that affect data or the lack of data on the Mexican side.

Difficulties that the U.S. has encountered in implementing MCMIS will likely pose problems for Mexico as well.

The MCMIS database, used to evaluate carrier and driver safety in the U.S. has presented a number of difficulties during use. It is foreseeable that Mexico will encounter similar problems. Discrepancies and deficiencies in the ways that different state enforcement agencies have entered or coded data in the database have affected the accuracy of the Safety Status Measurement System (SafeStat) scores of carriers.[27] SafeStat scores are important in evaluating the safety fitness of carriers and detecting "at risk" carriers. Delays also present problems, because SafeStat weighs accidents that occurred within the last 6 months three times more than accidents that occurred in the last 18 months or longer.[28] In fact, a significant proportion of the crashes reported in 1997 were reported after the period in which they would have been weighed the most heavily.[29] U.S. law enforcement has been working on reducing the delay of information added to the database, but Mexico would likely experience similar problems with delays.

If Mexican authorities do not enter complete information, the data will be extremely inadequate. The Inspector General's office found in an audit of MCMIS that less than 40 percent of the crashes entered into MCMIS for the U.S. in 1997 identified the carriers involved.[30] The same IG report also found that MCMIS contains no information on cause or fault in its crash data;[31] if this information is not supplied on the Mexican side, the FMCSA will have no way to recover it.

A new law will penalize U.S. commercial drivers for poor personal driving records but will likely not be practically applicable to Mexican drivers, reducing the effectiveness of the law and allowing Mexican drivers a competitive advantage over their American and Canadian counterparts.

A rule recently proposed by FMCSA would disqualify the commercial drivers licenses of drivers who are convicted of violations like drunk driving, leaving the scene of an accident, violating railroad-highway grade crossing signs, excessive speeding, and reckless driving, regardless of whether the offense was committed while driving a personal vehicle or a commercial vehicle.[32] However, the MCMIS database will not carry information regarding Mexican drivers' private driving records, making it impossible for FMCSA to enforce this law with respect to Mexican drivers. To enforce this law with respect to U.S. drivers but not Mexican drivers would be unfair to U.S. commercial drivers, creating a competitive disadvantage far beyond the foreseen consequences of NAFTA.

C. The proposed safety monitoring program is too weak to deter non-compliance. It also provides an 18-month safe harbor for Mexican-domiciled carriers.

Administrative difficulties will greatly hamper enforcement.

The proposed safety monitoring program is not likely to motivate carriers to comply with all regulations before the 18-month period expires. If the FMCSA is overwhelmed with applications, unable to conduct the number of safety reviews in a timely manner, or unable to keep track of suspended carriers, a carrier may operate indefinitely under hazardous conditions. Registration is so infrequently checked that finding a truck operating with suspended or revoked registration will be like finding a needle in a haystack. The consequences for carriers operating on a revoked or suspended license are neither certain nor serious.

The rules create an 18-month safe harbor for Mexican carriers and drivers.

In contrast to the NAFTA panel's ruling that Mexican-domiciled carriers could be subject to special provisions, the penalties for Mexican-domiciled carriers under the safety monitoring program are weaker than those that currently apply to U.S.-domiciled carriers.

Proposed section 385.23 provides a list of violations that are likely to result in an expedited safety review or deficiency letter. These violations include serious infractions such as using drivers lacking proper qualifications,[33] operating vehicles that have been placed out of service without correcting the fault, involvement in ac-

cidents leading to a hazardous materials incident, using drivers testing positive for drugs and alcohol, and operating a vehicle that is not insured.[34] For any one of these serious violations, a carrier would receive a safety review—a review to which it would have to submit anyway—or a deficiency letter instructing the carrier to notify FMCSA in writing that the problem has been corrected.

The consequences of violations such as these for U.S. carriers are considerably more severe, including civil and criminal fines or even jail time.[35] Allowing Mexican carriers to receive weak penalties for serious violations fails to communicate the seriousness of these violations to carriers and will not prepare them to comply with these regulations at the end of the safety oversight program.

A number of serious violations were omitted from the proposed program, compromising safety and placing U.S. carriers at a market disadvantage.

The FMCSA has also omitted some serious violations from the list of violations that would trigger an expedited safety review or deficiency letter. Under its proposal, an accident resulting in a hazardous materials incident prompts the expedited safety review or deficiency letter process, but an accident resulting in death does not. Furthermore, a violation of the hours of service limit is not on the list of violations that would result in an expedited safety review or deficiency letter. The hours of service limit is of particular concern because Mexican carriers often require their workers to drive for much longer periods per day than the U.S. statutory hours of service limit, and Mexican laws do not include hours of service rules.[36] The FMCSA should add these infractions to the list, and publish its plan for enforcing hours of service limits for drivers crossing the border who are not subject to any time controls while in Mexico.

Enforcement of penalties for carriers in the safety oversight program is weak and uncertain.

The safety oversight provision has no teeth. The rule does not specify a time limit for the carrier to address the problem and respond to the deficiency letter. During that interval, the carrier would be operating in spite of documented safety concerns. A deficiency letter, or FMCSA's intention to conduct a safety review sooner, does nothing to keep an unfit carrier off the road and does not communicate to the carrier the severity of the violation. Is an uninsured carrier allowed to operate while the safety review or deficiency letter process is going on? The agency must clarify its plan for ensuring that non-compliant carriers do not continue operating under hazardous conditions.

If a carrier fails to respond to the agency's deficiency letter, that carrier's registration may be suspended until corrective action is taken. If a carrier fails the safety review, the carrier's registration will be suspended until it takes corrective action. If the carrier does not take corrective action, or if the carrier operates in violation of a suspension order, the carrier's registration may be revoked following notice and an opportunity for a proceeding.

However, this rule does not specify a time limit for the carrier to respond to the deficiency letter before a suspension is issued. It is also unclear how soon after a violation an expedited safety review would take place. Without time limits, an unsafe carrier could operate indefinitely before any limitations are placed on it. The rule does not specify how long a carrier can be suspended without taking corrective action before its registration is revoked. The agency must clarify this rule and set definite time restrictions to ensure that non-compliant carriers do not slip through the cracks.

No system is in place at the border to enforce the suspension or revocation of operating authority.

The agency's suspension or revocation of a license will not change a carrier's ability to send trucks across the border. A November 1999 IG report found that, while suspension and revocation notices were sent to carriers, the carriers nevertheless were able to retain their certificates in their vehicles and continue operating across the border.[37] No information is available to inspectors to verify that a certificate of registration is valid, or to verify that a driver has a certificate of registration if he or she is not able to present it upon request.

D. Trucks crossing the border are not likely to be inspected because border facilities lack the resources and inspectors to step up inspections.

The vast majority of cross-border trucks are not inspected at the border.

About 1 percent of all trucks crossing the border are inspected.[38] The overwhelming majority of these inspections are cursory "walk-around" inspections. Trucks that are not inspected at the border will not likely be checked for a certifi-

cate of registration. Even if a truck is inspected, there is no information available to an inspector to verify that a certificate of registration is valid, or to verify that a driver has a certificate of registration if he or she is not able to present it upon request.

Border officials do not routinely check the registration of cross-border trucks.

Only federal inspectors and California state inspectors routinely check certificates of registration at the border. U.S. Customs officials and other state inspectors do not routinely check certificates of registration.[39] Many border crossings do not have full-time federal inspectors or federal inspectors present during all hours of operation. If a truck is not inspected by a federal inspector, it is much less likely to have its certificate of registration checked.

A substantial inspection presence may deter non-compliance.

Unsafe and non-compliant trucks that attempt to cross the border are not likely to be detected. There is a direct correlation between the lack of inspectors or full-time inspectors at a border crossing and the out of service rate of trucks that use that crossing.[40]

Border facilities still lack resources to inspect an adequate proportion of trucks crossing the border.

Currently, border crossings do not have the resources to inspect every truck at the border. In the absence of a comprehensive Mexican regulatory system, the border crossings present the only opportunity for the U.S. to filter out non-compliant, unregistered, uninsured, or unsafe trucks before they can travel U.S. highways.

Border crossings need many more federal inspectors.

The number of federal inspectors at the border is less than half the 139 inspectors the IG called for in 1998.[41] While 60 inspector positions have been authorized and funded, only 50 inspectors had been hired as of March 27, 2001.[42] The estimate of 139 inspectors was based on 1998 numbers for truck crossings. The volume of NAFTA traffic has increased since 1998, however, and that estimate did not include the inspectors needed for the 18-month proposed safety reviews.[43]

The proposed safety oversight program will strain the inspection forces at the border.

The proposed rule creates the need for additional inspectors to perform the safety reviews of carriers either at a point within the U.S. or at the place of business of carriers in Mexico.[44] The FMCSA is still short of the federal inspectors it needs to conduct truck inspections at the border, however, and the proposed rules do not include estimates as to how many additional inspectors are needed for the on-site safety reviews. The proposed rules do not estimate the amount of time each safety review would take, or the size of the workload attributed to a single inspector. Workloads would be exacerbated by the time and cost of traveling to places of business within Mexico. The greater the time and cost of each inspection, the longer carriers will operate without a thorough safety review.

Inspection facilities are sorely inadequate.

While plans have been made, no new border inspection facilities have been built since 1998.[45] A recent study has documented that border crossings lack Internet connections, inspection space, and space to park out-of-service vehicles. In a May 2001 IG report, investigators visited the 27 border crossings and found: at 20 crossings, FMCSA inspectors did not have dedicated phone lines to access databases, such as those for validating a CDL; at 19 crossings, FMCSA inspectors had space to inspect only 1 or 2 trucks at a time; and at 14 crossings, FMCSA inspectors had only 1 or 2 spaces to park vehicles placed out of service. Also, the out-of-service space was shared with the inspection space at the majority of these crossings.[46] The FMCSA must address these serious shortcomings before the volume of cross-border traffic increases under the proposed rules.

E. Insurance and proof-of-insurance requirements are dangerously inadequate to protect other drivers on public highways.

The applicant need not submit proof of insurance with the application. Carriers operating in the border commercial zones need only carry proof of insurance with them when they cross the border. It is unclear whether U.S. Customs officials, state or federal inspectors will routinely check for proof of insurance. Carriers operating beyond the border zones must submit insurance forms only after notice of their applications appear in the federal register. This process does not do anything to guarantee that registration will not be granted to an uninsured carrier.

While a Mexican carrier may have a general level of insurance, Mexican carriers sometimes transport a combination of freight and passengers, or freight and haz-

ardous materials. These different shipping practices carry different required insurance levels, and a carrier may only meet the lower insurance level, thus creating a hazard for other drivers.

F. New problems will arise after completion of the 18-month safety oversight program.

Once the safety oversight program is completed, and a carrier's registration becomes permanent, the oversight of Mexican carriers is considerably reduced. Serious violations, such as using unqualified drivers or drivers testing positive for drugs or alcohol, operating vehicles that have been placed out of service without correcting the violation, and involvement in accidents involving hazardous materials will not prompt a safety review. It is unclear whether, or for what infraction, a Mexican-domiciled carrier's registration could be suspended or revoked after the safety oversight program is complete. The agency must clarify what circumstances would lead to the suspension or revocation after the 18 month period has expired.

Lawfully imposed U.S. penalties may trigger conflicts.

When Mexican drivers and carriers encounter the full force of U.S. regulations, conflicts will result. Assuming that the normal statutory penalties would begin to apply once the registration is permanent, drivers and carriers would be subject to the same civil and criminal penalties to which U.S. drivers and truckers are subject.

However, when the Nogales border inspectors began inspecting trucks crossing the border and fining Mexican drivers when the trucks failed to comply with safety regulations, a group of Mexican truckers protested, blocking the border crossing at Nogales for 8 hours.[47] The drivers, who receive twenty to thirty dollars per border crossing, had been fined up to $1,400 each because their vehicles did not comply with safety regulations. The workers protested that they should not be fined for the condition of their vehicles, but U.S. law requires that truck drivers be responsible for inspecting their vehicles before they begin operations, and provides for the issuance of fines to both drivers and carriers when trucks are placed out of service.

U.S. penalties will be particularly hard on Mexican drivers, who are typically compensated at lower rates than drivers in the U.S. This incident illustrates a conflict that could become more pronounced as far more Mexican drivers encounter the enforcement of U.S. safety regulations.

IV. Non-border states are completely unprepared for the influx of Mexican trucks.

Trucks that are not inspected at the border are unlikely to be checked at any point beyond the border for certificates of registration. A November 1999 Office of the Inspector General report noted that, in FY 1998, 202 Mexican-domiciled motor carriers were found operating outside of their authority beyond the commercial zones in the border states, and 52 motor carriers were found operating outside of their authority in 20 non-border states.[48] The trucks, which were supposed to travel only within commercial zones at the border, were found in North and South Dakota, Washington state, New York, New Jersey, and Florida.[49] These trucks were detected only because they had been selected for roadside inspections.

Much of the data that the safety oversight program and safety review will depend on is the safety data gathered and entered into the database from roadside inspections in the U.S. However, the likelihood that a truck will be selected for a roadside inspection in the U.S. is small. Trucks are usually selected for roadside inspections on the basis of visual clues that they may not comply with safety standards or if their carrier has been selected for closer monitoring on the basis of its SafeStat score. The SafeStat scoring system is not generally accurate for small carriers because they do not generate enough data, and most Mexican carriers are small carriers.

If a truck operating without authority or outside of its authority does not appear to have physical defects, it is unlikely to be stopped at all. Inspectors in non-border states are much less likely to check certificates of registration, because the non-border states lack state laws banning Mexican-domiciled trucks from operating without registration or operating outside of their authority.[50] Roadside inspectors cannot place a Mexican-domiciled vehicle out of service simply because it is operating without registration or operating outside of its authority.[51]

An inspector may issue an out-of-service order for other violations meeting the necessary criteria or issue a fine for operating outside of authority, but while the fine limits for operating outside of authority have been raised, the actual assessed fines have remained the same, in the range of $500–$1000, an amount that a carrier could view as a cost of doing business.[52] There are few safeguards to monitor Mexican trucks operating beyond the border in the interior U.S.

V. The proposed rules present significant hidden economic costs for the U.S., utilizing government funds to subsidize the private sector.

The opening of the border under this proposed rulemaking will be costly to the United States economy in that it increases the probability of costly accidents and places all the expense of insuring Mexican compliance on U.S. border and road inspection resources.

Mexican drivers and commercial carriers can, under the proposed rules, procure a marketplace advantage under the 18-month safety monitoring program. While they are in this program, they need not follow hours of service laws, and penalties for drivers and carriers for violating other laws are only as costly as correcting the violation. U.S. carriers in the same circumstances face fines, disqualification, or even time in jail.

According to Department of Transportation calculations on the costs of truck crashes, just an additional 1,000 truck crashes resulting from this proposal would cost over $100 million, in addition to the intangible costs of injury and death. Even if the administration increases inspectors and their facilities at the border in an effort to avert disaster, the measure would amount to the U.S. performing the enforcement function of the laws that Mexico put on the books and is obligated to enforce under NAFTA.

VI. Conclusion

While the administration purports to require Mexican-domiciled carriers to adhere to the same safety standards as American carriers, the application process in the proposed rules indicates that its lofty goals are only accomplished on paper. Numerous failings in the current registration process for Mexican-domiciled carriers that were found and reported by the DOT Inspector General have not been addressed or even acknowledged in the proposed rules.

The DOT is willing to do on paper what it is not willing to do in practice. Requiring only that carriers promise to know and follow regulations and failing to verify the information supplied by the carrier will place the public at risk. Under the proposed rules, FMCSA would evaluate carriers' fitness for registration on paper before granting them authority, not conducting an actual on-site safety fitness review until after operating authority has been granted and the carriers have begun cross-border operations.

The effectiveness of the entire truck safety oversight program depends on the deterrent effect of suspension or revocation of certificates of registration, but certificates of registration are rarely checked and cannot be verified at the border. While FMCSA can suspend or revoke the registration on paper, it has no enforcement system in place to prevent carriers with suspended or revoked registration from operating across the border in practice. With the opening of the border, the impact of these failings will significantly increase.

The evaluation of the safety records of Mexican-domiciled carriers will depend in large part on the completeness and reliability of information supplied to the safety database on the Mexican side. We have no evidence to indicate that data is being entered promptly, completely, or accurately on the Mexican side, and no way to insure that its database programs are or will be implemented or funded in the future. The DOT relies on the MCMIS to analyze safety information and raise red flags for dangerous carriers in the U.S. If the database is not administered as conscientiously on the Mexican side, these same safeguards will be rendered ineffective for Mexican-domiciled carriers.

Opening the border under the proposed rules will seriously compromise the safety of the public on U.S. highways. The lax enforcement of U.S. regulations will give Mexican-domiciled carriers a competitive advantage over U.S.-domiciled carriers. If FMCSA does not address and correct the systemic problems outlined in a number of reports by the Office of the Inspector General, it need only wait until the inevitable crash occurs. Public safety must not suffer under NAFTA, and indeed the NAFTA dispute panel gives the U.S. full authority to firmly enforce U.S. law for any truck traveling in the U.S.

VII. Recommendations

The proposed rules must be rejected in favor of a plan that provides for extensive verification of safely fitness and an enforcement infrastructure to ensure that Mexican-domiciled trucks meet U.S. safety regulations and to deter noncompliance. Such a plan should:

- As a precondition for granting operating authority, provide an application process in which statements made by carriers on paper applications are verified and unannounced, on-site safety inspections of the carriers occur;

- As a precondition for granting operating authority, establish a proficiency test for all foreign carriers through which their knowledge of U.S. operating standards may be verified;
- As a precondition for granting operating authority, set minimum amounts of inspection, crash and other performance and enforcement data that must be in the database for a applicant carrier, i.e., enough to allow a SafeStat score to be calculated;
- Clarify the consequences, time-line, and oversight resources needed to monitor suspended and revoked registrations and carrier responses to deficiency letters;
- Strengthen inspection forces at the border. This should include inspection facilities with adequate space to conduct inspections and place vehicles out of service, drive-through weigh-in-motion systems, and dedicated phone lines for access to databases. This should also include a substantial increase in the number of federal inspectors at the border—enough to ensure that a significant proportion of trucks are inspected at the border;
- Increase coordination with state inspectors to facilitate the enforcement of certificates of registration and operating authority, and to ensure that border crossings are staffed with adequate numbers of inspectors at all hours of operation.

ENDNOTES

[1] Letter to the President from Senators Kerry, Baucus, Bingaman, Harkin, Daschle, Wyden, Kennedy, Bayh, Lieberman, and Durbin, June 11, 2001.

[2] A recent *Wall Street Journal* article reported: ". . . 82 Republicans joined 201 Democrats and two independents in voting to halt the safety permits. House leaders said one reason for the big margin was that lawmakers wanted to send a message to Mr. Bush to toughen regulations governing Mexican trucks." Helene Cooper,"Bush Wants to Reverse House Attempt to Keep Mexican Trucks Off U.S. Roads," *Wall Street Journal*, 6/28/2001.

[3] The Associated Press interviewed Mexican truck drivers who oppose the opening of the border to long-haul trucks: "Gomez said that unhitching a trailer from a Mexican truck and hooking it to a U.S. one at the border usually occurs as the drivers wait for officials to process their border-crossing papers.

"'We're always much faster' than the officials, he said." *Associated Press,* "Mexico Might Strike Against the United States," 6/27/2001.

[4] The number of inspectors is not likely to increase this year. On June 27, 2001, the Washington Post reported that the money earmarked for the hiring of an additional 80 inspectors was "struck from the spending bill on technical grounds yesterday." Juliet Eilperin, "House Acts to Block Mexican Trucks," *Washington Post,* 6/27/2001.

[5] Recommendations of the arbitral panel state:

"300. The panel notes that compliance by the United States with its NAFTA obligations would not necessarily require providing favorable consideration to all or to any specific number of applications from Mexican-owned trucking firms, when it is evident that a particular applicant or applicants may be unable to comply with U.S. trucking regulations when operating in the United States. Nor does it require that all Mexican-domiciled firms currently providing trucking services in the United States be allowed to continue to do so, if and when they fail to comply with U.S. safety regulations. The United States may not be required to treat applications from Mexican trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as they are reviewed on a case by case basis. U.S. authorities are responsible for the safe operation of trucks within U.S. territory, whether ownership is U.S., Canadian or Mexican.

"301. Similarly, it may not be unreasonable for a NAFTA Party to conclude that to ensure compliance with its own local standards by service providers from another NAFTA country, it may be necessary to implement different procedures with respect to such service providers. Thus, to the extent that the inspection and licensing requirements for Mexican trucks and drivers wishing to operate in the United States may not be "like" those in place in the United States, different methods of ensuring compliance with the U.S. regulatory regime may be justifiable. However, if in order to satisfy its own legitimate safety concerns the United States decides, exceptionally, to impose requirements on Mexican carriers that differ from those imposed on U.S. or Canadian carriers, then any such decision must (a) be made in good faith with respect to a legitimate safety concern and (b) implement differing requirements that fully conform with all relevant NAFTA provisions."

North American Free Trade Agreement Arbitral Panel Established Pursuant to Chapter Twenty: In the Matter of Cross-Border Trucking Services, Secretariat File No. USA–MEX–98–2008–01, Final Report of the Panel, Feb 6, 2001, 81–82.

[6] Translation of "Official Mexican standard NOM–068–SCT–2–2000, Ground Transportation—Federal motor transport service for passengers, tourism, hauling and private transportation—Mechanical and safety conditions for operating trucks on national roads and bridges," *Diario Oficial,* July 4, 2000. The preface lists over twenty companies and industry alliances.

[7] "Official Mexican Standard MON–068–SCT–2–2000," section 5.2.1.2.

[8] "Official Mexican standard NOM–068–SCT–2–2000," section 5.2.2.1.

[9] See Robert Collier, "Mexico's Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders," *San Francisco Chronicle* 3/4/2001 *(describing a ride-along with a Mexican long-haul trucker; police asked the trucker for bribes twice on the 3-day trip)*. See also "In Mexico, Graft Infects Every Aspect of Society," *Chicago Tribune,* 4/15/2001 *(describing traffic stops in which motorists pay bribes to transit policemen to avoid the long process of being issued a formal ticket, and discussing what the Mexican government is doing to try to stop the graft).*

[10] "Official Mexican Standard MON–068–SCT–2–2000," section 5.2.2.2.

[11] See attachment A: "Recent Mexican Trucking Rules Do Not Solve Serious Safety Hazards."

[12] "Marquez said federal police appear to have abandoned a program of random highway inspections that was inaugurated with much fanfare last fall." Robert Collier, "Mexico's Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders," *San Francisco Chronicle,* 3/4/2001. *See also* statements made at Land Transportation Standards Subcommittee briefing, 11/28/2001.

[13] Robert Collier, "Mexico's Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders," *San Francisco Chronicle,* 3/4/2001.

[14] Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 17.

[15] Ibid.

[16] Statements of Tom Kosloski, 11/28/2000.

[17] Robert Collier, "Mexico's Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders," *San Francisco Chronicle,* 3/4/2001.

[18] "The logbook of driver's hours of service is designed by the company, according to its needs." Translation of "Official Mexican Standard MON–068–SCT–2–2000," Appendix "A", Annex 1.

[19] "FMCSA reports that in FY 2000, 36 percent of the Mexican trucks that were inspected were placed out of service. This contrasts with a 24 percent out-of-service rate for U.S. trucks nationwide in FY 2000." Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 7.

[20] "Many of Mexico's 375,000 freight trucks have been in service for 15 to 20 years, compared with an average of 5 years in the United States. Industry leaders say it would cost billions of dollars over the next decade to bring the Mexican fleet to U.S. standards, though many defend the safety of their vehicles." "Mexico Might Strike Against the United States," *Associated Press,* 6/27/2001.

[21] Registration for operating within the border zone is granted upon consideration of both the application information and the carrier's inclusion in Mexican databases. Registration for operating beyond the border zone is conditional upon the satisfactory completion of a safety review to be conducted within 18 months after the grant of registration, including an evaluation of the carrier's safety record as reflected in information from the MCMIS database.

[22] Office of the Inspector General Audit Report TR–2000–013: "Mexico-Domiciled Motor Carriers." Nov 4, 1999, at 9.

[23] Ibid. When the IG attempted to verify certain information about Mexican carriers in DOT records, it found that it could not confirm ownership or even the mailing addresses of some carriers.

[24] Ibid.

[25] Statements of Tom Kosloski, 11/28/2000.

[26] Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 18.

[27] Department of Transportation Office of the Inspector General report TR–1999–091, "Motor Carrier Safety Program," April 26, 1999, 19–24.

[28] *Id.* at 25.

[29] "During FY 1997, 31 percent of the crashes were uploaded more than 180 days after the crash date." *Id*. at 25.

[30] *Id.* at 21.

[31] *Id.* at 25–26.

[32] 66 Fed. Reg. 22499; "The FMCSA estimates that nearly 500 CMV-related crashes would be avoided annually as a result of these disqualifications." Department of Transportation press release, FMCSA 9–01, May 4, 2001.

[33] Section 385.23(a)(1): "Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor (LFC) or Commercial Driver's License (CDL). A nonvalid LFC or CDL includes one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required." 66 Fed. Reg. 22415 (May 3, 2001) at 22419.

[34] Section 385.23(a)(6): "Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387."

[35] Penalties for U.S. drivers and carriers are more severe: "The Federal penalty to a driver who violates the CDL requirements is a civil penalty of up to $2,500 or, in aggravated cases, criminal penalties of up to $5,000 in fines and/or up to 90 days in prison. An employer is also subject to a penalty of up to $10,000, if he or she knowingly uses a driver to operate a CMV without a valid CDL." FMCSA website: <<http://www.fmcsa.dot.gov/safetyprogs/cdl.htm>>

The corresponding regulation for insurance of U.S. carriers, 49 CFR 387.17 states: "Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the FHWA's Associate Administrator for the Office of Motor Carriers, by written notice. In determining the amount of such penalty, the Associate Administrator, or his/her authorized delegate shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

[36] "Almost all Mexican long-haul drivers are forced to work dangerously long hours." Also, "Industry analysts say that after the ban is lifted, most of the two nations' trade will be done by Mexican drivers, who come much cheaper than American truckers because they earn only about one-third the salary and typically drive about 20 hours per day." Robert Collier, "Mexico's Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders," *San Francisco Chronicle* 3/4/2001.

[37] Office of the Inspector General Audit Report TR–2000–013: "Mexico-Domiciled Motor Carriers." Nov 4, 1999, at 9.

[38] Department of Transportation Office of the Inspector General audit report TR–2000–013, "Mexico-Domiciled Motor Carriers," Nov 9, 2000, at 10.

[39] "State inspectors in Arizona, New Mexico, and Texas did not routinely review the certificates of registration because State laws are not compatible with Federal requirements regarding operating authority. According to State officials in these three border States, legislation has not been initiated to provide for enforcement against a motor carrier for operating without a certificate of registration or for operating beyond the authority granted. Consequently, unless the truck happens to be selected for a safety inspection by a Federal inspector at the border, the certificate of registration will probably not be reviewed." Id. at 16.

[40] "A direct correlation exists between the condition of Mexican commercial trucks entering the United States and the level of inspection resources at the border. California has an inspection presence during all operating hours at its two major crossings and inspects each commercial truck that does not have a valid inspection sticker (Commercial Vehicle Safety Alliance sticker valid for 3 months). The condition of the Mexican commercial trucks entering at the Mexico-California border is much better than those entering through all other border States." *Id.* at 7.

[41] "FMCSA increased the authorized number of inspectors at the southern border from 13 in FY 1998 to 60 in FY 2001 and requested *80 additional enforcement personnel* in its FY 2002 budget request. . . . Deploying the additional 80 enforcement personnel at the border would bring the total number of authorized Federal inspectors there to 140, and be responsive to the recommendation in our 1998 report. If these 80 enforcement personnel are not deployed onsite at the border in the near term, sufficient inspectors will not be in place at all border crossings during all hours of commercial vehicle operations except for California's two major crossings at Calexico and Otay Mesa." (emphasis in original). Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of

Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 3.

Funding for the additional 80 federal inspectors has been struck from the Transportation Spending bill, *see* note 2.

[42] "As of March 27, 2001, FMCSA filled 10 of the 20 FY 2001 inspector positions, resulting in a total of 50 Federal inspectors assigned to the southern border." Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 9.

[43] "Our 1998 estimate of 126 additional Federal inspectors for the U.S.-Mexico border is conservative because it was an estimate for the near term, and did not:

- include the amount of time an inspector would be away from work for training and approved absences,
- allow for expanded hours for commercial port operations,
- account for continued commercial traffic growth,
- include providing inspectors to perform only visual inspections of trucks or electronic verification of Commercial Driver's Licenses (the capability to electronically verify Mexican Commercial Driver's Licenses is now available to Federal inspectors at the U.S.-Mexico border), and
- include inspectors to perform visual inspections of passenger buses and safety inspections for commercial bus drivers. Four port cities accounted for 80 percent of about 269,000 passenger bus crossings at the U.S.-Mexico border in FY 2000 (Otay Mesa and San Ysidro, California; and Hidalgo and Laredo, Texas)."

Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 11.

[44] "In addition to performing safety inspections, an FMCSA official said that the resources will be used to perform safety audits of motor carriers as proposed in the Motor Carrier Safety Improvement Act of 1999 and also to review applications requesting authority to operate in the United States. The FMCSA official further stated that, 'as the Agency assesses the volume of applications for operating authority and begins to conduct safety reviews of Mexican carriers, flexibility will be required to deploy enforcement personnel to perform critical safety oversight tasks,'" Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 10.

[45] Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 12.

[46] Id. at 14.

[47] "Truck driver threatening to block port again over fines," Associated Press, 4/11/2001. *See also* "U.S. Strangling 'Cruzadores,' Truckers say," Hernan Rozemberg, The Arizona Republic, 4/22/2001.

[48] Department of Transportation Office of the Inspector General Audit Report TR–2000–013, "Mexico-Domiciled Motor Carriers," Nov 4, 1999, at iii.

[49] Id. at iii.

[50] "After foreign motor carriers go past the border in California, state inspectors review certificates of registration during roadside inspections throughout the state. We found no evidence to indicate that any other states review certificates of registration during roadside inspections. Consequently, unless the truck happens to be selected for a safety inspection by a Federal . . . inspector at the border, the certificate of registration will probably not be reviewed." Office of the Inspector General Audit Report TR–2000–013: "Mexico-Domiciled Motor Carriers." Nov 4, 1999, at 10.

[51] Office of the Inspector General Audit Report TR–2000–013: "Mexico-Domiciled Motor Carriers." Nov 4, 1999, at 11–12.

[52] "The Motor Carrier Safety Improvement Act of 1999 providesincreased fines for foreign motor carriers operating without authority. The increased fines are not more than $10,000 for an intentional operating authority violation and not more than $25,000 for a pattern of intentional operating authority violations. FMCSA's assessed fines have remained constant since 1998, averaging $500 to $1000 for operating authority violations." Department of Transportation Office of the Inspector General report MH–2001–059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 16.

The CHAIRMAN. Thank you very much. Mr. Pantuso.

STATEMENT OF PETER J. PANTUSO, PRESIDENT AND CEO, AMERICAN BUS ASSOCIATION

Mr. PANTUSO. Thank you, Mr. Chairman. Members of the Committee. My name is Peter Pantuso, I am president and CEO of the American Bus Association and we appreciate the opportunity to testify before your Committee today.

ABA is the trade organization of the intercity bus industry in the United States and Canada. Our members carry people, the most precious and important cargo. We do not carry melons, we do not carry freight. Our members represent nearly two-thirds of all motor coaches on the road today. In the United States, they transport more than 774 million passengers annually. That is 200 million more than the airlines and it is more than double the number of passengers Amtrak and commuter rail together move. We serve 4,000 communities across the United States and we log more than 2.6 billion miles annually.

Intercity buses are the safest mode of commercial passenger transportation. ABA does support the timely, safe, and reciprocal provisions of NAFTA. For buses, NAFTA currently provides changes in access by lifting cross border restrictions on charter and tour buses, a provision that has already been implemented, and must yet implement reciprocal lifting of restrictions on regular route carriers.

We are very concerned by gaps in recent DOT safety proposals, and of primary concern is a loophole of enforcement and oversight for United States domestic subsidiaries of Mexican carriers. I led an ABA delegation to Mexico City last month to learn more about the Mexican bus industry and about NAFTA, and I must say that we were very impressed with what we saw. The Mexican people have realized that bus service is an affordable and a common sense method of transportation. Buses connect the most rural towns with Mexico City, or with even the smallest villages in Mexico. Future partnerships make sense between United States carriers and Mexican bus companies, whereby their relative strengths and their market advantage can be combined to form strategic alliances and allow for growth in expanded service.

However, there are important differences between the United States and Mexican motorcoach industry. Ninety-two percent of intercity trips are by bus in Mexico, with three billion passenger trips taken annually. That is versus the 774 million passenger trips in the United States. Small fleets are very common among United States bus operators, compared to very large fleets in Mexico. And perhaps the most significant differences are in vehicle safety standards.

Cross border service in the United States works well along our northern border with Canada because Canada has adopted very similar, almost identical safety regulations for buses. But the rules between United States and Mexico are not identical. On our trip, ABA also visited Veteran's Bridge, one of four border crossing points in Brownsville, Texas. Over 350 buses cross that bridge every single week. Customs and INS inspects all of the buses daily for contraband and for passenger documentation. DOT inspects

trucks daily at that border crossing point, but inspects buses only 1 day every month. This greatly concerns us and it must change.

Authorities must be always mindful always that buses carry passengers, and not freight. We are not saying that buses in Mexico are inherently unsafe. In fact, Mexican buses are made by Dina, Volvo and Mercedes. These are companies which also manufacture buses for the U.S. market. But the buses they manufacture for the U.S. market are built to U.S. Federal Motor Vehical Safety Standards. In Mexico, these standards do not apply.

Frequent border inspections will ensure the consistent application of U.S. standards. We urge DOT to create a specific plan to ensure motorcoach and passenger safety prior to finalizing their proposal. That plan should address some specific issues, including the creation of an effective mechanism for preventing entry by Mexican manufactured buses that do not comply with United States safety standards. It should include enforcement of rules relating to Mexican drivers providing passenger service in the United States and finally, it should include a clarification that the proposed rules apply both to motorcoaches and to commercial passenger vans engaged in intercity service.

Market equity with Mexican bus operations is also very important to our industry. Mexico will grant cross border authority for United States carriers to serve only one point in Mexico. It will not allow United States bus carriers to own or operate bus terminals in Mexico. And, it will not authorize those carriers to provide package service in Mexico. DOT proposals contain no such limitations on Mexican bus companies, and these differences could cripple the United States bus industry.

In conclusion, Mr. Chairman, we would like to say that NAFTA, we believe, can be implemented fairly and safely and in a way that provides opportunities for bus operators, and the customers we serve throughout North America. However, we do urge Congress and this Administration to work together with the Mexican Government to ensure that the highest level of safety exists for the traveling public. With that, Mr. Chairman, I thank you for the opportunity to testify before this Committee today.

[The prepared statement of Mr. Pantuso follows:]

PREPARED STATEMENT OF PETER J. PANTUSO, PRESIDENT AND CEO, AMERICAN BUS ASSOCIATION

Introduction

Good morning Mr. Chairman and Members of the Committee. My name is Peter J. Pantuso and I am President and CEO of the American Bus Association. Thank you for the opportunity to testify on the impact of the North American Free Trade Agreement on motorcoach transportation.

ABA is the trade organization of the intercity bus industry with more than 3,400 member motorcoach operator, tour and travel organizations and suppliers to the industry in the United States and Canada. We are currently celebrating our 75th year of service to the industry. Buses in the United States transport over 774 million passengers annually—over 200 million more than airlines and more than double Amtrak and commuter rail. We serve more than 4,000 communities and log more than 2.6 billion miles annually.

We are the safest mode of commercial passenger transportation with the lowest fatality rate per 100 million passenger miles traveled. According to the National Safety Council's Injury Facts reporting on a period from 1995—1997, U.S. motorcoach travel averaged .01 passenger fatalities per 100 million passenger miles compared to .04 passenger fatalities for both rail and air travel for the same period and

the same number of passenger miles. The industry strongly believes that even a single fatality is one too many and we continue to look for ways to further improve safety. Motorcoach operators and manufacturers themselves accomplished this safety record in large part through their own efforts to promote the highest standards of safe design and operation and vigilant compliance to stringent safety regulation.

NAFTA and Motorcoach Operations

I am here today to make you aware of motorcoach issues related to the implementation of motor carrier provisions of the North American Free Trade Agreement, or NAFTA. Although most commentary focuses on trucks, the fact is that there are unique and important bus issues that must be addressed.

ABA supports timely, safe and reciprocal implementation of NAFTA. However, we are concerned that the NAFTA implementation rules recentlyproposed by the Federal Motor Carrier Safety Administration of the Department of Transportation do not ensure reciprocity or safety in bus operations. Those proposals could open up U.S. markets to Mexican bus companies without limitation, notwithstanding the Mexican government's stated intent to limit U.S. bus companies' ability to own and operate Mexican terminals; to provide crossborder service to multiple points in Mexico and to carry incidental package express. Bus service is not viable with these limitations.

We are equally concerned by the gaps in the safety proposals. Unlike trucks, NAFTA authorizes Mexican motorcoach companies to set up U.S. subsidiaries to provide domestic U.S. bus service. DOT recognized that special procedures must be in place to ensure the safety of Mexican bus and truck operations, but without explanation, declined to apply those procedures to subsidiaries of Mexican motorcoach companies providing domestic U.S. service. Furthermore, there is little indication of a DOT program to ensure the safety of Mexican buses and bus operations. Indeed, existing border scrutiny of motorcoaches is sadly lacking.

The NAFTA surface transportation provisions are designed to eliminate restrictions in all three NAFTA countries that limit access for and investment in transportation companies. For buses, changes in access refer to lifting of crossborder restrictions on charter and tour buses, a provision that has already been implemented, and a reciprocal lifting of restrictions on regular route carriers which has yet to be implemented. In terms of new investment opportunities under NAFTA, the U.S. is to allow 100 percent investment in bus companies owned by Mexicans while Mexico is to allow 51 percent U.S. ownership of Mexican companies this year and 100 percent in January, 2004. Again, it is important to emphasize that unlike Mexican-owned U.S. trucking companies, which are limited to carrying international cargo, Mexican-owned U.S. bus companies will be allowed to provide both domestic and international service in the U.S.

The Mexican Bus Industry

An ABA delegation of members and staff visited Mexico last month in order to gain a better understanding of the opportunities and challenges facing our members under NAFTA. I must say, frankly, that we were impressed with what we saw. Perhaps most extraordinary was the information provided by the Mexican Bus Association, CANAPAT, that passengers in Mexico took more than 3 billion bus trips last year alone. Over 92 percent of the Mexican population rides the bus for intercity trips at least once per year. A number of companies operate more than 4,000 motorcoaches. This is no small business in Mexico.

We were impressed with the facilities we visited in Mexico City. Mexican bus companies operate out of centralized bus terminals that compare favorably to many airports in the U.S. with comfortable waiting areas, well-established gates, electronic ticketing, pre-boarding security procedures, shopping, and friendly, convenient and abundant service. Again, this is a significant industry. Clearly people in Mexico have realized that bus service is an affordable and common-sense alternative when road congestion and environmental concerns are at issue. Bus service connects the most rural towns with Mexico City and other metropolitan areas and with other villages.

Several things were made clear to us during that trip. Mexico represents a large market of people that rely heavily on bus service. Mexican bus companies pay lower wages to their workers than U.S. bus companies but have considerably less access to capital than their neighbors to the north. Partnerships make sense between U.S. and Mexican bus companies given these conditions as a backdrop and some of these partnerships are already in place.

However, I must emphasize that we also learned that there are important differences between the U.S. motorcoach industry and the Mexican motorcoach industry. First, the magnitude of the difference in size of both the industry as a whole

and the individual companies within the industry—3 billion passenger trips by bus annually in Mexico versus 774 million in the U.S.; small fleets in the U.S. compared to large fleets in Mexico. And, perhaps most significantly, differences in vehicle safety standards and the way in which industry is regulated. For all these reasons, we must be able to rely on strong enforcement in the United States to ensure safe highways and to ensure a level playing field for U.S. operators.

We will work with the Mexican bus association in the months ahead to insure that they better understand the rules they must abide by in the U.S. in order to operate safely on our roads. We expect to learn from them, as well, regarding the rules of the road in Mexico. The reason that crossborder bus service works well along our northern border with Canada is because, to a large extent, Canada has adopted almost identical regulations for drivers, vehicles, hours of service and various other safety provisions.

The rules between the U.S. and Mexico, however, are not identical. So, for now, while we are in Mexico, we will operate under their rules and when they are in the U.S., they will be expected to operate under U.S. rules. Eventually, given the proper authority and necessary resources, the NAFTA Land Transport Standards Subcommittee (a NAFTA working group including government regulators from all three NAFTA countries), working with groups like ABA and the Commercial Vehicle Safety Alliance, should be able to bring those rules into closer alignment to the benefit of us all. But in the meantime, it is of utmost importance that enforcement officials are vigilant in their efforts to ensure that all motorcoach companies operating on U.S. roads comply with U.S. highway safety rules.

Enforcement of Motorcoach Safety

Following our visit to Mexico City, our group traveled to the U.S.-Mexico border to see the Veteran's Bridge (one of four border crossing bridges in Brownsville) to meet with U.S. Customs officials. Over 350 buses cross that border point every week over the Veterans Bridge. Customs inspects all of those buses for drugs or other forms of contraband and the Immigration and Naturalization Service (INS) reviews passenger documentation. However, we were told that although the U.S. Department of Transportation inspectors inspects trucks daily, they only inspect buses one day per month. That means that, on that one bridge alone, more than 1,300 of the over 1,400 buses crossing monthly go uninspected by DOT. This concerns us greatly.

It seems that somewhere during the highly-charged debate on NAFTA and trucking, the authorities forgot that buses carry passengers—not freight—across the border. It seems to us that we have a much greater stake in fair and effective enforcement than has been reflected in the dialog to date. The current practices need to change to assure passenger safety and the safety of the traveling public on the roads.

We are not suggesting that Mexican buses are unsafe, they are made by Dina, Volvo and Mercedes—all of whom supply the U.S. market. We are only suggesting that frequent inspections will assure compliance with U.S. Federal Motor Vehicle Safety Standards (FMVSS) and Federal Motor Carrier Safety Regulation (FMCSR) requirements and keep safety the number one priority.

ABA has several specific concerns relating to the safety regulatory framework recently proposed by DOT relating to full implementation of NAFTA crossborder access rules. The proposals fail to take into account that, unlike for trucks, the NAFTA bus provisions allow for domestic operations by Mexican-owned bus operations

In the recent rulemaking proposal, DOT proposes to establish a system of special application procedures and oversight for Mexican companies providing crossborder services. But they specifically exempt from those procedures and that oversight Mexican passenger carriers that establish U.S. subsidiaries to provide domestic service in the U.S. This creates a giant loophole—Mexican companies operating in crossborder service are subject to the special application procedures and oversight while Mexican companies operating domestically are not.

We urge DOT to modify its proposal to apply its proposed special safety procedures for crossborder carriers to Mexican owned, U.S.-based companies applying to provide domestic U.S. bus service.

We also urge DOT to create a specific plan to ensure the safety of Mexican passenger motor carriers prior to finalizing their proposed rules and include the details of that plan in its decision promulgating the final rules.

The plan should address specific issues such as:

- Creation of an effective mechanism for preventing Mexican-manufactured buses that do no comply with the Federal Motor Vehicle Safety Standards or the Federal Motor Carrier Safety Regulations from entering the United States.

- Enforcement of rules relating to Mexican drivers providing passenger service in the U.S. The law requires that only U.S. citizens or resident aliens can provide domestic passenger service in the U.S. We believe that Mexican officials incorrectly interpret NAFTA as overturning this U.S. immigration law. DOT should work with INS to develop mechanisms to effectively enforce the immigration laws.
- DOT should also make clear that the proposed rules apply to both buses and commercial passenger vans carrying nine or more people in intercity service, including the driver. The department is expected to publish a final rule soon related to these "camioneta" operations that would increase these operators' safety compliance responsibilities—this should not fall through the cracks as the Department plans for the border opening.

Reciprocity with Mexican Bus Companies

We also have a number of concerns in relation to market equity with Mexican bus operators. NAFTA requires that the implementation of the crossborder transportation provisions be executed in a reciprocal manner with both countries providing the same treatment to citizens of the other country. However, there are several ways in which Mexico appears to be taking positions contrary to that mandate.

Mexico has taken the position that it will grant cross-border service authority for U.S. carriers to serve only one point in Mexico; it will not allow U.S. carriers to own or operate bus terminals in Mexico; and it will not authorize those carriers to provide incidental package express service as part of its crossborder trips. DOT's proposals contain no such limitations. Mexican companies would be free to serve multiple U.S. points; could own and operate bus terminals wherever they like; and would be able to carry incidental package express on any of their schedules.

If DOT implements its crossborder service proposals without ensuring reciprocal treatment of U.S. companies in Mexico, it could devastate the U.S. bus industry, which is much smaller than the Mexican bus industry. We urge DOT to engage in discussions with its counterpart in Mexico to determine what the terms and conditions of crossborder authority should be. Whatever terms and conditions are mutually agreed upon during those discussions should be implemented in the final rules.

Conclusion

We believe that NAFTA can be implemented fairly, safely and in a way that provides opportunities for bus operators and the customers we serve throughout North America. However, in order for this opportunity to be recognized, we are urging Congress and the Administration to work together with the Mexican government to ensure that the requests we have made which, we believe, will ensure the highest level of safety for the traveling public, are implemented with all due haste.

Thank you for the opportunity to testify today Mr. Chairman.

The CHAIRMAN. Very good. We thank you, sir. Mr. Acklie.

STATEMENT OF DUANE W. ACKLIE, CHAIRMAN, AMERICAN TRUCKING ASSOCIATIONS

Mr. ACKLIE. Mr. Chairman, Committee members, my name is Duane Acklie. I am Chairman of the American Trucking Associations or ATA, the national trade association of the trucking industry. Through our affiliated trucking associations, we have over 30,000 motor carrier members throughout the United States. I am also Chairman of Crete Carrier Corporation, a rather small trucking company based in Lincoln, Nebraska but serving customers in Canada, Mexico and the United States.

ATA supports the North American Free Trade Agreement, because it means increasing business for trucking companies and more jobs. According to the numbers of the United States Department of Commerce since NAFTA was implemented, trade between the United States and Mexico has more than tripled from 81 billion in 1993 to 246 billion in 2000. When measured by value, trucks move over 80 percent of the U.S.–Mexico trade and move 70 percent of the U.S.–Canada trade. In 1994, when NAFTA was imple-

mented, there were about two and a half million truck crossings in the United States–Mexico border. In the year 2000, nearly five million truck crossings took place at the southern border.

With that background, let me say that ATA has a stakeholder position based upon the growing volumes between United States and Mexico. ATA members have worked hard to improve safety on our highways, which can be seen in the reduced rates of truck accidents each year over the past 3 years. As truckers, we cannot afford to have our record blemished by unsafe trucks from either the United States, Canada, or Mexico.

ATA supports the proposed process in which applications from Mexican carriers to get United States operating authority will be reviewed under the proposed Federal motor carrier safety rules on a case-to-case basis.

The information being requested from the Mexican carrier goes beyond what is required from the new United States and Canadian carriers seeking United States operating authority. Let me also point out that when we started cross border with Canada, that they had no safety database, which they do today. They had no safety rating system, which they do today. And they had no alcohol and drug testing. In Canada, they still do not have, and it is prohibited, as I understand, by their constitution, a random testing on drugs and alcohol. But they must comply with all rules and regulations that we have in the United States.

So what we are looking at here today implementing is not all that different than what was implemented in Canada. In order to get a better understanding of why NAFTA is good for trucking, it is important to look at a snapshot of trucking at the border today. Today cross border freight is handed off on the United States side of the border at one of the 27 truck border crossings, but predominantly in the commercial zones of California and Texas.

Through interlying partnership, freight is handled on the United States side by the United States carrier and on the Mexican side by the Mexican carrier with a middleman or a cartage hauler in between, ferrying loads back and forth across the border to warehouses or freight yards to pick up and subsequent final delivery.

Now, my own opinion is that there is so much congestion at the moment and, at the border, that the reason we are seeing the older trucks from Mexico doing a cartage is simply because there is really very little utilization because a lot of it is tied up. I don't think the long haul Mexican carrier at the moment or the United States carrier is that interested in having their trucks tied up the border. That is why they—older trucks—are being used. I think there will be a different standard and different kind of truck once NAFTA is truly implemented.

In other words, one shipment from the United States and Mexico today generally requires three drivers, the United States carrier, the border carrier, or the, as I would call, the cartage carrier and the long haul or Mexican carrier. It takes three different pieces of equipment to move. Opening the border will allow a free interchange between the responsible United States carrier and the responsible Mexican carrier or allow the United States carrier to go into Mexico and the Mexican carrier to go into the United States

Our company, for example, being a smaller company, will continue interchange at the border with a very limited number of carriers we now use. We use responsible Mexican carriers. We have not had a problem in hijacking. We have not had a problem in theft or damage. All of our trailers go into Mexico, but our tractors stop at the border.

NAFTA's trucking provisions require all foreign carriers in the United States to abide by all United States standards. What's that mean? We had some talk here today about there wasn't going to be any laws. To be able to come into the United States, a Mexican carrier is going to have a week's logs when they arrive there or they do not get in. They are going to have to have a week's logs. We are going to have to do everything to check them in the very same manner as we check U.S. carriers.

NAFTA's trucking provisions require all foreign carriers operating in the United States to abide by U.S. standards and regulations, including the ability to speak and read the English language. ATA supports that position 100 percent. We believe in safety. We believe that the Mexican carriers should have to do the very same thing as all U.S. carriers.

In the opinion of ATA and its members, we believe that California has demonstrated the strong enforcement and proper inspection at the border works. The fact is that every trucking company and every driver entering the United States will be required to meet each and every safety requirement after undergoing a comprehensive review through the proposed Federal Motor Carrier Safety Administration application process to comply with United States safety standards.

One of the things I have not heard here today is any discussion about insurance. Before a Mexican carrier or United States carrier can get liability and cargo insurance, the insurance company goes out and does a thorough inspection, when we have renewals each year. They come in. They look at our hiring procedures. They check our hiring records. They check our out-of-service rate. They do everything to decide whether or not they are going to insure. I will say to you that each Mexican carrier will have to obtain that insurance, and they will have a further safety check by the United States insurance carrier that is issuing the insurance.

Such a review would include capturing information regarding hiring and training practices, maintenance practices and overall safety management. Thus the Mexican trucking companies will undergo not only a thorough application by the Federal Motor Carrier Safety Administration but also a far more thorough review by potential insurance carriers.

As a practical matter now, I believe it is going to be a number of years before we see any substantial number of Mexican trucks operating on the United States highways. The larger carriers will use a driver to take that tractor and trailer to the Mexican border and the Mexican trucker will take the same tractor and trailer and proceed on to the destination. In other words, they will interchange drivers rather than equipment at the border.

With carriers, like our company, that are smaller, we will merely exchange the trailer at the border with the responsible carrier and

eliminate that cartage company that runs that old dilapidated piece of equipment.

In conclusion, ATA strongly believes that motor carriers operating in the United States, no matter what nationality, must abide by United States safety standards. However, ATA is concerned that the discussion of our Mexican counterparts are based more on an incomplete understanding of motor safety and prejudice toward the Mexican carriers instead of being based on hard facts that relate to safety. Thank you, Mr. Chairman, thank you members of the Committee.

[The prepared statement of Mr. Acklie follows:]

PREPARED STATEMENT OF DUANE W. ACKLIE, CHAIRMAN, AMERICAN TRUCKING ASSOCIATIONS

The American Trucking Associations, Inc. (ATA), with offices located at 2200 Mill Road, Alexandria, Virginia 22314–4677, is the national trade association of the trucking industry. Through our affiliated trucking associations, and their over 30,000 motor carrier members, affiliated conferences, and other organizations, ATA represents every type and class of motor carrier in the country.

ATA has long viewed free trade as an important tool in improving our country's economic growth. Since the North American Free Trade Agreement (NAFTA) was implemented, trade between the United States and Mexico has more than tripled from $81 billion in 1993 to $246 billion in 2000.[1]

The trucking industry plays a critical role in the success of NAFTA. Trucks transport over 80 percent of the value of U.S.-Mexico trade, and over 70 percent for U.S.-Canada trade. Trucking companies have benefited from the growing trade volumes among the NAFTA partners, considering that higher trade flows have resulted in more business for motor carriers in all three nations. Implementing NAFTA's trucking provisions will allow motor carriers to better meet the transportation demands of our growing trade flows, doing so in an efficient, effective, and safe manner.

NAFTA and Trucking. The trucking industry has long supported NAFTA. Therefore, ATA firmly opposed the delay by the U.S. Government in implementing the essential cross-border trucking provisions of NAFTA. The delay has arbitrarily denied Canada, Mexico and the United States the full benefits of this important trade agreement, negatively impacting U.S. shippers and carriers engaged in NAFTA trade.

Under NAFTA, beginning on December 18, 1995, U.S. and Mexican carriers were to have been allowed to pick up and deliver international freight into each other's states contiguous to the U.S.-Mexico border. By January 1, 2000, access would expand to all states on either side of the border. NAFTA's trucking provisions would enhance the competitiveness of U.S. goods in the Mexican market by providing U.S. exporters and importers an efficient cross-border trucking operation.

When then Secretary of Transportation Federico Peña announced that the implementation of NAFTA's motor carrier provisions were being postponed, he cited safety and security concerns regarding Mexican trucks operating in the United States as the reason for the delay. However, it is important to remember that *NAFTA's trucking provisions require all foreign carriers operating in the United States to abide by U.S. standards and regulations,* so only Mexican carriers who applied and then met U.S. standards would be given U.S. operating authority. ATA fully supports rigorous enforcement of all U.S. standards for all carriers operating in this country, U.S. and foreign. The current freeze on NAFTA, however, imposes a presumption of guilt based upon national origin: no matter how safe the Mexican trucking company, it cannot get permission to leave the border zone.

The trucking provisions of NAFTA also allowed U.S. and Canadian carriers to improve their ability to invest in the Mexican market. Starting on December 18, 1995, U.S. and Canadian investors have been permitted to invest in up to 49 percent ownership of Mexican trucking companies or terminals providing exclusively international freight services. On January 1, 2001, the investment ceiling increased to 51 percent, and, on January 1, 2004, the rights expand to 100 percent. In the United States, starting on December 18, 1995, Mexican investors were to be allowed to invest up to 100 percent in a U.S. trucking company providing international freight services. This commitment had also remained unfulfilled until President

[1] Source: International Trade Administration, U.S. Department of Commerce

Bush lifted the moratorium on investment by Mexican nationals on June 6 of this year.

Because the NAFTA trucking provisions have been delayed, trucking companies that have invested in equipment to provide a first rate freight service throughout North America, are left to operate in an outmoded and ineffective freight transfer system at the U.S.-Mexico border. A shipment traveling from the United States to Mexico, or vice-versa, requires no less than three drivers and three tractors to perform a single international freight movement. Through interline partnerships, freight is handled on the U.S. side by a U.S. carrier and on the Mexican side by a Mexican carrier, with a "drayage" hauler in the middle. The drayage truck ferries loads back and forth across the border to warehouses or freight yards for pickup or subsequent final delivery.

Congestion is compounded because trailers come back empty after delivering their freight across the border and because drayage "bobtails" (tractors without trailers) deliver a trailer only one-way across the border and return solo. In addition to requiring two long-haul carriers, one on either side of the border, and a drayage carrier to haul the shipment across the border, the process includes freight forwarders, customs brokers, as well as the official processing handled by government inspectors and enforcement officials. This process results in extra trucks on the road, congestion, delays and "over handling" of shipments that invariably leads to increased costs, and lost and damaged freight.

Furthermore, the existing border infrastructure and human resources are seriously overburdened by the increased congestion generated by the growth in trade flows and the present outmoded cross-border trucking scheme. If, as anticipated, trade flows between Mexico and the United States continue to grow, the border facilities and personnel will only be further strained. To illustrate, according to a study by the International Association of Chiefs of Police (IACP), from 1994 to 1999, northbound truck crossings increased from 2.7 million to over 4.5 million. It is important to remind this Committee that these numbers reflect truck *crossings* and not the actual number of trucks crossing. According to the IACP, about 80,000 trucks accounted for the 4.5 million truck crossings.[2]

Drayage vs. Long-haul. The trucks presently crossing the border into the United States are drayage trucks. It is these drayage trucks that are being inspected when crossing the border into the United States and that have a high out of service rate as detailed in the U.S. Department of Transportation Inspector General's report (IG report) published in December 1998. (Report # TR–1999–034)

However, the very same situation that occurs with drayage operations on the U.S.-Mexico occurs, regrettably, each day at intermodal terminals in the United States. For example, in Kansas City, Missouri, in the heart of America, drayage trucks perform transfer movements at the second busiest intermodal rail facility in the nation. According to the Kansas City Police Department, the out of service rate in Kansas City for drayage trucks is 45 -50 percent, about the same as drayage operations at the port of entry in Laredo, Texas.

Drayage operations use older equipment because they are simply performing short transfers of freight from one side of the border to the other side, or from one end of the intermodal facility to the other end. Motor carriers, either on the U.S.-Mexico border, or in Kansas City, Missouri, do not invest $100,000.00 in equipment to perform short drayage operations. They simply cannot afford to do so. Motor carriers that buy new and expensive equipment do so for long-haul movements. Therefore, the trucks crossing the border today are not the same Mexican trucks that would operate in the United States once NAFTA's trucking provisions are implemented.

The IG report states that of the Mexican trucks crossing the border, an inordinate percentage of them, 44 percent, are put out of service, compared to 25 percent for the U.S. and 17 percent for Canada. It is critical to note that these are not random inspections, but targeted inspections by trained inspectors who know what they are looking for. The report recognizes that this population of drayage trucks may not be "statistically representative of the universe of Mexican trucks that are non-compliant." Furthermore, the study also raises that "once the border is open to long-haul traffic, the number and percentage of safety compliant Mexican trucks will dramatically increase because long haul trucks will be different from, and in better condition, than the shorter haul trucks" used for drayage in the commercial zones.

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[2] International Association of Chiefs of Police; *Estimates of Commercial Motor Vehicles Using the Southwest Border Crossings,* Economic Data Resources, Bethesda, Md, September 20, 2000, appendix A

It is important to note, however, that in a subsequent study of U.S.-Mexico cross-border trucking operations, the IG reported that the out of service rate for Mexican trucks entering the U.S. dropped from 44 percent in 1998 to 36 percent in 2000.[3]

In addition, the IG report stated that there is a strong correlation between the quality level of inspection procedures and facilities, and the out-of-service rate of Mexican trucks crossing the border into the U.S. In California, the out of service rate of Mexican trucks is 28 percent (nearly the same as the U.S. rate), compared to Texas at 50 percent. These out of service rates also changed in the 2001 IG report, with California down to 26 percent and Texas at 40 percent. According to both IG reports, the more rigorous inspection procedures in California encourage Mexican truckers to make sure their equipment is up to U.S. standards. The reports also stated that there is a need for increased funding to hire additional inspectors and to build adequate border inspection facilities. ATA agrees with this assessment, and therefore believes it is critical that the resources requested by the President for FY 2002 to hire more inspectors and to build inspection facilities be fully funded.

The IG report concluded that too few trucks "are being inspected at the U.S.-Mexico border, and that too few inspected trucks comply with U.S. standards." Considering that the present trucks are the pre-NAFTA drayage trucks, this is no surprise. Once NAFTA's trucking provisions are implemented, safety and congestion will be improved at the border by reducing the dependency on drayage operators to transfer trailers across the border, and therefore reducing the number of empty trailers and bobtail tractors operating at the border.

Motor Carrier Safety Encompasses More Than Equipment Condition. ATA believes it is important for the Committee and the public to recognize that motor carrier safety is a much broader issue than just the condition of the truck that is being operated on the highway. In fact, a more important component of truck safety is the licensing and qualification of the driver operating the truck. This statement is supported by the fact that general vehicle crash causation studies consistently indicate that approximately 90 percent of vehicle crashes are caused by actions or mistakes on the part of the driver. This is true whether the issue is passenger car crashes, or truck-involved crashes. Conversely, only a very small percentage of vehicle crashes are caused by defects in the vehicle being operated. Given these facts, it is curious why so much attention in the Mexican truck safety debate has been placed on the out-of-service rates of Mexican trucks.

In ATA's view, the overall safety of the Mexican trucking industry has been inappropriately labeled as less than satisfactory based primarily on the condition of Mexican drayage trucks operating in the U.S. commercial zones. This is unfortunate, and it seems unwise from a motor carrier safety and a general highway safety perspective, to put so much emphasis on the equipment and pay so little attention to what systems are in place regarding the driver.

The Committee should be aware that the Mexican federal government has had an effective commercial driver licensing program in place for years. In fact, in 1991 the standards and procedures for issuing a Mexican Licencia de Federal were recognized by the U.S. Department of Transportation as equivalent to their own Commercial Driver's License (CDL) standards and procedures. The reciprocity agreement recognizing this fact was signed by both countries in 1991, despite the fact that the CDL program in the U.S. was not fully operational until a year later.

Additionally in 1991, the U.S. Department of Transportation recognized the Mexican government's medical requirements for truck drivers as equivalent to those in place in the U.S. A reciprocity agreement is in place between both countries on this important driver-related issue as well. The Mexican government has also had in place since 1993 hours of service and logbook regulations for truck drivers hauling hazardous materials. These requirements were recently extended to all Mexican truck drivers.

It is true that the Mexican regulatory regime is not identical to that which is in place in the U.S. However, the same statement can be made for the regulatory system in place in Canada. The fact is that every truck and truck driver from Mexico that will operate in the U.S. must abide by all U.S. safety requirements when operating in this country. The U.S. Department of Transportation should be allowed to assess during the application process a Mexican trucking company's ability to meet the standards, and those carriers and drivers that can pass the test, should be allowed to operate in the U.S.

Language requirements. NAFTA's Land Transportation Standards Subcommittee (LTSS) has determined that there are minimal differences among the

[3] *Interim Rerport on Status of Implementing the North American Free Trade Agreement's Cross Border Trucking Provisions,* U.S. DOT Inspector General Report # MH–2001–059, May 8, 2001, pg. 7

three NAFTA member countries, which do not affect the safety of cross-border trucking services.

Foreign drivers, be they from Mexico, French-speaking Quebec, Poland or Russia, are required to have sufficient ability to understand road signs and to have basic proficiency levels to communicate in English when driving in the U.S. The Code of Federal Regulations, CFR 49, Section 391.11 (b)(2) states that a person is qualified to drive a commercial vehicle if he/she "can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records."

It is important to note that the ability to fluently speak the language of the host country in which a truck driver is operating does not represent an essential safety concern. Proof of this is the European Union where truck drivers from member countries operate freely throughout the region.

Labor requirements. Mexican drivers entering the U.S. for the purpose of delivering and picking up international cargo are considered as temporary business visitors, and therefore not subject to U.S. domestic labor laws. This definition is included in the NAFTA text in Chapter XVI, Annex 1603, Section A, Business Visitors, 1, which states: "Transportation operators transporting goods or passengers to the territory of a Party from the territory of another Party, or loading and transporting goods or passengers from a territory of a Party, with no unloading in that territory, to the territory of another Party."

Since a Mexican driver receives compensation in Mexico, and has an employment relationship with a Mexican-based company, the driver is covered by Mexico's labor laws, not U.S. labor laws. These are the same requirements that cover Canadian drivers driving in the United States.

Recent developments. ATA strongly supported the final finding released on February 6, 2001 by the NAFTA Arbitration Panel. The panel ruled that the U.S. had not met its commitments as established under NAFTA, and therefore should begin processing the applications of Mexican carriers. The arbitration panel also ruled that:

> *"The United States may not be required to treat applications from Mexican trucking firms in exactly the same manner as applications from U.S. or Canadian firms,* **as long as they are reviewed on a case by case basis.** (Emphasis added) *U.S. authorities are responsible for the safe operation of trucks within U.S. territory, whether ownership is U.S., Canadian or Mexican . . . Thus, to the extent that the inspection and licensing requirements for Mexican trucks and drivers wishing to operate in the United States may not be "like" those in place in the United States, different methods of ensuring compliance with the U.S. regulatory regime may be justifiable. However, if in order to satisfy its own legitimate safety concerns the United States decides, exceptionally, to impose requirements on Mexican carriers that differ from those imposed on U.S. or Canadian carriers, then* **any such decision must (a) be made in good faith with respect to a legitimate safety concern and (b) implement differing requirements that fully conform with all relevant NAFTA provisions."** (Emphasis added)

Following the guidance of the Arbitration Panel, on May 3, 2001, FMCSA published three notices of proposed rulemaking (NPRM) in the *Federal Register*. These proposed rules relate to the process by which Mexican motor carriers will have to complete to obtain U.S. operating authority. The three proposed rules are as follow:

- Revision of regulations and a new application form to be filled by Mexican motor carriers that intend to operate in U.S. commercial zones contiguous to the U.S.-Mexico border (Form OP–2);
- A new application form for Mexican motor carriers that intend to operate in U.S. territory beyond the commercial zones (Form OP–1(MX); and,
- A new safety audit review mandated by the 1999 Motor Carrier Safety Improvement Act (MCSIA), which would be required of all new motor carriers recently granted operating authority by the U.S. Department of Transportation within an eighteen month period.

In its comments to FMCSA in relation to the proposed rules, ATA recognized the Arbitration Panel's objective stated above granting the U.S. government the ability to request information from Mexican motor carriers above and beyond what is requested from new U.S. or Canadian carriers. Although the proposed rules do raise questions about violating the "national treatment" and "most favored nation" clauses established under NAFTA, ATA expects FMCSA's final rules to still require

Mexican carriers to provide far more information on their ability to meet U.S. safety standards than carriers from the United States or Canada. Any concerns over safety of these carriers from Mexico and their trucks and drivers can and will be addressed in the rules for implementing the NAFTA agreement. *The bottom line is that every trucking company, every truck and every driver entering the United States will be required to meet each and every U.S. safety requirement only after undergoing a comprehensive review through the proposed FMCSA applications, of their ability to meet those standards.*

Conclusion. ATA continues to encourage the United States and Mexico to agree on comprehensive safety standards through the work of the LTSS, establish and test effective enforcement programs, and staff border facilities with full time inspectors as they move forward in implementing NAFTA's trucking provisions. In 1999, ATA worked aggressively to include language in the legislation that created the FMCSA requiring that all trucks entering the U.S. from Mexico under NAFTA must meet U.S. truck safety standards.

ATA strongly believes that motor carriers operating in the United States, no matter what their nationality, must abide by U.S. safety standards. However, ATA is concerned that attacks on our Mexican counterparts are more based on an incomplete understanding of motor carrier safety and prejudice towards Mexican carriers, instead of being based on hard facts related to safety.

The U.S. trucking industry, shippers and the American consumers that we serve have already seen considerable benefits from NAFTA, i.e. job creation, opening of new markets for U.S. goods and services, business expansion opportunities, reduction in tariffs, and increased production efficiencies. Although NAFTA has proven beneficial to U.S. industries and consumers, the U.S. Government's decision to delay cross-border trucking service has unduly penalized not only the transportation industry, but also U.S. exporters and importers alike.

Implementation of NAFTA's trucking provisions will eliminate a cumbersome, outdated and costly system of moving freight across the border, and replace it with an efficient, transparent and safe cross-border trucking process. It is essential that public officials remember that implementing NAFTA's trucking provisions will also allow for U.S. carriers to increase to further improve their ability to provide cross-border freight services between the U.S. and Mexico. Once the border is opened, our countries can begin to recognize the full benefits of NAFTA and increased trade between the United States and Mexico. Then, we can focus our efforts on the many business and practical issues that will arise from the cross-border integration process, which can only be tackled with the goodwill of committed trading partners.

The CHAIRMAN. Thank you very much. The statement is made that the trade has increased three times, but we have unfortunately had to look at what really has tripled, and not the trade of products, but the trade of jobs. My little state has lost 43,200 textile jobs. The textile industry and the berry industry has lost over 400,000 since NAFTA, and right to the point with respect to going down there, the statement made by Ms. Claybrook relative to an actual onsite audit rather than a paper audit, Mr. Hoffa, I hope your Teamsters do not move to Mexico. I can see——

Mr. HOFFA. I don't think they will do that.

The CHAIRMAN. I can see Hollings Manufacturing or General Motors putting a subsidiary down there, one of their trucking lines and if they organize them, you got to look not just at the fact that they do have a union, but the composition of the union itself. In Tijuana a few years ago, I went down to look at the situation there and it so happened that the previous, they had a heavy rain, mud and everything. Came up around San Diego with the settlement, I guess it was 100,000 in a hard, crusted, no roads, no real development.

They just—housing was 5 garage doors put together, for example. Well, with that heavy rain, everything just washed out and people trying to get their belongings together, they missed 3 days of work and under the labor rules in Mexico, they were docked an additional one so they lost 4 days. And in February, they had someone

have his eye knocked out and they did not like that, the particular workers and then of course, the first week in May, their very favorite supervisor, she was expecting.

She went to the front office midday and said I have got to go home to work. She says no, no. You are being required and you got to continue to work. And as a result, she miscarried, so the workers in that particular plant said we are going up to California and we are going to organize, and they went up to Los Angeles, and you know what they found out? They had a union.

When that plant had moved from Santa Angelo down to Mexico, they filled out the papers between the lawyers. Down at the plant, they had never seen a steward or anybody from the union or whatever it was. They just swapped the paper and swapped the money, but that there was a compliance of having a paper union. And under the law in Mexico, if you try to organize a union, whereby you have a union, you file—and it was the mayor of Tijuana that invited Senator Hollings to come in and listen to these 12 workers who had been fired.

Now, I wrote an article about NAFTA for the foreign policy edition, and they gave me $500. I sent it to the little lady who showed me around, I said go down there and organize. I am trying to organize in Mexico because it is really, we got to look closely at these things. I can tell from the testimony, and this is one of the best hearings that we have ever had, it has come out that we are in trouble, namely the United States, not Mexico.

I think the fact that you have met with President Fox, Mr. Hoffa, and you have both gotten along and understand each other and can talk candidly and everything else gets past all of the politics about the NAFTA and the diplomacy and about enforcing the agreement.

Specifically, let me just ask one question, Captain Vaughn. You went into details about all the things that had to be checked. Knowing from your experience all of those things that have to be complied with and everything else like that, do you think we are on course to really getting that done by January 1st?

Captain VAUGHN. To do the CVSA plan, I believe there is an opportunity. If we do case studies rather than compliance reviews, what we are offering is to use state inspectors as part of a team that will also include a Federal representative and Mexican representative. That team will go in and we can look at each of the carriers that are applying for authority. Under that——

The CHAIRMAN. Have they put too much of the responsibility on the state?

Captain VAUGHN. It does fall back on the state but as the Commercial Vehicle Safety Alliance, our focus is on the safety of the nation's highways. And if we can get the support of our individual states, we are willing to do that, to go down and assure that those companies are, and should be accredited to operate in the United States. I believe we can do so. Yes, sir.

The CHAIRMAN. Let me yield to our distinguished chairman of the Transportation Subcommittee because he had to be earlier at another hearing. Senator Breaux.

Ms. CLAYBROOK. Could I just ask a question about what he just said? He said do case studies and look at each carrier. Is he refer-

ring to occasional case studies or is he referring to looking at in fact every carrier with a full case study?

Captain VAUGHN. What we would look at is each—currently we have been advised there are approximately 200 carriers in Mexico that are going to apply for authority to operate in the United States. If questions go to those 200 carriers, do the initial, so that they can have the authority to operate, it would be a conditional authority to operate, then it would fall back upon the Federal Motor Carrier Safety Administration to follow up and do the subsequent compliance reviews. That that is the direction this Committee, or rulemaking takes us.

Ms. CLAYBROOK. So you are talking about doing an on-site type of audit or just advising the company?

Captain VAUGHN. No. On-site in Mexico at the carrier's place of business.

Ms. CLAYBROOK. But not a full compliance review.

Captain VAUGHN. Not a full compliance review.

The CHAIRMAN. Senator Breaux.

STATEMENT OF HON. JOHN BREAUX, U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you, Mr. Chairman. I did not mean to jump in front of our colleagues. I was chairing the aging hearing this morning and we had a great hearing. I think this is a subject matter that the Committee should act on, I mean, not just be subject to an appropriations amendment, but this is real policy, and I think that Surface Transportation Subcommittee with the chairmen's cooperation really needs to move into codifying these new rules, whatever we decide is an appropriate standard. They ought to be part of the law and not just subject to an appropriation rider.

Having said that, I think that Senator Murray and her team worked on putting together this proposal. She has really done a very credible job and helpful job in setting out some standards that I think make some sense. If we had $103 million more in the appropriations bill for border safety activity, that is more than the administration was requesting by about $15 million.

That is a significant amount of money to be used that is not there today to improve the ability to conduct inspections and to assure safety which we all think is appropriate. I am impressed with two particular aspects of the Murray amendment, and I think it goes a long way.

Number one is that they would be prohibited from opening up the border until the Department of Transportation is able to certify that there is an adequate capacity to conduct a significant number of meaningful inspections. It is one thing to have an inspection program, but if you do not have enough people to conduct it, it is not worth the paper that it is written on. So the $103 million hopefully will be able to show that this in fact has adequate people to do the job with inspecting vehicles that come across. They cannot come across openly until that is certified.

The second thing I think is a good feature of it is the question of insurance. I think Mr. Acklie or someone spoke to that question. If the Murray amendment, as I understand it, says that they have to provide proof of valid insurance with an insurance company that

is licensed and based in the United States. I mean, there is no insurance company worth its salt that is going to insure vehicles that are not safe. It is an economic loss to them.

My colleague, Senator Boxer mentioned to me that they only buy insurance for 1 day. Well the insurance should cover the time that they are in the United States. If it is 1 day or 1 week, it should be within that period. You cannot provide insurance for a whole year if you are only going to be here for 7 days, it should cover the time that you are here, and I think that is going to be a real enforcement mechanism in addition to the government. I don't think any insurance company is going to risk insuring a vehicle that does not meet standards which is an incredible potential liability they would have if in fact an accident occurred and resulted from the negligence of the carrier.

So my simple question is with the Murray amendment, does anyone think that that is something we should not do? Either for the sake of it being too stringent or for the point that it is not stringent enough?

Ms. CLAYBROOK. We support the Murray amendment.

Mr. HOFFA. Teamsters do, too.

Mr. ACKLIE. I think Secretary Mineta said that it needed some fine tuning. With that, it just seems that it should be supported.

Senator BREAUX. The bus thing. We had some terrible bus tragedies in Louisiana, and I think the industry has moved toward correcting some of those problems. Not so much with the national carriers, but a lot of the private, smaller carriers were having drivers that should have been in jail instead of driving a bus.

Mr. PANTUSO. You are right, Senator. There is still a great deal to do. Much of this responsibility for change falls to FMCSA.

Senator BREAUX. I think we are moving in the right direction.

Senator DORGAN. Thank you. I thank the panel for their testimony. I guess I am missing something here. We have got people who say yes, the Federal Government can get this done by January 1st. I mean, am I missing, have you all worked with Federal agencies? Have you all worked with Federal agencies? Has anybody here had any experience in working with Federal agencies. This is a huge job. A huge job.

I am willing to bet you it is not going to get done in the next 5 years, let alone the next 5 months but we have got this fiction going on here. There is an old saying never buy something from someone who is out of breath. There is kind of a breathless quality about this notion that you can put something together by January 1st, assure the safety of the American people with the trucking industry that is allowed into this country that has such radically different standards.

With respect to Mr. Acklie's statements, I understand the point that they have logbook requirements, do not carry logbooks, they do not use logbooks. They have no hours of service requirements generally that are at all respected. All one has to do is look at the facts. We have radically different systems that we have to fuse together. It is going to take a good, long while.

I want to ask Mr. Hoffa and Ms. Claybrook a question. I think the testimony demonstrates that we are not anywhere near ready to do this. And I think by far the best approach is to take the

House amendment, the Sabo language which shuts this down for a year and fuse it to the Murray language which then establishes a process.

I guess I would ask Mr. Hoffa, you indicated support for the House language. Would you indicate support for an amendment that adds the House language to the Senate bill?

Mr. HOFFA. Yes, I will. I think it is good. It is strong. I think we have to have verification. It is like one of those nuclear tests. We have to verify what we are doing here. The problem is they talk about all these things. I heard the Secretary's testimony this morning. I am amazed that he could think he could hire 80 people, that he could train 80 people, and that he could acquire the land, build the facilities in 6 months.

I mean, that is just so incredible that it is not going to happen, and we all know that. And I just think that we are dealing with something that is very important, to put a deadline on something so vital as American highway safety. It is a great mistake and I just do not understand why the administration is in such a rush. I think it is better to do it the other way. Let us deny it and make them get the job done.

They have had 7 years to do this, and they have not done anything, and Mexico hasn't done it. Mexico knows that this deadline is coming up. They have not done the proper things with regard to making sure that their trucks are ready, making sure their drivers are trained, changing the way they operate to make sure they have a database, they have logbooks, they have driver training, they did CDLs, drug testing. Canada does it. We do not have any problem with Canada.

The CHAIRMAN. Mr. Hoffa, did you discuss that with President Fox?

Mr. HOFFA. We talked briefly. I said we have problems with the trucks, we have problems with the training of the drivers and he indicated that he knows that and I think that is one of the reasons why you do not see Canada enforcing any billion-dollar fine on us with regard to these things. I think it should be negotiated and this administration I think should be negotiating with the Mexican Government to set up something that is reasonable, that has a timeline where we can verify what they are doing, that we can get our act together with regard to 80 inspectors. 80 inspectors is such a small amount.

I do not see anybody talking about drugs, I do not hear anybody talking about law enforcement problems of the drugs that are pouring across. NAFTA was the greatest thing for the drug dealers that ever happened, and now that we are implementing this, they are going to be, if you are inspecting 1 percent of the trucks and somebody was a drug dealer, I mean they would know, they will give up 1 percent if the chances of getting caught are almost impossible.

I think that there is a lot of work to be done. I think the more pressure we put on the administration, we put on the Mexican Government to get something that is reasonable like Canada where they have compliance, where they have facilities where they inspect these trucks, where we have all the things we talked about, then we have got something we can bring back and we can all agree on and make sure that we have safe highways here.

Senator DORGAN. Mr. Hoffa, let me be clear on my question. My question was about the Sabo amendment as added by the House. The Sabo amendment is an amendment that simply prohibits the use of funds for issuing those licenses in the coming year. That effectively shuts us down for a year. My question was would you support that?

Mr. HOFFA. We support that.

Senator DORGAN. Let me ask another question if I might. The Inspector General showed us a map of where Mexican trucks are now moving. North Dakota is one of those states. My assumption is we know very little about what's going on here. Frankly, we are not really keeping track of what's coming across our border.

We inspect a relatively small percentage of trucks. We are finding serious safety violations in a rather large percentage but we are missing most of them that are coming across. While they are restricted to a 20-mile limit, the map shown by the Inspector General suggests that they are moving in many states across the country and in many cases moving well beyond the 20-mile limit in the border states. Ms. Claybrook, do you agree with that?

Ms. CLAYBROOK. I do, Mr. Chairman. The reason that I support authorization legislation or legislation out of this Committee in addition to legislation out of the Appropriations Committee is because I think that this is going to take more than a year to accomplish. That is, to have in place sufficient facilities for inspection, sufficient inspectors to do the job, and onsite audits of the companies that want to come across the border. This takes a lot of time.

I think that the appropriations bill merged between the House bill and the Senate Appropriations Committee bill is a very effective first step, but I think that this Committee, as Senator Breaux suggested, needs to act as well. When you look at the likelihood of any truck today getting caught if it goes beyond the 20-mile area, it is virtually nil, virtually nil.

Senator DORGAN. I support that. I, in fact, mentioned it to Senator Breaux that I would support efforts of his and the chairman of the full Committee. I think it is necessary for us to proceed as an authorizing Committee.

Let me make one final comment, Mr. Emmett, to you. I hope you will not do in the future what you did today on this issue where you describe racial profiling. The fact is I support the shutdown of Canadian wheat coming into this country until they can begin to comply with NAFTA with respect to wheat shipments. No one would suggest that is racial profiling on my part with respect to Canada, and I don't believe a serious discussion about truck safety dealing with the question of Mexico ought to be related to that either and your testimony—I was profoundly disappointed.

I think it ill-serves your cause to do that. That is not the motivation of those of us involved in a serious discussion about truck safety.

Mr. EMMETT. Senator Dorgan, I appreciate your comment. I would ask you to consider that this is more than government to government. Consider if you were the owner of a Mexican trucking company, and you voluntarily came to the United States and said "I will comply with anything you want me to comply with. I am based in Monterey. I have a customer in Kansas City and I will go

back and forth." Yet, they hear for year after year after year that the only reason they are not able to be admitted is because they are Mexican. And, there have been questionable things raised throughout this debate.

One of the other witnesses commented on the fact that Mexican trucks have a different weight limit. So do Canadian trucks. But she has not raised that issue with regard to the Canadians. She only raises it with regard to the Mexicans. I will be the first—having worked with you, Senator Dorgan, and almost everybody on this panel, to say that was not in any way aimed at the Senate.

In fact, our testimony today is totally supportive of the direction the Senate is going, particularly Senator Breaux. We think that, absolutely, the appropriate jurisdiction needs to be exercised here, but the blanket comments that were coming out not even by the members of the House, but by some of the witnesses, and the things that went on were, and are, unacceptable. Of course part of my feeling stems from the fact that I am from Texas and I have had a long working relationship with Mexicans.

I am hearing more and more from people who do business there that that is the way it is being taken. And that is the reason I raised it, and that is why I said it is akin to it, without any personal comment. So, I do not know what you would tell the owner of that Mexican trucking firm who is willing to fully comply when the only reason he cannot come in is because he is Mexican.

Senator DORGAN. I just ask you to be very careful when you move into those areas on page 3 of your testimony, it is not a discussion about some unnamed witnesses at some other venue. I just—look, this is a very serious issue for this country. It is very serious. And I want our roads, I want expanded trade opportunities.

While I did not support NAFTA, I did not support it for good reasons. The fact is NAFTA has taken a very small surplus with the country of Mexico and turned it into a very, very large deficit and it has been a colossal failure with respect to Canada and Mexico. But I still believe that proper trade agreements properly negotiated can be beneficial to expand opportunities for all, but this issue of safety is a very important and compelling issue, needs to be discussed seriously, and we need to find a method by which we can transition under this trade agreement to a circumstance where we have international trucking firms with all of the safeguards moving on America's highways.

But I do not want, whether in North Dakota or South Carolina, some family looking into the rearview mirror with an 18 wheel 80,000 pound truck that came across the border because it wasn't inspected. That is not racial profiling. Read the San Francisco Chronicle and lots of other reports that I have read about a guy that traveled 3 days in Mexico with a long haul trucker and the guy slept 7 hours in 3 days, had no logbook. Read it and ask, is that someone you want to drive next to on an American interstate? I don't think so. Let us make sure when we do this, we do it right. There isn't any way we will be ready in January to do this.

The CHAIRMAN. Senator Boxer.

Senator BOXER. Let me just add to that. In my state, the Latinos in my state, just as everyone else, want safe roads and want to be

able to take their kids to a soccer game and know they are not going to be hit by a truck that doesn't pass inspection. I want to say, Mr. Chairman, this hearing came not a minute too soon, given what we are facing.

Before Senator Dorgan may leave, I just want to express to him how much I support his approach if he chooses to go down that path. I think we ought to—of melding the two approaches, the Murray approach, along with the House approach because I believe strongly that this January 1st date was, as Mr. Hoffa implied, sort of plucked out as I will do this by January 1. And it doesn't have any connection to reality.

I know Mr. Mineta very well. And I have not, how do I put this, I don't feel comfortable with the amount of preparation that he exhibited here for this challenge. Nor do I feel comfortable, nor do I feel comfortable that the Inspector General knows exactly what he is going to do. I think after thinking about what came out of this hearing, Mr. Chairman, I do believe both Mr. Mineta and the Inspector General will look at this, will pay more attention to this, will try to get ready, but January 1st is just not real.

And I just want to say to my friends on all sides of this issue, and I think my colleagues will agree, one tragedy or two tragedies on the road, that is what it will take to shut down the border. We do not want that to happen. But I have been around politics a long time. And I see what happens when there is such a tragedy. So we want to avert it, and my friend, Senator Breaux, is right. We need to take action in this Committee and I will support him and my chairman in coming up with a good bill to do that.

But it is well and good to say that everyone needs to have insurance. Yes, of course, Mr. Acklie, and insurance is, I agree with my colleague from Louisiana, a very good hedge. That is why I always say on nuclear power, which is another issue, when the insurance companies are ready to insure—nuclear power plants, talk to me about it because it's a check on safety and if a company does go in and insure a carrier, it makes me feel a lot better.

But remember our problem is the inspections. In California, where we are doing, we have put so much money and it has come out of this hearing. We are only getting 2 percent of the trucks, only 2 percent of the trucks. And out of that 2 percent, about how many, 26 percent are failing inspection. So think about the other 98 percent we are not getting. So even if we make tough laws on insurance, but they do not have it, it is too late, once an accident occurs.

I want to put into the record the fact that I am very concerned, Mr. Chairman, and I need you to help me look into this, about the answer that was given to a question that I asked about the penalties that would be waged on Mexican drivers compared to American drivers if the law is broken. Because I got an answer that says it is identical all the way. I have the ruling here. And I have searched this rule. And Mr. Chairman, it says a Mexican motor carrier committing any of the following violations identified through roadside inspections or by any other means may be subjected to an expedited safety review or issued a deficiency letter identifying the violations, including, and then it goes into driver

violations. I can't find anything in here that talks about the drivers.

Now, I am very concerned about the answer that I got, so I would ask you, Mr. Chairman, if you would join with me in writing a letter to the Transportation Secretary asking him to please point out chapter and verse where is it written that there is in fact a level playing field with United States drivers because I do not see it. Would you do that?

The CHAIRMAN. I would definitely join with you on that. We are going to leave this record open for questions by other members of all the witnesses here.

Senator BOXER. Good. Because I want them to show me where this equality is in this rule.

Ms. CLAYBROOK. Senator Boxer, I can answer that question very quickly. And that is that for the 18-month period or whatever period it is going to be, the Mexican companies would be given a deficiency letter. A similar violation by a United States carrier would be, would involve a penalty. So in fact the Mexican companies would have a lesser penalty, that is a deficiency letter, than a United States carrier, who could be penalized.

Senator BOXER. Good. I would like to see whether Mr. Mineta agrees with that. I have a question for Mr. Hoffa, and that is all I have is one question here.

Truck drivers employed by companies domiciled in Mexico that enter and operate both within and outside the current commercial zones are not subject to United States minimum wage laws and we know that is the case. The DOT proposed rules would require the Mexican carrier to certify that it will comply with United States labor laws. The instructions, however, state that registration will not be withheld if the applicant refuses to certify such compliance. So they do not have to certify compliance with our, with our labor laws.

Why do you think the United States provided this out for these NAFTA carriers, and second, do you think the Labor Department could enforce wage and hour standards on Mexican drivers?

Mr. HOFFA. Starting with your last question, I have discussed this with the Secretary of Labor and they have no mechanism to do this. Driver comes across and drives a thousand miles from the heart of Mexico to the border, comes across the border, operates for 2 or 3 days back and forth. Who is going to make sure that during that period of time, he is paid the minimum wage? There is no mechanism to do that. It would be incredibly complicated to pick up Social Security. I have—they have not even thought about how they would even do that.

Senator BOXER. What do they get paid at this time in Mexico?

Mr. HOFFA. I have no idea. Somebody said they were paid at a rate—what was that rate, $7 a day. And could you imagine, and you think one of these companies is going to say okay, we are going to monitor the number of hours, we are going to give them at least minimum wage. It is not going to happen.

I have raised this issue with Secretary Mineta and I have raised it with the Secretary of Labor which would fall under her jurisdiction. They have not even thought about it. They said they are going to look into it. Thousands and thousands of drivers coming across,

how would they go about that? There is no computer to pick up how long they are here. How long would you monitor when they go back and who is going to compute it and where do you send the bill? It is not going to happen. It is impractical.

And no one is thinking about some of these issues. Like I said, I thought that the presentation today was that they have not thought through the thing. They are just trying very quickly to throw something together. This is a big issue about, they have to comply with these—with the American labor laws and they are not going to. Just like those trucks that we found up in North Dakota, you think those people were being paid the minimum wage? They are not. Everybody knows that. We shouldn't kid ourselves about it.

This is a major problem and until somebody comes up with a mechanism where we are going to have some kind of a computer base or give them an identification number and we are going to monitor it with regard to when trucks come through, do they go through, there is some kind of a pass, like a speed pass, they monitor the truck, it has a number. Driver has a number. They monitor the number of hours they were here and it goes back the same way and there is a computer printout as to the hours he spent in the United States, then it can be done. But it is a tremendous program to set that up. That is what has to be done to make sure we get compliance.

Right now the administration isn't even thinking about that so we are going to have literally thousands of people operating here being paid $7 a day for driving a truck who knows how many hours.

Senator BOXER. This is a rule that says a lot of words, but it is not backed up. It says we require a Mexican carrier to certify it will comply with United States labor laws but as Mr. Hoffa has stated and I think frankly he has been extremely reasonable. I am not so sure I could be quite as contained.

I compliment you on this because I know you fight hard for working people to have a decent life, and the fact of the matter is it is a sham. Because they say we require the Mexican carriers who are certified as complying with United States labor laws—my friend whispers to me what about health insurance and all the other things that we think are important?

The bottom line is how can it be done, No. 1, and if it can be done, can it be done by January 1? No. So there is a loophole in this deal that says well, you don't have to certify. You have to do it, but we do not require that you certify. So this is a sham deal. It is not right. And I hope—and that is why I was so happy when you agreed to do this hearing, Mr. Chairman. I want to applaud you and thank you. This is on our plate today, tomorrow, next day. We have got to confer and hopefully do something that will enable us to face this challenge, to do the right thing for people on both sides of the border. That is what I want to do, and I thank you very much, the whole panel. I thank you, Mr. Chairman.

Senator BREAUX. Mr. Chairman, a comment with regard to the point that my colleague, Senator Dorgan made, and others have made, including Senator Boxer, about not being able to have this in place by January. That is probably correct. But as I read the

Murray amendment, almost every paragraph says that they are not going to open the border until the DOT Inspector certifies that there is a policy they ensure compliance, until the Inspector General certifies that information infrastructure is in place, until the DOT Inspector has certified there is adequate capacity to do inspections, until the proof of license is made available, until DOT has equipped all of the border crossings with the weigh in motion systems, and until the DOT Inspector certifies it as an accessible database.

So I think the premise of the Murray amendment is that this really has to be done and until it is done and until it is certified that it is done and in place, we will not open the border. So they do not make this deadline by January. The border is not automatically opened under the Murray amendment. She says it cannot be opened until this is completed. If that is done in January, fine. But if it is not until January of next year, that is when the border would be opened.

The CHAIRMAN. It is worded that way, Senator, but we didn't want to go in a confrontational arbitrary way with some thought of the Sabo amendment, this ipso facto here in July we are going to cut out any chance for another year and a half because we know government. If they get another year and a half, then it won't happen for another year and a half. And we did not want a veto.

If we had it in that fashion, the President will say well you just cutoff your funds and you are against the policy and he may thereby veto. But the language and it is Shelby, too. It is Murray-Shelby, bipartisan. I think we could override.

Senator BREAUX. Under the Murray language, as I understand it, the time could be even longer if this would happen, than the House-passed language, which is a 1-year delay. If this takes more than 1 year, then it will be more than 1 year, so I think that is a good policy.

Ms. CLAYBROOK. Could I make one comment on the labor issue? For 15 years, safety groups have been trying to get an electronic box in trucks so they could enforce the hours of service rules and if you had an electronic box in the trucks, both in the United States, as well as in trucks coming into this country, you would be able to at least do a better job, albeit maybe not a perfect job, of enforcing those minimum wage requirements and you would also be able to enforce the hours of service rules.

And we have not been able to get the United States Department of Transportation through thick and thin to propose this and to issue it. They finally did propose it about a year and a half ago. The likelihood that they will ever issue a rule is small. I would urge, in your consideration of this legislation, that you consider requiring that because I don't think it is ever going to happen any other way.

The CHAIRMAN. Very good. Let me thank you on behalf of the Committee, each of the six. You all have made a very valuable contribution, and the record will stay open subject to questions and the Committee will be in recess subject to the call of the chair.

[Whereupon, at 1:05 p.m., the Committee adjourned.]

Appendix

PREPARED STATEMENT OF THOMAS J. DONOHUE,
PRESIDENT AND CEO, U.S. CHAMBER OF COMMERCE

Mr. Chairman, thank you for allowing the U.S. Chamber of Commerce and the American Chamber of Commerce of Mexico to submit this statement to this panel today. I am Thomas J. Donohue, President and CEO of the U.S. Chamber of Commerce. I appreciate this opportunity to comment on behalf of the Chamber on the spectacular success of the U.S.-Mexico trade partnership and the costs imposed by our nation's failure to implement the cross-border trucking provisions of the North American Free Trade Agreement (NAFTA).

Free trade has played a key role in our nation's economic growth and development since it was founded, and the NAFTA played an important role in the accelerated income gains our nation enjoyed in the 1990s. Since the NAFTA came into force in 1994, trade between the United States and Mexico has tripled from $81 billion in 1993 to $246 billion in 2000. And the trucking industry is critical to this trade partnership since trucks transport over 80 percent of the value of our trade with Mexico.

However, beginning in 1995, the Clinton Administration refused to abide by America's commitment under the NAFTA to open the U.S.-Mexico border to cross-border trucking. The difficulties that stem from this barrier to trade should not be underestimated. Current rules maintain a cumbersome, environmentally damaging, and costly system that represents a brake on further growth in trade. The time has come for our countries to open our borders to a modern cargo transportation system that will allow our economic partnership to reach the next level of success.

The Story So Far

The NAFTA gave U.S. and Mexican carriers the right to pick up and deliver international freight into the neighboring country's border states beginning in December 1995. This market access was scheduled to expand to the entire territory of the United States and Mexico by January 2000.

The NAFTA also included measures to permit U.S. and Mexican carriers to invest across the Rio Grande. Starting in December 1995, U.S. and Canadian investors were supposed to be allowed to invest in Mexican trucking companies or terminals providing exclusively international freight services up to a 49 percent ownership cap. The NAFTA laid out a schedule to raise this cap to 51 percent in 2001 and 100 percent in 2004.

By the same token, Mexican carriers were to be allowed to invest and fully own U.S. trucking companies for the purpose of transporting international cargo within the United States beginning in 1995. This provision was finally implemented on June 5, 2001, when President George W. Bush issued a memorandum instructing the U.S. Department of Transportation to begin accepting and processing applications by Mexican nationals for the purpose of establishing U.S. trucking companies.

In a long anticipated ruling, a NAFTA dispute settlement panel in February 2001 determined that the United States had violated its obligations on cross-border trucking, and analysts calculate that the United States will be slapped with retaliatory duties totaling between $1 billion and $2 billion for every year Washington refuses to allow cross-border trucking. More recently, the U.S. House of Representatives moved to bar funding for agencies charged by President Bush with processing applications by Mexican carriers to operate outside U.S. commercial zones; it also significantly reduced needed funding for truck inspections and border facilities.

This dispute is flaring up at a difficult time. With over 700,000 manufacturing jobs lost in the past 12 months, the sanctions mentioned above would hit the U.S. economy at a moment when it is already weak. Mexico's recently launched free trade agreement with the European Union means that Mexican importers have a wide range of choices when they seek suppliers, and this dispute could drive many Mexican firms to look for partners in countries other than the United States. After all, Mexico has free trade agreements with 32 nations, and if retaliatory duties drive up the price of U.S. goods, Mexican consumers have plenty of options.

Cross-Border Trucking

Experts agree that the dispute over cross-border trucking threatens our relationship with our second largest trading partner. However, it is bizarre to hear apparently reasonable people try to defend the trucking system that currently exists on the U.S.-Mexico border.

Cross-border trucking today was described in a recent coalition letter signed by the U.S. Chamber of Commerce and nine other business organizations as "archaic and convoluted. . . . Currently, a shipment traveling from the United States to Mexico, or vice versa, requires no less than three drivers and three tractors to perform a single international freight movement. Through interline partnerships, a U.S. motor carrier handles freight on the U.S. side, and a Mexican carrier handles the freight on the Mexican side, with a 'middleman' or drayage hauler in the middle. The drayage driver ferries loads back and forth across the border to warehouses or freight yards for pickup or subsequent final delivery within the designated border commercial zone."

The upshot is congestion, air pollution, and higher prices for both consumers and business. The fraught logistics of the existing system often compel trucks to return home with empty trailers or with no trailer at all. Our border infrastructure is seriously overburdened, and the entire system is quickly becoming a real brake on further growth in trade.

These problems are particularly severe for U.S. companies that operate "just-in-time" manufacturing facilities in Mexico. These operations were established with a clear expectation that transportation services would be able to deliver inputs from the United States or elsewhere to facilities in Mexico according to schedule. Our mutually beneficial trading relationship with Mexico will plainly suffer—with costly effects for U.S. business—if we fail to ensure the expeditious delivery of materials to these manufacturing facilities by modernizing the cumbersome transportation system upon which our trade with Mexico depends.

Safety: A Vital Issue

Safety is plainly one of the most important issues at play in this dispute. It should come as no surprise that ensuring the safety of all trucks on American roads was a top priority of the U.S. trade officials who negotiated the NAFTA. The Congress approved the NAFTA because it was broadly satisfied with the fruits of their labors.

And why shouldn't we be? Under the NAFTA, *every truck entering the United States is required to meet each and every U.S. safety requirement.* In fact, Mexican motor carriers applying for U.S. permits will be required to provide far more detailed information regarding their ability to meet U.S. safety requirements than their American or Canadian counterparts. Any lingering concerns over the safety of these carriers from Mexico and their trucks and drivers can surely be addressed in the proposed rules for implementing the NAFTA.

While safety is an overriding concern, we can certainly address this issue while keeping our international obligations and expanding upon our mutually beneficial trading relationship with Mexico. Failure to try would send a troubling message about the difference in our treatment of Canada and Mexico, our two closest neighbors and largest trading partners.

Finally, it is imperative that Congress make available the required funds to ensure that safety enforcement inspections of trucks on the U.S.-Mexico border are carried out with all due seriousness. The U.S. Chamber strongly supports providing necessary funding to hire additional safety inspectors to be stationed at the border and to build and maintain adequate border inspection facilities.

Conclusion

Because the NAFTA has already eliminated most tariffs and other barriers to trade with Mexico, improving our transportation infrastructure is the best thing we can do to keep this partnership on track. Implementing the NAFTA's trucking provisions offers the opportunity to fix the cumbersome, environmentally damaging, and costly transportation system upon which our trade with Mexico depends. With added and improved resources, inspection capabilities at the U.S.-Mexico border should ensure that trucks will be able to operate on both sides of the U.S.-Mexico border with safety and efficiency.

In the final analysis, this issue revolves around whether the United States will keep its word. We should be mindful that the United States made a commitment under the NAFTA to work with Mexico to modernize our cross-border transportation system. I urge the Congress to implement the NAFTA's cross-border trucking provisions and show the world that America keeps its commitments.

PREPARED STATEMENT OF SUSAN G. PIKRALLIDAS,
VICE PRESIDENT, PUBLIC AFFAIRS, AAA

AAA submits the following statement for the record to convey our views on the safety implications of opening the U.S. border to commercial trucks from Mexico.

As the largest association in America dedicated to the safety of the traveling public, AAA is acutely aware of the need to ensure the safest possible operation of commercial motor vehicles. AAA members consistently rate driving with large trucks as one of their greatest fears. Opening the border and adding trucks from Mexico to the mix of vehicles traveling the nation's roads will only intensify motorists' concerns.

While NAFTA requires that the border be open to ensure the smooth flow of traffic between both countries, the treaty also requires that trucks from Mexico meet all U.S. safety standards. To achieve that goal, the Administration and Congress must work together to ensure that all safety measures are in place and the processes and systems to monitor and enforce commercial traffic from Mexico are fully functioning.

In formal comments filed in response to the Department of Transportation's proposed rulemaking on NAFTA implementation, AAA expressed concern that the safety oversight plan unveiled by FMCSA falls short of providing motorists with necessary assurances to permit the opening of the border as the agency proposes. Motorists cannot accept a proposal that could allow carriers from Mexico to traverse U.S. roadways for up to 18 months before undergoing a safety audit. More intensive discussions and work must occur with representatives of both governments, enforcement authorities, and industry officials before the border is ready to be safely opened.

What do we know about the carriers, vehicles and drivers from Mexico who will make application to cross the border?

The answer is: very little. Until recently there have been few safety regulations placed on industry in Mexico, and the infrastructure to capture data is in an infant stage. In addition, we do not know the extent to which companies from Mexico will apply to cross the border or the types of operations and vehicles that will make such crossings. Vehicles and drivers currently traveling from Mexico to U.S. commercial zones are not necessarily indicative of the type of operations that may engage in long haul travel to the U.S. once the border is open.

Safety Audits Should Occur Before Trucks Cross The Border

AAA supports the Commercial Vehicle Safety Alliance's recommendation that the safety inspection process should begin before trucks cross the border, with carrier audits being done even earlier. U.S. enforcement officials should be permitted to inspect truck company base operations in Mexico, a practice that is already followed with Canadian companies. These visits should include the evaluation of company safety management practices, knowledge of and compliance with U.S. regulations, vehicle inspections, and education of drivers, dispatchers, mechanics and management.

Because U.S. enforcement authorities have had many years of experience with Canada, the database and knowledge of the Canadian trucking industry has developed over time. There is uniformity and reciprocity between Canada and the U.S. on enforcement standards and procedures. A similar relationship with Mexico is evolving, which is the goal of NAFTA.

Under current CVSA practice, when a truck operating in the U.S. undergoes and passes an inspection, a 3-month sticker is issued. Many (but not all) truck inspectors honor this sticker during its 3-month period of validity and do not re-inspect the vehicle. As a minimum, trucks from Mexico that wish to enter the U.S. should be required to display a valid CVSA inspection sticker. If a truck does not have one, it should undergo the most rigorous CVSA (or equivalent) inspection immediately upon crossing the border. If it fails inspection, it should be either repaired on the spot and reinspected, or prevented from crossing the border until defects have been repaired.

AAA is confident that Mexican authorities expect no less of their companies and drivers than to adhere to practices already followed by U.S. and Canadian companies. Many firms operating in Mexico maintain high safety standards for their trucks and drivers. AAA's concern is that the highest safety standards be applied to all trucks and drivers operating in the U.S. regardless of where they are domiciled.

Licensing Issues

AAA is also concerned that drivers from Mexico may not be licensed to U.S. standards, and in some cases testing procedures may fall woefully short. The databases

of both countries need to be synchronized so that enforcement authorities for both countries can easily check driver records. AAA has encouraged FMCSA to work closely with representatives of the American Association of Motor Vehicle Administrators (AAMVA) and CVSA to ensure that proper licensing procedures are in place and enforceable.

Insurance Concerns Must Be Addressed

Issues of insurance must also be addressed and steps taken to ensure that every vehicle in every fleet is adequately insured if it is operated in the U.S. Drivers must be required to carry an insurance document that is unique to their particular vehicle. Uninsured vehicles and drivers pose a threat to the economic well being of other road users and drive up the cost of insurance for everyone.

Weight Issues

AAA is very concerned about the safety and infrastructure impacts of increasing the size and weight of trucks. Effective enforcement of current weight limitations is essential, and AAA has vigorously opposed efforts in Congress that would seek to increase the weight of trucks beyond currently allowed levels. Opening the border to trucks from Mexico may result in pressure to raise sizes and weights to Mexican (and/or Canadian) limits. AAA believes trucks should be weighed at the border before entering the U.S. to ensure that U.S. weight limits are enforced.

Sufficient Resources Necessary To Monitor The Border

Much work remains to be done at major border crossings before we can be confident that the U.S. is prepared to handle the increased flow of commercial traffic across the border. The Department of Transportation's Inspector General report found a direct correlation between the conditions of trucks from Mexico entering the U.S. and the level of enforcement resources at the border. There are 27 southern border crossings, and AAA believes that every crossing point must have the resources and facilities in place to fully monitor and enforce U.S. safety regulations.

It should also be noted that issues resulting from opening the border are not solely confined to those residents of border states. More trucks from Mexico will place new responsibilities on enforcement authorities *across the country.* That will require additional resources.

Conclusion

To conclude, AAA believes the border should be opened to commercial vehicles from Mexico only when officials on both sides of the border are confident that all safety measures are in place. It is clear we are not ready today, and we are disappointed that these issues have not already been addressed in the intervening years since the adoption of NAFTA. It will take a concerted joint effort by officials from both countries to make it possible, but the safety of the motoring public on both sides of the border must be the primary concern.

PREPARED STATEMENT OF DR. JAMES R. GIERMANSKI, PROFESSOR AND DIRECTOR, INTERNATIONAL BUSINESS STUDIES, BELMONT ABBEY COLLEGE

Mexican Motor Carrier Access to the United States

The Mexican motor carrier safety issue from the very beginning was suspect. For those of us who are involved in or study the trucking industry, the decision to deny Mexican truckers access to the United States was a deal between the White House and the Teamsters. As a result of the release of the 82-page NAFTA dispute-panel unanimous decision, we know the deal constituted a United States breach of its obligations under NAFTA. Alleged safety issues were contrived and false. Continued distortions of the Mexican threat by the Teamsters, and by some in Congress, do a disservice to the public. Therefore, it is time for some reasonable assessments of the reality of Mexican access and its potential impact on the U. S. trucking industry and the general public. My assessment will treat the magnitude of Mexican access to the U.S. motor-carrier market, the labor issues connected to it, the likelihood of successful market penetration by Mexican carriers, the genuineness of the safety issue, the likely impact on costs to U.S. shippers, and U.S. DOT's role in allowing an unnecessary loophole in operating authority requirements.

The Magnitude of a Mexican Presence

According to the U.S. Bureau of Census figures, there are 733,900 Class 7 and 8 motor carriers operating in the United States. Class 7 and Class 8 include the heavy over-the-road motor carrier. That number does not include another 63,000 that failed to return a report, suggesting a total of 796,900 U.S. motor carriers. Of

the carriers reporting, 538,700 are truck load (TL) and 195,200 are less than truck load (LTL). The number of requests for operating authority by Mexican motor carriers as of July 20, 1999, totaled 184 applications. Based on statements of CANACAR, the Mexican Trucking Association, denying an interest on the part of Mexican carriers to operate in the United States, and based on these numbers, we would see that the Mexicans would account for .0002 percent of the trucking industry. If one were to look only at the TL sector, the target market carved out by the Mexicans in the North American Free Trade Agreement (NAFTA) negotiations, Mexican applications for operating authority amount to only .0003 percent of the U.S. truck-load carriers. Mexican presence in the TL market will hardly be noticeable.

Finally, the assumption that if Mexican truckers are allowed in, there will be more trucks than ever on U.S. highways is unsupportable. Since Mexican truckers are permitted to carry only international cargo (cargo with an origin or destination outside the territory of the nation in which the cargo is carried), truck volumes will not increase unless trade increases dramatically. There is also a limit on the availability of equipment (tractors and trailers) no matter how much trade might increase. Any carriage by Mexicans simply offsets what would have been carried by U.S. truckers. Given the minuscule number of Mexican operating authority applications (even assuming they were all approved), and assuming that all these carriers would somehow carry additional trade, the Mexican truckers would still not be noticed.

The actual impact of Mexican operations is likely to be small and positive: small because of sheer numbers, and positive because their presence could enhance service to domestic shippers. The potential displacement of U.S. drivers ordinarily carrying international cargo by Mexican entrants into the international cargo market would allow U.S. drivers to carry domestic cargo often delayed because of the shortage of U.S. truck drivers. In short, Mexican carriage of some international cargo frees up more U.S. drivers to improve domestic carriage, a clear benefit for the U.S. shipper and consignee.

The Labor Issue

Labor options under NAFTA severely limit the ability of Mexicans to capitalize on low wages paid to Mexican drivers operating in the United States. Only Chapter 12 (Cross-Border Services), and Chapter 16 (Temporary Entry for Business Persons) address and define the extent of labor activity afforded to Mexican drivers operating in the United States. There are only two options for Mexican motor carriers. The Mexican carrier with operating authority in the United States may use a Mexican driver living in Mexico on a temporary cross-border basis with limited time allowed in the United States. The Immigration and Nationalization Service (INS) allows these temporary workers up to one-year maximum and 6-months minimum in the United States. While some will claim that this is a threat to U.S. truck driver jobs, a closer examination suggests otherwise. A Mexican driver who lives and begins his work day in Mexico but subsequently enters the United States with cargo is subject to unique tax issues in some ways brought about by the time constraints contained in the INS regulations. Because of his cross-border status, the Mexican driver legally maintains his residence and principal place of employment in Mexico. Therefore, the Mexican driver is not provided the special U.S. tax treatment given to Mexicans who live in Mexico, or Canadians who live in Canada but enter to the United States for their normal work day. What this means is that a Mexican driver operating on a cross-border basis is obligated to pay Federal income tax to the United States, not just on earnings generated in the United States, but on all foreign earnings, including those generated in Mexico.

Additionally, since under NAFTA and INS rules, the primary source of remuneration must be in Mexico in pesos, the Mexican motor-carrier firm must either augment the drivers' earnings or provide expense allowances to pay for the increased costs of doing business in the United States. These expenses include the costs of fuel, food, lodging, and incidentals in the United States.

Restrictions on Mexican drivers such as primary source of remuneration; international character of work; and prohibition against entering the U.S. local labor market or shopping for international cargo or carrying U.S. domestic goods severely limit opportunities and increase costs to the Mexican trucking company. In short, the cross-border Mexican carrier has few advantages except perhaps for operations solely restricted to nearby U.S. border states where there is, according to one scientific study, a TL market suited for Mexican motor carriers.

Option two under Chapter 16 of NAFTA relates to professionals only. The chapter and 8 CFR 214 of INS regulations are so specific that they contain an all-inclusive list of what professional NAFTA covers. Truck drivers are NOT included. Of course,

a Mexican motor carrier who establishes a firm in the United States could openly recruit Mexican drivers who qualify for H–1B Non-Immigrant status and use them up to 3 years providing the Mexican-owned U.S. carrier could prove a driver shortage. In this scenario, the Mexican driver is an employee of a U.S. firm which is legally obligated to provide all the requirements that are given to U.S. drivers. These drivers working for a Mexican carrier established in the United States under NAFTA are still restricted to carrying only international cargo. However, once admitted to the U.S. as an H–1B, the Mexican driver could be recruited and hired away by a U.S.-owned and controlled motor carrier and be used to carry domestic cargo within the time period allowed under the H–1B Non-Immigrant classification. Therefore, the Mexican carrier operating a firm in the United States must pay a competitive wage.

The implementation of NAFTA with respect to Mexican truck drivers operating in the United States seriously restricts driver use, protects the U.S. local labor market, and suggests labor costs to the Mexican firm operating in the United States that are equal to, or nearly equal to those of the U.S. motor carrier. Thus, it appears at this time that there may not be a significant labor advantage for Mexican motor carriers operating in the United States under NAFTA.

Competitive Constraints

It is difficult to support the concept that Mexican motor carriers which will operate in the United States will successfully compete with U.S. carriers. First, Mexican carriers are limited to carrying international cargo. Second, they have to establish a system which provides cargo for their return trip, not an easy task. Third, given the likelihood of equipment and cargo imbalances, Mexican carriers will have to pool equipment in the United States at either terminals or lots and hire the personnel (U.S. jobs) necessary to operate and maintain their facilities in the United States. Fourth, they need sales offices, an adequate customer base, and a sophisticated information system to allow them a competitive advantage and interface with intermediaries, Customs, and customers at a level greater than or equal to that of their U.S. competitor. Fifth, Mexican carriers must meet all the federal and state requirements that every U.S. carrier must meet. Unlike their drayage counterparts on the border, Mexican long haulers must pay U.S. highway use tax. Mexican carriers operating in the United States must demonstrate financial responsibility, show proof of insurance or bond, or be self-insured. The insurance issue is a quite serious one for Mexican carriers. Their premiums to carry insurance sufficient to meet federal minimal liability standards will be exceptionally high because of the lack of actuary tables on Mexican motor carriers. Additionally, there is likely to be built into those high premiums, revenue to cover unfulfilled judgments should a Mexican carrier lose litigation in the United States. If not, the U.S. insurance industry by "spreading the risk" among all its customers would have to increase the costs of insurance to their U.S. motor carrier clients.

Mexican carriers must also meet all U.S. motor carrier safety regulations and conform to all U.S. motor carrier obligations. Finally, they must break into or penetrate the strong U.S. market sufficiently to survive, let alone to realize a profit.

The Safety Issue

At this time, enough has been disclosed and written to dispel the myth of inferior Mexican motor carrier safety. While there are many sources of evidence which demonstrate that the Mexican long-haul motor carrier is every bit as safe as U.S. and Canadian long haul carriers, three factual reports should be enough to demonstrate that safety is NOT an issue. The U.S. Department of Transportation (DOT) asked its Inspector General (IG) to investigate truck safety at the southern U.S.-Mexico border, presumably to support Clinton's decision not to admit Mexican carriers into the United States. In the DOT IG's 1998 report, it was expressly stated by the Inspector General that views differ on whether the data used to support the claim of unsafe Mexican trucks are statistically representative of the universe of Mexican trucks. The report did make it clear that given there were no Mexican long haul carriers to inspect, the inspection was made of Mexican drayage or transfer trucks used to ferry goods from one side of the border to the other—the worst of motor carrier equipment. What followed, however, was the use of these data to compare U.S. and Canadian long haul trucking to Mexican drayage trucking. This was a blatant distortion of fact. And if the reader read it carefully, he or she would see that the Inspector General acknowledged the distorted and dishonest comparison. Publicly reported results of examinations of both Mexican and U.S. drayage trucks by federal and state officials over many years demonstrated that, in fact, "out of service" rates for Mexican and U.S. drayage were essentially the same.

One year later in November 1999, DOT's Inspector General released another report, again presumably to support the Administration's contention that unsafe Mexican trucks were operating illegally in the United States through inventive lease agreements with U.S. carriers. In this report, the IG cited numerous interceptions of Mexican-long haul carriers found operating in the United States. What the IG did not highlight from that report was Exhibit D. An analysis of Exhibit D showed that of all the Mexican-long haul carriers inspected in the United States, only about 15 percent were put "out of service." For the first time, the U.S. had empirical evidence on Mexican long-haulers. However, what that evidence showed was that in comparison to the "out of service" rates of U.S. carriers (26%) and Canadian carriers (17%), the Mexican long-hauler was ALMOST TWICE as safe as the U.S. long-hauler.

Finally, the most obvious evidence came by way of the NAFTA Dispute Panel's ruling. The panel's determinations included the following finding. Although the United States, through a loophole in the law, is allowing the operation of 150 Mexican-domiciled, U.S.-owned carriers; 5 Mexican-domiciled, Mexican-owned carriers; and 1 Mexican-domiciled, Mexican-owned (Mexican-Canada transit, only) carrier in or through the United States, the United States could not provide the Dispute Panel one piece of evidence of a specific safety problem with these Mexican carriers.

Costs to the Shipper and/or Consignee

Since December 18, 1995, the United States has breached its obligations under NAFTA. This breach has denied the opportunity for revenue to qualified Mexican long haulers and has helped to perpetuate an archaic and costly procedure along the southern border. That procedure is known as drayage or transfer carriage. The practice of drayage is not only expensive but also risky for carriers and shippers alike. The average dollar cost of drayage ranges between $75 to $125 per crossing. There have been millions and millions of crossings since December 1995. In 1999 in Laredo, Texas, alone, a total of 2,793,166 trucks crossed Laredo bridges over 12 months. If all these trucks were lined up bumper-to-bumper, they would form a line 34,386 miles long and would stretch from Laredo to the Canadian border 20.7 times. Assuming 60 percent were carrying cargo for which there was a drayage charge of $100 dollars, that cost alone would amount to $167,589,960 of cost which would be unnecessary if opening the border for trucks had led to the opening of the border for cargo. It is difficult, if not impossible, to calculate the loss of time and money caused by maintaining an outdated transportation practice which is an essential condition for an outdated Mexican Customs Broker practice.

Nonfeasance and the U.S. Department of Transportation

When the ICC Termination Act went into effect in January 1996, USDOT was given clear guidance in publishing rules. These rules were to insure that the distinction between common carrier and contract carrier was eliminated (Sections 14101 and 14706). The effect of eliminating this distinction would result in, among other changes, the removal of a loophole which would allow Mexican motor carriers to file for operating authority as contract carriers and therefore not be required to carry cargo insurance (49 CFR 387.303 (c)).

In summary, the impact of Mexican trucking in the United States will be insignificant and likely limited by choice to the U.S. border states, providing a service to U.S. long-haulers. National treatment of Mexican carriers will benefit not only the U.S. trucking industry in the United States, it will benefit the U.S. trucking industry in Mexico. Opening the border is merely the first step in reducing costs for U.S. shippers, and providing faster service to them. The politics tied to this issue is not only distorting the truth, it also is jeopardizing the economy of the United States even further should Mexico be forced to retaliate justly to defend its rights as an equal party to the North American Free Trade Agreement.

PREPARED STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

My name is Jacqueline Gillan and I am Vice President of Advocates for Highway and Auto Safety (Advocates), a coalition of consumer, health, safety, law enforcement and insurance companies and organizations working together to advance highway and auto safety laws, regulations, and policies.

While Advocates' individual board members hold different views on NAFTA, we hold a common view on safety. I am pleased to offer testimony today on several necessary and basic safeguards that must be in place before opening our southern border to unrestricted access by commercial carrier traffic on U.S. streets and roads. The proposed rules by the Federal Motor Carrier Safety Administration (FMCSA),

an agency of the U.S. Department of Transportation (DOT), for the admittance of carriers from Mexico are totally inadequate and further actions are required in order to assure the safety of American motorists. My testimony will focus on deficiencies in the proposed rules and recommendations for further action. These recommendations do not conflict with meeting our treaty obligations, but instead will improve motor carrier safety as well as prevent unnecessary highway deaths and injuries.

Advocates has a long history of working with this Committee on a broad range of highway safety issues and legislation to improve highway safety, including motor carrier safety. Motor vehicles crashes are the leading cause of death and injury for Americans between the ages of 5 and 27 and result annually in more than 41,000 deaths and 3.5 million injuries.

In 1999, almost 5,300 people died in crashes involving large trucks, according to the Insurance Institute for Highway Safety, and more than 60,000 were injured (National Highway Traffic Safety Administration, *Traffic Safety Facts 1999.*) When big trucks and small passenger vehicles collide, 98 percent of the people who die are occupants of the small vehicles. In fact, 23 percent—almost one in four—of all passenger vehicle fatalities in 1999 that occurred in multiple-vehicle crashes were the result of collisions involving big trucks with small vehicles.

Large trucks, year after year, are dramatically over-represented in crash figures and disproportionately contribute to highway deaths, injuries, and property damage losses. A special study just completed for the FMCSA only a few months ago finally quantified the enormous losses we suffer as a nation each year because of truck crashes. The agency concluded that large truck crashes cost the U.S. over $24 billion every year from loss of life, use of medical and emergency services, property damage, and reduced productivity.

In recognition of the enormous personal and financial toll of deaths and injuries related to truck crashes, the Senate Commerce, Science and Transporation Committee advanced legislation in the 106th Congress to address the severity of the large truck crash problem. The Motor Carrier Safety Improvement Act of 1999 (the 1999 Act), created a new agency within the U.S. Department of Transportation, FMCSA, and gave the agency a clear mission and specific mandates intended to stem the tide of human losses attributed to truck crashes.

The FMCSA was created by Congress with the express mission:

> to reduce the number and severity of large-truck involved crashes through more commercial motor vehicle and operation inspections and motor carrier compliance reviews, stronger enforcement measures against violators, expedited completion of rulemaking proceedings, scientifically sound research, and effective driver's license testing, recordkeeping and sanctions.

Motor carrier Safety Improvement Act of 1999, Section 4.

Furthermore, both the previous and the current Secretary of Transportation have endorsed a goal to reduce truck crash fatalities by as much as 50 percent by the end of 2009.

Unfortunately, little progress has been made towards meeting this goal or fulfilling important mandates contained in the 1999 Act. Since 1996, deaths from big truck crashes have been holding at above 5,000 per year. Also, many of the congressionally-mandated responsibilities given to the agency have been met with insufficient actions while statutory deadlines have been delayed or completely ignored by FMCSA. The lack of preparedness by the FMCSA for opening the NAFTA borders is, in many cases, related to the agency's apparent indifference to several of these statutory mandates.

Adequately preparing for opening the southern border is especially important in light of the numerous studies by the Inspector General of the U.S. DOT, the General Accounting Office (GAO), and public interest groups, as well as media stories that have documented serious, life-threatening and pervasive deficiencies at the border crossings. These include insufficient federal and state enforcement personnel to staff the borders; too few inspections and too many trucks put out of service; no permanent inspection facilities at any border crossing outside of California; unreliable and unavailable data on the safety of motor carrier companies and drivers; and the absence of a basic system of motor carrier safety oversight in Mexico.

The Decision of the NAFTA Arbitral Panel Permits the United States to Apply Different Standards to Uphold Safety

While the NAFTA arbitration panel found the United States in violation of its treaty obligations, it also found that the United States may have different admission procedures for Mexican carriers to ensure that these carriers comply with U.S. regulations. The NAFTA arbitration panel indicated it was acceptable for the United

States to individually assess each application submitted by a carrier from Mexico to operate in the interior United States and refuse to issue operating authority if a particular carrier will not be in compliance with U.S. safety regulations. Paragraphs 300 and 301 of the ruling clearly allow the U.S. to apply, if found necessary, different, more stringent safety standards to ensure that the U.S. interest in upholding the safety and welfare of its citizens is fulfilled in awarding operating authority to Mexican motor carriers. Moreover, the ruling explicitly states that the U.S. does not have to provide favorable operating authority consideration to all or even any specific number of applications from Mexico. Mexican motor carriers which fail to meet reasonable, case-by-case examination of their safety condition may be barred from operating in the U.S. This panel ruling is a baseline legal interpretation of the rights and responsibilities of the U.S. in controlling cross-border motor carrier safety.

It is clear why the NAFTA arbitration panel reached this decision to openly interpret NAFTA to allow the U.S. to uphold the safety of its citizens by applying more strenuous safety requirements to Mexican motor carriers applying for U.S. operating authority. The panel had been provided with information gathered by the U.S. government showing the continuing poor record of Mexican motor carriers operating in our country and the almost total lack of a safety oversight system put in place by the Mexican federal government to generate reliable information about the safety records of Mexican truck and bus companies. In back-to-back filings with the NAFTA Secretariat on June 8 and 9, 2000, our government documented the lack of a government-administered safety regime in Mexico. It emphasized that roadside inspections of trucks coming into the U.S. from Mexico were completely unequal to the task of identifying which carriers were dangerous. In fact, our country's statements for the record stressed that even a company using new trucks in U.S. operations, which are more likely to pass roadside inspections, nevertheless did not ensure that it would operate safely once it had free operating privileges. Instead, the U.S. government stated that only on-site inspections of the company's operations at their places of business, with direct evaluation of their crash experience and other carrier operating information, could provide the basis for judging the safety of any Mexican trucking firm. Most importantly, the U.S. asserted in its June 9, 2000, filing that:

> No review of a Mexican motor carrier based solely on an *unverifiable* application for operating authority can give the United States a sufficient level of confidence regarding the safety of that carrier's vehicles, *no matter how detailed an application is required*. Secretariat File No. USA–MEX–98–2008–01, June 9, 2000 (emphasis supplied).

FMCSA Is Following a Course of Action That Degrades Safety and Ignores Procedures Permitted by the NAFTA Arbitral Panel

Only a year after the U.S. made this statement in its filing, the FMCSA, charged with protecting the safety of the American people through policies and regulations designed to enhance motor carrier safety to the highest degree, as directed by Congress in Section 101 of the Motor Carrier Safety Improvement Act of 1999, ignored our own government's position on the unacceptability of paper applications for ensuring public safety and for making awards of operating authority.

The FMCSA has proposed a dangerously flawed plan for granting new operating authority exclusively for motor carriers from Mexico. The plan asks only for uncorroborated responses from applicant companies that they understand and will comply with the entire range of driver, vehicle, insurance, hazardous material, and other legal and safety requirements for freight and passenger transportation in the U.S. The agency intends to accept applications that are checked "yes" in the appropriate places as the sole basis for awards of operating authority to Mexican truck and bus companies. In fact, there are more than five pages of questions in the Safety Certifications section of the application for both interstate and border zone motor carriers regarding an applicant's knowledge of, and intention to follow U.S. regulations. However, there is only an option to answer "yes" on the application. Regarding questions concerning safety practices, driver qualifications, hours of service, drug and alcohol testing, vehicle condition and hazardous materials training and operation procedures, there is no option to even respond "no."

Safety Compliance Reviews of Carriers from Mexico Will Be Conducted after FMCSA Grants Operating Authority

No initial safety compliance review will be conducted to determine whether these trucking and bus firms from Mexico actually understand and can comply with U.S. safety requirements before they operate on our streets and roads. During 18 months

or more of U.S. operations, the FMCSA proposes to conduct safety compliance reviews. However, these safety audits will often not be conducted at the motor carrier's place of business and the agency will still rely almost entirely on a review of the records which the FMCSA will ask Mexican companies to bring to locations within the U.S. Advocates strongly opposes this approach and supports a meaningful audit system that relies on an on-site evaluation and inspection of the carrier at its place of business.

FMCSA officials have stated that the purpose of the 18-month interval is to allow the agency to compile inspection and truck crash information on carriers during its operation in the United States. Using the American motoring public as a safety experiment with inexperienced foreign carriers would never be tolerated in any other mode of surface and air transportation or in any medical testing protocol. Yet, the FMCSA plans to go forward with this dangerous proposal.

This is not a system of safety assurance. This proposed approach to the safety management of thousands of Mexican trucks and buses is instead an award of an 18-month safe harbor for potentially dangerous vehicles and drivers. Permitting many thousands of new entrants into the U.S. is not a zero-sum safety proposition. These trucks and buses will increase their annual travel in the U.S. by more than an order of magnitude over the current annual mileage accrued by trucks and buses operating only in our southern border zone. This means that the exposure of the American people to crashes with trucks and buses from Mexico will dramatically increase.

Comparisons Between Mexico and Canada Regarding Commercial Carrier Safety Oversight Are Misleading

Critics have argued that differential treatment has been accorded Canada for cross-border commercial transportation while disfavoring Mexican freight and passenger motor carrier services in U.S. interstate commerce. Mexico, to date, has operated under the terms of restricted motor carrier access rights because there is no functioning safety regime in Mexico implemented and enforced by the government.

Canadian motor carrier safety standards are very similar to those in the U.S. unlike Mexico. For example, Canada and the U.S. recognize the same set of commercial vehicle safety inspection criteria which are applied on each side of the northern border. Moreover, safety compliance reviews using essentially the same standards for vehicle and driver safety are conducted by the other country in the host country at the place of business of the Canadian or U.S. domiciled carrier. Last, both countries have automated, reciprocal access to each other's databases of motor carrier registrations, roadside inspections results, safety ratings of motor carriers, driver license files, and violations/convictions records.

Currently, there are no databases comprising these areas of safety oversight in Mexico which could be used by U.S. safety auditors and inspectors to review the safety compliance records of motor carriers from Mexico. The effectiveness of the Canadian system of motor carrier oversight and regulation is demonstrated in the lower out-of-service rate for their trucks compared to the out-of-service rate for U.S. trucks.

Advocates' Recommendations

FMCSA must conduct an on-site safety review of carriers from Mexico seeking interstate operating authority in the United States.

Prior to granting operating authority to any Mexican carrier, the FMCSA must conduct an on-site safety compliance review. A safety compliance review should be conducted at the carrier's place of business with independent federal verification of driver license validity, equipment safety, inspection and repair facilities, safety management controls, and interviews with on-site company officials, in addition to other elements of a comprehensive safety compliance effort. A careful case-by-case review of motor carrier companies from Mexico as provided by the February 2001 NAFTA arbitration panel will help to ensure that only the safest companies and drivers will be permitted to share the road with American motorists.

Advocates is not alone in calling for these up-front safety audits of Mexican motor carrier safety capabilities. Major national groups and even trucking organizations have called for initial, case-by-case safety compliance reviews of new entrant applicants or have opposed reliance on nothing more than a simple, unverifiable paper application for gaining operating authority. In addition to Advocates, these include the American Association of Motor Vehicle Administrators, the Commercial Vehicle Safety Alliance (CVSA), the Transportation Lawyers Association, the Transportation Consumer Protection Council, the International Brotherhood of Teamsters, the California Highway Patrol (CHP), the American Bus Association, the Amalgamated Transit Union, the Owner-Operator Independent Drivers Association, the AFL-CIO,

AAA, Citizens for Reliable and Safe Highways, the Arizona Department of Public Safety, Public Citizen, and the American Insurance Association. All of these organizations agree with our own U.S. government's position taken in June 2000 that an unverified paper application cannot ensure the safety of the American people on their highways and streets. And hundreds of ordinary rank-and-file citizens have written to the U.S. Department of Transportation decrying the proposal of the FMCSA to allow cross-border trucking and passenger transportation operations without substantive safety compliance reviews. Without these initial safety compliance reviews conducted on-site in Mexico at a company's place of business, we are needlessly endangering the lives of both U.S. citizens on their own roads as well the lives of the drivers who will operate Mexican trucks and buses.

Strengthen Border Inspection Facilities.

Most states, including the border states, are completely unprepared to address the increased traffic that will result from opening the border. Texas, which has the most border crossings and the highest traffic volume of carriers from Mexico, does not have permanent inspection facilities at any crossing point. The Texas Legislature recently passed a resolution asking Congress to recognize the tremendous impact of opening the border to unrestricted travel by Mexican carriers and requested funding to pay for the additional infrastructure costs at the border and on its roads.

Of the current 27 recognized border crossing points, only two (2) have full inspection (Level One Inspection) facilities, both in California. All 27 border crossing points should have the facilities available for performing Level One inspections on a substantial percentage of Mexican-domiciled carriers seeking entry into the U.S. for either commercial zone or nationwide operation. Only a full inspection which intensively evaluates truck equipment and driver safety rather than only Level Two (simple "walk-around" or "eyeball" inspections) or only Level Three (only driver qualifications evaluations) can both detect serious safety deficiencies and create a deterrent effect for other Mexican-domiciled carriers who attempt to evade U.S. safety, insurance, licensing, and operating authority requirements. No Mexico-domiciled motor carriers should be granted access to the U.S. when the border is fully open unless all U.S. border crossings have Level One inspection facilities in place.

Require Weight Scales at All U.S. Border Crossings to Confirm that Each Mexico-Domiciled Truck or Bus Conforms to Federal Weight Limits Pursuant to 23 U.S.C. § 127.

Mexico-domiciled trucks and buses are permitted to operate in Mexico at both axle and gross weights which are far higher, and with axle spacings which are more lenient, than permitted in the U.S. under federal law and regulation governing commercial vehicle travel on the Interstate system. Since ample research, including research sponsored by the Federal Highway Administration, has shown that heavier, overweight trucks have more crashes and crashes of greater severity, increased weight certification at the border of Mexico-domiciled trucks and buses can prevent crashes once motor carriers from Mexico operate throughout the U.S. It would be preferable if money appropriated and spent for installing weigh scales at all border crossing points would be Weigh-In-Motion (WIM) systems so that Mexico-domiciled truck and bus weight verification would be automatic and performed for each vehicle entering the U.S.

Direct the U.S. DOT Secretary to Implement Section 210(b) of the Motor Carrier Safety Improvement Act of 1999 by Issuing a Final Regulation After Notice-and-Comment Rulemaking that Establishes a Proficiency Test of All New Foreign and Domestic Motor Carriers Applying for U.S. Operating Authority.

Currently, Section 210(b) directs the Secretary to conduct rulemaking to establish minimum requirements for new entrant applicant motor carriers, but it only suggests that the Secretary may consider adopting a proficiency test for new carriers to test their knowledge of U.S. federal safety standards. A safety proficiency test for all new foreign and domestic motor carriers applying for U.S. operating authority could supplant the Federal Motor Carrier Safety Administration's proposed reliance on uncorroborated certifying statements by new entrants that they are knowledgeable about and will conform to U.S. motor carrier safety law and regulation. Successful passage of a safety knowledge proficiency examination coupled with a preliminary safety audit could be the cornerstones

of a federal program of safety evaluation to ensure that new motor carriers have safe equipment, use legally licensed drivers, implement acceptable blood and alcohol testing programs, provide adequate safety oversight and regulatory compliance mechanisms, and employ only managers and drivers who are knowledgeable about U.S. motor carrier safety standards.

Direct the U.S. DOT Secretary to Implement Section 211 of the Motor Carrier Safety Improvement Act of 1999 by Providing for the Training and Certification of Sufficient Private Contractors for Conducting Safety Audits On the Mexico-U.S. Border.

Even the addition of another 80 inspectors to southern border inspection points may not be sufficient to augment the number of border crossing safety inspections and of motor carrier safety audits performed at the business locations of Mexico-domiciled carriers in order to ensure detection of dangerous trucks and buses. A sufficient number of inspections and timely safety audits is necessary to create a substantial deterrent effect for carriers who are tempted to evade U.S. safety and other motor carrier laws and regulations. Amplifying the number of federal and state inspectors with private, third-party contractors will strengthen the overall U.S. motor carrier inspection and safety auditing program at the southern U.S. border. Currently, Section 211 directs the Secretary to complete rulemaking to improve training and provide for certification of safety auditors. The section also provides that some of these auditors can be private contractors. Adequate controls can be placed on the supplementary use of private contractors to avoid possible problems of fraud and abuse, such as allowing only federal inspectors to award an actual safety rating.

Before the southern borders are opened, the Administration needs to certify that safety is not compromised. These recommendations cover the very basic safeguards that every American on our roads and highways deserves, and indeed, demands.

That concludes my testimony. I would be pleased to answer any questions for the Committee.

PREPARED STATEMENT OF JIM JOHNSTON, PRESIDENT,
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

Summary

On behalf of 66,000 independent small business truckers who are members of the Owner-Operator Independent Drivers Association ("OOIDA" or "Association"), I am pleased to submit this testimony regarding the operation of Mexican commercial vehicles within the United States.

OOIDA would like to first emphasize that the proposal at issue under the North American Free Trade Agreement ("NAFTA") is not simply the opening of the border to Mexican trucks. At issue is the opening of all interstate highways and local roads throughout the United States to Mexican trucks. Only from this perspective do you begin to understand the great impact that Mexican trucks will have on our country. OOIDA believes that no matter how strong our border enforcement is, the majority of problems our country will face with Mexican trucks will occur within the interior of the states.

It is well known that Mexican carriers and truckers are not required to meet, and frequently fail to meet, U.S. motor carrier safety standards. In response to these safety concerns, the Federal Motor Carrier Safety Administration has proposed that Mexican carriers undergo a "safety review" in the first 18 months of their operation in the United States. Some in Congress have suggested that this review must occur before a Mexican carrier begins its U.S. operation. Although useful and important, this exercise in paperwork would have little practical effect on the safety of Mexican trucks operating in the United States.

The Senate Transportation Appropriations Subcommittee has recommended a much more stringent pre-qualification of Mexican carriers and drivers, a stronger enforcement presence at the border, better tools for enforcement personnel, and consequences for Mexican carrier violation of U.S. laws. These are very positive and necessary actions, but we recommend that more needs to be done.

There are NAFTA trade rules that implicate Customs and Immigration issues which are just as important as the safety issues. Specific restrictions in the NAFTA agreement proscribe the activities and movements of Mexican trucks and drivers in the United States. Enforcement of these provisions will require the efforts of the Customs Service and the Immigration and Naturalization Service in coordination with state enforcement officials. No such effort has been proposed or contemplated.

Another overlooked issue is the revenue from fuel taxes, heavy truck excise taxes, and highway user fees that the states and the federal government will lose. These are important revenue sources that go to build and maintain our highways and bridges. When Mexican trucks come into the United States fueled up with cheap Mexican diesel, they avoid paying those taxes and replace American trucker who used to pay those taxes. There is no plan in place to address this consequence of NAFTA.

If these issues are not addressed, OOIDA members believe that we will see thousands of unsafe Mexican trucks operating virtually uninhibited on our highways. These trucks will not only endanger the safety of our highways but also create an issue of fairness to U.S. truckers who pay their fair share of taxes and comply with higher safety standards.

The following is a more detailed discussion of these issues.

U.S. Enforcement Efforts at the Border are Inadequate.

The DOT Office of the Inspector General recently published a report that detailed the inadequacy of our border enforcement efforts. [See Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions. Report Number: MH–2001–059, May 8, 2001]. It reported that during the fiscal year 1997, commercial trucks made 3.5 million crossings into the United States at the southern border. Federal and state inspectors performed inspections on less than 0.5 percent of those trucks. Furthermore, 44 percent of the trucks inspected were removed from service because of serious safety violations. These statistics demonstrate both our weak enforcement presence on the border and the poor physical condition of Mexican trucks.

Currently, the only permanent inspection facilities at the U.S.-Mexico border are the state run facilities in California. Of the other 25 border crossings, the Inspector General's report observed that few have a dedicated telephone line to access transportation databases. Furthermore, a majority of border facilities lacked the physical space in which to inspect or place out of service more than two vehicles at a time.

The DOT has proposed hiring 40 new inspectors and 40 new safety investigators. This would bring the number up to 140 total, the level that the Inspector General recommended were needed for Mexican truck traffic in 1998. More substantial inspection facilities and many more inspection personnel need to be in place before our highways are opened to more Mexican trucks.

U.S. Enforcement Efforts Within the United States is Nonexistent

The individual states are on the front line of truck safety enforcement. Once a Mexican truck crosses the border, each state, not the federal government, will have the responsibility of inspecting Mexican trucks and verifying their compliance with U.S. regulations. In this role, it is the state enforcement personnel who must know whether a Mexican truck and driver is operating safely and within the bounds authorized by NAFTA.

OOIDA is aware of no effort by any state, except perhaps California, to adequately take on the enforcement of the laws and regulations raised by Mexican trucks. California's effort is limited to the inspection of the vehicle. OOIDA is aware of no effort by any federal government agency to educate the states on these issues or to give them the authority to enforce these laws and regulations. Such efforts must be a part of any thorough plan to allow more Mexican trucks onto our highways.

Mexican Trucks Rarely Comply With U.S. Safety Law

There is no true equivalent of the U.S. Commercial Driver License ("CDL") system in place in Mexico.

While both U.S. and Mexican government officials claim Mexico's commercial driver licensing requirements are equivalent to the U.S. rules, statistics from border checks indicate that significant problems exist. Lack of a valid license is the top reason for placing Mexican drivers out-of-service ("OOS") according to the Office of the U.S. Trade Representative. A recent spot check by the Texas Department of Public Safety found 9 of 12 drivers lacked valid licenses. Even if the license is valid and legally obtained, little or no data exists in Mexico that can accurately confirm that information. Nor can U.S. inspectors identify the details of a driver's violation history or accident record. They may not even be able to tell whether the license presented belongs to the driver carrying it.

There is no viable truck safety inspection program in Mexico.

There are few if any trained Mexican commercial motor vehicle inspectors that measure up to the U.S. standards. While the Mexican government insists it enforces very strict commercial vehicle and driver standards, Mexican truckers report that the main condition to compliance is the financial persuasion of enforcement officials.

Although Mexico joined the Commercial Vehicle Safety Alliance ("CVSA") and has agreed to adopt CVSA training, inspection and enforcement practices, the CVSA has failed, despite repeated attempts, to obtain inspection data from the Mexican government. There is no proof that Mexico is inspecting any vehicles or drivers. Unless Mexico quickly makes significant strides to ensure the safety of Mexican motor car-

rier equipment and drivers, the entire burden of safety compliance will fall squarely on U.S. enforcement efforts.

There is no drug and alcohol testing program comparable to that of the U.S. program in Mexico

U.S. drivers are extensively tested for use of controlled substances and alcohol. Although Mexico claims to have a program in place, the Association believes they have no means or will to enforce the rules. In fact, it is reported that Mexican drivers frequently use drugs in order to drive longer hours. Amazingly, sometimes the use of these drugs is encouraged by their trucking employer.

It would be inherently inequitable to allow Mexican drivers to operate in the U.S. without being subject to the same stringent standards required of U.S. drivers. To permit a certain class of drivers to be largely and effectively "exempt" from these regulations would be a manifest injustice and place U.S. truck drivers at a distinct economic disadvantage and all drivers at a safety risk.

Mexico has no driver hours-of-service regulation.

There is no way to begin to verify how many hours a Mexican driver has operated in any given day or week. It has been reported that Mexican drivers commonly operate 16 to 20 hours a day or more. Regardless of whether Mexican drivers adhere to the U.S. standard while operating in the U.S., there is no way of knowing how long the driver had been driving prior to entering our country.

Mexico Has No Viable Vehicle Size and Weight Enforcement

Mexico has no effective weight enforcement for its vehicles. There are no fixed weigh station facilities in Mexico, and none on the U.S. side at the border. OOIDA fears that an influx of overweight Mexican trucks will cause a significant degradation in U.S. highway safety and the infrastructure.

Mexican truckers who know or learn their way around state scales could conceivably travel throughout the United States and back into Mexico without ever being weighed. Fixed weigh stations at border crossings must be established in the United States to assure that Mexican trucks meet federal weight restrictions. FMCSA did not consider the additional costs of these facilities in their budget proposal. Millions of dollars in additional funds will be required to erect these weigh station facilities.

Mexican Trucks Avoid State and Federal Fuel Taxes and Highway User Fees

Mexican carriers have in the past installed additional fuel tanks to carry extra high sulfur fuel purchased at a much lower cost in Mexico. These vehicles can travel hundreds and even thousands of miles during each trip on U.S. highways without ever buying fuel in the U.S. In doing so, these Mexican trucks avoid paying any state and federal fuel taxes. Furthermore, they take the place of U.S. trucks and drivers that currently do pay those taxes and every other tax levied on us as citizens, including state and federal income and payroll taxes.

The principal way that highways and bridges are financed in the U.S. is through taxes assessed on the trucking industry. Fees and taxes on highway use are primarily collected through registration fees and through taxes on fuel consumed under the International Registration Plan ("IRP") and the International Fuel Tax Agreement ("IFTA"), respectively. Since Mexico does not participate in either plan, the fees and taxes cannot be collected under the agreements, and U.S. truck owners bear the entire cost of highway repair and new highway construction.

Mexican Trucks Already Violate NAFTA Rules

Once a Mexican truck passes through the border, the United States has no plan to ensure that they only perform the limited operations allowed by NAFTA. Under NAFTA, a Mexican truck can only deliver a cross-border shipment to a destination in the United States, pick up another shipment for return to Mexico, or drive through the United States on the way to Canada. We have no system in place to ensure they adhere to these restrictions.

When a Mexican truck driver begins to violate NAFTA by hauling between two points within the United States, he or she has begun to perform domestic work within the U.S. and must have proper documentation (such as a green card) to do so. When a Mexican truck begins to haul between two points within the United States, "technically" that truck has been imported into the U.S. and all applicable duties and tariffs must be paid on it.

The INS and Customs Service are unprepared to supervise Mexican truck compliance with these rules. As the Inspector General of the Department of Transportation has reported, Mexican trucks, ostensibly allowed into the country for ship-

ments to the commercial border zones, are already flaunting this NAFTA rule by operating throughout the United States.

Aside from the initial contact when a truck enters the United States at the border, U.S. Customs and INS personnel rarely, if ever, come in contact with a foreign-based motor carrier's vehicles and drivers. Most state motor carrier enforcement personnel, those who regularly encounter commercial vehicles in the interior of the country, are trained only to enforce federal and state vehicle and driver safety regulations. Few consider the origin and destination of a load, and how the movement may relate to the motor carrier's country of domicile. Furthermore, state enforcement agencies appear unwilling at this point to take on the task of enforcing cabotage restrictions. Even if state CMV enforcement agencies received the necessary funding, and inspectors were properly trained and had the requisite authority, there is simply not enough staff to catch more than a token number of violators.

There Will Be No Reciprocal Benefit From Mexico To the United States

Under NAFTA each country has promised the others to give equal access to its markets. Practically speaking, however, Mexico is not prepared to give American trucking companies the same kind of safe and secure highways as their trucks will find in the United States. The reputation of the crime rate in Mexico and of Mexican law enforcement inspires few U.S. truckers to risk their own safety and security by trucking south of the border. We have attached an article that describes the routine danger of truck shipments being hijacked in Mexico.

In terms of trucking, the benefits of opening the border all flow toward Mexico. Mexican truckers gain access to new markets and customers on the safest and most open highway system in the world. In return, the U.S. truckers are invited to travel more dangerous highways while the U.S. government gets the burden of performing safety enforcement for both countries.

Conclusion

Allowing Mexican trucks into the United States at this time is not in the best interest of the American public or U.S. drivers and small business truckers. Truck safety and highway conditions will suffer greatly. Mexican motor carrier and driver safety regulations are either inadequate or non-existent. Allowing the border to open without correcting these inadequacies will result in a substantial decline in truck safety.

Border enforcement capabilities will need to be strengthened prior to allowing Mexican trucks into the U.S. Unless adequate personnel are deployed at border zones and additional funding is committed to provide permanent border weight and inspection facilities, there will be no way to ensure that Mexican carriers comply with United States laws and regulations. The U.S. Senate Appropriations Committee has recommended some strong, realistic rules to address these safety issues.

It is OOIDA's belief that few Mexican carriers are educated in the numerous federal and state laws they will encounter. While many of these regulations and laws are within the control of the FMCSA, implementation of the entry provisions of NAFTA will require a cooperative effort among members of the FMCSA, INS, U.S. Customs Service and state enforcement officials. Coordination between the federal and state governments will also be necessary to recover the fuel taxes and user fees not paid by Mexican trucks.

Allowing Mexican trucks into the U.S. should not compromise the safety of our highways. Until measures are put in place to ensure that Mexican trucks and drivers entering the U.S. are in compliance with NAFTA trade rules and *all* United States transportation laws and regulations, OOIDA remains adamant that the United States-Mexico border remain closed. Thank you for the opportunity to present these comments.

PREPARED STATEMENT OF JAMES LA SALA, INTERNATIONAL PRESIDENT, AMALGAMATED TRANSIT UNION, AFL–CIO

Mr. Chairman and Members of the Committee:

On behalf of the Amalgamated Transit Union (ATU), which represents over 175,000 members maintaining and operating bus, light rail, ferry, intercity bus, school bus and paratransit vehicles in the United States and Canada, including over 5,000 Greyhound employees operating from 88 cities throughout the United States, I am pleased to submit this testimony on whether Mexican-domiciled motor carriers should be allowed to operate throughout the United States. In addition, I thank you for holding a hearing on this crucial safety and fairness issue.

Initially, I take this opportunity to affirm our longstanding commitment to the safety and security of U.S. bus passengers and operators, as well as the rest of the

traveling public. As such, we welcome the opportunity to work with this Committee, Congress and the Administration, toward a safe, effective and fair implementation of the cross-border passenger motor carrier provisions of the North American Free Trade Agreement (NAFTA). At this time, however, the ATU is firmly opposed to the proposed opening of the U.S.-Mexico border to cross-border passenger motor carrier operations.

As you know, the Senate Appropriations Committee reported out the FY 2002 Transportation Appropriations bill (S. 1178) last week, including in the bill several provisions drafted by Senator Patty Murray, Chair of the Transportation Appropriations Subcommittee, to address the issue of motor carrier safety with respect to Mexican cross-border truck and bus operations. These provisions are similar to those included in House Resolution 152. In addition to these pending bills, the House Transportation Appropriations bill (H.R. 2299) that passed the House of Representatives a few weeks ago includes language barring the U.S. from granting operating authority to any Mexican motor carriers. The ATU supports all of these bills which address many of the ATU's safety concerns. However, the ATU does have several concerns, specific to the intercity bus industry, that may require separate legislative action. These concerns are discussed below.

Specifically, it is the position of the ATU that:

(1) Mexican buses should not be authorized to operate in the U.S. absent reciprocal treatment of U.S. buses by Mexico;
(2) Mexican buses must be certified as safe before the first day they are authorized to operate in the U.S.;
(3) The U.S. border crossing must be adequately equipped and staffed and inspectors must be fully trained before operating authority can be granted to any Mexican bus operation; and
(4) U.S. subsidiaries of Mexican companies must be subject to the same standards and reviews as their Mexican parent company.

Mexican Buses Should Not be Authorized to Operate in the U.S. Absent Reciprocal Treatment of U.S. Buses by Mexico

As you know, on February 6, 2001, a NAFTA dispute resolution panel ruled that the U.S. violated its NAFTA obligations by not implementing the NAFTA cross-border *trucking* provisions. As a result, the Administration has moved forward with a plan, as evidenced by the implementation rules recently proposed by the Federal Motor Carrier Safety Administration (FMCSA), to fully open the border to *both* Mexican *trucks* and *buses* by January 2002.

It is important to note that the NAFTA panel decision concerned only the implementation of NAFTA's cross-border *trucking* provisions and no similar ruling has been issued with respect to the cross-border *passenger* motor carrier provisions. As such, there is no need to hastily open the border to Mexican buses without first ensuring not only their safe and legal operation, but also a level playing field for U.S. competition.

In fact, granting operating authority to Mexican-owned buses at this time is premature under the terms of NAFTA, which provides that, upon opening the border, Mexico is obligated to provide the "same treatment" to U.S. bus firms as the U.S. provides to Mexican firms. However, the Mexican and U.S. governments have taken different positions on several important operational issues that would result in vastly *different* treatment of the foreign bus operations in each country, involving access to bus terminals and the ability to provide service to multiple points within each country.

Specifically, the Mexican government has taken the position that it would only authorize U.S. bus companies to provide cross-border service to *one point* in Mexico. In contrast, the position of the U.S. government, made evident by the FMCSA's proposed implementation rules, is to authorize Mexican operators to provide cross-border service to *multiple points* in the U.S. Additionally, while the U.S. has not proposed to place any restrictions on the ability of Mexican companies to own or operate bus terminals in the U.S., Mexico's position has been to strictly prohibit foreign ownership or operation of Mexican bus terminals.

The different treatment accorded foreign bus companies by the two countries would result in unfair competition and would be a violation of the "same treatment" requirement imposed by NAFTA. As such, the U.S. should not open the border to Mexican buses until Mexico has agreed to provide reciprocal authority to U.S. owned or controlled passenger motor carriers operating in Mexico.

H.R. 2299 addresses this issue by simply prohibiting the opening of the border. Likewise, H. Res. 152 addresses the issue by requiring that a reciprocity agreement be reached by Mexico and the United States before operating authority can be

granted to Mexican bus operations. *S. 1178, however, does not address this important issue of reciprocity.*

Mexican Buses Must be Certified as Safe Before the First Day They Operate in the U.S.

The Administration is proposing to authorize Mexican passenger motor carriers to operate in the U.S. for up to 18 months before receiving a safety review. Further, under the FMCSA's proposed rules, those carriers who do not receive a review within the 18 month time frame, will be allowed to operate in the U.S. for an indefinite period until a safety review is conducted. At the same time, the FMCSA recognizes that "Mexican carriers have, for the most part, little or no experience operating under regulations comparable to the [Federal Motor Carrier Safety Regulations (FMCSRs)]" (66 FR 22372).

The results of an audit conducted by the Department of Transportation's (DOT) Inspector General (IG), released in May of this year, back up the FMCSA's observation. Specifically, the report stated that the percentage of Mexican trucks found to have safety deficiencies is 50 percent higher than that of U.S. trucks. (Report No. MH–2000–059, May 8, 2001). Like Mexican trucks, Mexican buses fail to comply with U.S. safety requirements for critical safety items such as brakes, fuel systems, windows and emergency exits. Currently, there is only one Mexican-manufactured bus model that is known to meet the Federal Motor Vehicle Safety Standards (FMVSS) and the FMCSRs.

Mexican buses must be safe on the first day they are authorized to operate in the U.S. Given the evidence from the IG audit and the observation of the FMCSA that these carriers do not and are not prepared to conform their operations to U.S. standards, we cannot allow these buses to operate on our roads and highways for 18 months, or possibly longer, without first determining that they meet our drug and alcohol testing, driver, equipment, hours of service, fatigue and other safety standards. Failure to do so will seriously threaten the safety of U.S. bus passengers and others traveling our nation's roads. All three bills, H.R. 2299, H. Res. 152 and S. 1178, adequately address these safety concerns.

The U.S. Border Crossing Must be Adequately Equipped and Staffed and Inspectors Must be Fully Trained Before Operating Authority Can be Granted to Any Mexican Bus Operation

As the above-referenced IG study has shown, the U.S. is ill-prepared to handle the inspection and enforcement needs that will result from the increase in Mexican motor carrier traffic entering the U.S. when the border is fully opened. According to the IG, there are only two permanent inspection facilities on the U.S.-Mexico border, both of which are state facilities in California. Of the 25 remaining border crossings, 20 do not have dedicated telephone phone lines to access safety databases, such as those for validating a commercial driver's license. Further, almost all of these inspection facilities lack adequate space to inspect vehicles and/or place dangerous vehicles out of service. In addition, there are not currently enough inspectors to adequately staff border operations.

Despite these obvious deficiencies at our border, the Administration has not proposed a safety enforcement and compliance program that will ensure the safe operation of Mexican carriers authorized to provide cross-border services into the U.S. Such a program must be in place and must be adequately funded before operating authority is granted to any Mexican bus or truck operation.

In addition to being able to stop unsafe vehicles from crossing the border, the U.S. must be prepared to ensure that the drivers of Mexican-owned passenger motor carriers are legally allowed to operate the authorized service. While the Administration has proposed to allow Mexican drivers possessing a valid Licencia Federal de Conductor (LFC) to operate cross-border bus service into the U.S., it is well established law that passenger motor carriers must use U.S. citizens or resident aliens to provide domestic point-to-point passenger service in the U.S., even if that service is part of an international operation. The U.S. must takes steps to ensure that Mexican carriers are not only aware of this restriction, but that they are also in compliance with this important immigration law. To accomplish this, FMCSA must work with the Immigration and Naturalization Service (INS) to develop mechanisms that effectively enforce this law, which protects the safety of U.S. travelers and U.S. worker jobs. Such an enforcement system must be in place, and publicized, before any operating authority, domestic or cross-border, is granted to Mexican-owned carriers.

Again, H.R. 2299 addresses this issue by completely prohibiting the granting of operating authority to Mexican buses and trucks and both H. Res. 152 and S. 1178 would ensure that the U.S. border crossing is adequately equipped and staffed and

that inspectors are fully trained before operating authority is granted to any Mexican bus or truck operation.

U.S. Subsidiaries of Mexican Companies Must be Subject to the Same Standards and Reviews as Their Mexican Parent Company

In its proposed rule makings, FMCSA has specifically exempted from the special application procedures and oversight, U.S. subsidiaries of Mexican companies that provide domestic point-to-point service in the U.S. These are the carriers that will have the most impact on U.S. travelers since they will be providing both domestic and cross-border service to those passengers. As such, their operations should, at a very minimum, be subject to the same level of scrutiny and review, with respect to safety concerns, as their parent company and other cross-border carriers.

In fact, equal application of these rules to Mexican-owned subsidiaries in the U.S. is necessitated by the recent Memorandum from President Bush to the Secretary of Transportation lifting the moratorium on Mexican owned and controlled companies providing domestic bus service in the U.S. In his letter, President Bush stated that all such entities "will be subject to the same Federal and State regulations and procedures that apply to all other U.S. carriers." Unless these Mexican-owned subsidiaries are subject to the same application and review procedures proposed for other Mexican carriers, there will be no way to ensure that these Mexican bus companies, carrying U.S. passengers, are conforming their operations to U.S. standards.

Further, this exemption would result in a loophole through which Mexican passenger motor carriers could bypass entirely safety fitness evaluations by setting up a U.S. subsidiary that can combine its U.S. domestic bus authority with its Mexican parent's domestic and cross-border Mexican authority to provide an integrated domestic and cross-border service. Again, given the observations of the FMCSA that Mexican operators are unfamiliar with U.S. safety regulations, and therefore must be subject to special safety scrutiny, we cannot allow these Mexican-owned U.S. subsidiaries to operate without the thorough safety evaluation that the FMCSA says is needed. None of the pending bills, H.R. 2299, H. Res. 152 or S. 1178 address this issue.

Conclusion

In closing, I again emphasize the unyielding commitment of the ATU to the safety and well-being of the traveling public. It is for that reason, as well as those discussed above, that the ATU is opposed to the proposed opening of the U.S.-Mexico border to Mexican-owned bus operations until such time as our government can ensure to the American people that buses traveling into the U.S. from Mexico, as well as Mexican-owned buses operating throughout the U.S., comply with all safety, health and labor requirements as mandated under U.S. laws and regulations, and until the U.S. and Mexico have come to an agreement with respect to ensuring that the two countries provide the "same treatment" to foreign bus companies operating in each country.

Again, we express our thanks to the Committee for the opportunity to testify on this matter and we look forward to working closely with this Committee, Congress and the Administration to ensure a safe and fair implementation of the NAFTA cross-border passenger motor carrier provisions.

PREPARED STATEMENT OF EDWARD WYTKIND, EXECUTIVE DIRECTOR, TRANSPORTATION TRADES DEPARTMENT, AFL–CIO

My name is Edward Wytkind. I am the Executive Director of the Transportation Trades Department, AFL-CIO (TTD). On behalf of the TTD and our 33 affiliated unions,[1] I want to thank you Chairman Hollings for holding this hearing and for giving transportation labor an opportunity to share our views on the current proposals to allow Mexican commercial trucks and buses to operate in the U.S.

TTD affiliates represent hundreds of thousands of truck and bus drivers employed in all areas of our nation's transportation system. As such, our collective interest in this issue and in promoting transportation safety is substantial. Let me state up front our continuing opposition to opening up the U.S.-Mexico border to unencumbered cross-border traffic. We remain concerned that the U.S. government cannot ensure that Mexico-domiciled motor carriers will comply with all safety and health requirements as mandated under U.S. laws and regulations. We urge that the border remain closed until Mexico fully brings its safety regime to an acceptable

[1] A complete list of TTD affiliates is attached.

standard and the U.S. substantially improves its border inspection capabilities and infrastructure.

With that said, I think it is important that we review how we got to this point under the North American Free Trade Agreement (NAFTA) process. NAFTA went into effect in 1994 with provisions allowing Mexico-domiciled motor carriers increasing access to U.S. highways. These NAFTA provisions required the U.S. to open access to all U.S.-Mexico border states in December 1995 and to permit Mexico-domiciled motor carriers to travel throughout the entire United States as of January 1,200. Until these provisions are implemented Mexico-domiciled carriers may operate in a border commercial zone ranging from 3 to 20 miles into the U.S. to drop off loads destined for U.S. interior states.

In 1995, due to a number of unresolved safety concerns, President Clinton maintained limited access to the border commercial zones and did not allow any greater access to the rest of the U.S. In 1998, Mexico challenged the President's decision before a NAFTA tribunal, demanding that the U.S. abide by its NAFTA commitments and open its highways. On February 6, 2001, the final NAFTA panel report ruled that the safety of Mexico-domiciled trucks was a legitimate concern and provided that the U.S. could, consistent with NAFTA, promulgate stricter requirements for registration of Mexico-domiciled carriers than are used for the registration of U.S. carriers. It also held that the U.S. was required to start processing foreign motor carrier applications on a case-by-case basis. Although this particular case only concerned the trucking provisions of NAFTA, it is expected that the DOT will conclude bilateral bus passenger carrier negotiations at the same time as the trucking negotiations.

The United States is under no legal obligation to implement the findings of the NAFTA panel. Under U.S. law, to the extent NAFTA conflicts with any U.S. law dealing with health, environment and worker safety, U.S. laws prevails.[2] Even under the terms of NAFTA, the U.S. is entitled to disregard the panel's recommendation. Under NAFTA dispute settlement provisions, if the U.S. does not agree to open the border to Mexican motor carriers, it can offer to compensate Mexico with new trade benefits and cash payments. However, if Mexico refuses to negotiate terms of compensation, NAFTA permits Mexico to take compensation in the form of levying reciprocal trade sanctions against the U.S. Despite the fact that the U.S. is not required to open the southern border to unsafe motor carrier traffic, the Bush Administration seems poised to open the border by the end of the year.

This apparent decision by the Bush Administration goes against the enormous body of evidence that far too many safety hazards remain unresolved and that the U.S. is ill-prepared to handle the massive influx of foreign traffic that would result from the opening of the border. In the late 1990s, studies by the Department of Transportation's Inspector General ("IG") and the General Accounting Office ("GAO") established that Mexican transportation companies were ill-prepared to comply with all U.S. laws and regulations. These same studies have also exposed the fact that our government is not prepared to carry out its enforcement and inspection responsibilities at the border and on American highways. These facts were recently reconfirmed by a new IG report that found that while some improvements have been made since the IG last investigated the safety of Mexico-domiciled motor carriers in 1998, Mexico-domiciled motor carriers are still not as safe as U.S. carriers, and U.S. border inspection facilities are still inadequate to investigate the safety of Mexico-domiciled motor carriers as they cross the border.

Mr. Chairman, these are troubling facts in light of Mexico's commitment to harmonize its safety standards to the level of the United States and Canada. In 1994, the three NAFTA countries established a Land Transportation Standards Subcommittee ("LTSS") to address the different rules and standards between the NAFTA countries. At the time, transportation labor was concerned that the LTSS had the potential of lowering U.S. highway and other transportation safety standards. Our goal has been the adoption of a common set of standards that raises each trading partner's existing transportation safety standards to the highest common denominator found in any of three countries. In doing so, strong safety standards guarantee the fair trade necessary to protect and promote the well-being of citizens in each of the signatory countries.

However, to date this committee has not completed its work and certainly has not accomplished a leveling-up of the Mexican highway standards. Mexico has no hours-of-service restrictions, roadside inspections are now voluntary, driver's licensing requirements are brand-new and permit commercial drivers under age 21, has no accurate database to track safety violations of its carriers and drivers, and has new and untested logbook requirements. Without needed improvements in Mexican

[2] 19 U.S.C. § 3312(a).

standards and the necessary resources to enforce these upgraded standards, any opening of our southern border is grossly premature, and is doomed to sacrifice safety and labor standards.

Against the backdrop of all these developments, an overwhelming majority of the U.S. House of Representatives and a majority of the U.S. Senate has continued to endorse comprehensive safety standards before opening the U.S.- Mexico border to commercial motor vehicles. In 1999, 258 members of the House of Representatives, led by Reps. James Oberstar (D-MN) and Jack Quinn (R-NY), joined together to urge President Clinton to maintain the cross-border restrictions until both countries agree on comprehensive safety standards, establish and successfully test effective enforcement programs, and staff border facilities with full-time inspectors. In the same year, 48 U.S. Senators, led by Senators Ron Wyden (D-OR) and Ben Nighthorse Campbell (R-CO), sent the same clear message to the President.

More recently, the Congress has again gone on record supporting comprehensive safety standards before allowing Mexico-domiciled motor carriers to the enter the United States. On June 26, 2001, the House of Representatives, by an overwhelmingly vote of 285 to143, adopted an amendment to the Department of Transportation Appropriations bill (H.R. 2299) prohibiting any funds from being used to process applications by Mexico-domiciled motor carriers for conditional or permanent authority to operate beyond the commercial border zone. During debate on the House floor, the amendment's primary sponsor, Rep. Martin Sabo (D-MN), made clear that it was unacceptable to permit 18 months to elapse between the time that a Mexico-domiciled carrier is granted U.S. operating authority and the completion of a thorough Federal Motor Carrier Safety Administration (FMCSA) safety review of the applicants. He further asserted that the proposed FMCSA paper review is not sufficient, and that FMCSA officials should be able to conduct a more thorough review, including audits of Mexico-domiciled carriers' home offices, *prior* to granting even conditional operating authority. TTD strongly agrees with Representative Sabo's measure, and we believe that the debate on this amendment clearly demonstrated again that a substantial majority in the House of Representatives remains committed to the highest safety standards at our border.

On the Senate side, the Senate Appropriations Committee reported out the FY 2002 Transportation Appropriations bill (S. 1178) last week, including in the bill several provisions drafted by Senator Patty Murray, Chair of the Transportation Appropriations Subcommittee, and ranking member Senator Richard Shelby, to address the issue of motor carrier safety with respect to Mexican cross-border truck and bus operations. TTD supports the Murray-Shelby measures which address most of our safety concerns.

At this point, I would like to address some of our safety concerns with the cross border policy of this Administration. It is this Committee's responsibility to address safety on our nations roads and highways. Anything that might have a negative impact on safety ought to be addressed in an immediate and responsive way by the Congress and the Department of Transportation. The admittance of Mexico-domiciled motor carriers will change the landscape of our highways and we need to be prepared to integrate them into our system safely and without sacrificing the safety of the traveling public.

In May of this year, the FMCSA published three notices of proposed rulemaking and requests for comments concerning procedures for the registration and safety monitoring of Mexico-domiciled carriers. Two of the rulemakings propose new forms for Mexico-domiciled motor carriers applying for operating authority in the commercial border zones and nationwide. The third rulemaking addresses the establishment of a safety oversight program. Without going into all the specifics of these rulemakings, suffice it to say these rulemaking are inconsistent with our long held views that Mexico-domiciled motor carriers should have to meet the same comprehensive safety standards that U.S. carriers must meet and should demonstrate compliance *before* being granted operating authority.

Two years ago this committee held hearings on motor carrier safety and how to improve it. Those hearings led this committee to create the FMCSA to protect the safety of U.S. highways. At the time, TTD affiliates strongly supported strengthening the legislative and regulatory framework supporting the Department of Transportation's (DOT) safety programs which, prior to the FMCSA's creation, drew criticism from the Congress regarding its effectiveness. Today, the newly created FMCSA is still under pressure to increase resources to support a proper level of safety oversight and inspection and bring greater focus to issues such as the safety hazards posed by Mexico-domiciled motor carriers entering our southern borders.

Under statutory requirements,[3] the agency is required to register only those motor carriers that can demonstrate that they are fit, willing, and able to comply with U.S. safety and financial responsibility requirements. Furthermore, the FMCSA is required to consider all available evidence and make a determination that the carrier is fit *prior* to issuing registration to operate in the United States. With these standards in mind, we believe the FMCSA does not have an adequate implementation plan in place to ensure that all Mexico-domiciled carriers meet these legal requirements.

Moreover, the proposed safety monitoring rulemaking is supposed to enhance safety oversight but provides no indication as to how this is going to be accomplished and with what resources. Needless to say, without specific procedures outlined or any credible plan for a substantial increase of enforcement personnel along the border, these proposed new rules will fail to raise the bar on safety. It is also not clear when these rules would be implemented and whether they could be accomplished in the short time frame established by the Bush Administration for liberalizing cross-border truck and bus operations between the U.S. and Mexico.

We also believe that the safety inspection process should occur even before motor carriers cross the border, with carrier audits being done even earlier. U.S. enforcement officials should be permitted to inspect truck and bus companies base operations in Mexico. These visits should include the evaluation of company safety management practices, knowledge of and compliance with U.S. regulations, vehicle inspections, and education of drivers, dispatchers, mechanics and management. These procedures would not be without precedent. The Federal Aviation Administration (FAA) safety authorities routinely inspect foreign airlines in the United States and abroad, to ensure these carriers are complying with safety regulations.

Another deficient area in the proposed rules is the failure to deal effectively with bus issues. As detailed in the testimony of Amalgamated Transit Union (ATU) President Jim LaSala, the proposed rules fail to establish any plan or meaningful mechanism for monitoring the unique safety issues that exist for Mexico-domiciled passenger motor carrier operations. Mexican buses and passenger vans have safety problems similar to those of Mexican trucks. Very few are inspected and those that are have a much higher out-of-service rate compared to U.S. vehicles. Because buses and vans carry people, the Department of Transportation has always held these passenger motor carriers to the highest safety standards. We believe the same must be true for Mexican-owned bus and van operations. There are a variety of unique and important passenger carrier issues that must be addressed including the threat to U.S. passengers from Mexican-owned or controlled passenger motor carrier companies operating buses domestically in the U.S., developing a clear system that ensures that all Mexican-manufactured buses entering the U.S. comply with relevant safety standards, and the increasing use of unsafe camioneta vans on our highways.

These real unresolved safety concerns in the Administration's plans to the open the border are only compounded by an inadequate inspection force at the border that is completely unprepared for the influx of newly admitted carriers. Currently, less than one percent of the 4.5 million motor carriers that enter the U.S. at our southern borders are inspected. Additionally, the number of federal inspectors at the border is less than half of the number that was estimated to be necessary in 1998, and that number did not include the investigators that will be necessary for the agency to conduct its 18-month safety reviews. Also, only 2 of 27 border crossings have permanent inspection facilities, both of which are state facilities in California which is nationally recognized as already having a good inspection program. We believe that this situation along the border is inexcusable and gives a very clear indication that in no way will our government be prepared to open the border by the first of next year. Our position is that we must increase inspection resources to ensure every motor carrier entering the United States is inspected.

Conclusion

Based on all the evidence that exists, it is clear that the U.S. is not prepared to step up to the myriad inspection and enforcement duties associated with permitting uninspected Mexican commercial traffic on our highways. The current bilateral process being employed by the U.S. and Mexico for the purpose of harmonizing standards and regulations is failing to produce satisfactory solutions to the many serious unresolved safety hazards along the border. Additionally, our government cannot ensure that Mexico-domiciled carriers will comply with all safety and health regulations, nor has it developed a safety enforcement implementation plan for safely opening the border. For these reasons, we believe it would be irresponsible for our government to expose U.S. highway users, including truck and bus drivers, to the

[3] 49 U.S.C. § 13902

safety threats posed by giving Mexico-domiciled carriers uninhibited access onto U.S. highways. We urge you to insist that the Administration reconsider its proposal to open the U.S.-Mexico border and work with TTD and our affiliated unions including the International Brotherhood of Teamsters and Amalgamated Transit Union to keep our border closed to unsafe motor carrier operations.

Thank you again for giving us an opportunity to share our views on this important matter.

Attachment 1

TTD AFFILIATES

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association
Amalgamated Transit Union
American Federation of State, County and Municipal Employees
American Federation of Teachers
Association of Flight Attendants
American Train Dispatchers Department
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Communications Workers of America
Hotel Employees and Restaurant Employees Union
International Association of Fire Fighters
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
International Longshoremen's Association
International Longshoremen's and Warehousemen's Union
International Organization of Masters, Mates and Pilots, ILA
International Union of Operating Engineers
Marine Engineers Beneficial Association
National Air Traffic Controllers Association
National Association of Letter Carriers
National Federation of Public and Private Employees
Office and Professional Employees International Union
Professional Airways Systems Specialists
Retail, Wholesale and Department Store Union
Service Employees International Union
Sheet Metal Workers International Association
Transportation
Communications International Union
Transport Workers Union of America
United Mine Workers of America
United Steelworkers of America

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